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Review of implementation of the United Nations
Convention against Corruption

Executive summary: Burundi

Note by the Secretariat

The present conference room paper is being made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the first year of the second review cycle.



II. Executive summary

Burundi

1. Introduction: overview of the legal and institutional framework of Burundi in the context of implementation of the United Nations Convention against Corruption

Burundi ratified the Convention on 18 January 2005 (Law No. 1/03). On 10 March 2006, the instrument of accession to the Convention was deposited. On 18 April 2006, Law No. 1/12 Law on the Prevention and Punishment of Corruption and related offences was enacted in order to implement the provisions of the Convention.

Burundi was reviewed during the first year of the first cycle of the Implementation Review Mechanism (CAC/COSP/IRG/I/1/1/Add.16).

In Burundi, only duly ratified international human rights instruments are recognized as an integral part of the legal system and have direct effect (art. 19 of the Constitution of 2005)¹. Thus, the enactment of a new law was necessary in order to incorporate the Convention into domestic law.

Burundi has a mixed legal system. In administrative and criminal cases, the judicial system is inquisitorial, while in civil cases, it is adversarial.

With the creation of the Burundi Transitional Government resulting from the Arusha Peace and Reconciliation Agreement concluded on 28 August 2000, a Ministry of the Presidency in charge of Good Governance (MBGP) was established. In addition, Burundi has institutions for the prevention of and fight against corruption, such as the Court of Auditors, the General Inspectorate of the State, the General Inspectorate of Finance, the Special Anti-Corruption Brigade, the Burundian Revenue Office, the Prosecutor General's Office at the Anti-Corruption Court, the Anti-Corruption Court, the Public Prosecutor's Office and the Supreme Court.

Burundi has enacted numerous laws to prevent and combat corruption, including the Law on the Prevention and Punishment of Corruption, the Law on the General Status of Civil Servants, the Law on the Public Procurement Code, the Law on the Code of Private and Public Companies and the Law on the Fight against Money Laundering and Terrorist Financing.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Burundi has not established a specific national strategy for the prevention of corruption. Nevertheless, several documents, such as the National Strategy for Good Governance and Anti-Corruption (SNBGLC), contain elements for preventing corruption. The SNBGLC was provided for in the second generation Strategic Framework for Economic Growth and Poverty Reduction, which has nevertheless expired in 2015. At the time of the country visit, a new document was being prepared to include a new strategy to prevent and fight corruption.

Several awareness-raising and educational campaigns on good governance and the negative effects of corruption have been organized. The SNBGLC has been evaluated several times (e.g., external evaluation supported by development partners), and the results of these evaluations have been made public.

Burundi is a party to the African Union Convention on Preventing and Combating Corruption and participates in the African Union Advisory Board on Corruption.

¹ The authorities have indicated that article 19 of the new 2018 Constitution is also relevant.

The Ministry of Good Governance and Planning (MGBP) is the body responsible for coordinating the prevention of corruption (art. 1, Decree No. 100/103 of 4 November 2005) and overseeing the implementation of the SNBGLC. Other institutions, such as the Court of Auditors, the General State Inspectorate and the National Directorate for the Control of Public Procurement also have mandates to prevent corruption. Coordination between the institutions is ensured through regular meetings. As a Ministry, the MGBP is not independent. A draft decree was submitted in 2017 (draft decree No. 100 on the organization of the Ministry of the Presidency in charge of good governance and planning) to update the structural organization of the MGBP.² According to the authorities, this reform proposal will not change the substantive or formal competencies of the MGBP.

The Court of Auditors plays a particularly important role in preventing corruption. As an external and independent auditor, it ensures the proper management of public accounts (art. 178 of the Constitution of 2005).³ In doing so, the Court contributes to the mission of preventing the mismanagement of public finances.

Burundi was reminded of its obligation to inform the Secretary-General of the names and addresses of authorities that can assist other States parties in developing and implementing specific measures to prevent corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

Law No. 1/28 of 23 August 2006 on the General Status of Civil Servants (SGF) establishes the general criteria for the recruitment of civil servants to whom the statute applies (arts. 7 et seq.). Special statutes, such as that of judges, contain the criteria for the recruitment of other categories of civil servants. Recruitment is carried out through an open competition (art. 12 SGF), and every civil servant must go through a probationary period at the beginning of his or her term of office in order to receive the relevant training. No specific integrity training takes place. The SGF also establishes criteria for the remuneration of civil servants (arts. 40 et seq.). There is no identification of positions particularly vulnerable to corruption or for the specific selection, training or rotation of individuals in these positions.

The Constitution provides for the general criteria for the eligibility to hold the office of the President of the Republic and Members of Parliament (arts. 97 and 165). Law No. 1/20 of 3 June 2014 revising Law No. 1/22 of 18 September 2009 on the Electoral Code⁴ provides for specific criteria relating to the eligibility of the President, Members of Parliament, senators and leaders of communities (arts. 94, 125, 158 and 172). Candidates for the Presidency of the Republic sentenced to a term of six months or more for any offence are ineligible for a period of four years after serving the sentence (10 years after serving a sentence of more than five years for having committed a crime (art. 94). The relevant periods of ineligibility to hold public office for candidates for Members of Parliament and senators in the National Assembly, as well as for candidates for the Communal Council, are two and five years, respectively (arts. 125, 158 and 183 of the Electoral Code).

Law No. 1/16 of 10 September 2011 revising Law No. 1/006 of 6 June 2003 on the Organization and Functioning of Political Parties establishes the rules applicable to the financing of candidates for elective public office. Any political party must keep regular accounts and present its accounts to the Ministers of the Interior and Finance, and must be able to justify the origin of their financial resources and their use

² After the country visit, the authorities indicated that Decree No. 100/130 of 1 September 2018 on the organization of the Ministry of the Presidency in charge of good governance and planning was signed.

³ By virtue of its article 183, the new Constitution of the Republic of Burundi of 7 June 2018 gives the Court of Auditors a new task, namely to monitor the accounts of all public services.

⁴ Amendment by virtue of articles 98 and 170 of the Constitution of the Republic of Burundi of 7 June 2018, Organic Law No. 1/11 of 20 May 2019 amending Law No. 1/20 of 3 June 2014 on the Electoral Code.

(art. 41, law No. 1/16). Access to these reports is limited to control and/or investigative institutions such as the Public Prosecutor's Office, the General Inspectorate of the State, the General Inspectorate of Finance, the Special Anti-Corruption Brigade, etc. In addition, a party that receives State funding or the coalition of approved and regularly constituted political parties receiving a gift or legacy must make a declaration to the Minister of the Interior (art. 45, law No. 1/16). Only natural persons of Burundian nationality may make donations to political parties in the form of donations or legacies, provided that the lawful origin of such donations can be established (art. 20, Act. No. 1/16).

Decree-Law No. 1/03 of 31 January 1989 establishing the regime of incompatibilities attached to the functions of public officials or authorized public representatives and the procedures for controlling the lawful origin of their property (Decree-Law No. 1/03 of 1989) provides that public officials and authorized public representatives may not engage in any activity likely to compromise their independence or have interests in any undertaking likely to compromise their independence (article 8, paragraph 3). Public officials may not receive gifts (art. 5, SGF).

The same Decree-Law (art. 2) also provides that declarations of interest are made before the competent authority as defined in article 7 of the said Decree-Law. However, access to these declarations is not public.

In addition, the President of the Republic must cease all outside activity as soon as the results of the election are announced (art. 99 Law no. 1/20)⁵, and Members of Parliament and senators exercising a function incompatible with their mandates are considered to have resigned automatically (arts. 124, 157 Law No. 1/20).

The SGF provides that civil servants must demonstrate, *inter alia*, honesty, responsibility and integrity in the performance of their duties (art. 4, para. 6) and provides for sanctions in the event of non-compliance (art. 65 et seq.). However, the Staff Regulations only apply to civil servants employed by the administration, which does not cover all public officials.

The general code of conduct is integrated into the SGF. Nevertheless, some services, such as the police, have specific codes of ethics. In addition, Articles 4-6 of the SGF apply, on a suppletive basis, in the event of deficiencies identified in the particular codes of ethics or in the absence of a particular code of conduct. These codes are shared with employees at the beginning of the probationary period (mandatory for public officials) and an assessment of knowledge of the codes is carried out at the end of the probationary period.

In the SGF, there is no explicit obligation for public officials to report to the competent authorities acts of corruption of which they have become aware in the performance of their duties.⁶ Public services, private institutions, non-governmental organizations, international institutions and organizations operating in Burundi as well as the Special Anti-Corruption Brigade must establish suggestion boxes for users wishing to report acts qualified as corruption and related offences (art. 41 of Law No. 1/12). A hotline has been established to this end.

Senior officials and other officials of the Public Administration are required to declare their assets when they take up their duties and at the end of their duties (Art. 146 Constitution)⁷. Burundi has moreover set up a system of asset declarations, which are received confidentially on paper, at the beginning and end of the term of office, of a

⁵ Amendment by virtue of article 99 of Law No. 1/20 102 of the Constitution of the Republic of Burundi of 7 June 2018 and article 99 of Organic Law No. 1/11 of 20 May 2019 amending Law No. 1/20 of 3 June 2014 on the Electoral Code.

⁶ Since the country visit, the obligation of all public officials to report to the competent authorities acts of corruption of which they have become aware in the performance of their duties is provided in article 102, paragraph 5, of Law No. 1/09 of 11 May 2018 amending the Code of Criminal Procedure.

⁷ Article 146 of the 2005 Constitution is equivalent to article 151 of the new Constitution of Burundi of 7 June 2018.

wide scope of specific officials (arts. 29 and 32 to 35 of Law No. 1/12 of 18 April 2006). This obligation applies to all officials working in areas related to procurement, contracting and financial responsibilities. There is no system of verification of declarations or sanctions for non-submission of declarations or false declarations, nor is there a system requiring public officials to report external activities, employment or gifts or benefits that could result in a conflict of interest with their functions as public officials.

The Constitution provides for the principle of the independence of the judiciary (art. 209).⁸

Decree No. 100/114 of 30 April 2013 on ethical guidelines provides in detail the rules concerning obligations relating to the respect for integrity, the prohibition of conflicts of interest and the disqualification procedure for judges and magistrates (arts. 14, 15, 72). Disciplinary sanctions for breaches of integrity rules are taken by supervisors and the Higher Council of the Judiciary (arts. 87, 96 Decree No. 100/114 of 2013). These sanctions may go as far as revocation.

The magistrates of the prosecution services are officers of the Public Prosecutor's Office. Nevertheless, they are subject to the same rules as magistrates and judges (art. 2, Law No. 1/001 of 29 February 2000, article 2, Decree No. 100/114 of 30 April 2013). In addition, members of the public prosecutor's office are not immoveable and may be assigned or reassigned to the offices of the Public Prosecutor's Office, the judiciary and other parts of the public administration as required.

Public procurement and management of public finances (art. 9)

The public procurement system is governed by Law No. 1/01 of 4 February 2008 on the Public Procurement Code (CMP)⁹. Burundi does not yet use electronic platforms for public procurement, but efforts in this regard were ongoing during the country visit. The public procurement procedure is centralized; however, at the time of the country visit, a change to a decentralized system was in progress.

The CMP provides for the principle of publicity of procurement procedures (Articles 15, 16, 47 and 68 CMP), and national and international public procurement by tender must be the subject of an invitation to tender brought to the public's attention via the Official Journal and the website of the Public Procurement Regulatory Authority. Failure to publish the invitation to tender is sanctioned by the nullity of procedures (art. 47 CMP). The Code also provides for the establishment of criteria for the evaluation of offers (arts. 21, 45, 63, 82 CMP), conditions for participation in specific cases (arts. 22, 23, 52, 55 CMP) and the selection process (art. 80 CMP).

Chapter 7 of the CMP concerns the dematerialization (use of electronically saved documents instead of hard copies) of procedures. Tender or consultation documents may be made available to candidates electronically (arts. 50, 51 of Chapter 7, CMP). Article 68, which concerns the information provided to bidders, emphasizes that contracting authorities must observe a minimum period of 15 calendar days after the publication of the results, before signing the contract and submitting it to the competent authorities for approval (para. 3). Paragraph 2 provides that the publication of the award report must be communicated in writing to any unsuccessful tenderer, together with the reasons for rejecting his tender.

Any aggrieved candidate first addresses his recourse to the Person in Charge of Public Procurement in the contracting authority (art. 132 CMP). This appeal has a suspensive effect (art. 134 CMP). In the absence of a decision by the latter within five working days, the applicant may also refer the matter to the Dispute Settlement Committee,

⁸ Amendment by virtue of article 214 of the new Constitution of the Republic of Burundi of 7 June 2018.

⁹ Since January 2018, procedures for the award and performance of public contracts have been governed by Law No. 1/04 of 29 January 2018 amending Law No. 1/01 of 4 February 2008 on the Public Procurement Code.

which renders its decision within 15 working days (art. 135 CMP). The Committee's decision may also be appealed to a judicial body (Article 137 CMP).

The national budget is adopted on the basis of Law No. 1/35 of 4 December 2008 on public finances. For each ministry and other institution, the Minister of Finance appoints an expenditure commitment controller in charge of authorizing any expense prior to incurring it and controlling the execution of the budget (art. 43, Law No. 1/35). In the absence of a pre-authorization, the expense cannot be incurred (art. 43, Law No. 1/35). The Court of Auditors also has the task of judicial control of the financial legality and budgetary compliance of all expenditure and revenue transactions (art. 52, Law No. 1/35).

An Integrated Public Finance Management System (SIGEFI web) that is interconnected with all ministries and other institutions has been implemented since January 2015.

Burundi is in the process of establishing an electronic system for keeping supporting documents for financial records in order to prevent their falsification. However, the system is not yet operational. Accounting standards that provide for the archiving of supporting documents and other relevant provisions to preserve the integrity of books and accounting statements, financial statements or other documents relating to public expenditure and revenue and to prevent their falsification are specified in Law No. 1/01 of 16 January 2015 revising Law No. 1/07 of 26 April 2010 on the Commercial Code (art. 26 to 33); Law No. 1/09 of 30 May 2011 on the Code of Private and Public Participation Companies (arts. 66 to 81); Law No. 1/18 of 6 September 2013 on Tax Procedures (arts. 26 to 30); and the National Chart of Accounts revised and adopted by Ministerial Order No. 540/1791 of 7 November 2012.¹⁰

Public reporting; participation of society (arts. 10 and 13)

Burundi has no access to information law but a bill was being prepared at the time of the country visit. While the Communication Strategy adopted by the Council of Ministers provides for the right of every citizen to information, no sanctions are provided for when it is not possible to effectively exercise this right. An information and communication unit has been established in each ministry, and any citizen may request information from it. Every quarter, the Ministries hold one radio session, in which citizens can also ask questions.

Several institutions, such as the Investment Promotion Agency and the Ministry of Transport, have begun to create points of contact in order to simplify administrative procedures.¹¹

Annual reports on the implementation of the SNBGLC and the final evaluation report were made public.

The participation of civil society in public decision-making processes is ensured through elections, grassroots initiatives and referendums. In addition, the authorities have indicated that it is customary to consult several civil society groups during the drafting process of bills and awareness-raising campaigns are conducted through the media and workshops.

Telephone lines for reporting suspected cases of corruption to the Special Anti-Corruption Brigade have been established, including by civil society, and reporting can be done anonymously. Sensitization campaigns on anti-corruption issues and integrity have been organized.

¹⁰ Articles 357 et seq. of the new Criminal Code penalize the creation and use of false documents (Law No. 1/27 of 29 December 2017).

¹¹ After the country visit, the authorities reported that provincial one-stop shops were being installed throughout the country (including five provincial one-stop shops already installed, and five others to be operational by December 2019), in order to provide the public with easier and less costly access to information and services for issuing passports, driving licences, criminal records and other documents.

Private sector (art. 12)

Law No. 1/01 of 16 January 2015 Revising Law No. 1/07 of 26 April 2010 on the Commercial Code (Law No. 1/01 of 2015) contains provisions relating to the obligation for traders (except itinerant traders) to open a bank account and establish a regular account that records their transactions and assets, and to maintain these documents and business correspondence for 10 years (arts. 26-31).

A person convicted with a final judgment of, inter alia, misappropriation or embezzlement may not be registered in the Trade and Companies Register (art. 60, Law No. 1/01 of 2015). A public official or agent of a public administration who had been in charge of exercising direct supervision or control over a private company, or to express his opinion on operations carried out by a private company and, for a period of three years from the termination of the office, exercises a mandate or a remunerated activity for that company, is subject to criminal sanctions (art. 60, para. 2, of Law No. 1/12 of 2006).

Articles 481, 531 and 562 of Law No. 1/09 of 30 May 2011 on the Code of Private and Public Companies oblige companies to have their accounting records audited by an independent auditor. The improper use of the regulatory procedures of private entities is further punishable pursuant to articles 153 to 161 of Act N°1/09 of 30 May 2011.

The cooperation between anti-corruption law enforcement agencies and private entities is limited to cooperation deriving from the legal powers of the Special Anti-Corruption Brigade and the Public Prosecutor's Office to investigate and prosecute acts of corruption and related offences, as set out in articles 5 to 9, 17, 24 and 27 of Law No. 1/12 of 18 April 2006.

The establishment of off-book accounts, off-book or insufficiently identified transactions, the recording of non-existent expenses or liabilities whose object is not correctly identified, or the use of false documents are considered false public writing and sanctioned (arts. 345, 348 and 349 of the Criminal Code). Law No. 1/18 of 6 September 2013 on tax procedures qualifies as tax fraud the intentional destruction of accounting documents earlier than foreseen by the law. Penalties are provided for in articles 130 and 131 of the Act.

The General Tax Code (CGIT) does not mention the prohibition of tax deductibility of expenses that constitute bribes. However, these are not mentioned in the list of permitted deductions (Art. 7 of Title II, Arts. 43, 44, 50, 51 and 52 of Title IV CGIT) and therefore cannot be deducted.

Measures to prevent money-laundering (art. 14)

Law No. 1/02 of 4 February 2008 combating Money Laundering and Terrorist Financing (LBCFT) provides for the creation of the National Financial Intelligence Unit (FIU) by Ministerial Order No. 540/791 of 25 May 2010. According to the LBCFT law, the FIU must be composed of representatives from different services from the public and private sectors under the coordination of the Ministry of Finance. The functions of the Unit (Article 12 LBCFT) include the receipt of suspicious transaction reports, their analysis and the transmission of the resulting report and other information concerning acts likely to constitute money-laundering (Articles 16-20 LBCFT). A complete list of reporting persons is established by virtue of Article 3 of the LBCFT Act.

During the country visit in 2017, it was explained that the FIU had never become operational and had, for example, never received a suspicious transaction report. The review team was informed that there were plans to completely restructure national measures to prevent money-laundering in Burundi. The review team expressed serious concern about the void created by virtue of the reorganization of this key institution, as the FIU should have been established and operational seven years ago.

Information exchanges by authorities dedicated to anti-money laundering at the national level could be carried out formally by the prosecutor and the special brigade as well as spontaneously (art. 15 LBCFT). However, the exchanges of information by the INTERPOL system had not yet concerned corruption offences at the time of the country visit. Cross-border movements of cash are not regulated.

With regard to financial institutions, the review team was informed that despite representatives of state and private banks having participated in a number of training courses by the IMF and the World Bank, there were no specific regulations for the electronic transfer of funds. The LBCFT Act specifies, among other things, the measures to be taken with regard to client identification (art. 4) and the preservation of documents for 10 years (art. 14), but as indicated above, not all provisions of the Act are implemented.

Burundi has observer status with the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

2.2. Successes and good practices

- Existing codes of ethics form an integral part of the employment contract of public officials (art. 25, para. 5 SGF).

2.3. Challenges in implementation

It is recommended that Burundi:

- Advance the adoption of the national policy letter on Good Governance and Anti-Corruption and the second generation of the SNBGLC, integrating aspects of corruption prevention and ensuring that the new policy is comprehensive, effective and coordinated (art. 5, para. 1);
- Consider strengthening specific anti-corruption preventive practices, such as awareness-raising and education campaigns for the public (art. 5, para. 2);
- Grant the MGBP the necessary independence, in accordance with the fundamental principles of Burundi's legal system, to enable it to effectively carry out its functions with regard to the prevention of corruption and free from undue influence and provide it with the necessary resources or establish a new independent preventive body (art. 6, para. 2);
- Endeavour to strengthen the system of selection for public positions considered especially vulnerable to corruption and, where appropriate, ensure the rotation of certain posts (art. 7, para. 1 (b));
- Promote education and training programmes for public officials that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions (art. 7, para. 1 (d));
- Encourage integrity, honesty and accountability among its public officials, as well as among persons employed by the administration who are not civil servants, and endeavour to apply codes or standards of conduct in all public services, taking into account relevant initiatives of regional, interregional and multilateral organizations (art. 8, paras. 1-3);
- Consider strengthening measures and systems to facilitate the reporting by public officials to the competent authorities of acts of corruption of which they have become aware in the performance of their duties (art. 8, para. 4);
- Endeavour to extend the scope of the asset declaration to all public officials and to establish a system of verification of declarations and sanctions for non-compliance (arts. 8(5) and 52(5));
- Endeavour to set up systems for the declaration of any outside activity or undertaking, whether paid or unpaid and gifts or benefits from which a conflict of interest may arise (art. 8, para. 5);

- Continue its efforts to introduce an electronic system for public procurement, as well as for the preservation of supporting documents for financial records (art. 9, paras. 1 and 3);
- Continue its efforts to increase the transparency of its public administration, in particular with regard to the adoption of a law on access to information (including on the organization, functioning and decision-making process of the public administration) by citizens, the simplification of procedures for this purpose and the publication of information (art. 10);
- Take measures to strengthen the prevention of corruption involving the private sector in general and in particular to promote cooperation between law enforcement and private entities, standards and procedures to preserve the integrity of private entities, transparency between private entities, prevent and criminalize of the misuse of regulatory procedures of private entities (art. 12, paras. 1 and 2);
- Consider, in the interest of legal clarity, to explicitly specify that bribes cannot be tax deductible (art 12 (4));
- Burundi must review its system for the prevention of money-laundering as a matter of priority and ensure that it complies with the requirements of the present Convention, including by implementing the existing provisions of the LBCFT that are already in line with the Convention (art. 14);
- Strengthen its system for the prevention of money laundering as a matter of priority, ensure that it is in compliance with the requirements of the present Convention and functional, including by applying existing provisions of the LBCFT that are already in compliance with the Convention, and consider implementing measures to detect and monitor the cross-border movement of cash and appropriate negotiable instruments (art. 14).

2.4. Technical assistance needs identified to improve implementation of the Convention

The following technical assistance is required to improve the implementation of the Convention in Burundi:

- Legal support in the implementation of the reform of the legal and institutional framework for the prevention of corruption and the conduct of organizational and functional/operational audits of the prevention bodies (arts. 5, 6);
- Strengthening of the organizational and operational capacities of institutions responsible for designing, implementing, monitoring and evaluating prevention policies, support in monitoring and evaluating the implementation of the SNBGLC (art. 5);
- Training of managers (art. 7);
- Capacity-building of the system for collecting, storing and processing of data for the production and publication of corruption prevention statistics.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Burundi does not have a special law or practice on asset recovery.¹² The legal framework applicable in this area consists of LBCFT and the Criminal Code. Articles 33 to 35 of the LBCFT set out the conditions and scope of mutual legal

¹² After the country visit, the authorities indicated that a bill on international cooperation of general scope was being adopted.

assistance that may be granted to foreign countries for combatting money-laundering and other offences within the scope of the Act (art. 34). However, as indicated above (see Measures to prevent money laundering (art. 14)), the FIU is not operational and the LCBFT law is not enforced in all its provisions.

The MBGP has prepared a policy and technical guidance document on the reform of the legal and institutional framework for preventing and combating corruption. This document underlines that the Government of Burundi remains open to modernizing its legal and institutional system in order to open up channels of international cooperation. It should also be noted that Burundi is a member of the Asset Recovery Inter-Agency Network for Eastern Africa (ARINEA) and part of the Network of National Anti-Corruption Institutions of Central Africa (RINAC). Burundi is an observer to the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA).

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The obligation to verify the identity of clients is provided for in Article 4 LBCFT for all establishments and persons referred to in Article 2 LBCFT. Under Article 5 LBCFT, financial institutions must be particularly vigilant when entering into relationships with politically exposed persons. The notion of politically exposed person covers any person who performs or has performed important public functions in Burundi or in a foreign country, without distinction between nationals and foreigners (art. 2§12). However, the law does not extend the obligation of enhanced scrutiny to family members or close associates of such persons. Nor does it provide for measures to identify the beneficial owners of funds deposited into high-value accounts.

Burundi has not issued guidelines on the implementation of the measures contained in article 52 of the Convention. In addition, Burundi does not have a system of notification, at the request of other States or on its own initiative, of the identity of persons to whose accounts enhanced scrutiny is to be applied.

Under Articles 8 and 9 LBCFT, for a period of at least ten years, financial institutions are required to keep data relating to the transactions they have carried out. This includes supporting documents used to identify clients and any documents relating to transactions carried out by clients.

Article 52 of the 2015 Commercial Code provides that no foreign commercial establishment, whether banking or not, may be registered in Burundi without a physical presence. However, it is not clear whether or not the legislation prohibits foreign banks from depositing accounts in legally established banks.

The Burundian asset declaration system is established by Law No. 01/12 of 18 April 2006 (articles 29-36) and is applicable to senior level officials, as well as those handling procurement, public contracting and finances. The penalties applicable to officials who do not comply with this obligation are provided for in Articles 71 to 74 of Decree-Law No. 1/03 of 31 January 1989. The declaration of accounts domiciled abroad is not provided for by this law.

Article 12 of the LCBFT law provides for the creation of the FIU by Ministerial Order No. 540/791 of 25 May 2010. This Unit is not operational.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Under article 163 of the Code of Criminal Procedure¹³, any party that considers itself aggrieved may bring a civil action to recover property. With regard to the action for

¹³ After the country visit, a new Code of Criminal Procedure was adopted. The authorities indicated that the corresponding article in the new Code of Criminal Procedure was article 219.

compensation of damages, article 3 of the Code of Civil Procedure specifies that only persons with a legitimate interest may avail themselves of it.

Burundian law does not provide for the enforcement of foreign confiscation orders nor for the confiscation of the proceeds of crimes of foreign origin arising from the adjudication of money-laundering or other offences established by the Convention. Burundi has no provisions allowing for the confiscation of property without a criminal conviction. However, the Burundian Criminal Code provides for confiscation as an additional penalty that may be imposed in addition to the main penalty (articles 61 to 64 of the Criminal Code). It is possible to request a protective seizure of illegally acquired property (art. 63 of the Criminal Code) but no protective seizure has so far been carried due to the absence of cases of requests from other States parties.

Burundi has an exequatur procedure. Indeed, article 26 of Law No. 1/08 of 17 March 2005 on the Code of Organization and Competence of the Judiciary provides that the high courts may recognize the enforceability of decisions rendered by foreign courts.

Burundian domestic law does not explicitly provide for the preservation of property with a view to its confiscation. However, this would be possible by means of Article 33 LBCFT, whose scope is particularly broad.

Return and disposal of assets (art. 57)

Burundi does not regulate the return of assets to a requesting State. At the time of the country visit, Article 62 of the Criminal Code provides that confiscated property is in principle forfeited to the State of Burundi. However, bona fide third parties retain their legally acquired rights to the property. Damages are calculated according to a particular methodology detailed in the internal rules of the courts and tribunals.

Burundi relies on UNCAC to allow for the deduction of reasonable expenses incurred in investigations, prosecutions or judicial proceedings that resulted in the return or disposal of confiscated property.

3.2. Challenges in implementation

It is recommended that Burundi:

- Consider the establishment of a law on mutual legal assistance that addresses the requirements of chapter V of the Convention (art. 51);¹⁴
- Ensure that the relevant legislation is amended to give effect to the requirements under article 52 under the Convention;
- Require financial institutions to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts (art. 52(1));
- Amend the definitions of politically exposed persons in line with the requirements of art. 52(1);
- Consider adopting guidelines on the types of natural or legal persons over whose accounts and transactions financial institutions will have to exercise enhanced scrutiny (art. 52(2)(a));
- Consider requiring financial institutions to refuse to establish or maintain correspondent banking relationships with banks that do not have a physical presence and are not affiliated with a regulated financial group, and to refrain from establishing relationships with foreign financial institutions that allow their accounts to be used by such banks (art. 52, para. 4);
- Consider establishing a financial disclosure system or extending the scope of the asset declaration system to all public officials as well as system of

¹⁴ After the country visit, the authorities indicated that a bill on international cooperation of general scope was being adopted.

verification of such disclosures and declarations together with sanctions for non-compliance (arts. 8(5) and 52(5));

- Consider establishing a comprehensive system for the declaration of assets, the verification of asset declarations and the information provided therein, and the imposition of sanctions in the event of non-compliance with the relevant provisions (art. 8, para. 5 and art. 52, para. 5);
- Endeavour to set up systems requiring public officials to declare any outside activity or undertaking, regardless of paid or unpaid, and gifts or benefits from which a conflict of interest may arise (art. 8(5));
- Ensure that accounts domiciled abroad also be subject to public officials' asset declaration system requirement (art. 52(6));
- Ensure that the requirement for aggrieved States to justify its legitimate interest before initiating civil action does not prevent the full implementation of Article 53 of the Convention;
- Take necessary measures to permit competent authorities to: a) give effect to a foreign confiscation order, and b) order confiscation of property of foreign origin by adjudicating a money laundering offence, or another offence within its jurisdiction, or by another procedure permitted by its domestic law (Art. 54(1) (a) and (b));
- Consider taking the necessary measures to allow for the confiscation of such property in the absence of a criminal conviction (Art. 54(1) c);
- Permit the freezing or seizure of property by decision of a court or competent authority of a requesting State Party for the purpose of confiscation (Art. 54(2) a);
- Permit the freezing or seizure of property at the request of another State Party for the purpose of confiscation (Art. 54(2) b);
- Consider taking measures to ensure the preservation of the value property and proceeds of corruption also outside the application of LCBFT with a view to its confiscation (Art. 54 (2) c);
- Establish a system for responding to requests for confiscation from other States Parties (art. 55 (1) (a) and (b));
- Establish measures for the identification, tracing, freezing and seizure of proceeds of crime for subsequent confiscation to be ordered either by the requesting State Party or pursuant to a request by the requested State Party (art. 55 (2));
- Endeavour to establish measures to allow for the spontaneous transmission of information on the proceeds of crime deriving from all offences established in accordance with the Convention (art. 56);
- Ensure the adoption of legislation on Asset Recovery and that it reflects the requirements of article 57 of the Convention;
- Establish and render operational the FIU, as foreseen by article 58 of the Convention and the LBCFT.

3.3. Success and good practices

- Burundi's efforts to establish a law on mutual legal assistance, including asset recovery.

3.4. Technical assistance needs identified to improve implementation of the Convention

- Legal Support to review its legal and institutional framework, in particular to enable the confiscation of property not based on a court conviction (art. 54);
 - Support in the collection, storage and analysis of data for the production and publication of statistics within institutions for the recovery of illegally acquired property (art. 54);
 - Capacity-building of institutions for the recovery of illegally acquired property and staff training (art. 54), including the organizational and functional capacities of the FIU and its staff (art. 58).
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