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## Executive summary

## Note by the Secretariat

## Addendum

## Contents

	<i>Page</i>
II. Executive summary .....	2
Burundi .....	2

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## 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 (Act No. 1/03). On 10 March 2006, the instrument of accession to the Convention was deposited. On 18 April 2006, Act No. 1/12 on preventing and combating corruption and related offences was enacted; it is one of the main pieces of legislation that implement the provisions of the Convention.

The implementation by Burundi of chapters III and IV of the Convention was reviewed during the first year of the first cycle of the Implementation Review Mechanism (CAC/COSP/IRG/II/1/1/Add.16).

In Burundi, only international human rights instruments can have direct effect (art. 19 of the Constitution of 2005).<sup>1</sup> 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 instatement of the Transitional Government pursuant to the Arusha Peace and Reconciliation Agreement for Burundi concluded on 28 August 2000, the office of Minister to the President in charge of good governance was established. In addition, Burundi has various institutions responsible for preventing and combating 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 Act on Preventing and Combating Corruption, the Act on the General Statute Governing Civil Servants, the Act on the Public Procurement Code, the Act on the Code of Private and Public Companies and the Act 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 the Fight Against Corruption (SNBGLC), contain elements for preventing corruption. The SNBGLC was established within the second-generation Strategic Framework for Economic Growth and Poverty Reduction, which expired in 2015. At the time of the country visit, a document establishing a new strategy for preventing and combating corruption was being prepared.

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.

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

The Ministry of Good Governance and Planning (MBGP) is the body responsible for coordinating the prevention of corruption (art. 1 of 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 Inspectorate of the State 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 MBGP is not independent. A draft decree was submitted in 2017 (draft decree No. 100 on the organization of the office of the Minister to the President in charge of good governance and planning) to update the structural organization of the MBGP.<sup>2</sup> According to the authorities, this reform proposal will not change the substantive or formal competencies of the MBGP.

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).<sup>3</sup> In doing so, the Court contributes to efforts to prevent the mismanagement of public finances.

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

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

Act No. 1/28 of 23 August 2006 on the General Statute Governing Civil Servants (SGF) establishes the general criteria for the recruitment of those civil servants to whom it applies (arts. 7 et seq.). Special statutes, such as that for judges, contain the criteria for the recruitment of other categories of civil servants. Recruitment is carried out through open competitive processes (art. 12 of the SGF), and all civil servants must complete a probationary period at the beginning of their appointment during which time they receive the relevant training. The SGF also establishes criteria for the remuneration of civil servants (arts. 40 et seq.). Positions particularly vulnerable to corruption have not been identified and there are no specific procedures for the selection, training or rotation of individuals in such positions.

The Constitution establishes general criteria relating to eligibility for the office of President of the Republic and members of the National Assembly (arts. 97 and 165). Act No. 1/20 of 3 June 2014 amending Act No. 1/22 of 18 September 2009 on the Electoral Code<sup>4</sup> establishes specific criteria relating to eligibility for the office of the President, members of the National Assembly and the Senate, and local elected officials (arts. 94, 125, 158 and 172). Persons sentenced to a term of imprisonment of six months or more for any offence are ineligible for election to the office of President for a period of four years after having served their sentence, or for 10 years after having served a sentence of more than five years (art. 94). The periods of ineligibility for election as a member of the National Assembly or Senate or as a member of a local council are two and five years, respectively (arts. 125, 158 and 183 of the Electoral Code).

Act No. 1/16 of 10 September 2011 amending Act No. 1/006 of 26 June 2003 on the organization and functioning of political parties establishes the rules applicable to the financing of candidates for elected public office. All political parties must keep regular accounts, submit those accounts to the Ministry of the Interior and the Ministry of Finance, and be able to justify the origin of their financial resources and

<sup>2</sup> After the country visit, the authorities indicated that Decree No. 100/130 of 1 September 2018 on the mandate and organization of the office of the Minister to the President in charge of good governance had been signed.

<sup>3</sup> Article 183 of the new Constitution of the Republic of Burundi of 7 June 2018 entrusts the Court of Auditors with a new task, namely to monitor the accounts of all public services.

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

the use made of those resources (art. 41 of Act 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 and the Special Anti-Corruption Brigade. In addition, any party that receives State funding or any coalition of approved and regularly constituted political parties that receives donations or bequests must declare them to the Minister of the Interior (art. 45 of Act No. 1/16). Only natural persons who are Burundian nationals may make donations to political parties in the form of donations or bequests, provided that the lawful origin of such donations can be established (art. 20 of Act. No. 1/16).

Decree-Law No. 1/03 of 31 January 1989 on practices that are incompatible with the functions of public officials or authorized public representatives and the procedures for controlling the lawful origin of their property states 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 (art. 8, para. 3). Public officials may not receive gifts (art. 5 of the SGF).

Article 2 of the same Decree-Law also stipulates that disclosures of interests must be made before the competent authority as defined in article 7 of the Decree-Law. However, access to that information 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 of Act No. 1/20),<sup>5</sup> and members of the National Assembly and the Senate who engage in activities incompatible with their mandates are considered to have resigned automatically (arts. 124 and 157 of Act No. 1/20).

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

The General Code of Conduct is incorporated 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 gaps identified in a particular code 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 knowledge of the codes is assessed at the end of that 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.<sup>6</sup> Public services, private institutions, non-governmental organizations, institutions, international organizations operating in Burundi and the Special Anti-Corruption Brigade must establish suggestion boxes for users wishing to report acts classified as corruption and related offences (art. 41 of Act No. 1/12). A hotline has been established for that purpose.

Senior officials and other officials of the public administration are required to declare their assets upon entry to and departure from their positions (art. 146 of the Constitution).<sup>7</sup> Furthermore, Burundi has set up an asset declaration system whereby a large number of specified officials submit hard copies of asset declarations

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

<sup>6</sup> 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 has been established in article 102, paragraph 5, of Act No. 1/09 of 11 May 2018 amending the Code of Criminal Procedure.

<sup>7</sup> Article 146 of the 2005 Constitution corresponds to article 151 of the new Constitution of Burundi of 7 June 2018.

confidentially at the beginning and end of their period of employment (arts. 29 and 32–35 of Act 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 for verifying declarations and there are no sanctions for the failure to submit declarations or for the submission of false declarations. Moreover, there is no system for public officials to report outside activities, employment, gifts or benefits that could result in conflicts of interest with their functions as public officials.

The Constitution establishes the principle of the independence of the judiciary (art. 209).<sup>8</sup>

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

Public prosecutors are officials of the Public Prosecutor's Office. Nevertheless, they are subject to the same rules as judges (art. 2 of Act No. 1/001 of 29 February 2000 and art. 2 of Decree No. 100/114 of 30 April 2013). In addition, members of the Public Prosecutor's Office do not have security of tenure and may be assigned or reassigned to departments within the Public Prosecutor's Office, the judiciary or other parts of the public administration, as required.

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

The public procurement system is governed by Act No. 1/01 of 4 February 2008 on the Public Procurement Code (CMP).<sup>9</sup> 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 establishes the principle of publication of procurement procedures (arts. 15, 16, 47 and 68), and national and international public procurement by tender must be the subject of an invitation to tender brought to the public's attention through the Official Journal and the website of the Public Procurement Regulatory Authority. Failure to publish an invitation to tender results in the nullity of the procedure (art. 47). The Code also provides for the establishment of criteria for the evaluation of offers (arts. 21, 45, 63 and 82) and the selection process (art. 80).

Chapter 7 of the CMP concerns the dematerialization of procedures (i.e., the use of electronic documents instead of hard copies). Tender or consultation documents may be made available to candidates electronically (arts. 50 and 51 of chapter 7 of the CMP). Article 68, which concerns the information provided to prospective tenderers, emphasizes that contracting authorities must wait a minimum 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 of that article establishes that publication of the award report must be communicated in writing to all unsuccessful tenderers, together with the reasons for their rejection.

Any unsuccessful tenderer that wishes to appeal the decision must first submit the appeal to the person in charge of public procurement (art. 132 of the CMP). This appeal has a suspensive effect (art. 134). In the absence of a decision by the latter within five working days, the appellant may refer the matter to the Dispute Settlement

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

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

Committee, which delivers its decision within 15 working days (art. 135). The Committee's decision may also be appealed before a judicial body (art. 137).

The national budget is adopted on the basis of Act No. 1/35 of 4 December 2008 on public finances. For each ministry and some other institutions, the Minister of Finance appoints an expenditure commitment controller in charge of authorizing any expense before it is incurred and controlling the implementation of the budget (art. 43 of Act No. 1/35). In the absence of prior authorization, the expense cannot be incurred (art. 43). The Court of Auditors is responsible for judicial control of the financial legality and budgetary compliance of all expenditure and revenue transactions (art. 52).

The Integrated Public Finance Management System (SIGEFI web), which is connected with all ministries and some other institutions, was established in January 2015.

Burundi is in the process of establishing an electronic system for keeping supporting documents in order to prevent falsification. However, the system is not yet operational. Accounting standards that provide for the archiving of supporting documents and other provisions on preserving the integrity of accounting books and records, financial statements and other documents relating to public expenditure and revenue and on preventing their falsification are set out in Act No. 1/01 of 16 January 2015 amending Act No. 1/07 of 26 April 2010 on the Commercial Code (arts. 26–33); Act No. 1/09 of 30 May 2011 on the Code of Private and Public-Participation Companies (arts. 66–81); Act No. 1/18 of 6 September 2013 on tax procedures (arts. 26–30); and the National Accounting Plan amended and adopted by Ministerial Order No. 540/1791 of 7 November 2012.<sup>10</sup>

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

Burundi has no law on access to information, 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 have been established 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 those units. Every quarter, the ministries broadcast a radio show during which citizens can ask questions.

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

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, grass-roots initiatives and referendums. In addition, the authorities indicated that it is customary to consult several civil society groups during the drafting of bills and awareness-raising campaigns are conducted through the media and workshops.

Hotlines have been established, including by civil society, for the reporting of suspected cases of corruption to the Special Anti-Corruption Brigade, and reports can be made anonymously. Awareness-raising campaigns on integrity and the fight against corruption have been organized.

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

<sup>11</sup> After the country visit, the authorities reported that points of single contact were being established in provinces throughout the country (including five that had already been established, and five others to be operational by December 2019), in order to provide the public with easier and less expensive access to information and services for the issue of passports, driving licences, police records and other documents.

*Private sector (art. 12)*

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

Any person convicted for, inter alia, misappropriation or embezzlement cannot be registered in the Trade and Companies Register (art. 60 of Act No. 1/01 of 2015). Public officials or officials of a public administration whose responsibilities included exercising direct supervision or control over a private company or expressing an official opinion on the operations carried out by a private company are liable for criminal sanctions, if, within a period of three years from the cessation of their functions, they undertake a mandate or remunerated activity for that company (art. 60, para. 2, of Act No. 1/12 of 2006).

Articles 481, 531 and 562 of Act No. 1/09 of 30 May 2011 on the Code of Private and Public-Participation Companies establish the obligation for companies to have their accounting records audited by an independent auditor. The improper use of the procedures applicable to private entities is punishable under articles 153–161 of Act No. 1/09 of 30 May 2011.

Cooperation between the anti-corruption law enforcement agencies and private entities is limited to cooperation on the basis of 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 5–9, 17, 24 and 27 of Act 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, and the use of false documents are considered acts of forgery and are sanctioned (arts. 345, 348 and 349 of the Criminal Code). Act No. 1/18 of 6 September 2013 on tax procedures considers 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 a prohibition on tax deductibility of expenses that constitute bribes. However, these are not mentioned in the list of permitted deductions (art. 7 of Title II and arts. 43, 44, 50, 51 and 52 of title IV of the CGIT) and therefore cannot be deducted.

*Measures to prevent money-laundering (art. 14)*

Act No. 1/02 of 4 February 2008 on the fight against money-laundering and terrorist financing (LBCFT Act) provides for the creation of the National Financial Intelligence Unit (FIU). According to the LBCFT Act, the FIU must be composed of representatives of various services in the public and private sectors under the coordination of the Ministry of Finance. The functions of the Unit (art. 12 of the LBCFT Act) 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 (arts. 16–20). A complete list of entities subject to reporting requirements is established in 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 the reorganization of this key institution, as the FIU should have been established and operational seven years ago.

Information exchanges at the national level could be carried out formally by the Prosecutor and the Special Brigade, as well as informally (art. 15 of the LBCFT Act).

However, exchanges of information by the INTERPOL system had not yet involved 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 organized by the International Monetary Fund (IMF) and the World Bank, there were no specific regulations for the electronic transfer of funds. The LBCFT Act specifies, *inter alia*, 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, of the SGF)

## **2.3. Challenges in implementation**

It is recommended that Burundi:

- Move forward with the adoption of the national policy letter on good governance and the fight against corruption and of 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 preventive anti-corruption practices, such as awareness-raising and education campaigns for the public (art. 5, para. 2)
- Grant the MBGP the necessary independence, in accordance with the fundamental principles of the legal system of Burundi, to enable it to carry out its functions with regard to the prevention of corruption effectively and free from any 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 positions considered especially vulnerable to corruption and, where appropriate, ensure rotation in certain posts (art. 7, para. 1 (b))
- Endeavour to 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 responsibility 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 functions (art. 8, para. 4)
- Endeavour to broaden the scope of the asset declaration system and to establish a system for verifying declarations and sanctions for non-compliance (art. 8, para. 5, and art. 52, para. 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 transparency in 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, with such measures possibly including, in particular, promoting cooperation between law enforcement and private entities, standards and procedures to safeguard the integrity of private entities and transparency among private entities, and preventing and criminalizing the misuse of procedures regulating private entities (art. 12, paras. 1 and 2)
- Consider, in the interest of legal clarity, explicitly specifying that bribes cannot be tax deductible (art. 12, para. 4)
- 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 that it is functional, including by applying existing provisions of the LBCFT Act 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 implementing 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 and 6)
- Strengthening of the organizational and operational capacities of the institutions responsible for designing, implementing, monitoring and evaluating prevention policies, and support in monitoring and evaluating the implementation of the SNBGLC (art. 5)
- Training of managers (art. 7)
- Building the capacity of the system that collects, stores and processes 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 specific law on asset recovery.<sup>12</sup> The legal framework applicable in this area consists of the LBCFT Act and the Criminal Code. Articles 33–35 of the LBCFT Act set out the conditions and scope of mutual legal assistance that may be granted to foreign countries to combat 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 not all provisions of the LBCFT Act are implemented.

<sup>12</sup> After the country visit, the authorities indicated that a bill on international cooperation that was general in scope was being adopted.

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), part of the Network of National Anti-Corruption Institutions in Central Africa (RINAC) and an observer in 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 established in article 4 of the LBCFT Act for all establishments and persons referred to in article 2 of the Act. Under article 5 of the LBCFT Act, financial institutions must be particularly vigilant when entering into relationships with politically exposed persons. The concept 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, para. 12). However, the law does not extend the enhanced scrutiny obligation to family members or close associates of such persons, nor does it establish 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, with regard to persons whose accounts are to be subject to enhanced scrutiny.

Under articles 8 and 9 of the LBCFT Act, 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 establishes that no foreign commercial establishment, whether bank or non-bank, may be registered in Burundi without a physical presence. However, it is not clear whether or not the legislation prohibits foreign banks from opening accounts in legally established banks.

The Burundian asset declaration system is established for all categories of public officials by Act No. 01/12 of 18 April 2006 (arts. 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 set out in articles 71–74 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 LBCFT Act provides for the creation of the FIU. The Unit, which was established by Ministerial Order No. 540/791 of 25 May 2010, 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 Procedure,<sup>13</sup> any party that considers itself aggrieved may bring a civil action to recover property. With regard to action for 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 or 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.

<sup>13</sup> 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.

Burundi has no provisions allowing for the confiscation of property without a criminal conviction. However, the Burundian Criminal Code establishes confiscation as an additional penalty that may be imposed in addition to the main penalty (arts. 61–64 of the Criminal Code). It is possible to request the protective seizure of illegally acquired property (art. 63 of the Criminal Code), but no protective seizures have so far been carried out owing to the absence of requests from other States parties.

Burundi has an exequatur procedure. Pursuant to article 26 of Act No. 1/08 of 17 March 2005 on the Code of Organization and Competence of the Judiciary, 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 of the LBCFT Act, whose scope of application 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 establishes that confiscated property is in principle forfeited to the State. 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 bases itself on the United Nations Convention against Corruption in allowing for the deduction of reasonable expenses incurred in investigations, prosecutions or judicial proceedings that result in the return or disposal of confiscated property.

### **3.2. Successes and good practices**

- The efforts by Burundi to establish a law on mutual legal assistance, including asset recovery

### **3.3. Challenges in implementation**

It is recommended that Burundi:

- Consider adopting a law on mutual legal assistance that addresses the requirements of chapter V of the Convention (art. 51)<sup>14</sup>
- Ensure that the relevant legislation is amended to give effect to the provisions under article 52 of 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, para. 1)
- Amend the definition of politically exposed persons in line with the requirements of article 52, paragraph 1
- Consider adopting guidelines on the types of natural or legal persons over whose accounts and transactions financial institutions should exercise enhanced scrutiny (art. 52, para. 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 comprehensive system for the declaration of assets, the verification of asset declarations and the information provided therein, and the

<sup>14</sup> After the country visit, the authorities indicated that a bill on international cooperation that was general in scope was being adopted.

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, whether paid or unpaid, and gifts or benefits from which a conflict of interest may arise (art. 8, para. 5)
- Ensure that accounts domiciled abroad are also subject to the asset declaration requirement to which public officials are subject (art. 52, para. 6)
- Ensure that the requirement for aggrieved States to justify their legitimate interest before initiating civil action does not prevent the full implementation of article 53 of the Convention
- Take such measures as may be necessary to permit the competent authorities (a) to give effect to a foreign confiscation order and (b) to order the confiscation of property of foreign origin by adjudication of a money-laundering offence or such other offence as may be within its jurisdiction or by another procedure authorized under its domestic law (art. 54, para. 1 (a) and (b))
- Consider taking such measures as may be necessary to allow the confiscation of property without a criminal conviction (art. 54, para. 1 (c))
- Permit the freezing or seizure of property by decision of a competent authority of a requesting State party for the purpose of confiscation (art. 54, para. 2 (a))
- Permit the freezing or seizure of property at the request of a competent authority of another State party for the purpose of confiscation (art. 54, para. 2 (b))
- Consider taking measures to ensure the preservation of valuable property and the proceeds of corruption outside the scope of application of the LBCFT Act with a view to their confiscation (art. 54, para. 2 (c))
- Establish a system for responding to requests for confiscation from other States parties (art. 55, para. 1 (a) and (b))
- Establish measures for the identification, tracing, freezing and seizure of the proceeds of crime for the purpose of eventual confiscation to be ordered either by the requesting State party or pursuant to a request by the requested State party (art. 55, para. 2)
- Endeavour to establish measures to enable the spontaneous transmission of information on the proceeds of crime deriving from all offences established in accordance with the Convention (art. 56)
- Ensure that legislation on asset recovery is adopted and that such legislation reflects the requirements of article 57 of the Convention
- Establish and render operational the FIU, as provided for by article 58 of the Convention and the LBCFT Act

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

- Legal support to review its legal framework, in particular, to enable the confiscation of property without a criminal 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 (arts. 52, 54 and 57)
- Capacity-building of institutions for the recovery of illegally acquired property and for staff training (art. 54), including the organizational and functional capacities of the FIU and its staff (art. 58)