



**International Covenant on
Civil and Political Rights**

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**Consideration of reports submitted by States
parties under article 40 of the Covenant**

Second periodic reports of States parties due in July 1996

Burundi*

[7 February 2013]

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I. General information on the country

A. Geographic and demographic information

1. Burundi is a Central African country and has just joined the East African Community. It is landlocked, and has a surface area of 27,834 km², 27,000 km² of which is land. To the north lies Rwanda, to the south and east the United Republic of Tanzania, and to the west the Democratic Republic of the Congo. Burundi is divided into 17 provinces, 129 municipalities and 2,908 *collines* (the smallest administrative unit in Burundi). It has a tropical climate with two main seasons, one long rainy season and a dry season of just over three months.

2. The language spoken by the whole population and used in primary education is Kirundi. The language of administration is French. Other languages, such as English and Swahili, are learned in school and spoken by a small part of the population.

3. The most recent population census (2008) puts the population at 8,038,618, of which 4,111,751 (51 per cent) are women. The capital, Bujumbura, is the most densely populated city. The population of Burundi is very young, with children and young people accounting for 60 per cent. Population density is 297 inhabitants per km², with:

- An annual demographic growth rate of 3 per cent;
- A fertility rate of 6.3 children per woman;
- Life expectancy at birth of less than 44 years.

4. According to the Constitution, Burundi is a secular country. Freedom of religion is guaranteed and, accordingly, the Catholic, Protestant and Muslim faiths are accepted.

B. Political information

5. Before colonization, Burundi was a monarchy, ruled by “divine right” by the Ganwa dynasty. It was colonized by Germany before the First World War, and after the Second World War by Belgium as a mandated trusteeship territory, until independence on 1 July 1962. Not long after independence, Burundi went through a prolonged period of recurring internal crises, including:

- The assassination, on 13 October 1961, of Prince Louis Rwagasore, Hero of National Independence;
- A succession of fratricidal crises and civil wars of a genocidal nature in 1965, 1969, 1972, 1988, 1991 and 1993;
- The culmination of these, which was the assassination, on 21 October 1993, of the first democratically elected President, His Excellency Melchior Ndadaye, hero of democracy in Burundi. After that, Burundi was plunged into more than 10 years of civil war, which declined in intensity in a first phase with the signing of the Arusha Agreement on Peace and Reconciliation in Burundi on 20 August 2000, followed by a transition of 36 months, divided into two periods of 18 months each;
- During the second period of transition, the keynote of the second phase was the signing of the political and ceasefire agreements between the Government and the former armed political movements and parties, the most decisive of these being the political agreement and the Forces Technical Agreement between the Government and the Conseil national pour la défense de la démocratie-Forces pour la défense de

la démocratie (CNDD-FDD) on 16 November 2003. This led to the latter's admission, once it had transformed itself into a political party, to the country's institutions (executive, parliament, diplomatic corps, and local and parastatal administrations). This process culminated in the adoption by referendum on 18 March 2005 of a Constitution based on the major principles of balance contained in the Arusha Agreement; and the organization of free, transparent and democratic elections in June 2005, which set up the institutions that currently run the country. Even the last remaining armed political movement, the Parti pour la libération du peuple Hutu-Front national de libération (PALIPEHUTU-FNL), has now laid down its weapons and is participating in the national institutions.

C. Economic and social information

6. Until 1992, Burundi enjoyed sustained growth, with estimated annual rates of 4.3 per cent on average between 1980 and 1991. The budget deficit was less than 5 per cent of gross domestic product and foreign aid averaged US\$ 300 million. From 1.9 per cent in 1992, the inflation rate rose to 31.1 per cent in 1997, and then fell to 24.3 per cent in 2000, 8.3 per cent in 2004 and 2.7 per cent in 2007. Since 1993, when the sociopolitical crisis began, the nation's wealth has shrunk by an average of 3 per cent per year and in 2002 the overall fall in production was put at more than 20 per cent. Development assistance to Burundi, chiefly humanitarian aid, was more than US\$ 300 million in 1999. Thus the Burundian economy is still essentially founded on arable and livestock farming, which continues to use archaic methods such as hoeing and prestige breeding. Agriculture is subject to climatic factors which do not help production. Burundi is thus classified as one of the five poorest and most indebted countries.

D. Normative and institutional human rights framework

1. Government mechanism for the promotion and protection of human rights

7. Ever since independence, Burundi has been described as a State in which massive violations of human rights constantly occur. The repeated crises mentioned above, which have cast a pall over the country and claimed many victims, are evidence of this. Until the early 1990s, there were no State institutions explicitly responsible for dealing with human rights issues. Only with the wave of democratization that washed over African institutions in the 1990s (after the sixteenth Franco-African summit at La Baule) and, above all, in response to the demands of donors, did attention begin to be paid to human rights issues. In April 1992, for the first time in Burundi, a human rights centre was set up under the aegis of the Ministry of Justice. This later became the Centre for the Promotion of Human Rights and the Prevention of Genocide, and was placed under the aegis of the ministry with responsibility for human rights.

8. In July 1993, after elections that June, the Ministry of Welfare, Human Rights and the Advancement of Women was set up, with a woman at its head (Decree No. 1/100/2002 of 10 July 1993). A ministry with responsibility for human rights has thus existed in the ministerial framework since 1993.

9. The Ministry's responsibilities include:

- Developing government policy on human rights and contributing to its implementation;
- Promoting and defending human rights in cooperation with the other ministries and public and private organizations concerned;

- Coordinating human rights activities;
- Designing and promoting a programme of education for peace, human rights, tolerance and democratic values, in cooperation with other national and international partners;
- Developing and implementing a programme for the prevention of genocide and eradication of the ideology of genocide, in cooperation with the other national and international partners.

10. Although it does not conform to the Paris Principles, the Governmental Commission on Human Rights, which is about to become the Independent National Commission on Human Rights, was set up in 2000 by Decree No. 120/VP1/002/2000 of 11 May 2000.

2. Institutional and legislative framework

11. Burundi has ratified and/or acceded to a number of regional and international human rights instruments, most of which form an integral part of the Constitution of 18 March 2005, through its article 19: "The rights and duties proclaimed and guaranteed inter alia by the Universal Declaration of Human Rights, the international human rights covenants, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights may not be the subject of any restriction or derogation, except in certain circumstances justified by the general interest of the protection of a fundamental right."

3. State of ratification of international legal instruments by Burundi and submission of reports

12. Burundi has ratified several human rights conventions including, for instance:

(a) The African Charter on Human and Peoples' Rights, which was adopted on 26 June 1981 and ratified by Burundi on 28 July 1989. The initial report became available in June 2010;

(b) The Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted on 9 December 1948 and entered into force on 12 July 1996. Burundi acceded to it on 22 July 1996. No report relating thereto has so far been produced;

(c) The Organization of African Unity (OAU) (African Union (AU)) Convention governing the Specific Aspects of Refugee Problems in Africa, which was adopted on 10 September 1969 and entered into force on 20 June 1974. It was ratified by Burundi on 31 October 1975. No report relating thereto has so far been produced;

(d) The Convention on the Political Rights of Women, which was adopted on 20 December 1952 and entered into force on 7 July 1954. It was ratified by Burundi on 31 December 1992. No report relating thereto has so far been produced;

(e) The Convention on the Rights of the Child, which was adopted on 20 November 1989 and entered into force on 2 September 1990. The initial report was produced in 1997 and presented to the Committee on the Rights of the Child. Burundi has given follow-up to the Committee's conclusions, recommendations and observations, as described in the first periodic report, which has been available since 2005, was submitted to the Committee in 2006, and was presented in September 2010;

(f) Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international armed conflicts, which was adopted on 8 June 1977 and entered into force on 7 December 1978. It was ratified by Burundi on 6 November 1993. No report relating thereto has so far been produced;

(g) Additional Protocol II to the Geneva Conventions of 12 August 1949 relating to the protection of victims of non-international armed conflicts, which was adopted on 8 June 1977 and entered into force on 7 December 1978. It was ratified by Burundi on 6 November 1993. No report relating thereto has so far been produced;

(h) The International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted on 21 December 1965 and entered into force on 4 January 1969. It was ratified by Burundi on 12 September 1977. No report relating thereto has so far been produced;

(i) The Convention on the Elimination of All Forms of Discrimination against Women, which was adopted on 18 December 1979 and entered into force on 3 September 1981. It was ratified by Burundi on 4 April 1991. The initial report was produced in January 2001 and presented to the Committee. The follow-up to the conclusions, observations and recommendations is described in the first periodic report, which was produced in November 2005 and presented in April 2008;

(j) The Protocol to the African Charter of Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights, concluded at Ouagadougou on 10 June 1998. It was ratified by Burundi on 27 June 2000;

(k) The African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa in July 1990. It was ratified by Burundi on 11 August 2000. No report relating thereto has so far been produced;

(l) The Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the General Assembly of the United Nations on 26 November 1968. Burundi acceded to it on 16 June 2000. No report relating thereto has so far been produced;

(m) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which was ratified by Burundi by Act No. 1/15 of 18 January 2005. No report relating thereto has so far been produced;

(n) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified by Act No. 115 of 18 January 2005;

(o) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 10 December 1984, ratified by Burundi on 31 December 1992. The initial report of Burundi was presented in November 2006 and the resultant conclusions, observations and recommendations may be found in the first periodic report, which has been available since December 2009.

4. Dissemination of the International Covenant on Civil and Political Rights

13. The International Covenant on Civil and Political Rights has not yet been translated into the national language. However, all ministerial departments, through their human rights focal points, are fully informed about the Convention. During sessions organized by the ministry with responsibility for human rights, the human rights focal points receive training on the main texts and conventions to which Burundi is a party. The sessions have also been offered to civil society groups that play an important role in promoting and protecting human rights, and the team set up to assist in the drafting of reports for some of the conventions has already received training in the area.

14. Pending the establishment of a standing interministerial committee for the drafting of initial and periodic country reports on the conventions ratified by Burundi, a 17-member ad hoc interministerial body has been set up with representatives from the Office of the

First Vice-President of the Republic and the ministries with responsibility for human rights, foreign relations, justice, the interior, labour and social security, and good governance. It is this body that worked together with national and international human rights partners such as civil society, national and international NGOs, certain United Nations agencies, the Burundi office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Integrated Office in Burundi (BINUB) to draft Burundi's report on the basis of existing documentation on the subject and discussions and surveys in the field.

15. The Swiss cooperation agency, through the OHCHR Burundi office, provided resources for communications and mobility to facilitate travel for the members of this body. This is an important example of cooperation, solidarity and support that deserves to be highlighted.

II. Information on articles 1 to 27 of the Covenant

Article 1

Right of peoples to self-determination

16. The Constitution of 18 March 2005, which was adopted by referendum on 28 February 2005, states in its preamble to paragraph 7: "The Burundian people reaffirm their determination to defend the sovereignty and the political and economic independence of their country." And in paragraph 8: "The Burundian people assert the importance in international relations of the right of peoples to self-determination".

17. In its title II, "The fundamental rights and duties of the individual and the citizen", it addresses:

- The right to exercise political rights (art. 86);
- The right to property (art. 36);
- The right of women to protection (art. 30);
- The right of access to health care (art. 55);
- The right of equal access for all to public service (art. 51);
- The right of equal access to training, education and culture (art. 53);
- Freedom of association and the right to strike (art. 37);
- Freedom of expression (art. 31).

18. It also provides great latitude in the creation of political organizations. Its article 75 states that: "The multiparty system is recognized in Burundi". It further stipulates in article 76 that: "Political parties may be established freely, in accordance with the law. They are approved in accordance with the law."

19. Burundi has ratified the African Charter on Human and Peoples' Rights, which sets out in its article 20 that: "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen."

20. Under article 19 of the Act of 18 March 2005, "The rights and duties proclaimed and guaranteed inter alia by the Universal Declaration of Human Rights, the international human rights covenants, the African Charter on Human and Peoples' Rights, the

Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi.”

21. The unfortunate events of 1988 and then 1993 led successively to:

- The Charter of National Unity of 5 February 1991, adopted by referendum;
- The Arusha Agreement of 28 August 2000, which set in place a transitional regime prior to the establishment of the national institutions that resulted, pursuant to article 304 of the Constitution, from the 2005 elections.

22. Other measures have been taken to ensure the freedom of citizens to exercise the principles set forth in the Covenant. Article 142 of the Act of 18 March 2005 and Decree No. 100/13 of 23 January 2009 establishing the structure, operation and mandate of the Government of Burundi have instituted:

- The public administration, organized in ministries;
- The provincial administration, subdivided into decentralized entities (municipalities), which, in turn, are divided into local communities, pursuant to article 263.

Article 2

Right to non-discrimination

23. Article 13 of the Constitution states: “All Burundians are equal in value and dignity. All citizens are entitled to equal rights and to equal protection of the law. No Burundian shall be excluded from the social, economic or political life of the nation on account of his or her race, language, religion, gender or ethnic origin.”

24. Article 22 further states that: “All citizens are equal before the law, which affords them equal protection. No one may be discriminated against on grounds, inter alia, of origin, race, ethnicity, gender, colour, language, social situation, or religious, philosophical or political convictions, or by reason of a physical or mental disability or for being a carrier of HIV/AIDS or any other incurable disease.”

25. Article 57 shows that, for the same work, men and women have the same rights: “All equally qualified persons have the right, without discrimination of any kind, to equal pay for equal work.”

26. Similarly, there may be no discrimination in respect of the fundamental duties of the individual and citizen.

27. Article 62 of the Constitution stipulates that: “Every person has the duty to respect his or her compatriots and to show them consideration, without any discrimination.”

Article 3

Right to gender equality

28. The right to gender equality is enshrined in articles 7 to 14 of the Convention on the Elimination of All Forms of Discrimination against Women. The provisions of these articles are applicable in Burundi since, at the national level, the Convention forms part of our Constitution, as provided for in article 19. The country’s institutions include a ministry responsible for gender matters. In the area of gender equality, this ministry is supported by the human rights leagues, national and international NGOs, and certain organizations and agencies of the United Nations system, including the United Nations Development

Programme, the United Nations Development Fund for Women, the United Nations Population Fund, the OHCHR Burundi office and the United Nations Integrated Office in Burundi (BINUB).

29. Burundi has also taken measures to establish equality between men and women, the most important of which are:

- The formulation and adoption of a national gender policy with the main objective of reducing the inequality and discrimination of which women are victims;
- The formulation of an action plan to implement this policy;
- Integration of the gender dimension into the sectoral policies of the various ministries;
- Provision has been made for the establishment of a National Gender Council, which will comprise all bodies involved in promoting gender equality, with a view to achieving better coordination of the various activities conducted.

30. The specific objectives of the national gender policy are to correct existing inequalities in specific priority areas: culture, security and mobilization for peace, action to combat poverty, employment, agriculture, health, action to combat HIV/AIDS, education and training, action to combat violence against women, decision-making, information and communication.

31. Despite the efforts made at governmental level through the institutions, the conventions ratified and even the national gender policy, the gender and development approach has not yet been fully assimilated by Burundian society. Although article 129 of the Constitution guarantees a minimum quota of 30 per cent women on representative bodies, disparities continue to exist at various levels, and especially in women's access to positions of responsibility, as shown in the table below.

Table 1
Number of women in senior posts

| <i>Position</i> | <i>No. of women</i> | <i>No. of men</i> | <i>Total</i> | <i>% Women</i> |
|-----------------------|---------------------|-------------------|--------------|----------------|
| Members of Parliament | 37 | 81 | 118 | 31.35 |
| Senators | 17 | 32 | 49 | 34.6 |
| Ministries | 8 | 18 | 26 | 30 |
| Chefs de Cabinet | 1 | 30 | 31 | 3.23 |
| Directors-General | 7 | 19 | 26 | 26.92 |
| Ambassadors | 5 | 15 | 20 | 25 |
| Provincial governors | 1 | 15 | 17 | 11.6 |

32. Despite the relatively high number of trained women in all areas, not enough of them are reaching political office.

33. Women form 30.72 per cent of the Government because it is a constitutional requirement. In other areas, the number of women is inversely proportional to the importance of the post. At the level of chef de cabinet, the figure is very low, at 3.23 per cent (See *Étude sur l'expertise féminine et institutions d'appui à la promotion du genre au Burundi* (Study on female expertise and gender promotion support institutions in Burundi), Collectif des associations et ONG féminines du Burundi, Bujumbura, December 2009).

34. The national gender policy has to meet a number of challenges, notably increasing women's representation, increasing women's involvement at all levels of decision-making and eradicating cultural prejudice against women.
35. In addition, the lack of a law on succession, matrimonial regimes and gifts still constitutes a barrier for women.
36. Gender disparities and imbalances must be corrected in, inter alia:
- The Nationality Code, to which some modifications have recently been made; the Labour Code, which should be brought into line with the Convention on the Elimination of All Forms of Discrimination against Women, particularly with regard to paid maternity leave; the Taxation Code, which makes a married woman liable to tax as a person without dependants;
 - The Personal and Family Code, which should be revised, notably its article 126, to make the consent of the wife an obligatory condition for any act of marriage for both girls and boys.

Article 4

Public emergencies

37. Article 115 of the 2005 Constitution states that, if the institutions of the Republic, the independence of the nation, the integrity of the national territory or the fulfilment of international commitments are faced with a grave and immediate threat and the regular exercise of the authorities is interrupted, the President of the Republic may, after official consultation with the Government, the Offices of the National Assembly and the Senate, the National Security Council and the Constitutional Court, issue a decree-law proclaiming a state of emergency and take all measures required by the circumstances. He or she shall inform the nation by a public address.
38. Such measures must be inspired by the desire to provide the constitutional authorities, in as detailed a manner as possible, with the means of exercising their functions. The Constitutional Court is consulted on the matter. Parliament may not be dissolved when emergency powers are in force.
39. The aforementioned article is consistent with the requirements of the Covenant and it may be pointed out that the national legislature has, through the relevant legal provisions, endeavoured to ensure the fundamental safeguards in this respect.

Article 5

Guarantee of the rights recognized in the Covenant

40. It should be pointed out that the basic law stipulates that any restriction on a fundamental right must be based on a legal foundation, be justified by the public interest or the protection of the fundamental right of another person, and be proportionate to its ends.
41. Fundamental rights must be respected and upheld by the judiciary, the administration and the institutional authorities (arts. 47 and 48).

Article 6

Right to life

42. The right to life is a fundamental and inalienable right and is protected by all States parties to the international and national legal instruments.

43. Article 3 of the Universal Declaration of Human Rights stipulates that: “Everyone has the right to life, liberty and security of person.” The International Covenant on Civil and Political Rights stipulates in its article 6 that: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.”

44. The Constitution of 18 March 2005, in its article 24, guarantees the right to life: “Every woman and every man has the right to life.”

45. The right to life is protected from the time of conception, not only from birth, as the Criminal Code makes abortion an offence under articles 505–511, “Offences against the family”.

46. Article 505 states that: “Anyone who, through food, beverages or medicines, intentionally causes a woman to abort, other than in the cases provided for under the law, shall be punished by imprisonment for 1 to 2 years and a fine of between 20,000 and 50,000 francs.”

47. Article 506 states that: “When an abortion is caused by intentional violence, but without the intention of producing an abortion, the guilty party shall be punished by between 6 months’ and 2 years’ imprisonment and a fine of between 50,000 and 100,000 francs.”

48. “If the violence is committed with premeditation and with awareness of the state of the victim, the penalty shall be 5 to 10 years’ imprisonment and a fine of 50,000 to 100,000 francs and a fine of 20,000 to 50,000 francs.”

49. Article 510 states that: “Any woman who voluntarily undergoes an abortion shall be punishable by 1 to 2 years’ imprisonment and a fine of 20,000 to 50,000 francs.”

50. To address all these offences, the Government of Burundi has put in place mechanisms to prevent human rights violations. However, despite the setting up of the Demobilization and Disarmament Commission, human rights violations still occur.

51. Isolated cases of people taking justice into their own hands still occur. These involve lynching. The explanation given for these incidents relates to land disputes. However, the Government spares no effort to punish the perpetrators of these violations of the right to life. They are hunted down, arrested, tried, convicted and imprisoned in various establishments.

52. Pursuant to its policy of honouring its human rights commitments, the Government is in the process of harmonizing its national law with the international human rights instruments. Thus, the current Criminal Code of 29 April 2009 has abolished the death penalty, which is now commuted to life imprisonment.

Article 7

Prohibition of torture

53. The right not to be subjected to torture is affirmed in article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

54. Article 25 of Act No. 1/08/10 of 18 March 2005 on the Constitution provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” It should also be noted that the new Criminal Code makes acts of torture a distinct offence. Articles 205 to 209 of the Criminal Code are quite clear in this matter.

55. The Government has recently produced the country’s first periodic report on implementation of the Convention against Torture.

Article 8

Prohibition of slavery

56. The prohibition of slavery is enshrined in the Universal Declaration of Human Rights and in the Constitution of Burundi of 18 March 2005.

57. Article 4 of the Universal Declaration of Human Rights and article 26 of the Constitution state that: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

58. Burundi has ratified the following Conventions of the International Labour Organization (ILO) prohibiting forced labour and the worst forms of child labour:

- Forced Labour Convention, 1930 (No. 29);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Worst Forms of Child Labour Convention, 1999 (No. 182).

59. The Government has already produced reports for the ILO bodies on the implementation of these Conventions.

60. A study on child labour in Burundi was conducted in February 2009 with the support of the International Labour Office.

61. It shows the extent to which Burundi and others comply with the provisions of ILO Convention No. 182, article 3 of which lists the worst forms of child labour.

62. Article 2 of the Labour Code absolutely prohibits forced or compulsory labour: “Forced or compulsory labour is absolutely prohibited.” The prohibition covers any work or service which is exacted from any person under the threat of any penalty and for which the said person has not freely volunteered.

63. This definition does not cover the following:

- Obligations in the event of force majeure such as war, calamity, threat of calamity, prevention of famine, natural disasters, epidemics and, in general, circumstances likely to endanger the lives of others or the living conditions of all or part of the population;
- Work required of an individual as a result of a judicial sentence, provided that such work is carried out under the supervision of the public authorities and that the individual is not put at the disposal of private individuals or private legal entities.

64. Trafficking or the holding of slaves in bondage is an affront to human dignity. Article 21 of the Constitution of 18 March 2005 states that: “Any violation of human dignity is punishable under the Criminal Code.”

65. Article 242 of the Criminal Code, on trafficking in persons, stipulates that: “Anyone who, either free of charge or for payment, concludes an agreement with the objective of alienating the freedom of a third person shall be punished by imprisonment for between 5 and 10 years.”

66. In the laws and codes of Burundi, the Act of 28 March 1923, notes that:
1. Domestic slavery is abolished throughout the territory of Rwanda-Urundi.
 2. Anyone who in any way reduces a native to slavery or keeps him or her in that state will be punished by imprisonment for between 1 and 5 years.
67. In conclusion, servitude was abolished in Burundi on 1 November 1976 under the Second Republic.

Article 9

Right to liberty and security of the person

68. Everyone is entitled to have his or her security and liberty guaranteed. This refers to the prohibition of arbitrary arrest.
69. In Burundi, arrests, indictments and judgements of defendants are regulated by the current Code of Criminal Procedure.
70. Article 39 of the Constitution states that the conditions of questioning and detention are strictly established by the law. A person may be arrested and indicted only with good cause, that is, for a violation of criminal law.
71. Article 23 of the Constitution provides for compensation for damage resulting from a miscarriage or malfunctioning of justice.
72. Similarly, the preliminary draft of the Code of Criminal Procedure provides for compensation for any victim of unreasonable or arbitrary temporary detention or custody.
73. Article 27 of the current Code of Criminal Procedure provides that staff of the procuratorial authorities strictly follow the statutory rules authorizing restrictions on individual freedom including detention and restraint. If they find that detention is arbitrary or unlawful, they shall take all appropriate measures to end it. If it is found or proved that admissions of guilt have been obtained by coercion, they shall be declared null and void.
74. In practice, this provision has often been breached due to the fact that the authorities and judicial services did not function during the 15 years of war.
75. Even since the war, this provision has not been fully respected, as confirmed by the many remand prisoners who are filling the country's prisons (see Table 2).

Table 2
Prison population in March 2010

| <i>Prisons</i> | <i>Prison capacity</i> | <i>Prison population</i> | <i>Prisoners awaiting trial</i> |
|----------------|------------------------|--------------------------|---------------------------------|
| Bubanza | 100 | 356 | 259 |
| Mpimba | 800 | 3 479 | 2 638 |
| Bururi | 250 | 402 | 363 |
| Gitega | 400 | 1 552 | 705 |
| Muramvya | 100 | 492 | 322 |
| Muyinga | 300 | | |
| Ngozi (male) | 400 | 1 914 | 1 046 |
| Ngozi (female) | 350 | 84 | 31 |
| Rumonge | 800 | 1 294 | 191 |
| Rutana | 250 | 289 | 158 |

| <i>Prisons</i> | <i>Prison capacity</i> | <i>Prison population</i> | <i>Prisoners awaiting trial</i> |
|----------------|------------------------|--------------------------|---------------------------------|
| Ruyigi | 300 | 841 | 601 |
| Total | 4 050 | 10 703 | 8 314 |

76. This situation is, to a great extent, due to the shortage of competent staff and adequate resources.

Article 10 **Humane treatment and respect for the dignity of detainees**

77. Several pieces of legislation exist that prohibit other forms of cruel, inhuman or degrading treatment. The Constitution of 18 March 2005 stipulates in article 21 that human dignity shall be respected and protected. Any violation of human dignity is punishable under the Criminal Code. Article 25 of the Code prohibits torture and other cruel, inhuman or degrading treatment. It stipulates: "Every woman and every man has the right to life, security of person, physical and mental integrity and freedom of movement. No one may be subjected to torture or cruel, inhuman or degrading punishment or treatment."

78. Article 369 of the revised Criminal Code of 22 April 2009 prohibits abuses of authority. It provides that: "Any civil servant, public official or person enforcing a warrant, court order or any other order or decision of the authorities who, without just cause, uses violence or causes violence to be used against persons in the performance of his or her duties, shall be punished by a term of imprisonment of 1 to 5 years and a fine of 50,000 to 100,000 francs or one of those penalties alone."

79. Further, its chapter VIII, section 1, article 251, and section 2, article 252, on injurious allegations and insults, provide that: "Anyone who maliciously and publicly imputes a specific fact which is likely to be prejudicial to the honour or reputation of a person or expose him or her to public scorn, is liable to imprisonment of from 1 month to 1 year and a fine of 10,000 to 100,000 francs or one of those penalties alone."

80. "Anyone who publicly insults a person is liable to imprisonment of between 1 month and 1 year and a fine of 10,000 francs or one of those penalties alone."

81. These provisions are consistent with the international human rights instruments of the United Nations, in particular article 5 of the Universal Declaration of Human Rights which states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

82. Unfortunately, because of the lack of adequate material and financial resources, most prisons in Burundi date from colonial times and no longer meet the standards required by article 10 of the Covenant because of their state of disrepair and their small size. The Government, with the support of its bilateral partners and the international agencies, has worked to rehabilitate some of the prisons to address these challenges.

83. Article 46 of the Constitution also stipulates that children have the right to be held separately from detainees over 16 years of age and to enjoy treatment and conditions of detention in keeping with their age.

84. Table 3 shows the number of prisoners being held in the prisons of Muramvya, Ngozi, Muyinga, Gitega, Ruyigi, Bururi, Rutana and Rumonge in March 2010.

Table 3
Prison population, March 2010

| <i>Prisons</i> | <i>Prison capacity</i> | <i>Prison population</i> | <i>Prisoners awaiting trial</i> | <i>Sentenced</i> | <i>Infants</i> | <i>Minors</i> | <i>Women</i> | <i>Military personnel</i> | <i>Police officers</i> | <i>Demobilized personnel</i> | <i>Foreign nationals</i> | <i>Fugitives</i> | <i>Deaths</i> |
|----------------|------------------------|--------------------------|---------------------------------|------------------|----------------|---------------|--------------|---------------------------|------------------------|------------------------------|--------------------------|------------------|---------------|
| Bubanza | 100 | 356 | 259 | 95 | 2 | 11 | 9 | 1 | 5 | 5 | | 4 | 1 |
| Mpimba | 800 | 3 479 | 2 638 | 807 | 34 | 178 | 112 | 281 | 91 | | 98 | 7 | 1 |
| Bururi | 250 | 402 | 363 | 39 | | 20 | 18 | 3 | 11 | 6 | | 5 | |
| Gitega | 400 | 1 552 | 705 | 838 | 9 | 46 | 61 | 28 | 19 | 5 | 5 | 6 | |
| Muramvya | 100 | 492 | 322 | 169 | 1 | 11 | 14 | 8 | 8 | 2 | 1 | | 1 |
| Muyinga | 300 | | | | | | | | | | | | |
| Ngozi (male) | 400 | 1 914 | 1 046 | 868 | | 50 | | 33 | 29 | | 10 | 20 | 2 |
| Ngozi (female) | 350 | 84 | 31 | 40 | 13 | 2 | 69 | | | | 2 | | |
| Rumonge | 800 | 1 294 | 191 | 1 094 | 9 | 30 | 27 | 12 | 6 | | 5 | | |
| Rutana | 250 | 289 | 158 | 126 | 5 | 6 | 14 | 3 | 6 | 5 | | 1 | |
| Ruyigi | 300 | 841 | 601 | 235 | 5 | 16 | 22 | 2 | 14 | 15 | 1 | | 1 |
| Total | 4 050 | 10 703 | 8 314 | 4 311 | 78 | 370 | 346 | 371 | 189 | 33 | 120 | 43 | 6 |

Table 4
Variation in prison population in March 2010

| <i>Prisons</i> | <i>Prisoners awaiting trial</i> | | | | <i>Convicted prisoners</i> | | | | <i>Infants</i> | Total | <i>Prison capacity</i> | <i>Occupancy rate</i> |
|----------------|---------------------------------|------------|------------|--------------|----------------------------|--------------|------------|--------------|----------------|---------------|------------------------|-----------------------|
| | <i>D</i> | <i>E</i> | <i>S</i> | <i>F</i> | <i>D</i> | <i>E</i> | <i>S</i> | <i>F</i> | | | | |
| Bubanza | 316 | 4 | 61 | 259 | 84 | 20 | 9 | 95 | 2 | 356 | 100 | 356% |
| Mpimba | 2 678 | 178 | 218 | 2 638 | 767 | 97 | 57 | 807 | 34 | 3 479 | 800 | 434.87% |
| Bururi | 387 | 27 | 51 | 363 | 42 | 5 | 8 | 39 | | 402 | 250 | 160% |
| Gitega | 581 | 194 | 70 | 705 | 897 | 62 | 121 | 838 | 9 | 1 552 | 400 | 388% |
| Muramvya | 366 | 48 | 92 | 322 | 116 | 56 | 3 | 169 | 1 | 492 | 100 | 492% |
| Muyinga | | | | | | | | | | | 300 | |
| Ngozi (male) | 1 152 | 65 | 171 | 1 046 | 825 | 65 | 22 | 868 | | 1 914 | 400 | 478.50% |
| Ngozi (female) | 33 | 1 | 3 | 31 | 40 | 1 | 1 | 40 | 13 | 84 | 350 | 24% |
| Rumonge | 164 | 32 | 5 | 191 | 581 | 1 216 | 703 | 1 094 | 9 | 1 294 | 800 | 161.75% |
| Rutana | 184 | 17 | 43 | 158 | 110 | 28 | 12 | 126 | 5 | 289 | 250 | 115.6% |
| Ruyigi | 611 | 57 | 67 | 601 | 208 | 50 | 23 | 235 | 5 | 841 | 300 | 280.3% |
| Total | 6 472 | 623 | 781 | 6 314 | 3 670 | 1 600 | 959 | 4 311 | 78 | 10 703 | 4 050 | 264.27% |

Key:

D = prisoners held at beginning of month.

E = prisoners who entered during month.

S = prisoners who left during month.

F = prisoners held at end of month.

85. In practice, not all prisons have special quarters allocated to minors, women and men. This means that article 10 of the Covenant could not be fully implemented because of the lack of material and financial resources. Another reason is the increase in the prison population throughout the country.

- In order to reduce crowding in prisons, in 2007 the President decreed the release of political detainees belonging to the last remaining armed movement (FNL-Palipehutu) and in 2010, the release of very elderly prisoners and others with incurable illnesses;
- On the rehabilitation of convicted persons, article 183 of the Criminal Code stipulates that: “Any person who has been convicted of an offence committed in Burundi can be rehabilitated.”

86. Article 192 of the Code states that: “Rehabilitation removes the conviction from the individual’s criminal record.” In the revised Criminal Code, these provisions have been adapted to include the principles of humane treatment of detainees set out by the Covenant.

Article 11

Prohibition of imprisonment for civil debts

87. As Burundi has ratified the Covenant, it has the obligation to incorporate the prohibition of imprisonment for civil debts into its national legislation. Article 19 of the Constitution thus stipulates: “The rights and duties proclaimed and guaranteed inter alia by the Universal Declaration of Human Rights, the international human rights covenants, the African Charter on Human and Peoples’ Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi.”

88. The law punishes any abuse of authority, arbitrary imprisonment or detention, as well as imprisonment for debt. As civil debts are contracts between the parties concerned, undertaken freely and with consent, they contain guarantees of repayment.

89. These legally constituted contracts, free of defects, are far from constituting one or several offences that can be contested before the police. Only a court sitting in a civil case is competent to decide to reimburse and/or award compensation, which is the reason for the inclusion of repayment guarantee clauses. Specific police and administrative authorities must observe the law scrupulously because where there is no offence, there may be no punishment if not prescribed by law.

90. Furthermore, article 39 of the Constitution stipulates: “No one may be deprived of his or her liberty except in accordance with the law.”

Article 12

Right to liberty of movement and freedom to choose one’s residence

91. Burundi guarantees the freedom of movement. This freedom is enshrined in national law, specifically in article 33 of the Constitution of 18 March 2005, which stipulates: “All Burundian citizens have the right to freedom of movement and free residence within the national territory, as well as to leave and to return.”

92. As Burundi has ratified the International Covenant on Civil and Political Rights, it must guarantee this freedom to all its citizens, as well as to those foreign nationals legally residing in its territory.

(a) Hence, everyone who is lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence;

(b) Everyone shall be free to leave any country, including his or her own;

(c) No one shall be arbitrarily deprived of the right to enter his or her own country.

93. It should be noted that these freedoms are corollaries of the ratification by Burundi of the Covenant and its integration into national law.

94. It should also be noted for reference that there are certain restrictions on the freedom of movement, related to the protection of national security, public order, public morals and the rights and freedoms of others, and consistent with the other rights recognized in the Covenant, that is, restrictions that are consistent with the law.

95. No complaints of violations of this freedom of movement by the State or its agencies have been reported by either citizens or foreign nationals.

Article 13 **Prohibition of expulsion**

96. Expulsion from a country may be due to multiple reasons:

- Lack of a document allowing legal residence in the country in the case of, e.g., undocumented individuals;
- Serious offence(s) committed by diplomats who enjoy diplomatic immunity;
- Serious offence(s) committed by one or more members of international organizations, e.g., non-governmental organizations.

In recent years, Burundi has seen some cases of expulsion. These include, for instance:

- The deportation in 2009 of Congolese and Rwandan citizens who were living unlawfully in Burundi.

97. These expulsions were legal. The decisions were taken in accordance with the law.

Article 14 **Right to a fair trial**

Paragraph 1

98. Under article 13 of the Constitution, “All Burundians are equal in merit and in dignity. All citizens are entitled to equal rights and to equal protection of the law.”

99. Article 22 states that: “All citizens are equal before the law, which affords them equal protection.”

100. Justice is dispensed by the courts and tribunals on the territory of the Republic in the name of the Burundian people. The role and functions of the public prosecutor’s office are performed by public prosecutors. However, judges of *tribunaux de résidence* (local courts) and police officers may carry out these duties in these courts under the supervision of the State prosecutor.

101. Pursuant to article 225 of the Constitution, the organization and jurisdiction of the courts are laid down by an organic law, currently Act No. 1/08 of 17 March 2005 establishing the Code of Judicial Organization and Jurisdiction.

102. The public and fair nature of hearings and in camera proceedings is governed by articles 38, 40 and 206 of the Constitution. The Constitution also provides in its article 209 that the judiciary is impartial and independent of the legislative and executive authorities. Proceedings must be held in camera when they involve minors, as indicated in article 177 of the bill on the reform of the Code of Criminal Procedure. In the exercise of their functions, judges are bound only by the Constitution and the law. The President of the Republic, as Head of State, is guarantor of the independence of the Judiciary.

103. He or she is assisted in this task by the Judicial Service Commission. Act No. 001 of 29 February 2000 on the reform of the status of judges guarantees the conditions for their career progression and independence, such as their appointment, the qualifications they are required to have, conditions for promotion and salary increases, the duration of their authority, transfers and their effective independence.

104. For example, article 29 of the Act states that: "In the exercise of their functions, judges are independent of the legislative and executive authorities, and are subject only to the law. They take final decisions in cases referred to them and decide, independently of any influence, on the action to be taken. No higher court or main chamber may issue either an order or an injunction to the lower courts to decide in a particular way on any disputes submitted to their jurisdiction."

105. It is also interesting to note that a civilian cannot be subject to the Code of Military Justice or tried by a military court (Constitution, art. 261).

Paragraph 2

106. The presumption of innocence is a fundamental right in Burundi and is guaranteed by several texts including the Constitution (art. 40) and the Code of Criminal Procedure.

Paragraph 3

107. Article 92 of the current Code of Criminal Procedure stipulates that an individual accused of an offence shall benefit from all the guarantees necessary to ensure his or her right to a defence, including legal counsel. The accused may communicate with counsel and receive assistance in drafting correspondence and preparing evidence for the defence.

108. He or she may, at any time, request information on the seriousness of the charges faced. An accused party or claimant for criminal indemnification may be assisted by a counsel of his or her choice during the pretrial proceedings. Counsel may communicate freely and in private with the accused, even when the latter is held in detention, and familiarize himself or herself with the case file (Code of Criminal Procedure, art. 93).

109. The bill on the reform of the Criminal Code makes legal aid mandatory for young persons under the age of 18 in conflict with the law, as they are not mature enough to face a criminal trial.

110. Furthermore, the legislature must ensure that the trial is conducted without undue delay. Article 11 of the internal court regulations provides that the presidents of courts and sessions must ensure that cases are not held pending because of delaying tactics by the parties. Cases in which the defendants are being held on remand must be investigated as priorities.

111. Detainees must be summoned to appear within three months of the day that the hearing for directions takes place. Three adjournments should in theory allow the judges to

deliberate the cases. The deliberation may last no more than 30 days. Articles 97 to 101 of the Code of Criminal Procedure mention interpreters, translators, experts and doctors but do not refer specifically to free assistance. The cases for the prosecution and the defence must be investigated, and the accused must be informed of his or her rights for the examination to be valid, and may not to be compelled to testify against himself or herself or to confess guilt.

Paragraph 4

112. Juveniles under the age of 15 are not held to be criminally responsible. As provided by article 29 of Act No. 1/05 of 22 April 2009 on revision of the Criminal Code, offences they commit give rise only to civil damages.

Paragraph 5

113. Appeals may be lodged by the accused, any person incurring civil liability, a claimant for criminal indemnification or the persons to whom damages have been automatically awarded, in respect only of their civil interests and to the Office of the Public Prosecutor. Appeal in criminal matters is governed by sections 147 to 159 of the Code of Criminal Procedure.

Paragraph 6

114. There is no express provision in this case. However, it may be noted that article 23 of the Constitution provides that no person shall be treated in an arbitrary manner by the State or its agencies. The State has the obligation to compensate any person who is the victim of arbitrary treatment caused by it or its agencies.

Paragraph 7

115. It should be pointed out that, although it does not refer to an offence committed in Burundi and does not incorporate the exact words of the Covenant, article 11 of the Criminal Code addresses the matter in these terms: "If an offence is committed abroad, no prosecution shall take place if the accused provides evidence that he or she has been subject to final judgement and, if convicted, has served his or her sentence or was pardoned or if the penalty has lapsed."

116. The principle that a person may not be tried twice for the same offence is upheld in the courts of Burundi. However, for the specific cases listed in the Act, the Supreme Court, sitting as a full court, may hear appeals or decisions confirmed as *res judicata* by the supervisory review procedure (Act No. 1/07 of 25 February 2005 on the Supreme Court, article 43).

Article 15

Prohibition of retroactivity of the law

117. Current legislation, including the new Criminal Code of 22 April 2009, makes this article a full part of national legislation, as indicated in article 41 of the Constitution which stipulates that: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed.

118. "Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed."

119. The Criminal Code removes any ambiguity in its article 4 which provides that: "No offence may be subject to penalties which were not provided for by law before the offence

was committed. However, where two criminal laws may apply, an older one under which the offence was committed and another enacted since then, but before a final judgement has been handed down, the new law shall be applied only if it enacts a less severe punishment.”

120. Current practice is encouraging because there have so far been no complaints in respect of violations of these provisions.

121. Greater awareness of human rights ensures that these provisions are even better respected and guaranteed.

Article 16

Right to recognition as a person before the law

122. Decree-law No. 1/024 of 28 April 1993 reforming the Personal and Family Code is sufficiently clear on the matter. Its title II, in article 11, describes a person’s “name” as follows: “The surname is the mandatory form for the designation of natural persons. It may be accompanied by one or more given names. If the surname is accompanied by a given name, the latter is an integral part of the name.”

123. Similarly, Act No. 1/002 of 6 March 1996 establishing the Private and Public Companies Code recognizes the legal personality of people who come together in companies.

124. Its article 122 states: “The present Act recognizes the following categories of companies:

1. Private companies whose capital belongs entirely to physical persons and private legal entities:

- Civil-law partnerships;
- Commercial partnerships;
- Limited partnerships;
- Private limited companies;
- Corporations sole;
- Cooperative societies;
- Public limited companies;

2. Companies with funding from the State, municipalities and/or other public corporations or any foreign public agency:

- Public corporations;
- Quasi-public corporations.”

125. This legislation shows that any physical or legal person has the right to a name.

126. In practice, although the legislative framework exists, there have not been any complaints about difficulty in obtaining approval of associations of any kind provided that the applications are complete and meet the requirements of the relevant legislation.

Article 17

Right to protection of privacy

Paragraph 1

127. The Constitution contains relevant provisions as stipulated in the International Bill of Human Rights.

128. Its article 43 thus states that: “No one shall be subjected to arbitrary interference into his or her privacy, family, home or correspondence, nor to attacks on his or her honour or reputation.

129. “House searches or visits to a person’s domicile may not be ordered except as provided for by law. Privacy of correspondence and communication is guaranteed in such forms, and subject to such conditions, as are prescribed by law.”

- The same is true of Act 1/025 of 27 November 2003 regulating the press which stipulates, in its article 10, that journalists must refrain from publishing in a newspaper or broadcasting in an audiovisual programme or in any other organ of the press information that could undermine:
 - National unity;
 - Public order and security;
 - Public morals and decency;
 - Honour and human dignity;
 - National sovereignty;
 - Individual privacy.

Paragraph 2

130. Articles 52, 53, 56 and others of Act No. 1/015 of 20 July 1999 on the reform of the Code of Criminal Procedure guarantee respect for human rights.

131. The Act contains a whole series of articles that give effect to the rights recognized in the Covenant.

132. The bill on the reform of the Code of Criminal Procedure incorporates all these concerns and thus strengthens the way in which all aspects of human rights are respected.

Article 18

Right to freedom of thought, conscience and religion

133. Article 19 of the Constitution is formulated in such a way as to record all the covenants, charters and conventions, as well as the Universal Declaration of Human Rights, in our Constitution to truly highlight our country’s determination to preserve and guarantee respect for human rights.

134. It reads:

The rights and duties proclaimed and guaranteed inter alia by the Universal Declaration of Human Rights, the international human rights covenants, the African Charter on Human and Peoples’ Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi.

These fundamental rights shall not be limited or derogated from, except in circumstances justified by the general interest or for the protection of a fundamental right.

135. Similarly, article 31 is specifically formulated to meet the concerns expressed in article 18 of the International Bill of Human Rights. It states that: “Freedom of expression is guaranteed. The State respects freedom of religion, thought, conscience and opinion.”

Article 19

Right to freedom of opinion and expression

136. The texts that govern the press in Burundi show clearly that this right is respected. Article 31 of the Constitution stipulates: “Freedom of expression is guaranteed. The State respects freedom of religion, thought, conscience and opinion.”

137. Restriction of the above-mentioned right: see the Code of Conduct for Political Parties and the Media during the election period in 2010.

Article 20

Prohibition of war propaganda and incitement to racial, religious or tribal hatred

138. This article bears a certain relationship to article 19. Under article 78 of the Constitution: “In their organization and operation, political parties must meet democratic principles. They must be open to all Burundians and their nationwide character must also be reflected in their leadership. They may not advocate violence, exclusion or hatred in any form, including those based on ethnicity, regional origin, religion or gender.” See the Code of Conduct for Political Parties during the election period.

Article 21

Right to freedom of assembly

139. Article 32 of the Constitution states that: “The freedom of association and assembly and the right to found associations and organizations in conformity with the law are guaranteed.”

140. For people who have the same interests, decree-law No. 1/11 of 18 April 1992 establishes the legal framework for the operation of non-profit organizations; there is also Act No. 1/006 of 26 June 2003 on the organization and operation of political parties (44 registered political parties). For the labour force, there are employers’ and workers’ unions set up to defend their interests.

141. Articles 264 to 290 of the Labour Code deal with the freedom of association. Burundi has two trade union confederations: the Confédération des syndicats du Burundi (COSYBU) and the Centrale des syndicats du Burundi (CSB). The employers’ unions are the Association des Employeurs du Burundi (AEB) and the Centre Syndical des Employeurs du Burundi (CESEBU).

142. Around 50 workers’ unions belong to the two trade union confederations. There are also independent trade unions.

143. The Act of 29 November 2002 regulates the right to organize and the right to strike in the public service (...). The status of judges in Burundi enshrines the principle of the right

to organize. However, the Constitution does not recognize the right to establish trade unions for the police and the army.

Article 22

Right to freedom of association and right to organize

144. Burundi has also ratified the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). The Government has already produced reports for the ILO bodies on the implementation of these Conventions.

145. Article 32 of the Constitution of 18 March 2005 guarantees freedom of association and assembly and the right to found associations and organizations in conformity with the law.

146. Pursuant to article 37, “The right to form and join trade unions, as well as the right to strike, are recognized. The law may regulate the exercise of these rights and prohibit certain categories of persons from taking strike action. These rights are, in all cases, prohibited to members of the defence and security forces.”

147. The detailed rules for the application of the provisions set out above are provided for in the following legislation:

I. Decree-law No. 1/11 of 18 April 1992 establishing the legal framework for the operation of non-profit organizations.

148. Article 1: “The present decree-law is intended to govern the organization and operation of any non-profit association whose legal existence is not subject to a specific law. Mutual associations, public-interest corporations and foundations, in particular, are excluded from its scope of application.”

149. In Burundi, mutual associations are governed by the decree of 15 April 1958, the scope of which covered both Rwanda-Urundi and the Belgian Congo. The Government plans to revise this text to reflect the current political, social and economic context.

II. Political parties operate on the basis of Act No. 1/006 of 26 June 2003.

150. Article 1: “The present Act determines the political rights and freedoms, obligations, approval procedure, organization, operation and financing, as well as the regime for sanctions and the dissolution of political parties.”

151. Articles 75 to 85 of the Constitution also address the political parties system. Article 82 prohibits members of the defence and security services and active magistrates from joining political parties.

III. The 1993 Labour Code governs both employers’ and workers’ trade union associations in the private and the semi-public sectors (arts. 264 to 290), as well as State subcontracts.

152. Articles 211 to 223 provide for the right to strike. Article 223 stipulates that the minister responsible for labour will specify in a ministerial order the terms under which the articles concerned shall be implemented. No such order yet exists.

IV. The Act of 29 November 2002 regulating the right to organize and the right to strike in the public service.

V. *The status of judges in Burundi* enshrines the principle of the right to organize. Regulations for the implementation of this right are to be set out in a decree but this does not yet exist.

Article 23

Right to protection of the family

153. This right is provided for by the Constitution in its articles 27 to 30.

Article 27 stipulates: “The State shall ensure, to the fullest extent possible, that all citizens have the means to lead a life consistent with human dignity.”

Article 28 provides that: “All men and women are entitled to respect for their privacy, their family, their home and their personal communications.”

Article 29 states: “Freedom to marry and the right to choose one’s partner are guaranteed. Marriage may only be entered into with the free and full consent of the intending spouses. Marriage between people of the same sex is prohibited.”

Under article 30, “The family is the natural basic unit of society. Marriage is the legitimate ground on which it is built. The family and marriage are specifically protected by the State.”

154. Articles 87 to 157 of the Personal and Family Code of 28 April 1993 address the issue of marriage: entry into a marriage, the effects and the obligations that result from a marriage and annulment of a marriage.

Article 88 states that: “Neither a man under 21 years of age nor a woman under 18 years of age may enter into marriage. The Provincial Governor may, however, grant dispensation of this age requirement for serious reasons.”

155. Divorce is provided for in articles 159 to 195: the causes of divorce, the divorce proceedings, provisional and precautionary measures during the divorce proceedings, application to strike out a divorce petition, the effects of divorce and divorce by mutual consent.

Article 24

Rights of the child

156. Under article 30 of the Constitution, “Parents have the natural right and duty to educate and raise their children. They are supported in this task by the State and the public authorities. All children, on account of their status as minors, are entitled to receive special protection from their families, society and the State.”

157. The Criminal Code of 22 April 2009 contains several provisions that protect the minor child (arts. 28 to 30).

158. Article 28 states that: “Juveniles under the age of 15 cannot be held criminally responsible. Offences they commit give rise only to civil reparations.”

159. Article 29 concerns the penalties that may be imposed on juveniles aged between 15 and 18 years who commit or are accomplices in an offence.

160. Article 30 enumerates the protection, education or supervision orders which may be pronounced against a minor.

161. The Labour Code contains specific provisions on child labour. The legal age for admission to employment is set at 16 years.

162. However, the Ministerial Order of 5 January 1981 regulating child labour provides for exceptions to that principle. A child under the age of 16 may perform light, healthy work or an apprenticeship provided that the work is not harmful to his or her health or normal development, nor is it likely to adversely affect his or her attendance at school or ability to benefit from the education given there (arts. 126 to 128).

163. A child may not be kept in a job which demands strength beyond his or her capacities (art. 129).

164. Burundi has ratified the two basic ILO Conventions that protect children, namely:

- The Minimum Age Convention, 1973 (No. 138);
- The Worst Forms of Child Labour Convention, 1999 (No. 182).

165. Reports on the implementation of these Conventions have already been submitted to the ILO bodies. They show that the worst forms of child labour do exist in Burundi but that the Government is taking measures to deal with them. In this task, the Government is supported by other agencies, such as NGOs, human rights organizations, religious denominations, etc.

166. A study on child labour in Burundi was published in February 2009, together with an action plan for the elimination of child labour; both of these were commissioned by the International Labour Office.

167. Articles 37 to 40 of the Personal and Family Code govern birth certificates. A birth must be registered within 15 days. Articles 11 to 18 deal with the child's name.

168. Acquisition of nationality is covered by:

- Act No. 1/013 of 18 July 2000 reforming the Nationality Code;
- Decree No. 100/156 of 14 October 2003 laying down detailed rules for acquiring Burundian nationality by naturalization;
- Joint Ministerial Order No. 550/540/713 of 17 June 2004 laying down the investigation and publication costs relating to naturalization.

Article 25

Right to vote and to take part in the conduct of public affairs

Subparagraph (a)

169. The right to take part in the conduct of public affairs is guaranteed by the Constitution of 20 March 2005, specifically its article 16, which stipulates that: "The Government of Burundi must be composed so that: all the people of Burundi are represented and it represents them all; everyone has an equal opportunity to take part; all citizens have access to public services; and the decisions and actions of the Government attract the widest possible support."

170. In addition, article 51 clearly explains the right to take part in the conduct of public affairs.

"All Burundians have the right to participate, either directly or indirectly through their representatives, in the management and conduct of affairs of State, subject to the relevant legal conditions, particularly those related to age and competence. All Burundians also have the right to perform public functions in their country."

Subparagraph (b)

171. Article 8 of the Constitution guarantees every citizen of Burundi the right to vote and to be elected. “Suffrage is universal, equal, secret, free and transparent. It may be direct or indirect in the conditions provided by the law. All Burundians aged 18 years and over who enjoy their civil and political rights are considered as voters in the conditions set by the Electoral Code.”

172. The legislative measures that support this law are contained in the new Electoral Code, under Act No. 1/22 on the revised Electoral Code, promulgated on 18 September 2009 in preparation for the 2010 elections.

173. The new Electoral Code introduces provisions for the good conduct of the elections and respect for political, ethnic and gender balances.

174. It states in its article 2 that: “Suffrage is universal, equal, secret, free and transparent. It may be direct or indirect in the conditions provided for each type of election.”

175. The establishment of the Independent National Electoral Commission, whose tasks and composition are set by the Constitution, determines the modalities for verification, corrects imbalances and proceeds with cooptation if necessary; this shows that this right is well protected.

Subparagraph (c)

176. This right is guaranteed by article 13: “No Burundian shall be excluded from the social, economic or political life of the nation on account of his or her race, language, religion, gender or ethnic origin.”

Article 26**Right to equality before the law without any discrimination**

177. The current Constitution, in its article 22, prohibits all forms of discrimination: “All citizens are equal before the law, which affords them equal protection. No one may be discriminated against on grounds, inter alia, of origin, race, ethnicity, gender, colour, language, social situation, or religious, philosophical or political convictions, or by reason of a physical or mental disability or for being a carrier of HIV/AIDS or any other incurable disease.”

178. The fundamental duties of the individual and the citizen, as specified in article 67 of the Constitution, require that all Burundians must “respect and have regard for their fellow citizens without discrimination and maintain such relations with others as will promote, safeguard and strengthen respect and mutual tolerance”.

179. Article 13 states that: “No Burundian shall be excluded from the social, economic or political life of the nation on account of his or her race, language or religion.”

Article 27**Rights of minorities**

180. Burundi enjoys a cultural and linguistic homogeneity that is rare in Africa. However, although the Batwa are an indigenous minority population (1 per cent of the population) compared to the Hutu and Tutsi, it cannot be argued that they are deprived of any rights relating to the use of their language, which are the same for all ethnic groups, or to having a free cultural life of their own.

181. The history of our country has meant that the Batwa have been marginalized from the political and economic life of the country, both because Burundian culture has ostracized them, and also because they have developed a behaviour of self-exclusion.

182. Today, the Constitution grants them three seats in Parliament and in the Senate and ensures their presence in other political bodies. Measures to promote their rights are being elaborated, including:

- Schooling for their children;
- Their freedom of association;
- Their integration into political, economic and social life.

183. The Arusha Agreement provided the following:

Article 7.4: “Deliberate promotion of disadvantaged groups, particularly the Batwa, to correct the imbalances that exist in all sectors. This exercise shall be conducted while maintaining professionalism.”

184. The Constitution also stipulates that everyone has equal opportunities to participate in the Government.

“The Government of Burundi must be composed so that all the people of Burundi are represented and it represents them all; that everyone has an equal opportunity to take part; that all citizens have access to public services and that the decisions and actions of the Government attract the widest possible support.”

185. Furthermore, in its articles 164 and 180, the Constitution makes clear reference to the Batwa minority and their representation in Parliament and the Senate.

186. In terms of measures for the protection of minorities, in June 2003, the Ministry of the Interior and Public Security authorized an association of the Batwa, Unissons-nous pour la promotion des Batwa (Let us unite for the promotion of the Batwa). This has proved to be an important element in advocacy for the rights of this minority community in Burundi and for continued dialogue with the Government towards their representation and active participation in the political life of the country at all levels.
