

TRANSITIONAL JUSTICE AND HUMAN RIGHTS
PROVISIONS IN THE ARUSHA PEACE AND
RECONCILIATION AGREEMENT FOR BURUNDI

– An Annotated Guide –

International Human Rights Law Group

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CHAPTER I: INTRODUCTION

1.1 Raison d'être for a publication on transitional justice and human rights provisions in the Arusha Peace and Reconciliation Agreement (APRA)

Produced under a Transitional Justice initiative of the International Human Rights Law Group in Burundi, this Guide is part of an integrated project implemented in conjunction with civil society actors and designed to strengthen and impact upon the process of post-conflict justice in the country. The project, which brings to Burundi IHRLG's institutional expertise on the subject especially through comparative experiences from other countries in transition or post-conflict periods, has the following goals:

- To strengthen the capacity of Burundian civil society in working towards a successful process of transitional justice – including efforts to combat impunity, seek justice and historical clarification as well as reconciliation – and ensuring that the process respects human rights values and principles;
- To enable Burundian civil society assume a leading role in policy-making on this issue of critical importance to the resolution of the country's conflict, and enable civil society to push for its treatment as a priority during Burundi's political transition;
- To raise awareness among Burundi's population on the vitality of the issue and the stakes involved, and on the mechanisms of transitional justice envisaged for Burundi, with a view to ensuring that the process is characterized by both popular participation and ownership;
- To enable Burundi's civil society to support and render more effective the work of the mechanisms for post-conflict justice once they are established.

In line with these overall project goals, the development of this Guide was inspired by the following specific objectives:

- To serve as a sensitization and awareness-raising tool on the provisions of the APRA relating to transitional justice and human rights.
- To provide a source of information on the key concepts and terms that are frequently used in the public debate both within and outside Burundi, on the use of "exceptional" mechanisms of justice to deal with atrocities and human rights violations on a massive scale;

- To constitute a sector-specific guide on the commitments (related to ensuring transitional justice and protecting human rights) entered into by the political actors that negotiated the APRA. This should enable Burundian civil society to objectively check the extent and quality of progress – or lack thereof – towards their realization during Burundi’s transition and post-transition periods.

1.2 Why this Guide examines transitional justice and human rights provisions within the framework of the APRA.

The APRA was signed on August 28, 2000 by several of Burundi’s key political actors after peace talks largely conducted outside the country during a period of intense armed conflict and without much popular participation or consultation. Thus, the APRA, the principles it espouses and the compromises it reflects are not particularly well known, understood, and debated by a vast majority of the Burundian population. Over two years after it was signed, the APRA has yet to usher in the most-awaited result from the peace process: an effective cease-fire between the main belligerents. Until very recently, the main insurgent groups, the FDD and the FNL, stayed out of the peace negotiations and the transitional framework created by the APRA. The broader political context that explains this state of affairs is outside the scope of this Guide. How relevant then is this Guide if the underlying political agreement (whose provisions are reproduced here extensively) has failed to deliver the expected results?

The APRA – for all its constraints – remains the one available process that has explicitly proposes principles and mechanisms to deal with accountability for past crimes, historical clarification and reconciliation in Burundi. Addressing these issues is important in resolving Burundi’s conflict, and is the *raison d’être* for this publication. The challenges to an effective transitional justice process in Burundi are immense and include:

- Strong political and historical differences over responsibility for grave incidents that characterize the country’s past;
- Widespread denial or exaggerated generalization of responsibility for crimes committed by one group (often ethnic) against another;
- Intense politicization of the debate on impunity and as to where responsibility lies for past crimes;
- A culture of failing to punish those responsible for grave crimes, including abuses currently being committed, or committed in a recent or distant past;
- The fact that the vast majority of Burundi’s population has been personally victimized by massive crimes, killings and other acts of repression.

Despite its limitations, the APRA introduces a number of important paths for resolving Burundi's conflict. While some of the mechanisms it envisages for dealing with impunity need to be further debated, criticized and even modified, the mere fact that it attempts to deal with these issues – hitherto taboo subjects in Burundi – is a positive advancement.

Primarily designed as a sensitization resource, this Guide reproduces – without extensively commenting – relevant provisions of the APRA, while organizing them thematically. It does not purport to be an exhaustive analysis of all the provisions of the APRA related to post-conflict justice and human rights, but rather is a useful summary – as close as possible to the agreement's text – of the key provisions. Where necessary, the provisions of the APRA are compared to international human rights and humanitarian law standards and instruments, many of which have been ratified by Burundi; however the Guide is not a position paper on the myriad issues in the area of transitional justice that are open to divergences of opinion. Also beyond the scope of this Guide is an introduction to the conceptual and philosophical issues that underpin discussions and policy-making in the area of post-conflict justice; other aspects of the International Human Rights Law Group's Transitional Justice project in Burundi have been implemented to meet that need.

1.3 Overview of the Guide's contents

The text is divided into two main sections, the first, on provisions related to transitional justice in the APRA, and the second, on its provisions related to human rights protection. The logical thread and continuity in the text stems from the very nature of policy-making around post-conflict justice, which is not simply a retrospective exercise (that is, ensuring accountability for *past* wrongs). In dealing with the past, a society must also set down rules that guarantee human rights protection in the future and prevent a recidivist slide towards the impunity of the past.

The first section of the text deals with mechanisms often of an exceptional and temporary nature, such as the creation of an International Judicial Investigation Commission and an international mechanism to try the most serious crimes. Other measures – also of an exceptional and temporary nature – such as the granting of a provisional immunity from prosecution to certain political actors, an amnesty, and the release of political prisoners are also examined. In focusing on these mechanisms and measures that are designed to operate in the short term, the first section also deals with issues of historical clarification, truth-seeking and reconciliation which are within the remit of the National Truth and Reconciliation Commission. Provisions relating to the reintegration and resettlement of war victims and to resolving land and property disputes resulting from the conflict are also examined.

The second section of the text focuses on key long-term institutional and legal reforms designed to protect human rights in the post-transition period. The degree of implementation of these reforms can constitute an important indicator of the commitment of future governments to definitively break with the past. The second section is thus in essence a compilation of the various provisions to guarantee respect for human rights in the long term.

I.4 Explanation of the form and structure of the APRA.¹

The APRA is made up of a main political agreement, four substantive protocols, and one implementation protocol, all signed by the negotiating parties.² The four substantive protocols correspond to the four key sectors identified by the negotiators in the Arusha peace process (that resulted in the APRA) as critical to the resolution of Burundi's conflict. Each of the four substantive protocols is the result of a consensus reached by Commissions comprised of representatives of the various negotiating parties. Also appended to the APRA are annexes which are deemed to form an integral part of the agreement. Structurally, the entire agreement is comprised of:

- The main political agreement;
- Protocol I: The nature of Burundi's conflict, the issue of genocide and exclusion, and solutions to these problems;
- Protocol II: Democracy and Good Governance;
- Protocol III: Peace and Security for all;
- Protocol IV: Reconstruction and Development;
- Protocol V: Framework to guarantee implementation of the Agreement; and
- Annexes:
 1. Statement of commitment by the signatories
 2. Structure of a new national police force
 3. Cease-fire agreement
 4. Report of the Fourth Commission (on Reconstruction and Development)
 5. Timeline for implementation of the Agreement.

¹ Citation of provisions of the APRA are as follows: roman numerals, (I, II, III) refer to the **Protocols**; Arabic numerals (1, 2, 3) refer to the **Chapters** within the Protocols; the letter "A" followed by an Arabic numeral (A15, A16, 45) refers to **Articles** within the Chapters; and the letter "P" followed by Arabic numerals refers to page numbers in the official text of the APRA. Therefore, the citation "II, 3, A35, p.71" refers to Protocol II, Chapter 3, Article 35, page 71.

² The complete text of the Arusha Peace and Reconciliation Agreement for Burundi, signed on 28 August 2000 can be consulted at *The Peace Agreements Digital Collection* of the United States Institute of Peace's on-line library at: http://www.usip.org/library/pa/burundi/pa_burundi_08282000_toc.html (last visited 20 December 2002).

SECTION I:

Transitional Justice in the Arusha Agreement

CHAPTER II: TRANSITIONAL JUSTICE, EXCEPTIONAL PRINCIPLES AND MECHANISMS IN THE APRA

2.1 Introduction

Since independence, Burundi has been marked by grave incidents that continue to define its history and fuel its bloody internal conflict. Burundi's political landscape has been scarred by massacres of civilians considered hostile to regimes in power or deemed – correctly or erroneously – to be in sympathy with political adversaries; large-scale and targeted repression against specific (often ethnic) groups; a civil war fought in blatant disregard of humanitarian law; and sheer impunity for perpetrators of these abuses. With no political will to confront the difficult reality wrought by these events and suffered by the population, several political 'transitions' and regime changes have failed to deal with the issue of responsibility for, and stock-taking from the past.

In raising these questions, the Arusha process enables the establishment of mechanisms to: determine where responsibility lies for past crimes and identify perpetrators, resolve long-standing historical disputes between different ethnic and political groups, reverse the trend towards impunity, repair wrongs done to victims of the conflict, and foster reconciliation. The APRA's preamble outlines its commitment:

...to bring to an end, the profound causes of the continuous bloody violence, insecurity, political instability, genocide and exclusion that have befallen Burundi's people, creating distress and suffering, while also impeding economic development and the attainment of equality and social justice in [the] country.

The APRA's framework for combating impunity can be summarized into three priorities: the search for justice, the right to know, and the right to reparation.

2.2 The search for justice

2.2.1 Exceptional legal mechanisms:

The APRA envisages a number of exceptional legal mechanisms to bring to justice those responsible for grave crimes, especially genocide, crimes against humanity and war crimes. It also envisages reform of Burundi's criminal law to incorporate these crimes into the Penal Code. (I, 2, 26. pp 18-19). Specifically, these provisions call for:

- 1) The creation of an International Judicial Investigation Commission to investigate into the perpetration of genocide, war crimes and crimes against humanity in Burundi. The Commission would be mandated to:
 - (a) Investigate and establish facts related to such crimes committed between Burundi's independence (in 1962) and the date the APRA was

signed (28 August, 2000); (b) Characterize (that is, provide an opinion as to their nature of) these acts; and (c) Submit a report of its findings and conclusions to the UN Security Council.

- 2) The creation, by the UN Security Council, of an International Criminal Tribunal to try and punish those responsible, in the event that the above-mentioned Investigation Commission concluded that genocide, war crimes or crimes against humanity had been committed in Burundi. (I, 2, A6, p.19)



WAR CRIMES

War crimes refer to certain conduct prohibited under **international humanitarian law** (a body of law that regulates how war is conducted), for which those responsible can be tried and punished. The laws of war, which are based on the principles of proportionality in the means of warfare, and the protection of persons who are not taking part in the fighting, generally call for the punishment of the following: (i) abuses committed against persons protected in times of war, including civilian populations and soldiers no longer taking part in fighting (such as disabled adversaries), and (ii) acts aimed at destruction of property and goods that are important for the survival of a civilian population and attacks directed against infrastructure that do not constitute legitimate military targets.

Among the acts that can constitute **war crimes**, if committed against protected persons are (non-exhaustively): willful killing; torture or inhuman treatment, including biological experiments; unlawful deportation or transfer; taking of hostages; intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; or against civilian objects, that is, objects which are not military objectives; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance; killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion; making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy resulting in death or serious personal injury; intentionally directing attacks against buildings dedicated to cultural and social (education, art, science, religion) purposes; pillaging a town or place, even when captured through combat; employing poison or poisoned weapons; committing rape, sexual slavery, enforced prostitution; and utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations (using "human shields").

War crimes are specified and prohibited by a number of treaties, including the 12 August 1949 Geneva Conventions. Some conduct is also so widely condemned that the customary law of war considers them as war crimes.

SOURCES: Geneva Conventions of 12 August 1949; Rome Statute of the International Criminal Court.



GENOCIDE

Genocide, refers to any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- 1) Killing members of the group;
- 2) Causing serious bodily or mental harm to members of the group;
- 3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- 4) Imposing measures intended to prevent births within the group;
- 5) Forcibly transferring children of the group to another group.

SOURCE: Convention on the prevention and punishment of the crime of genocide, 9 December 1948; Rome Statute of the ICC.



CRIMES AGAINST HUMANITY

Crimes against humanity refer to any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- 1) Murder;
- 2) Extermination;
- 3) Enslavement;
- 4) Deportation or forcible transfer of population;
- 5) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- 6) Torture;
- 7) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- 8) Persecution against any identifiable group or collectivity based on political, racial, national, ethnic, cultural, religious, or gender grounds;
- 9) Enforced disappearance of persons;
- 10) The crime of apartheid;
- 11) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

SOURCE: Rome Statute of the ICC.

2.2.2 Measures designed to address limitations of Burundi's judicial system.

The following principles are laid down in the APRA as key objectives for improving Burundi's judicial system in the long-term (including the post-transition period):

- 1) Combating impunity; (I, 2,A6, p.18)
- 2) Preventing, punishing and eradicating genocide, war crimes and crimes against humanity as well as other violations of fundamental rights, including women's rights; (I, 2,A6, p.18)
- 3) Development of an impartial and independent judicial system. To this effect, The National Truth and Reconciliation Commission shall receive complaints and appeals relating to assassinations and politically-motivated trials;³ (I, 2,A6, p.21)
- 4) Reform of the judiciary at all levels, especially with a view to correcting ethnic and gender disparities where these exist; (I, 2,A6, p.21)
- 5) Undertaking law reform where necessary (this includes the Criminal Code, Criminal Procedure Code, Civil Code, Nationality law, etc); (I, 2,A6, p.21)
- 6) Reform of the Higher Judicial Council with a view to ensuring its independence and the independence of the judiciary; (I, 2,A6, p.21)
- 7) Establishment of a judicial training program, especially through the creation of a National School of Magistracy; (I, 2,A6, p.21)
- 8) Providing the court system with adequate human and material resources; (I, 2,A6, p.21)
- 9) The establishment of an Ombudsman's office;
- 10) The possibility for the National Assembly to pass laws with retroactive effect, although no new law may impose criminal responsibility for conduct that was not previously considered a crime, nor may such a law retroactively increase the punishment for a crime. (II, 2, A16, p.47-48)
This essentially enables the passing of laws that are "curative" of past wrongs.

The APRA also specifies certain measures to be implemented even prior to the post-transition period:

- 1) Through recruitment and appointments, better gender and ethnic diversity in Burundi's judicial system should be achieved;

³ Like many other provisions in Protocol I (which deals with most of the post-conflict justice issues), this provision (read in the light of the entire agreement) is unclear. While it gives the TRC seemingly judicial function, other provisions suggest that the TRC should not be seen as a court or appeal mechanism for individual cases of wrong-doing or injustice. The draft TRC legislation should clarify this situation.

- 2) With a view to addressing gender and ethnic disparities in the composition of the judiciary, institutions for training of judicial personnel should be established, fast-track training should be encouraged, and the conditions, benefits and internal promotion prospects for Magistrates already in service should be improved;
- 3) The law relating to judicial organization, the civil and criminal procedure codes and the territorial (geographic) distribution of courts should be revised;
- 4) Required steps should be taken (including enactment of legislation punishing international law crimes) to combat impunity, and ensure that all cases amounting to a parody of justice or sham trials be re-opened and resolved.
- 5) Even prior to the establishment of the transition government, legislation should be passed granting provisional immunity from prosecution for any politically-motivated crimes committed prior to the signing of the APRA.

2.2.3 Exceptional provisions with implications on the quest for justice

(i) The Issue of Political prisoners

The Agreement calls on the transition government:

To create, within 30 days of the start of the transition period, a Commission tasked with conducting an urgent investigation into, and making recommendations on:

- Prison conditions, the treatment of prisoners, training and working conditions of personnel of Burundi's penitentiary services;
- The release of persons awaiting trial whose cases have been handled with excessive delay; and
- The existence and release of all political prisoners; (II,A15, p.47)



POLITICAL PRISONERS

While the APRA uses this term, it is not precisely defined. (A Commission, created as required by the APRA examined the issue and proposed a definition for the term “political prisoners”; see below). The APRA tends to use the following terms in a manner that lacks clarity:

? Political crimes	(See provision on a possible amnesty)
? Politically-motivated crimes	(See provision on provisional immunity)
? Political prisoners	(See provision creating the independent Commission)

It is particularly important to assign a specific meaning to these terms because each of the provisions that use them (scope of an amnesty law, scope of provisional immunity, release of prisoners) seeks to carve out a category of potentially criminal conduct or persons within the prison population to whom criminal responsibility would not be imputed (either temporarily or definitively). Two approaches, the first of which is more consistent with international human rights standards, are possible:

- 1) In the first approach, offenses under Burundi's criminal law that punish conduct endangering the political system and constitutional order as such may be considered political offenses. These include: conspiracy and plotting against State authority, endangering the external security of the State and its territorial integrity, participation in an insurgency, and similar offenses which are necessarily corollaries of the existence of an armed rebel movement. Persons serving sentences for these crimes may thus be considered “political prisoners”. This is by and large, the approach proposed by the Independent Commission established to investigate and make recommendations on the issue.
- 2) The existence of a political motive or objective for the offence, or the political character of the perpetrator of the offense could be used as the decisive criterion. In addition to the strong criminological arguments that weigh against this approach, it also carries the danger (as the experience in South Africa, where it was adopted, shows) if it is the sole criterion, of removing criminal responsibility for acts that amount to war crimes, genocide and crimes against humanity. These are after all, often committed precisely to achieve a political objective, or with a political motive.

The Independent Commission tasked with studying the issues of prison conditions, excessive judicial delays, and political prisoners (composed of 4 Burundian and 4 non-Burundian jurists) was created on November 30, 2001, and submitted a report of its findings and recommendations on February 14, 2002. The Commission recommended that persons detained on suspicion of, charged with, or sentenced for the following offenses under Burundi's criminal law, should be considered “political prisoners”:

- 1) Offenses against the external security of the State, punishable under articles 393 to 409 of the Penal Code;
- 2) Assassination attempts and plotting against the Head of State, punishable under articles 410 and 411 of the Penal Code;
- 3) Conspiracy, plotting, and other offenses against the security of the State and against its territorial integrity, punishable under articles 412 to 416 of the Penal Code. Some Burundian members of the Commission objected to conferring “political prisoner” status on persons detained, charged, or sentenced for “attacks aimed at . . . inciting citizens or inhabitants to take up arms against each other” (article 412).
- 4) Offenses defined and punished under article 419 of the Penal Code (with the same objection as expressed for article 412);
- 5) Offenses defined and punished under articles 420 and 423 of the Penal Code (with the same objection as expressed above);
- 6) Offenses defined and punished by articles 423 to 429 and 434 to 439 of the Penal Code;
- 7) Ordinary (common law) offenses committed with a political motive and having as consequence endangerment of the political order;

The Commission recommended that in exercise of their sovereign powers, Burundi’s political authorities could further confer political prisoner status on detainees chosen as interlocutors in political negotiations. It recommended that victims of abuse of criminal proceedings for political ends be entitled to political prisoner status, and that persons meeting the definition of political prisoner be released through legal means, except those regularly charged or sentenced for murder.

(ii) The Issue of an Amnesty

Protocol I of the APRA, in specifying the arbitration and reconciliation mandate of the National Commission on Truth and Reconciliation (TRC), stipulates:

The Transitional National Assembly [legislature] may enact one or several laws establishing a framework for an amnesty consistent with international law; the amnesty would apply to such political crimes as the Assembly itself or the TRC shall decide.⁴

⁴ For a position paper on the issue of an amnesty in Burundi, see Ligue ITEKA – Chronique Judiciaire, Amnistie: Définition et problématique au Burundi, (5 February 2001), at www.ligue-iteka.bi/ch/050201.htm

Protocol III of the APRA, among principles to govern a cessation of hostilities and a permanent ceasefire, states:

An amnesty is granted to all combatants from political parties and movements for crimes committed in the course of their involvement in the conflict; such amnesty shall not however extend to acts of genocide, war crimes, crimes against humanity, and participation in *coups d'état*.

The expressly granted amnesty in the APRA which seems to apply only to combatants and not to non-combatant (political) leaders of insurgent groups was intended to encourage rebel groups in Burundi to lay down their arms with a view to securing a permanent ceasefire.



AMNESTY

An amnesty is a legal measure that prevents or ceases prosecution or other legal action, or extinguishes an already-imposed criminal conviction and sentence. An amnesty removes criminal responsibility for specific acts – sometimes for a defined time period – that would otherwise be punishable. It may be granted to a specific category of perpetrators of otherwise criminal conduct, or may attach to specific criminal offenses. Where a person has already been convicted and sentenced, an amnesty relieves them from the obligation of serving the sentence. Amnesties are most often granted by way of legislation. Amnesties are different from *pardons* which are a prerogative of the Executive branch. Amnesties also differ from the *nolle prosequi* and dismissal of charges prior to trial, both of which also result in extinguishing prosecutorial action against an accused person, but which arise in judicial proceedings. Amnesties are also different from criminal *statute of limitations*, which is a recognized tenet of criminal law that prevents trial for a crime after the passage of a specified period of time since the acts amounting to criminal conduct were committed.

Amnesties may be conditional, as was the case in post-apartheid South Africa where perpetrators of otherwise criminal conduct could avoid prosecution if they provided full and complete information about such conduct to the TRC. They may apply to criminal prosecution or to all legal proceedings (including civil suits). As a national (legislative) measure, an amnesty granted by a particular State cannot stand in the way of the obligations under international law to prosecute certain crimes, such as torture and genocide, since other states have obligations to prosecute and punish perpetrators of these crimes.

(iii) The Issue of Provisional Immunity

The APRA calls upon the *interim* government in place in Burundi at the time of its signing to adopt:

“Legislation necessary to grant provisional immunity from any prosecutions for politically-motivated crimes committed before it signing.”

Immunity (from legal process) removes a person or an entity from the jurisdiction of a court; such a court if seized of the matter would declare itself incompetent, or lacking in jurisdiction to hear or try the case. Examples of immunity are those extended by a country to diplomats or official emissaries of a foreign State, and immunities that attach to Heads of State and certain public officials for acts committed in the course of their official duties. The immunity called for in the APRA has a temporary character. This provision was designed to respond to a specific need in Burundi, as the APRA's drafters sought a temporary measure that would enable the peace process (which did not end with the APRA) to proceed without the threat of prosecutions acting as an impediment. Firstly, the provision is intended to prevent arrests based on suspicion of involvement in past crimes prior to the finalization of investigations to be carried out by the exceptional mechanisms (International Investigation Commission, TRC). Secondly, this measure was envisaged to facilitate the return to Burundi's political scene and transition institutions of political leaders in exile, and to enable the insurgent movements subsequently to join the peace process without fear of prosecution.

(iv) Other (non-criminal) sanctions against perpetrators of abuses

While the APRA provisions examined above may have the effect of temporarily or permanently limiting the prosecution of persons who may have committed, ordered or condoned criminal conduct, the agreement also provides for some measures of a non-judicial nature that may, if implemented, have the effect of imposing some responsibility for past crimes. Firstly, the mandate of the National Commission on Truth and Reconciliation requires for the Commission to both (i) establish responsibility for crimes perpetrated in Burundi since independence, and (ii) identify the victims and perpetrators of these crimes.

The APRA's text does not provide clear guidance on whether the identity of perpetrators should be made public. The revelation of the identity of perpetrators – and the resulting public knowledge of their involvement in past crimes – may lead to some moral censure of those identified. The APRA also does not provide guidance on the implications of being identified in the TRC's report as a perpetrator, nor does it state expressly that such a finding would form the basis for subsequent criminal proceedings against those named. The possibility of naming those implicated however raises concerns about due process rights (if any sanctions apply after such a finding) especially if the TRC is unable to afford each named individual or institution an opportunity to defend themselves.

The APRA also requires the exclusion from the new defense and security corps of any members of the armed forces or rebel groups guilty of grave rights

violations such as genocide, war crimes and crimes against humanity. The same provision also re-states that such persons shall not be eligible for an amnesty. (III, 2, A14, p.70) The text of this provision suggests that only persons whose guilt has been legally proven after a trial could be thus excluded from the new defense and security corps. Considering that the creation of a new defense corps through reform of the current army and integration of former rebel combatants is a priority issue in the ceasefire negotiations, and that realistically, trials of persons accused of these crimes will take considerably longer, this provision's implementation may face challenges. The provision would seem difficult to apply when the new defense corps is constituted (that is, as a *pre-entry* screening requirement) since trials may not have taken place by then.

2.3 Historical clarification and the right to know

This important aspect of Burundi's envisaged transitional justice process is dealt with principally in the provisions creating a National Commission on Truth and Reconciliation (TRC). The Commission will be tasked with:

1. Shedding light and establishing the truth on severe acts of violence committed during the cyclical conflicts that Burundi has witnessed between its independence (October 1, 1962) and the date of signing of the APRA (August 28, 2000).
2. Characterizing (that is, provide an opinion as to the nature of) these acts, establishing who bears responsibility for them, and identifying the perpetrators and victims. The Commission shall however not have jurisdiction to qualify or characterize acts as having amounted to genocide, war crimes and crimes against humanity. (I, 2, A8, p.23)

Also related to the TRC's mandate of historical clarification and reconciliation, the APRA calls for the establishment of a national (and inter-ethnic) front to resist any recidivism into acts of genocide, war crimes and crimes against humanity, and to challenge generalizations and collective imputation of guilt. The APRA also calls for the building of a national monument in memory of victims of genocide, war crimes and crimes against humanity which shall carry the inscription "NEVER AGAIN". Furthermore, the agreement calls for a national Day of Remembrance for victims of genocide, war crimes and crimes against humanity, and that steps be taken to enable identification of mass graves, and a decent burial for deceased victims. (I, 2, A6, p.18)

Given Burundi's context, the work of the TRC is of potential significance, since very divergent opinions and versions of history exist (often along ethnic and political lines) about the grave incidents that have marked Burundi's past. There is often a marked tendency to perceive members of other ethnic groups as having been principally responsible for crimes committed against members of one's own ethnic group; this was clearly perceptible in the

splits between representatives of the G-7 (pro-Hutu) and G-10 (pro-Tutsi) political parties in Commission I at the Arusha negotiations (that examined the nature of Burundi's conflict). In fact, the idea for creating the TRC -- which has historical clarification as a key task -- stems from these profound differences of opinion and perspective.

Furthermore this process is intended to reverse the tendency to collectivize guilt, or use loose generalizations in private and public discourse about responsibility for past crimes. This usually involves imputing responsibility for crimes to the perpetrator's entire ethnic group. In Burundi's current conflict, repression often flows from an individual or family's ethnic origins. This practice can be traced back to the pre-colonial period, when an offense against Burundi's then monarchy would be followed by repression against, and even extermination of the perpetrator's clan or close kin. The TRC should thus serve the purpose of shedding light on who exactly bears responsibility for past crimes, and clarify the circumstances in which these crimes were perpetrated, with a view to releasing future generations from the misplaced guilt or hatred bred by doubts over responsibility for past wrongs. It should also address the prevalent practice of "negative solidarity" that involves denial or distortion of wrongs done *by* one's own ethnic group while exaggerating the nature, extent or responsibility for wrongs done *to* one's own ethnic group.

The transition government has prepared a bill to establish the National Commission for Truth and Reconciliation. The bill, which deals with the mandate, composition, organization and functioning of the TRC is expected to be examined and enacted into law by the transitional legislature. (See Annex 1)

2.4 *The right to reparation and the need for reconciliation*

There is a fundamental link between the notions of reparation and reconciliation. They involve public or individual acknowledgement of responsibility for wrongs done and of the loss suffered by the victims. Once the wrong and loss is acknowledged, there is an attempt to provide a remedy -- to make the victim whole -- either by placing them in as close a position as possible to their state prior to having suffered a wrong, or offering other compensation. Although dealt with under the previous sections entitled, the "quest for justice" and the "right to know", establishing criminal responsibility of perpetrators of grave crimes, and clarification of responsibility for past wrongs are also integral to the right to reparation. For some victims of repression, formal or official acknowledgement of what they suffered and shedding light on who bears responsibility for these acts may constitute an important form of psychological and intangible reparation. This may particularly be the case for persons whose suffering has been widely denied, distorted or never previously acknowledged.

Also considered as facets of reparation are structural changes designed to create a more just society, to restore confidence and trust in the system and signal a break with the past.

2.4.1 Measures of reparation and reintegration for war victims, and refugee return policy

The APRA envisages repairing wrongs done to victims of Burundi's conflict through a combination of efforts of several mechanisms. In addition to direct measures of reparation to individual victims of abuses, the APRA establishes a "refugee return" policy that applies to a broad group (persons pushed into internal displacement or refugee status because of the conflict) which in the last decade has steadily risen to at least one in seven Burundians. With respect to reparations for individuals who allege that human rights abuses were perpetrated against them, the TRC is expected at the end of its investigations, to:

Decide or propose to Burundi's authorities such measures as would promote reconciliation and forgiveness; decide on the restitution of seized or confiscated property to its rightful owner or their heirs or decide on amounts of compensation due; propose any appropriate measures of a political, social or other nature that are conducive to fostering reconciliation. (I, 2, A8, p.23)

2.4.2 Claims by victims and refugees relating to dispossession of land and other property

In order to resolve disputes relating to land and other property (especially to restore such land or property to persons who were dispossessed during the conflict), the APRA establishes the following principles:

1. The right to own property is guaranteed to all. Where this right is interfered with by expropriation, fair and equitable compensation must be provided. Expropriation may only be resorted to in the collective interest and must be in accordance with, and backed by the law, which shall specify the method of compensation;
2. Every refugee or war victim is entitled to recover their property, especially land.
3. If recovery of their property proves impossible, they shall be entitled to fair compensation.
4. Refugees who do not return to Burundi are nonetheless entitled to just compensation if their land was expropriated without prior compensation, in violation of the principle enunciated in (1) above.
5. The State's policy of re-distributing State-owned lands shall be revised to prioritize resettlement of war victims.

6. An inventory of destroyed landed property in urban areas shall be established with a view to repairing and re-distributing them, or, as a matter of priority, restoring them to their original owners.
7. A number of measures shall be taken to prevent future litigation related to land ownership. Specifically, this shall include the establishment of a registry or rural lands, enactment of a law on succession (inheritance), and in the long term setting up a cadastral survey of rural lands.
8. The State policy of distributing land should take into account environmental protection and water levels of the country, by protecting natural forests.
9. Burundi's Land law shall be revised to ensure it better addresses current land problems.
10. A Sub-Commission to deal specifically with issues related to land shall be tasked with:
 - Examining all cases involving land belonging to refugees who have spent long periods of time outside the country; and cases involving State lands;
 - Examining all contentious cases where allegations of abusive redistribution of land are made, and arrive at a decision in each case.

The Sub-Commission shall be guided in its work, and individual decisions by the values of equity, transparency and good judgment. In performing its tasks, it shall remain conscious of the fact that its mandate is not only to restore property to returnees, but also to reconcile different groups and consolidate peace.

2.4.3 Framework and principles for reintegration of war victims and refugee return

Protocol IV and the report of the 4th Commission (an Annex to the APRA) deal with these issues at length. Protocol I (I, 2, A7) provides:

1. Refugees shall be reintegrated (for professional purposes) taking into account their experience both prior to and during exile; (p.20)
2. The problems of refugees, internationally displaced persons, persons forced into “regroupment” camps, and other war victims shall be definitively resolved through reintegration, resettlement, and compensation for destroyed property; (p.22)
3. Property – including moveable and immovable property, bank and other savings accounts, and social security benefits – which may have been confiscated by the State or misappropriated by third parties shall be returned to its rightful owner; (p.22)
4. A National Commission for Reintegration of War Victims shall be established. (p.22)

Protocol IV (on post-conflict reconstruction and development) deals extensively with the issue of **return, reintegration and resettlement of refugees**.

a) Principles governing return, reintegration and resettlement (IV, 1, A2, p.85-86)

1. Every Burundian refugee has the right to return.
2. Refugees who are no longer in their country of first asylum shall receive the same treatment as refugees returning to the country.
3. Refugee return shall be voluntary and must be carried out with dignity and with guarantees for security; particular attention should be paid to the vulnerability of returning women and children.
4. Reception facilities should be established prior to refugee return.

5. Returnees (that is, returning refugees) shall enjoy all their rights as citizens and shall have their property restored in accordance with Burundi's laws in force *after* the signing (and entry into effect) of the APRA.
 6. Every war victim that so wishes shall be entitled to return to their pre-war home.
 7. War victims who deem that they are unable to return to their pre-war homes should receive treatment that enables them to return to a normal social and professional life;
 8. In refugee and IDP return, reintegration and resettlement, the principle of equity, including gender equity must be applied strictly; there should be no discrimination against or favoritism towards any categories of persons.
- b) The APRA outlines steps to be taken in preparation for refugee and IDP return, reintegration and resettlement
1. The establishment of a National Commission for Reintegration of War Victims (CNRS), whose mandate shall be to organize and coordinate (in partnership with international organizations and host countries to Burundian refugees) the repatriation effort and the reintegration of war victims, including through supporting their resettlement and social integration. The CNRS shall also deal with the myriad issues outlined in the report of Commission IV (an annex to the APRA);
 2. Establish a Sub-Commission of the CNRS to deal specifically with land-related claims and disputes;
 3. Conduct a headcount of all war victims;
 4. Organize sensitization campaigns targeted towards refugees and war victims, as well as awareness-raising visits to the refugees' host countries;
 5. Conduct sensitization and public awareness programs on mechanisms for peaceful co-existence especially in communities to which refugees return;
 6. Set up reception committees (where these do not exist) tasked with facilitating the return, and providing support to war victims who have returned to their places of origin, ensuring their security, and assisting them with social and economic re-integration.

c) Principles to guide the CNRS in developing a resettlement and reintegration policy (IV, 1, A4, p.87)

The CNRS, in pursuance of a plan of priorities it shall develop and depending on the resources available to it, shall ensure resettlement and reintegration consistent with the following guidelines:

1. Ensure the administrative, social and economic reintegration of war victims;
2. Provide each returning family – including families headed by women and children – with food aid and assistance with healthcare, education, agriculture and reconstruction of their properties. Such assistance should last until such time as they can take care of themselves;
3. For returnees who deem that they cannot return to their pre-war homes, it shall resettle them on sites close to their pre-war homes to enable such returnees initially have access to their farms, and when the situation permits, to return to their pre-war homes.
4. In reconstruction of homes, it shall encourage collective living (as opposed to construction of dispersed homes) to free up arable land;
5. Ensure equity in the distribution of resources along both ethnic and regional (provincial) lines so as to avoid tensions between groups involved;
6. Encourage returnees to reintegrate into the professional activities they had conducted prior to leaving into exile, if they demonstrate that they in fact previously conducted such activities.
7. Intensive language courses should be offered to returnees to overcome language barriers;
8. Returnees should be supported on such matters as: medical services, psycho-social support, social security and retirement, education of their children, and obtaining Burundian equivalency for diplomas, degrees and qualifications obtained abroad.

d) Measures to support prospective returnees in their countries of asylum (IV, 1, A5, p.88):

The government is expected to take the following steps to assist prospective returnees in their countries of asylum:

1. Provide assistance to them in resolving outstanding litigation in their country of asylum especially cases relating to immovable property, banks accounts, social security, etc;
2. Within the framework of inter-State or inter-institution agreements, assist those who had taken up employment and made social security contributions in their country of asylum, to receive pension benefits to which they are entitled as a result of such employment;
3. Study the modalities for compensating returnees who have left behind property in their country of asylum which they can neither return with nor sell, or otherwise recoup the investment involved;
4. Assist students in the last two years of their primary, secondary or university education programs who wish to complete their studies in their country of asylum.

e) Guaranteeing access and security for international personnel (IV, 1, A7, p.89)

The government shall allow international organizations and both national and international non-governmental organizations unrestricted access to returnees and war victims in order to provide them humanitarian assistance. The government shall guarantee security for personnel of these organizations and facilitate the provision – with appropriate supervision and without discrimination – of short-term assistance to the repatriation process.

f) National Fund for War Victims (IV, 1, A9, p.90)

A National Fund for War Victims shall be created. It shall be funded from the State budget, donations from bilateral and multilateral aid organizations or from assistance provided by non-governmental organizations.

- g) Special measures to protect particularly vulnerable returnees (IV, 1, A10, p.91)

The government shall, through special assistance measures, ensure the protection, reintegration and promotion of the interests of vulnerable groups, especially minors who are family heads, orphans, street children, unaccompanied children, widows, single mothers, juvenile delinquents, the mentally and physically disabled, etc.

Finally, as a guiding principle, the APRA provides that efforts to rebuild destroyed infrastructure should specifically aim at both easing the return of refugees and war victims, and rebuilding destroyed property. These efforts, which should be conducted in a transparent and equitable manner, should: (a) take into consideration the needs of resettled and reintegrated persons, *and* the needs of communities that are receiving them; and (b) resolve the problem of repayment of loans to banks and other financial institutions, in cases where the property developed with the loan has been destroyed.

SECTION II:

Human Rights provisions in the APRA

CHAPTER III: STATUS OF HUMAN RIGHTS PROVISIONS IN THE APRA

3.1 Introduction and Relevance

It is generally accepted that for human rights protections to be effective, it is essential that those who enjoy these rights be aware of them and capable to defend them. Gaining awareness of key rights and entitlements and how to protect them can help transform citizens – especially emerging from decades of conflict and repression when they were alienated from the public space – into active defenders of fundamental rights.

The cyclical crises and violence that have marked Burundi's history since independence have led to human rights violations on a scale only comparable to some of the worst political violence in the Great Lakes region. At the origins of the violence and the enduring conflicts that fan it, are also very severe denial of fundamental rights, such as the right to equality of all citizens and protection against discrimination. The right to life, to a fair trial, to humane treatment of persons in detention, the right to take part in the public affairs of one's country, and an array of economic and social rights (to adequate healthcare, education, food, and housing) have all been major casualties of Burundi's protracted internal conflict. In an envisaged post-conflict era, securing these rights – or at least demonstrable signs of progress towards doing so – for Burundi's citizens may be the best indicator of whether the country is undergoing a profound transition, or merely preparing for another cycle of conflict. The APRA's approach of requiring legal, institutional and structural reforms suggests an effort towards transforming Burundian society into one respectful of fundamental entitlements; effective implementation however remains critical.

This section of the Guide attempts to make accessible to the Burundian public the commitments entered into by the signatories of the APRA, which have to be translated into practice by legal, institutional and structural reforms. The straightforward presentation of the rights-protective principles and provisions of the APRA – organized according to the classical typology of rights – is intended as a quick reference and information source, with potential usefulness in advocacy work, monitoring legal reforms, verifying the overall extent of implementation of the APRA, and day-to-day protection of rights. The contents of this section are provisions relevant to rights protection, drawn from the four Protocols to the APRA, and organized thematically into different bodies of rights. The core statement of fundamental rights however, is found in a *Charter of Fundamental Rights*, contained in Protocol II (dealing with Democracy and Good Governance) to the APRA.

Basic definition: A right is essentially an entitlement recognized by law. Human rights generally refers to a series of entitlements that accrue to every human being, simply by virtue of their being human. These rights derive from dignity and respect for the human person, and are anchored on equality of all human beings. Human rights are not privileges that can be granted and withdrawn by a State authority. They are a core set of entitlements that cannot be compromised by the State; in reality, they often restrain arbitrary power of the State against its citizens. Human rights may be restricted, but any such restrictions (even in periods of conflict or war) must be reasonable and strictly proportional to the motive for the restriction. In fact, nothing, not even a state of war, can justify violating certain rights – such as freedom from torture, and cruel and inhuman treatment. In most countries, human rights are protected against being violated by the laws of that country. All five constitutions of Burundi adopted since independence (in 1962, 1974, 1981, 1992 and 2001) contain provisions designed to protect human rights. Most States have also undertaken, in agreements (treaties, conventions) entered into with other States to protect the rights of their own citizens.

3.2 The APRA's diagnosis of remote causes of human rights violations in Burundi

Traditional Burundian society attaches importance to the protection of human life, and the dignity of the human person. The traditional institution of the *Ubushingantahe* (a community-level conflict resolution mechanism made up of community elders) also has deep roots in Burundian traditional society's concern for fairness, equity and justice, non-violent resolution of differences, and respect for the human person. The APRA notes that "the existence of *Bashingantahe* from the *Baganwa*, *Bahutu*, and *Batutsi* ethnic groups who acted as judges and counselors at all levels constituted a source of social cohesion". (I, 1, A1, p.5).

In examining the profound causes of Burundi's conflict, the APRA negotiators focused on the issue of "exclusion" – widespread, institutionalized and repressive discrimination, often perpetrated along ethnic lines. This severe form of discrimination is traced back to the colonial period, during which: (per the text of the APRA – I, 1, A2, P.15-16):

- a) A racist and simplistic vision of Burundian society was propagated, replete with stereotypes and profiling, based among other things on physical differences between different groups in the country; class differentiation among segments of Burundian society was done on the basis of physical and other character traits;
- b) A system of identification (identity cards) was introduced which labeled Burundians according to their ethnic group, thus reinforcing ethnic consciousness at the expense of a national identity. This ethnic differentiation was used to grant differential treatment on the basis of the colonial system's own theories (of superiority and inferiority);

- c) The colonial administration, through discriminatory practices manipulated the existing state of affairs;
- d) The colonial administration undertook to destroy certain cultural values that until then were critical in fostering unity and national cohesion.

The APRA does not however lay the blame for Burundi's dismal human rights record solely on the colonial era. The signatories also recognized that acts of genocide, war crimes and crimes against humanity have been perpetrated in Burundi since independence against the *Hutu* and *Tutsi* ethnic groups in Burundi. (I, 1, A3, p.16)

3.3 The integration of human rights concepts into other key aspects of the APRA

The APRA (both in the main political agreement and in Protocol I) expresses commitment to making protection of rights part of a new political and social dispensation in Burundi. A principal policy directive in Protocol I aimed at eliminating grave threats to the *collective security and existence of any ethnic group* (for which the APRA often uses the phrase, "threat of genocide") and *widespread, institutionalized and repressive discrimination* (for which the APRA often uses the phrase "exclusion"), is to:

Establish a new political, economic, social, cultural and legal order in Burundi, within the framework of a new Constitution informed by Burundi's current realities and built on values of justice, the rule of law, democracy, good governance, pluralism, respect for human rights and fundamental freedoms of individuals, unity, solidarity, equality of the sexes, and mutual understanding and tolerance between the different ethnic segments and political shades of opinion in Burundi. (II, 1, A1, P.26)

- a) The constitutional principles that inform the post-transition Constitution are to be based on the following human rights values (II, 1, A1, p.26)
 1. All Burundians are equal in merit and dignity. All citizens are entitled to equal protection of the law. No Burundian shall be discriminated against, or suffer exclusion in the social, political or economic life of the nation on account of their race, language, religion, gender or ethnic origin.
 2. All Burundians have the right to live in the country, in peace and security. They should live together in harmony, respecting the dignity, and being tolerant of the differences of others.
 3. The Government shall be founded on the will of the Burundian people, shall be accountable to them, and shall respect their rights and fundamental freedoms.

b) The Charter of Fundamental Rights (II, 1, A3):

In its first paragraph, the Charter states that human rights protections afforded under a number of key international human rights instruments shall be integrated into Burundi's post-transition Constitution. The international instruments mentioned include: the Universal Declaration on Human Rights, the two International Covenants (on civil and political, and economic, social and cultural rights, respectively), 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.

The Charter further stipulates that fundamental rights should be respected throughout Burundi's new legal, administrative and institutional order. Furthermore, any restriction of a fundamental right should have a basis in law; it must be justifiable in the interests of society or by the need to protect the fundamental rights of other. Such restrictions must also be proportionate to the objective sought. (II, 1, A3, P.29)

c) Creation of an Ombudsman's Office (II, 1, A10, p.39):

The APRA creates a new human rights protection mechanism in the Office of the Ombudsman. Its mandate shall be to receive complaints about, and undertake investigations into allegations of mismanagement and violations of fundamental rights of citizens committed by public servants and judicial personnel. It shall thereafter make recommendations to the competent authorities.

d) Human rights protection in the mandate of the new security forces:

Protocol III of the APRA which deals with Peace and Security, states that the new defense and security corps of Burundi shall have the fundamental duty to guarantee the protection of inalienable human rights, especially the right to life; they shall also protect other rights enumerated in the Universal Declaration of Human Rights and other treaties to which Burundi is a party. (III, 1, A, p.58)

The APRA also requires that training of the new defense and security corps in Burundi shall include: pacifism; the military's relations with, and status within a democratic, pluralistic political system; human rights; and humanitarian law. (III, 2, A18, p.73)

e) Integrating human rights into Burundi's post-conflict reconstruction program:

Burundi's transition Government is required by the APRA to undertake and fund – with the support of the international community – a political and infrastructure reconstruction program

with an overall approach that caters to the following objectives: social reintegration, consolidation of peace, promotion of human rights and freedoms, and long-term economic growth and development. (IV, 2. A11, p.90)

CHAPTER FOUR: SPECIFIC PROVISIONS OF THE APRA RELATED TO CIVIL AND POLITICAL RIGHTS

4.1 *The right to life*

This most fundamental of rights is protected explicitly in the *Charter of Fundamental Rights*, which states: “All men and women have the right to life”. (II, 1A3, p.28). The APRA’s provisions relating to Burundi’s new defense and security corps also states that these institutions shall have the fundamental duty to guarantee the defense of inalienable human rights, especially the right to life. (III, 1, A1, p.58).

Considering that the most severe current threat to the right to life in Burundi is the on-going armed conflict (that continued even as the APRA was being negotiated and signed), the APRA’s main political agreement includes a call by all the signatories to Burundi’s armed groups to immediately suspend hostilities and acts of violence, and an invitation to these groups – on pain of sanctions – to enter into serious negotiations towards reaching a cease-fire.

The APRA does not however deal with the issue of the death penalty, which remains the punishment provided for offenses involving deliberate taking of human life (Article 145 of Burundi’s Penal Code).

4.2 *Freedom from slavery or servitude*

The *Charter of Fundamental Rights* expressly states that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” (II, 1, A3, p.28)

4.3 *Freedom from torture or from cruel, inhuman and degrading treatment of punishment*

With a view to protecting the physical and moral integrity of every individual, the *Charter of Fundamental Rights* states that “all persons have the right to liberty and security of person, especially their physical and psychological integrity and freedom of movement. No one shall be subjected to torture, or to cruel, inhuman and degrading treatment or punishment. All persons have the right not to be subjected to violence, whether public or private”. The *Charter* also states that no one shall be treated in arbitrary manner by the State or its Institutions.

4.4 Right to recognition as a person before the law, and right to a nationality

The former, which is critical to ensuring that everyone can enjoy their rights guaranteed by law and claim their enforcement if violated, is not protected expressly in the *Charter*. On the latter, the *Charter* provides that no one shall be arbitrarily deprived of their nationality or denied the right to change their nationality. (II, 1, A3, p.28)

4.5 Liberty and security of person

The *Charter* states that no one shall be deprived of their liberty except as provided by law (II, 1, A3, p.29). The principles for maintaining peace and security laid down in Protocol III of the APRA (on Peace and Security) state that all Burundians – without distinction – shall have the right to live in peace and security, and all Burundians have the duty to respect their fellow citizens' right to live in peace and security, and respect public order.

4.6 Freedom of movement

All Burundian citizens have the right to move freely and establish residence anywhere on the national territory, as well that the right to leave and re-enter the national territory (II, 1, A3, p.28)

4.7 Right to seek and enjoy in other countries, asylum from persecution

The APRA does not specifically address this right.

4.8 Right to due process of the law

The *Charter* states that everyone shall have the right, in an administrative or judicial proceeding, to a fair hearing for their cause, and the right to have the matter determined within a reasonable amount of time. Everyone has the right to the guarantees afforded by law and the right to a fair trial. (ii, 1, A3, p.29)

The APRA's statement of constitutional principles that should inform the post-transition Constitution contains directives designed to ensure more fairness and independence of the judicial system. (II, 1, A9). Amongst other reforms, the principles insist on the use of Kirundi in Burundi's courts, strengthening impartiality of the judiciary through regulating the judicial appointment and disciplinary powers of the Higher Judicial Council. Those members of the Council drawn from judicial personnel shall be elected by their peers. Notable among these principles are:

- a) The judiciary shall be impartial, independent and regulated solely by the Constitution. No one shall interfere with the functioning of the judiciary (II, 2, A9, p.36)
- b) The working languages of the courts is Kirundi and Burundi's other official languages. Laws shall be promulgated and published in Kirundi and the other official languages. (II, 2, A9, 36)
- c) Supreme Court judges shall be appointed by the President of the Republic from a shortlist submitted by the Higher Judicial Council, and with the approval of the National Assembly and Senate (II, 2, A9, 37).
- d) An Office of the Attorney (or Prosecutor) General attached to the Supreme Court shall be created; its Magistrates shall be appointed in the same manner as Supreme Court judges (II, 2, A9, 37).
- e) A Council of the *Ubushingantahe* shall have jurisdiction over the smallest administrative unit, the *colline* (hill). It shall dispense justice in a spirit of conciliation (II, 2, A9, 37).
- f) The President of the Court of Appeals, the Presidents of the High Courts, Prosecutor Generals, and State Counsels (attached to these courts) shall be appointed by the President of the Republic after having been designated by the Higher Judicial Council and confirmed by the Senate (II, 2, A9, 37).
- g) Within the limits of its resources, the Government shall ensure that Magistrates have the necessary qualifications and training to carry out their duties, and shall ensure that the judicial system has necessary resources (II, 2, A9, 37).
- h) A Higher Judicial Council shall be created, with ethnically-balanced membership. Seven of its fifteen members shall be elected (by their peers) from among members of the judicial corps (II, 2, A9, 37).
- i) The Higher Judicial Council shall be the highest disciplinary organ for the judicial corps. The Council shall receive complaints from individuals or from the Ombudsman concerning the conduct of judicial personnel. It shall hear appeals from judicial personnel against disciplinary actions taken against them and claims regarding professional or career advancement from judicial personnel. A Magistrate or Judge may only be dismissed for cause (professional error or incompetence) and only by a decision of the Higher Judicial Council ((II, 2, A9, 37).
- j) Trials shall be conducted in public, except where the interests of justice or the general interest require otherwise. Judgments shall lay forth their reasoning and shall be rendered in public.

- k) Magistrates shall be appointed by Presidential decree upon recommendation of the Higher Judicial Council. Presidents of the courts of First Instance (*Tribunaux de Residence*) shall be appointed in the same manner, but potential appointees shall be recommended to the President after Senate approval (II, 2, A9, 37).

4.9 Right to privacy

The *Charter* states that all women and men have the right to protection of their privacy, family life, home and personal correspondence (II, 1, A3, p.28). Human dignity shall also be protected and respected (II, 1, A3, p.27).

4.10 The right to form a family

In guaranteeing the right not to be forced into, or prevented from marital life, and establishing the State's obligation to protect the family, the *Charter* states that "freedom to marry, as well as the right to choose one's spouse, is guaranteed. Marriage shall only be entered into with the free and full consent of the intending spouses. The family, fundamental group unit of society is entitled to protection by society and the State". (II, 1, A3, p.28)

4.11 Freedom of thought, conscience and religion

The *Charter* protects these fundamental freedoms by stating that "the State shall respect freedom of religion, of thought, of conscience and of opinion". It defines Burundi as an independent, sovereign and united nation, respectful of ethnic and religious diversity. (II, 1, A3, pp 27-28)

4.12 Freedom of opinion and expression

The *Charter* guarantees freedom of expression and media freedom (II, 1, A3, p.28). This right includes freedom to express opinions without interference; and to seek, receive and impart information and ideas through any media.

In order to protect freedom of political opinion, the APRA stipulates that any political party that peacefully advocates for a return to the monarchy in Burundi shall have the right to function (II, 1, A2, P.27). The Transition National Assembly is expected to repeal all laws that impede political liberties or the application of Protocol II of the APRA which liberalizes political activity (II, 2, A22, p.53). Furthermore, upon the reaching of a ceasefire agreement, all persons detained or taken hostage on account of their political leanings or activities shall be released and shall have the right to take up residence wherever in the country they wish (III, 3, A26, p.78)

The APRA also provides measures to promote the emergence of independent media. The report of Commission IV at Arusha (an annex to the APRA) states (at p. 131) that the Government should understand that private, independent media are indispensable for good

governance. It should therefore accept their existence and even provide support to them, especially in their nascent stages. The flourishing of private radio, television and print media outlets should therefore be accepted. It calls on new media institutions to display professionalism, competence and respect of journalistic ethics. It also calls for the re-defining and strengthening of the role of the National Communications Council in the regulation of public and private media.

4.13 Freedom of assembly and association

The *Charter* provides that freedom of assembly and association are guaranteed, as well as the right to form, in accordance with the law, non-profit associations and organizations. (II, 1, A3, p.48) Protocol IV of the APRA recognizes the legality of multi-party politics in Burundi.

The APRA however calls for the prohibition of any political or other association which advocates discrimination based on ethnic or regional origin, religion, gender, or other values that are contrary to national unity. How this provision is interpreted will determine its consistency with the human rights framework. If it is interpreted too strictly and prevents the type of position-taking – for instance on regional issues within Burundi – that is acceptable for a political organization, this provision may be a disproportionate restriction of a human right (freedom of association). It would thus violate the APRA’s own standard for the legality of restrictions on fundamental rights.

Furthermore, the APRA (“with a view to promoting a national rebirth, reconciliation and unity”) prohibits any political party that is founded on the basis of regional or ethnic exclusivity. This provision allowed existing political parties to modify their names or formal documents if they were not in compliance, by requiring that the new rule come into effect nine months after the start of the transition period, i.e., in August 2002. This provision also requires definition and interpretation to determine the exact meaning of “regional and ethnic exclusivity”. The context of the provision however suggests that it is aimed at parties that restrict their membership to persons from one ethnic group.

4.14 The right to take part in the government of one’s country

The APRA’s provisions on equal access to public service (including and especially state employment), along with its provisions to eliminate discrimination, are some of the most elaborate sections of the agreement. Both are contentious issues central to resolution of Burundi’s conflict and stemming a recidivist decline into the political frustrations and antagonism that fueled cycles of past violence. Within the APRA, the right to take part in the government of one’s country can be analyzed from two perspectives:

- The right of equal access to public service in one’s country;
- The right to elect, or be elected, to public office.

4.14.1 The right of equal access to public service in one's country

Specifically, the APRA calls for:

- a) Equality of opportunity for all men and women in access to employment, through strict compliance with existing laws and regulations on recruitment by the State and fully or partially-owned State enterprises; or through the passing of new laws; and through transparent testing and entrance examinations (I, 2, A7, p.20).
- b) The post-transition Constitution to be inspired, amongst other rules, by the following principle: "The composition of Burundi's Government shall be representative of all Burundians; all should have equal chances to become a member of Government; all citizens shall have access to public services and decisions and actions of the Government should canvass the widest support possible (II, 2, A1, p.26).
- c) Among principles for peace and security (Protocol III), respect for sovereignty of the Burundian people as expressed in the Constitution and laws arising from it. It further imposes the duty to respect the principle of participation by all groups in State institutions and the equality of opportunity for all citizens in all facets of national life. (III, 1, A1, p.58)
- d) The possibility that some matters within legislative competence may be submitted for popular vote by way of referendum (II, 1, A6, p.32)
- e) Political parties to be open to all Burundians; their nationally diverse character should also be reflected at the level of their leadership (II, 1, A4, p.30)
- f) Political parties or coalitions of parties that have at least 5% of the electoral vote, shall be invited – though not required – to submit to the President a list of potential ministerial appointees. (II, 1, A4, p.35)
- g) It is recommended that political parties promote freed expression of political choice. (II, 1, A4,p.30)

4.14.2 The right to elect, or be elected, to public office

Specifically, the APRA states:

- a) The right to vote is guaranteed. (II, 1, A5, p.30)
- b) Elections shall be free, fair and transparent, in conformity with the law governing elections and the law on political parties. (II,1, A4, p.30)
- c) Impartial elections shall be organized at the level of the entire nation, at the level of *communes* (districts), *collines* (hills) and at other levels to be specified by the Constitution or by law. (II, 1, A5, p.31)
- d) The Constitution shall provide that with the exception of the first Presidential election, all other presidential elections should be conducted on the basis of direct universal suffrage, with each voter only being able to vote in favor of one candidate. (II, 1, A7, p.35)
- e) Elections to the National Assembly shall be by lists established through proportional representation. The revised Electoral law shall require that the composition of these lists be multi-ethnic and also take gender balance into account. For every three candidates on the lists thus proposed, at least one must be from a separate ethnic group from the others; at least one candidate in five on every list must be a woman. (II, 2, A20, p.52)

4.15 The right to own property

The *Charter* provides that the right to own property is guaranteed to all men and women. Whenever property is expropriated, fair and equitable compensation must be provided. Expropriation may only be resorted to in the collective interest and must be in accordance with, and backed by the law, which should specify the method of compensation. (II, 1, A3, p.29)

4.16 The right to equality before the law, the prohibition of discrimination, and protection of minorities

Widespread disrespect for equality before the law, and the unchecked practice of discrimination are at the heart of the country's post-independence conflicts. Discrimination is a negation of the principle of equality. The APRA frequently uses the term "exclusion" to characterize the widespread, institutionalized and repressive form of discrimination that has come to prevail in Burundi, and that was identified as a root cause of the conflict, to be reversed by a series of legal, institutional and structural reforms.

Naturally, the right to equality before the law and the prohibition of discrimination pervades the APRA's four Protocols. It is present in: statements of constitutional principles for the post-transition Constitution, in directives for several transition institutions, in affirmations of commitment by the signatories, and in sector-specific reform measures. Some of these provisions endorse affirmative action, including immediate measures to reverse discrimination in order to attain specific percentages or quotas of representation from the main ethnic groups.

4.16.1 Statement of General Principles

The APRA's nine core principles for equality under the law and against discrimination are:

- a) All citizens have rights and obligations;
- b) All men and women are equal. No one shall be subject to discrimination especially on account of their origin, race, ethnicity, sex, color, language, social status, religious philosophical or political beliefs, or mental or physical disability. All citizens are equal before the law, which shall afford them equal protection;
- c) All Burundians are equal in merit and dignity. All citizens shall enjoy the same rights and equal protection of the law. No Burundian shall be excluded from the social, economic or political life of the nation on account of their race, language, religion, sex or ethnic origin;
- d) All Burundians have the right to live in peace and security in Burundi. They shall live together in harmony, respecting others' dignity and tolerating their differences;
- e) All persons have the obligation to respect and show consideration for their fellow citizens, and refrain from discrimination against them; (II, 1, A3, pp. 26 – 29)
- f) Political organizations should favor inclusiveness; exclusion from political groups on account of one's ethnic or regional origin, sex, or religion is prohibited;
- g) Political organizations should develop ideals of peace and national unity; ideologies of exclusion, racism, and genocide are prohibited;
- h) The principles of participation of all groups in the management of State institutions and equality of opportunity among citizens in all sectors of national life should be respected; (III, 1, A1, p.59)

- i) A commitment should be made to eradicate genocide and abolish all forms of discrimination and exclusion. (I, preamble, p.14)

4.16.2 General political measures to combat discrimination

While the APRA goes into specific detail on measures to reverse discrimination in particular sectors of public life in Burundi, it starts out with a number of over-arching approaches. Among general policy directives to guide a post-conflict phase, it is required that:

- a) State organizations be re-organized to ensure they integrate and provide reassurance to all segments of Burundian society;
- b) Political parties should develop programs and agendas built on the values of unity, national reconciliation and socio-economic development, and not on defense of the interests of segments of the Burundian population;
- c) An electoral law should be passed that takes into account the concerns and interests of all segments of the nation, based on the provisions of Protocol II (on Democracy and Good Governance) of the APRA. (I, 2, A5, p.17)

4.16.3 Sector-specific measures to combat discrimination

- a) In access to State employment

The APRA calls for equal opportunity for all, through strict application of existing laws or the promulgation of new laws relating to recruitment into the public service and into State-owned enterprises, and through transparent testing and entrance examinations. It also calls for the establishment of a qualified, competent and responsible public service corps, working in the general interest and ethnically and gender-balanced in composition. Training of public servants should also be structured so as to integrate all segments of Burundian society; this should notably be achieved through the creation of a Higher Institute of Public Administration. (I, 2, A7, p.20)

- b) In the composition of the Defense and Security corps, including the Police

The APRA provides a number of general principles and specific guidelines for alleviating imbalances and preventing discrimination in the composition and functioning of Burundi's new defense and security corps. It provides, generally:

- (i) that reforms be undertaken to correct ethnic, regional and gender imbalances in the composition of the corps, as specified in Protocol III (on Peace and Security); (I, 2, A7, p.21)

- (ii) that the following criteria be used to determine imbalances in the composition of the corps: political leaning, ethnicity, region of origin and gender; (III, 2, A16, p.72)
- (iii) that special measures be taken to protect all ethnic groups within Burundi's population, notably through preventing *coups d'état*, segregation and genocide; (III, 1, A1, p.58)
- (iv) that Burundi's military and security corps should reflect the wish of Burundians, individually and as a nation, to live in equality, peace and harmony; (III, 2, A10, p.65)
- (v) that the military and security corps should develop an internal culture of non-discrimination, eschew ethnic and gender discrimination. (III, 2, A11, p.65)

Specifically, the APRA envisages the following approach to addressing discrimination in the defense and security corps:

- (i) Serving in the new corps should be open to all Burundians without discrimination; (II, 1, A11, p.65)
- (ii) During a period to be determined by the Senate, and considering the need for ensuring an ethnic balance and preventing acts of genocide and *coups d'état*, the national defense corps should be composed by no more than 50% of persons belonging to the same ethnic group; (III, 2, A14, p.70)
- (iii) The redressing of imbalances in the corps shall be done progressively, in a spirit of reconciliation and confidence-building, with a view to reassuring all Burundians; (III, 2, A16, p.72)
- (iv) To redress imbalances in the defense and security corps hierarchy, fast-track training for combatants from the ranks of the armed political movements to assume the grade of commissioned officers, shall be undertaken within and outside the country from the start of the transition period; (III, 2, A16, p.73)
- (v) A National Commission shall be created and tasked with selecting candidates for all grades of the corps and the national Police force; this Commission shall also be ethnically balanced. (III, 2, A17, p.73)

c) In the composition and functioning of the Executive branch

The APRA states as a general principle, that the make-up of Burundi's Government should be representative of all Burundians; all should have a chance to serve in it, and all citizens should have access to public services. Specifically, the agreement requires, with a view to eliminating discrimination in Government, State institutions and the public service:

- (i) A transition Government of National Unity shall be formed. This Government shall be widely representative in character, composed of representatives of different parties, with more than half and at least three-fifths of the ministerial portfolios occupied by representatives of political parties from the "G7 group" (generally considered pro-Hutu parties);
- (ii) The functioning and decision-making process of the transition Government should be consistent with its status as a government of national unity. Its appointments to the public service and to diplomatic posts should be made in the same spirit. It shall strive to reach decisions by consensus, and shall, in its decisions and appointments, also take into account the need for maintaining ethnic, religious, political and gender balances;
- (iii) The first President and Vice-President of the Republic during the transition period shall come from different ethnic groups and political parties; (II, 2, A15, p.46)
- (iv) The public service shall be widely representative of the Burundian nation and shall reflect the diversity of its constituent parts. Its hiring policies shall be based on fair and objective criteria of competence, and on the need for redressing inequities and ensuring wide representation.
- (v) State institutions shall be structured, and public servants shall conduct their duties, in a manner that serves the entire public with courtesy, efficiency, impartiality and equity;
- (vi) No public servant or employee of the Judicial branch may receive any favorable or partial treatment solely on account of their sex, ethnic origin or political affiliation. (II, 1, A10, p.39)

d) In relation to the Legislature's composition and functions

With a view to addressing imbalances in the composition of the Legislature and ensuring legislative oversight over anti-discrimination measures, the APRA provides:

- (i) The Bureau (governing organ) of the National Assembly shall be composed of representatives from several political parties; the Senate's Bureau shall be multi-ethnic in composition;
- (ii) The Senate's membership shall comprise of two delegates from each province chosen by an electoral college made up of communal councilors from the province in question; these councilors shall come from different ethnic communities and shall be themselves chosen through separate elections;
- (iii) The Senate's functions shall include:
 - Hearing reports from the Ombudsman relating to the work of State's administrative machinery;
 - Conducting investigations into the work of the administration, and in such cases, making recommendations to ensure that no region of the country or specific group is being denied access to public services;
 - Ensuring compliance with constitutional provisions that require representation or balancing in the make up of the public service or the defense and security corps.
- (iv) The Senate shall ensure that the composition of Communal councils generally reflects the ethnic diversity of their electorates; (II, 1, A6 pp. 33-35)
- (v) In establishing the Senate, the President of the Republic and Bureau of the National Assembly shall ensure that political, ethnic and regional balancing is taken into consideration. (II, 2, A15, p.44)

e) In relation to the Judiciary

In addition to the principles for restoring judicial independence and impartiality (see "Right to due process of the law" above), the APRA also contains specific provisions related to ethnic and gender imbalances in the judiciary. It states expressly that no one shall be deprived of a judicial post on account of their ethnicity or gender, and that the judiciary should be structured in a manner that promotes its ideals. This includes being reflective of the diversity of the population. The Higher Judicial Council, which shall wield appointment and disciplinary powers over the judicial corps shall also be ethnically balanced. (II, 1, A9, p.36-37)

f) In relation to Political parties

With a view to ensuring inclusiveness in political parties, the APRA provides, that:

- (i) In their organization and functioning, political parties shall respond to democratic principles. They should be open to all Burundians and their nationally diverse character should also be reflected in their leadership. Political parties shall be barred from advocating violence and hatred on the basis of ethnic and regional origin or religious belief;
- (ii) Political parties shall commit, in writing, to combat any political ideology and act that tends to encourage violence, hatred or illegal discrimination;
- (iii) With a view to promoting a national renaissance, reconciliation and unity, no political party shall be registered to function if it is founded on the basis of regional or ethnic exclusivity. This provision takes effect nine months after the beginning of the transition period to enable political parties whose names or Charters do not conform to this rule, to make necessary modifications. (II, 1, A4, p.30, p.43)

g) In relation to Elections

The APRA establishes an elections system designed to ensure ethnic and gender representation, especially for communal and legislative elections. The Senate is tasked with ensuring that no more than 67% (two-thirds) of the Communal administrators in the country are from the same ethnic group. Elections to the National Assembly (the lower house of the new bicameral legislature) are also designed to ensure that no single ethnic group attains more than 67% of the seats. This is achieved through a system of list-based proportional representation, where the electorate will vote on lists of candidates prepared by the contending political groups. Ethnic and gender representation is envisaged through the requirement that at least one in three candidates on each list should be from a different ethnic group, and at least one in five candidates must be a woman.

Furthermore, a National Electoral Commission shall have among its missions:

- To ensure, through appropriate regulations, that political parties do not operate in a manner that incites ethnic violence, or act otherwise in violation of the APRA's Protocol II;
- To ensure respect for the provisions of Protocol II aimed at ensuring multi-ethnic representation (for instance, in lists of election candidates), and adjudicating allegations of violations. (II, 2, A20, p.51-52)

h) In relation to development policy

The report of the APRA's Commission IV (on Reconstruction and Development), notes that in Burundi, economic imbalances are evident between ethnic groups, regions, rural and urban areas, and between the sexes. The Government is required:

- (i) To strive to redress imbalances in the distribution of the country's scarce resources and to commit to equitable, sustainable development;
- (ii) To establish an adequate framework that enables the equitable distribution of development resources, especially with respect to secondary and higher education, access to healthcare for all, employment, and equitable access to financial resources such as bank loans and public procurement contracts.

4.16.4 Protection of minorities

The APRA treats the *Batwa* as Burundi's sole minority group, and while it proposes a number of measures that protect the interests of the *Batwa*, it does not go as far as international human rights instruments, in protecting their specific cultural identity rights as a minority group. Two measures proposed for promotion of *Batwa* interests are stated thus:

- (i) A (non-binding) engagement in the promotion disadvantaged groups, in particular the *Batwa*, with a view to redressing imbalances existing in all sectors; (I, 2, A7, p.19)
- (ii) The Senate may include three members of the *Batwa* ethnic group in order to ensure representation of this community into the legislature. (II, 1, A6, p.39)

4.17 Provisions related to the protection of children's rights

The APRA's *Charter of Fundamental Rights* states that the UN Convention on the Rights of the Child shall be integrated into the Burundian Constitution (II, 1, A3, p.27), a requirement that is complied with in Article 15 of the Burundi's transition Constitution.

Considering the situation of children's rights especially resulting from the conflict, several key guarantees that could have been expressly given effect to in the APRA, are not dealt with. These include: the prohibition of the death penalty against persons under the age of 18, a child's right to live with or maintain contact with their parents in the case of separation, the right to leave or enter any country to achieve family reunification, and the prohibition of enlisting or recruiting children under the age of 18 to engage in the armed forces.

The *Charter of Fundamental Rights* however contains the following provisions:

- (i) All children have the right to special measures to ensure or improve: the care necessary for their well-being, their health, their physical security, and protection against ill treatment, abuses or exploitation;
- (ii) No child shall be directly used in an armed conflict. Children shall be protected during armed conflict.
- (iii) No child may be detained in judicial proceedings except as a last resort, in which case such detention should be for as short a period as possible. Any child in detention has the right to be held separately from detainees over the age of 16, and is entitled to treatment and conditions of incarceration adapted to their age. (II, 1, A3, p.29)

CHAPTER V: SPECIFIC PROVISIONS OF THE APRA RELATED TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The *Charter of Fundamental Rights*, the APRA's core statement of human rights guarantees, does not make as many explicit references to guarantees of economic, social and cultural rights, as it does with protection of civil and political rights. Rather, measures that go towards guaranteeing these rights – often not expressed in terms of rights as such, but in terms of directives and policy orientations for future Burundian governments – can only be gleaned from reading together different parts of the APRA, especially Protocol IV (on Reconstruction and Development) and the annexed report of Commission IV.

5.1 The right to work

The APRA, including the *Charter of Fundamental Rights* does not make explicit reference to the right to work. However, a few provisions could be considered an attempt to introduce:

“ . . . programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”

Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) detailing the type of measures States may take to achieve realization of the right to work.

Illustratively, the APRA calls for the creation of an environment conducive to private sector development (IV, 3, A16, p.92), and for efforts to create employment and respect criteria of fairness and transparency in recruitment policies (IV, 2, A16, p.92). Commission IV's report (annexed to the APRA) also calls for an effort to create jobs as well as an appropriate institutional framework capable of stimulating employment and productivity in the private sector, in rural areas and in the tertiary sector.

5.2 *The right to just and favorable conditions of work*

The APRA does not explicitly refer to this, which includes, amongst other guarantees: remuneration that provides workers with fair wages and equal remuneration for work of equal value, and with a decent living for themselves and their families; and guarantees of safe and healthy working conditions. The ICESCR also defines this right to include equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; and rest, leisure and reasonable limitation of working hours. Arguably, the prohibition of discrimination in the APRA (notably in the public service and all forms of State employment) cover the non-discrimination aspects of this right.

5.3 *The right to form and join trade unions, and other unionizing rights*

The APRA's *Charter of Fundamental Rights* recognizes the right to form and to join trade unions, as well as the right to strike. It nonetheless provides for legislation that regulates the exercise of unionizing rights, and may forbid certain categories of personnel from exercising the right to strike. (II, 1, A3, p.29).

5.4 *The right to social security, including social insurance*

The APRA does not make express reference to this right; the only references to social security and insurance are the requirement that contributions made by war victims to the National Social Insurance Fund be refunded to them (I, 2, A7, P.22), and the obligation of the Government to assist potential returnees involved in litigation to view to reclaim or benefit from social security payments they made while working in their countries of asylum (IV, 1, A5, p.88).

5.5 *The right to an adequate standard of living*

The APRA tasks Burundi's government with undertaking the following measures towards ensuring an adequate standard of living:

- (i) To meet the aspirations of Burundi's people and to heal the divisions of the past, improving the quality of life of all Burundians, and enabling them to live in Burundi free from fear, discrimination, sickness and hunger (II, 1, A1, p.26);
- (ii) To ensure to the extent possible, that all citizens can afford a living consistent with human dignity (II, 1, A3, P.28);
- (iii) To support development, especially in rural areas (II, 1, A3, p.29);
- (iv) To rapidly implement an urgent economic recovery program aimed at eradicating poverty and increasing incomes of citizens, and launch a program of reconstruction of destroyed economic infrastructure ((I, a, A7, p.21);
- (v) To implement measures that stimulate economic growth within an equitable and harmonious framework (I, 2, A7, p.22);
- (vi) To launch a long-term economic and social development program (IV, 3, A14, p.92);
- (vii) To concentrate, with support from international institutions, on addressing the economic situation; reversing the downwards economic trends resulting from the crisis especially the increase in poverty; and meeting the specific challenges that impede economic growth (IV, 3, A14, p.92).

5.6 The right to health

With respect to the right to health and access to healthcare, the APRA's Reconstruction and Development proposals (Protocol IV) tasks the Government with enabling access to healthcare for the entire population, and sets as a target to reduce the infant mortality rate by one-half (IV, 3, A15, p.92). It also envisages measures to reduce the costs of medication to render the more accessible, especially through the creation of a system of collective rural health-care plans (*mutualités*), and providing similar benefits for persons in urban areas who lack a collective health care plan.

5.7 The right to education

The *Charter of Fundamental Rights* states that no one shall be denied access to basic education. The State shall organize public education, develop secondary and higher education and encourage access to them. (II, 1, A3, p.28). Protocol IV also encourages the State to ensure primary and secondary education for all children up to the age of sixteen. (IV, 3, A14, p.92). In addition, with a view to redressing imbalances in access to education, the APRA calls for:

- (i) Equitable distribution of educational infrastructure, equipment and textbooks across the country, ensuring there is no discrimination between male and female students;

- (ii) Encouraging universal primary education which ensures equality between boys and girls, through joint funding by the State and *communes* (but without a binding obligation to achieve this);
- (iii) Transparency and fairness as principles in testing and entrance examinations;
- (iv) Addressing the situation of boys and girls whose education was interrupted by the Burundian conflict and by the practice of exclusion, especially through ensuring adequate re-integration into the school system, and later, into professional life;

Commission IV's report also lays down the following directives for revamping the education sector:

- (i) Implementing reforms that enable all pupils to attain at a minimum, ten years of formal schooling. Investments in the area of education should be aimed at attaining this objective;
- (ii) Increasing the enrolment capacity of secondary education institutions, especially by encouraging and supporting communal colleges, encouraging the creation of private secondary schools, training sufficient number of school qualified teachers, and providing the pedagogic materials necessary;
- (iii) Diversifying the scope of the technical education sector;
- (iv) Encouraging the creation of both public and private higher technical institutes and universities.

5.8 Cultural rights

The APRA states that education provided to Burundians, especially the youth, should include education in cultural, traditional values such as solidarity, mutual social help, forgiveness and mutual tolerance, patriotism, *ibanga* (confidentiality and a sense of responsibility), *ubupfasoni* (dignity, respect for others and for oneself), and *Ubuntu* (humanism and strength of personality). In addition, the APRA expressly provides for the revival of the traditional institution of the *Ubushingantahe*, a traditional institution and process of proximate, community-based conflict resolution.

CHAPTER VI: SPECIFIC PROVISIONS OF THE APRA RELATED TO GENDER EQUALITY

The *Charter of Fundamental Rights* integrates the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) into Burundi's Constitution. (II. 1. A3, p.27). As a general principle on establishment of a new political order, Protocol II calls for measures to ensure women's empowerment, and Protocol IV on Reconstruction and Development calls for the promotion of the role of women in development.

The APRA's extensive provisions that prohibit myriad forms of discrimination (for instance in access to State employment, and access to education) include gender as one of the prohibited grounds for discrimination. Positive measures to address existing imbalances in several core corps, such as recruiting of judicial personnel also imply immediate initiatives as well as long-term policies to encourage better gender representation. Regarding access to political office, the APRA institutes, with respect to elections to the National Assembly, a 20% gender quota. This is to be achieved through an electoral lists system under which one out of every five candidates presented by contesting political parties must be female. Access to State employment, while not subject to a quota is nonetheless expected to be guided by a principle of effective gender representation in the public service, and among judicial personnel.

Illustrative of the provisions that prohibit gender-based discrimination and encourage gender representation are the following:

- a) the prohibition of favorable or partial treatment towards any State employee solely on account of their gender; (II, 1, A10.p.39)
- b) the requirement that the transition Government take into account the need for maintaining a gender balance in making appointments; (II, 2, A15, p.46)
- c) the requirement that, with a view to improving upon Burundi's judicial system, the transition Government should encourage greater gender diversity in recruitment of judicial personnel, including through establishing training institutions; (II, 2, A17, P48) and
- d) the principle of non-discrimination on the basis of gender for entry into the country's Police Force.

Commission IV of the APRA, in its report on Reconstruction and Development, calls for:

- a) Inclusion of women in all management structures created to oversee the reconstruction of the country, such as committees for the reintegration and resettlement of war victims, and for the distribution of humanitarian aid, at all levels;

- b) Raising women's awareness about, and mobilizing them around activities towards national reconciliation and promoting women as peace makers;
- c) Organizing meetings between Burundian women in the country and those abroad to discuss their respective problems and visions for the future of the country;
- d) Consideration to be given to single mothers, and children who are family heads, and support for those widowed and orphaned by Burundi's crises;
- e) Creating an institution tasked with taking stock of problems faced by women as a result of Burundi's crises, and proposing solutions to the Government;
- f) Drafting, adopting and promulgating a law on succession (inheritance);
- g) The rebuilding of destroyed homes for women who are homeless;
- h) Providing assistance to women to undertake income-generating projects; and
- i) Providing trauma relief, support and social re-integration services to women and girl victims of sexual assault and forced marriages during and after the crisis.

On the role and involvement of women in development, the APRA states that:

- a) Gender equality contributes substantially to improving the well-being of women, men, girls and boys and is indispensable to achieving sustainable, people-centered development;
- b) The transition and post-transition governments are thus called upon (without a binding commitment), to take steps to:
 - Ensure equal opportunity for women in managing State affairs;
 - Ensure integration of women into all sectors, including the defense and security corps;
 - Mobilize women to enable them articulate their demands;
 - Ensure that concerns of women are taken into account in policy-making;

- Find solutions to the problems impeding greater girls' access to secondary and higher education;
- Enable greater access for women to resources for economic productivity, especially land and bank loans;
- Require that development projects and programs integrate women at all stages.

ANNEXES

ANNEX ONE:

A Bill to establish the mission, composition, organization and functioning of the National Commission on Truth and Reconciliation

(Approved by Burundi's cabinet, 28 August 2002).

Law No .../ 2002 establishing the mission, composition, organization and functioning of the National Commission on Truth and Reconciliation

The President of the Republic

Mindful of the Arusha Peace and Reconciliation Agreement for Burundi;

Mindful of the Transitional Constitution of the Republic of Burundi, notably its Articles 229 and 233;

Mindful of Decree No 1/6 of 4 April 1981 revising the Penal Code;

Mindful of Law No. 1/015 of 20 July 1999 revising the Code of Criminal Procedure, notably Articles 52 to 55;

Having been deliberated upon by the Cabinet;

Having been adopted by the transition National Assembly and the transition Senate;

Having been declared by the Constitutional Court in its decision No.... to be in conformity with the Constitution:

Hereby Promulgates into Law :

Chapter I: GENERAL PROVISION

Article 1

A National Truth and Reconciliation Commission, hereinafter referred to as "the Commission" is hereby created. The mission, composition, organization and functioning of the Commission shall be governed by this law.

Chapter II: MISSION

Article 2

The Commission is tasked with the following:

- a) Conducting investigations with a view to:
 - (i) Establishing the truth regarding acts of grave violence committed in the cyclical conflicts that have plagued Burundi since 1 July 1962 when the country became independent;
 - (ii) Characterizing (that is, providing an opinion as to the nature of) the crimes committed, with the exception of genocide, crimes against humanity and war crimes;
 - (iii) Establishing where responsibility lies for them, and the identity of those responsible;
 - (iv) Indicating the identity of victims.

- b) At the end of its investigations, and to achieve arbitration and reconciliation, the Commission shall :
 - (i) Decide or propose to the governing transition institutions, such measures as are likely to promote reconciliation and forgiveness;
 - (ii) Handle claims arising from practices linked to the Burundian conflict;
 - (iii) Decide on restitution to the rightful owners of property of which they have been deprived, or decide on necessary compensation at the expense of the perpetrator;
 - (iv) Propose, as deemed appropriate, any measures of a political, social or other nature that tend to encourage reconciliation.

- (c) Clarify the history of Burundi, by reaching as far into the past as possible to shed light on the past.

Article 3

The Commission's shall have a two year time mandate. This may be extended for one year if the Government deems such extension necessary. Such extension must be made at least fifteen days prior to the expiration of the two year mandate.

Article 4

The Commission may determine for which political crimes an amnesty – by way of legislation – may be granted.

Article 5

The Commission shall undertake its investigations both within and outside of Burundi.

Chapter III: COMPOSITION

Article 6

The Commission shall be made up of persons recognized for their moral probity, integrity and their ability to transcend divisions of all kinds.

In selecting members of the Commission, attention shall be paid to the need for cohesion, for bringing together all segments of the nation, and for respecting its ethnic, regional and gender balance.

Members shall be drawn notably from civil society organizations, political parties, religious groups and women's organizations.

Article 7

The Commission shall have fifteen members.

Members shall be appointed by the President of the Republic in consultation with the Vice-President of the Republic and the bureaus of the transitional National Assembly and transition Senate, after widespread public consultation.

Article 8

Members of the Commission:

- Shall be of Burundian nationality;
- Shall be at least thirty-five years of age;
- Shall have completed at least a university degree, or its equivalent;
- Shall be in full enjoyment of their civic rights;
- Must never have been convicted of a felony or misdemeanor except for convictions resulting from non-intentional crimes;
- Must never have been barred from professional activities;
- Shall be of good moral character, and architects of truth and national reconciliation.

Article 9

Membership of the Commission is incompatible with the exercise of any other State functions.

Article 10

Persons appointed to the Commission who are public officials shall be on secondment to the Commission.

Article 11

Tenure as a member of the Commission shall be terminated in the event of any of the following:

- Unavailability or prolonged absence;
- Resignation;
- Death;
- Failure to perform their duties, as decided by the authority responsible for their appointment after having sought the opinion of the bureau (executive committee) of the Commission.

Article 12

In the event that a seat on the Commission is vacant, the President of the Republic in consultation with the Vice-President of the Republic and the bureaus of the transition National Assembly and transition Senate shall appoint a new member.

Article 13

Members of the Commission shall be remunerated for their work. The status (benefits) of the Members of the Commission shall be established by Presidential decree passed prior to their appointment, based on recommendations from the Minister of Finance and the Minister for Institutional Reforms, Human Rights and Parliamentary Affairs.

Chapter IV: ORGANIZATION

Article 14

The Commission shall be headed by a Bureau comprising a Chair, a Vice-Chair, a Secretary General, and a Deputy Secretary General. They shall be appointed by the President of the Republic in consultation with the Vice-President of the Republic and the bureaus of the transition National Assembly and transition Senate.

The composition of the Commission's bureau shall take into account the need for respecting Burundi's ethnic, regional and gender balance.

Article 15

Prior to taking office, members of the Commission shall take the following oath:

“I, (Name), do hereby swear before the President of the Republic and the Burundian people that in the discharge of my duties, I will be guided by the search for truth and national reconciliation; I will also respect the Arusha Agreement for Peace and Reconciliation in Burundi and the Charter of National Unity”

Article 16

The Commission may create sub-Commissions, and shall establish a support structure made up of as many units or departments as necessary.

Article 17

The Commission shall meet at its own initiative fifteen working days after the appointment of its members, to adopt its internal rules of procedure.

Article 18

In the discharge of their duties, members of the Commission and its support staff shall be independent of the State, of political parties, and other interest groups.

Article 19

The Commission shall have its own budget, and shall enjoy financial and administrative autonomy.

Article 20

The Commission shall have wide investigative powers, and shall enjoy unhindered access to all sources of information. The Commission shall rely on all sources of information, notably:

- Complaints by victims;
- Witness testimony;
- Statements by suspected offenders;
- Information provided by civil society or political organizations;
- Judicial sources;
- Official reports and documents;

- Documents and information held by foreign governments, international organizations and foreign non-governmental organizations;
- Testimonies from experts and persons with substantial experience.

Article 21

The Commission shall have the same powers of search and seizure as those exercised by Prosecutors, as defined by the relevant provisions of the Criminal Procedure Code.

Article 22

Persons subpoenaed by the Commission are obliged to appear before it. Refusing to appear shall constitute a criminal offense punishable by imprisonment ranging from one to two years, or a fine ranging from ten thousand to one hundred thousand Burundian francs, or both such imprisonment and fine.

Article 23

Public or private entities are obliged to comply with requests for the production of documents deemed useful by the Commission. Refusing to produce the requested documents shall constitute a criminal offense punishable by imprisonment ranging from two to five years, or a fine ranging from twenty thousand to two hundred thousand Burundian francs, or both imprisonment and a fine.

Article 24

Refusing to testify, to take the required oath, and perjury before the Commission shall constitute criminal offenses punishable with the same sentences as provided in the preceding article.

Article 25

Neither an individual's position of responsibility, functions, immunity or privileges, nor the grant of an amnesty, or the passing of the statute of limitations or any other reason shall relieve them of the obligation to cooperate with the Commission.

Article 26

The Commission shall determine the probative value of all sources of information at its disposal, and shall arrive at decisions in all honesty, with fairness and in a spirit of national reconciliation.

Chapter V: PROCEDURE

Article 27

The Commission may be approached by victims or their legal representatives, by victims' heirs or by any other interested person or entity. The Commission may also be seized of a matter of its own initiative (*sua sponte*).

Article 28

The Commission may be seized of a matter either orally, or by letter duly registered with the bureau of the Commission, which shall succinctly state the violation alleged and any compensation sought. The complaint letter shall also indicate the identity of the alleged perpetrator as well as their address.

Article 29

The alleged perpetrator shall be informed that a complaint has been lodged and shall be asked to appear before the Commission by a specified date. Where the Commission is seized of a matter of its own initiative, it shall invite the alleged perpetrator to appear before it, on a specified date. The date of appearance of the perpetrator shall be notified to the victim, their legal representative, or the victim's heirs, as well as to potential witnesses.

Article 30

The Commission's sessions require a quorum of four-fifths of its members.

Article 31

Sessions of the Commission shall be open to the public. The Commission may however decide to meet in closed session when necessary. Its decision-making deliberations shall always be held in closed session.

Article 32

The Commission's procedure shall give all sides a hearing. Its procedure shall also be free of charge.

Article 33

The parties before the Commission may address it in one of the two official languages, Kirundi or French.

Article 34

The victim or the alleged perpetrator may seek recusal of a member of the Commission on the basis of proven facts. The Commission shall itself decide on requests for recusal; these may be granted at the Commission's discretion.

Article 35

The Commission's examination of a matter before it shall proceed thus:

- The Chair of the Commission shall invite the complainant to set forth their complaint. Where the Commission is seized of a matter on its own initiative, the Chair shall make known to the suspected perpetrator the allegations against them;
- The alleged perpetrator shall then respond to the allegations made;
- Witnesses for the complainant or the alleged perpetrator shall present their testimony;
- The Commission shall then undertake any such steps it deems necessary to discover the truth;
- The alleged perpetrator shall have the last word.

Article 36

Prior to giving testimony, witnesses before the Commission shall take the following oath:

“I, (name), do swear to tell the truth and nothing but the truth”.

Article 37

A person designated by the Chair of the Commission shall keep a record of its proceedings, the identity of witnesses and the parties as well as their statements.

Article 38

Decisions of the Commission shall be taken by consensus; or by a majority of two-thirds where no consensus is reached.

Article 39

Decisions of the Commission shall be enforceable and binding, and shall not be subject to appeal.

Article 40

The Commission shall be competent to hear complaints brought to its attention even where a court decision no longer subject to appeal has been rendered in relation to the matter.

However, the Commission may only reopen a matter in which a court decision no longer subject to appeal has been rendered, if it relates to assassinations or political trials. The Commission shall examine such cases with the objective of discovering the truth; in these cases it shall take decisions it deems necessary to foster reconciliation in Burundi.

Once a claim for reparation or compensation submitted to the Commission has been decided upon, the matter may not be brought up before the courts.

The Commission may also recommend to the competent authorities, measures likely to foster reconciliation.

Article 41

Where the conclusions of the Commission contradict court decisions, the Commission shall propose measures likely to promote national reconciliation.

Article 42

At the end of its term, the Commission shall draw up a report, addressed to the President of the Republic, the transition Government, the transition National Assembly, the transitional Senate, and the National Council on National Unity and Reconciliation.

This report shall be made public.

Chapter VI: FINAL PROVISION

Article 43

This law shall enter into force on the day of its promulgation.

Done in Bujumbura, this day of, 200...
Pierre BUYOYA

Under Seal of the Republic of Burundi
The Minister of Justice and Keeper of the Seals
Fulgence DWIMA BAKANA

ANNEX TWO:

Excerpts of Burundi's Penal Code relevant to crimes proposed by the Independent Commission tasked with Examining Issues related to Prisoners as "political offenses", and for which persons in detention (charged or convicted) may be considered "political prisoners".

Section I: Treason and Espionage

Article 393

A national of Burundi who takes up arms against the country shall be guilty of treason, punishable by death.

Article 394

A national of Burundi who commits any of the following shall be guilty of treason, punishable by death:

- 1) Share intelligence with a foreign power or its agents to enable such power to launch hostilities against Burundi, or provide them the means to do so;
- 2) Cede to a foreign power or to its agents any of the following that belong to Burundi: defense infrastructure, defense equipment, ports, warehousing facilities, equipment, ammunition, vessels, buildings, or aircraft;
- 3) With a view to compromising national defense, destroys or damages a maritime vessel, aircraft, supplies, or any building or infrastructure, or with similar intent, renders defective any of the above either prior to, or after their construction.

Article 395

A national of Burundi who, during wartime, commits any of the following shall be guilty of treason, punishable by death:

- 1) Incites soldiers to take up arms on behalf of a foreign power, assists them in doing so, or enlists soldiers on behalf of a foreign power at war with Burundi;
- 2) Shares intelligence with a foreign power or its agents, with the purpose of supporting action by such foreign power against Burundi;

- 3) Deliberately takes part in demobilizing the army or the nation, with the purpose of compromising national defense.

Article 396

A national of Burundi who, during wartime, commits any of the following shall be guilty of treason, punishable by death:

- 1) Delivers to a foreign power or its agents any recording, object, document or process, in whatever form and through whatever means;
- 2) Procures possession of any intelligence, information, object, document or process with the purpose of delivering it to a foreign power or its agents;
- 3) Destroys or allows to be destroyed any such intelligence, information, object, document or process with the purpose of supporting a foreign power.

Article 397

A foreign citizen who commits any of the acts mentioned in articles 394 and 395 shall be guilty of espionage, punishable by death.

Article 398

Subject to articles 67 and 68 of this [Penal] Code, persons guilty of the following shall be punished with imprisonment ranging from one to five years:

- 1) Soliciting the commission of any of the offenses described in articles 393 to 397 of the Penal Code;
- 2) Agreeing to such solicitation.

Section 2: Other offenses against the external security of the State

Article 399

Whoever commits the following without intending treason or espionage shall be punished with imprisonment ranging from two to ten years:

- 1) Obtains, without authorization, information, an object, document or process that is classified in the interests of national security, or knowledge of which could lead to revelation of a national security secret;

- 2) Destroys or allow the destruction, removes or allows the removal, copies or allows the copying of any such information, object, document or process;
- 3) Makes known, allows to be made known to an unauthorized person or to the general public, or otherwise broadens the circulation of any such information, object, document or process.

Article 400

Whoever, without intending treason or espionage, discloses to an unauthorized person or to the general public, military information not previously disclosed by the competent authority where disclosure manifestly compromises national security, shall be punished with imprisonment ranging from one to five years.

Article 401

Whoever is guilty of the following shall be punished with imprisonment ranging from one to five years:

- 1) Entering any of the following under cover of disguise, under a false name or while otherwise concealing their identity and nationality: defense infrastructure, munitions dump, or warehousing facility, a building used for war purposes or a commercial building being utilized for national defense, a military institution, or into an institution or site of importance to national security.
- 2) Even without using a disguise or false name, or concealing identity or nationality, shall establish through illegal means a method of long-distance communication and information of a nature as to compromise national security.

Article 402

Whoever shares with agents of a foreign power, such intelligence as compromises the military, political, and economic position of Burundi shall be punished with imprisonment ranging from one to five years.

Article 403

Whoever is guilty of the following shall be punished with imprisonment ranging from one to five years:

- 1) Maintaining, without government authorization, communication or relations with subjects or agents of an enemy power;

- 2) Engaging, whether directly or through an intermediary, in acts of trade with the subjects or agents of a foreign power in violation of decrees prohibiting such commerce.

Article 404

Whoever shall commit acts of hostility not approved by the government and thereby exposes Burundi to hostilities from a foreign power shall be punished with imprisonment ranging from one to five years.

If such hostilities from a foreign power actually take place, imprisonment shall range from five to twenty years.

Article 405

The punishment provided for in articles 399 to 403 and in article 404, paragraph 1 shall be doubled if the offender is a national of Burundi.

The punishment provided in article 402, paragraph 2 shall be life imprisonment or death if the offender is a national of Burundi.

Article 406

Whoever commits any of the following on Burundian territory, with a view to using armed violence to impede a process of self-determination, or endanger the stability and territorial integrity of another State, shall be guilty of conducting mercenary activities, punishable with twenty years imprisonment:

- 1) Hosts, organizes, finances, assists, equips, trains, supports or otherwise uses mercenary groups, in whatever manner;
- 2) Enlists in, joins, or attempts to join mercenary groups.

Article 407

Whoever shall serve as commander of mercenary groups, give orders to mercenary groups, or be guilty of the crime of conducting mercenary activities against the State of Burundi may be punished with life imprisonment or death.

Article 408

Persons accused of mercenary activities incur criminal responsibility not only for the crime of conducting such mercenary activities, but for any related crimes.

Article 409

The term, “mercenary” refers to any person:

- 1) Who is recruited within or outside the country specifically to take part in an armed conflict;
- 2) Who in fact takes direct part in hostilities;
- 3) Who takes part in hostilities for personal profit and to whom a promise of remuneration is made by or on behalf of a party to the conflict;
- 4) Who is neither a national of a State taking part in the conflict nor resident in territory controlled by any party to the conflict;
- 5) Who is not a member of the armed forces of a State taking part in the conflict; *and*
- 6) Who has not been dispatched by a State that is not party to the conflict on an official mission, as a member of such State’s armed forces;

ARTICLES 410 TO 439

Section I: Assassination attempts and plots against the Head of State

Article 410

Assassination attempts on the Head of State shall be punishable by death. Where such attempt neither undermines the liberties of the Head of State, nor leads to death, bodily harm, or ailment, it shall be punishable with life imprisonment.

Article 411

Plotting or conspiring against the life or person of the Head of State shall, where any acts in preparation of executing such plot have been committed, be punishable with imprisonment ranging from ten to fifteen years. Otherwise, it shall be punishable with imprisonment ranging from five to ten years.

Whoever shall unsuccessfully solicit to plot or conspire against the life or person of the Head of State shall be punished with five years imprisonment.

Section II: Attacks, conspiracy and other offenses against State authority and territorial integrity

Article 412

Attacks intended to destroy or change the constitutional order, either by inciting citizens and inhabitants to take up arms against State authority or against each other, or to endanger territorial integrity of the nation shall be punishable with life imprisonment.

Article 413

A conspiracy to achieve the purposes mentioned in the preceding article shall be punishable with imprisonment ranging from ten to fifteen years where any acts in preparation of executing such plot have begun or been committed. It shall otherwise be punishable with imprisonment ranging from five to ten years.

Whoever shall unsuccessfully solicit to form a conspiracy to achieve any of the purposes mentioned in article 412 shall be punishable with five years imprisonment.

Article 414

Whoever shall, except as covered under articles 412 and 413, through whatever means, undertake to compromise territorial integrity of the nation shall be punished with five years imprisonment.

Article 415

Whoever shall raise an army or cause an army to be raised, recruit, enlist or cause such recruitment and enlisting, or furnishes them with weapons and ammunition without authorization of the Government, shall be punished with imprisonment ranging from five to twenty years.

Article 416

Whoever commits any of the following shall be punished with imprisonment ranging from five to twenty years:

- 1) Without lawful reason, takes military command powers;
- 2) Maintains such command powers in defiance of Government orders;
- 3) Keeps their troops or army together after their dismissal, or after orders for separation of such troops have been made.

Section III: Attacks and conspiracies leading to massacres, destruction and looting

Article 417

Attacks aimed at committing massacres, destruction or looting shall be punishable by death.

Article 418

A conspiracy to achieve any of the purposes mentioned in the preceding article shall be punishable with imprisonment ranging from fifteen to twenty years, where any acts in preparation of executing such conspiracy have begun or been committed. Otherwise, it shall be punishable with imprisonment ranging from ten to fifteen years.

Whoever shall unsuccessfully solicit to form a conspiracy to achieve any of the purposes mentioned in article 417 shall be punished with five years imprisonment.

Section IV: Participation in armed groups

Article 419

Whoever heads an armed group or exercises any command functions therein, with a view to endangering the State through:

- (i) any of the attacks mentioned in articles 412 and 417;
- (ii) an invasion;
- (iii) interference with public or private property; or
- (iv) attacking, or putting up resistance against security forces defending against (i) to (iii) above,

shall be punished with death.

The same punishment shall apply to whoever directs a conspiracy to create, creates or procures the creation of armed groups, or organizes or procures the organization of such armed groups.

Article 420

Persons belonging to armed groups mentioned in the preceding article who do not have any command role or function, and are apprehended at the site of a seditious meeting shall be punishable with imprisonment ranging from ten to fifteen years.

Article 421

Where any of the offenses covered under articles 412 and 417 are committed by an armed group, all persons belonging to the group and apprehended at the site of the crime shall be punished with death, with no distinctions based on hierarchy within such group.

Whoever, although not apprehended at the site of the crime, has directed the seditious enterprise, or holds a command position or role with such armed group shall also be punished with death.

Article 422

Persons who do not hold command positions or roles in an armed group, and who lay down their arms upon the first warning to do so issued by the State's civilian or military authorities, shall not be guilty of sedition. If such persons (without command positions or roles) are apprehended unarmed at a different location from the site of the seditious meeting, and do not resist their apprehension, they shall not be guilty of sedition.

In such cases, they shall only be punished for any specific offenses they may have committed.

Section V: Participation in an insurgent movement

Article 423

Whoever commits the following within an insurgent movement shall be punished with imprisonment ranging from two to ten years:

- 1) Erects barricades, digs trenches, or undertakes other works with the goal of impeding or preventing the work of security forces;
- 2) Through violence or threats, prevents the convergence or meeting of security forces, or facilitates the gathering of insurgents by disseminating orders and announcements, carrying flags or other rallying signs, or any other method used to assemble insurgents;
- 3) With a view to attacking or putting up resistance against security forces, invades or occupies State buildings, installations and edifices, or inhabited or uninhabited houses. The same penalty shall apply to any property owner or tenant who, aware of the insurgents' purpose, nevertheless willingly grants them ingress into such houses.

Article 424

Whoever is a member of an insurgent movement and commits the following, shall be punished with imprisonment ranging from five to twenty years:

- 1) Seizes weapons, ammunition, or equipment of any nature through violence or threats, through looting of stores or public institutions, or by disarming members of the security forces;
- 2) Carries weapons and ammunition, whether visible or hidden. Those who actually use their weapons shall be punished with death.

Article 425

Whoever directs or organizes an insurgent movement shall be punished with death.

Section VI: Other offenses against the internal security of the State

Article 426

Whoever, for purposes of propaganda, distributes, makes available for distribution or brings to the attention of the public any tracts, bulletins, or flags of foreign origin or inspiration capable of compromising the national interest, shall be punished with imprisonment ranging from two to three months, or a fine ranging from a thousand to ten thousand francs, or both such imprisonment and fine.

Whoever is in possession of such bulletins or flags with intent to distribute them for purposes of propaganda shall receive the same penalty.

Article 427

It shall be an offense to receive from a foreign person or entity, whether directly or indirectly, and in whatever form, any gifts, loans, or other advantage destined for or used, whether wholly or in part, to pay for an activity or propaganda in Burundi that endangers her integrity or independence, or weakens the loyalty Burundian citizens owe to their State and the institutions of the Burundian people. Persons found guilty of this offense shall be punished with imprisonment ranging from two months to three years, or a fine ranging from ten thousand to one hundred thousand francs, or both such imprisonment and fine.

Article 428

Whoever commits any of the following shall be punished with imprisonment ranging from two months to three years, or a fine of ten thousand francs, or both such imprisonment and fine:

- 1) Publicly challenges the binding and obligatory nature of Burundi's laws or directly incites disobedience of same;
- 2) Deliberately disseminates false rumors capable of creating alarm among the public, incites them against government authority or incites them to civil war;
- 3) With the purpose of disturbing public peace, deliberately contributes through whatever means to publishing, transmitting or disseminating false information or fabricated, falsified documents that are wrongfully attributed to someone else.
- 4) Exhibits or procures the exhibition of, in a public venue, or other place open to the public any drawings, posters, engravings, paintings, photographs or object or image of any kind capable of disturbing the peace.

Article 429

It shall be an offense to endanger, through whatever means, the economy or national security by stealing, destroying or damaging, wholly or in part, any buildings, bridges, dykes, roadways, railways, telephone or telegraph installations and equipment or other structures belonging to the State or other state or semi-state owned institutions. Persons found guilty of this offense shall face punishment ranging from five years imprisonment to the death penalty, or a fine ranging from five thousand to one hundred thousand francs, or both such imprisonment and fine.

Section VII: Definitions related to Sections I to VI above

Article 430

Attempt to commit an assassination or attack is punishable.

Article 431

A conspiracy exists where a decision to act is arrived at by two or more persons.

Article 432

The term "weapons", includes all machinery, instruments, utensils, or other sharp, piercing, or blunt object which is obtained to kill, wound, or strike, even if such object is not used.

Article 433

The term “insurgent movement”, refers to a movement that manifests itself by committing acts endangering established public power and institutions, or by committing attacks against individuals, acts of destruction, or looting.

Section VIII: Provisions common to the two preceding chapters of the Penal Code

Article 434

Whoever, knowing of plans or acts of treason, espionage or other activities capable of endangering national security, or attacks, plots or conspiracies against the internal security of the State, does not immediately inform the military, administrative or judicial authorities, shall be punished with imprisonment ranging from three months to two years, a fine ranging from a thousand to fifty thousand francs, or both such imprisonment and fine.

Article 435

Except for persons covered under article 68 of the Penal Code, the following shall be punished as accomplices:

- 1) Whoever, with knowledge of their purpose, willingly provides assistance, means of subsistence, lodging, or a retirement or meeting place to perpetrators of offenses against the security of the State;
- 2) Whoever knowingly conveys messages or correspondence on behalf of perpetrators of the aforementioned offenses, or knowingly facilitates through whatever means, obtaining, receiving, transporting or transmitting the object used to commit the offense.

Article 436

Except for persons covered under article 218 of the Penal Code, and apart from the main offender or an accomplice, persons committing the following acts shall be guilty of receiving of stolen goods:

- 1) Whoever knowingly receives objects or instruments used or to be used to commit the crime, or objects, materials or documents that obtained as a result of the crime;
- 2) Whoever knowingly destroys, takes away, receives, hides, or alters a public or private document capable of facilitating the discovery of the crime, obtaining evidence thereof, or punishing those responsible.

Where the person who “aids and abets” the main offender is a relative of the main offender (up to the fourth degree of consanguinity) they may be exempted from criminal responsibility.

Article 437

No criminal responsibility shall attach to a conspirator or plotter, who prior to the completion of, or an attempt at, committing an offense against State security, first informs the administrative or judicial authorities.

A person *may* be exonerated from criminal responsibility where such information is given to the authorities *after* the attempt or completed act has been committed, but *before* criminal charges are brought.

A person *may* also be exonerated from criminal responsibility although charges have been brought, where they provide information that leads to the arrest of the perpetrators and accomplices of the same crime, or other crimes of a similar nature or gravity.

Article 438

The courts must order the confiscation of the object of the offense, and any objects used to commit the offense.

Any proceeds derived by the offender, or the value of the object when such proceeds are not seized shall be paid in the public treasury.

Article 439

Whoever is found guilty of treason, or conspiracy against the internal security of the State may have their right to vote and to be elected into office suspended for a minimum duration of five years and a maximum duration of ten years.