

BURUNDI LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

Burundi possesses a mixed legal system of Belgian civil law and customary law. According to Article 48 of the constitution, the constitution forms the supreme law of the nation and all laws which are contrary to it are classed as 'null and void.'¹ Legislation ranks below the constitution and the executive branch may issue decrees with the force of law, if authorised by parliament. International treaties and agreements have no force until their ratification and domestication yet must still abide by the articles of the constitution. The constitution does not define the role of customary law but at the local, or hills, level, custom de facto governs personal matters such as inheritance and succession.² The judiciary also has a clear hierarchy. The Supreme Court and Constitutional Court form the apex of the judiciary; together they form the High Court of Justice. Subordinate courts include the Courts of Appeal, County Courts, Courts of Residence and the specialised courts.³

The independence of the judiciary is guaranteed by Article 209 of the constitution. De jure the courts are a distinct, separate institution yet de facto the executive exerts significant influence over on the judicial system. Indeed, judicial appointments are made by the executive, the minister of justice and president. As such, the judiciary often bends to the will of the executive, making the judiciary highly politicised and a tool to remove political opposition. The extent of this was shown in 2015, when the Constitutional Court's vice president, Sylvere Nimpagaritse, fled Burundi after judges came under 'enormous pressure and even death threats' from the government to legitimise President Nkurunziza's election candidacy.⁴ The lower levels of the judiciary are poorly trained and the entire system is prone to bribery, including the anti-corruption court.⁵

Burundi's predominant source of contract law remains its antiquated Civil Code of 1888, which defines contracts, their nullity, obligations and force majeure amongst numerous further articles which apply to commercial life.⁶ Commercial life is further governed by the 2010 Commercial Code which elaborates on commercial contracts, trade registrations, the Commercial Court and commercial sales. Meanwhile, the Investment Code of 2008 lays a basic framework for direct investments and to encourage investment into Burundi.⁷ The Labour Code 1993 is the primary labour relations act and sets the law on employment contracts, wages, working conditions and health and safety at work. The Penal Code provides anti-corruption laws criminalising both passive and active corruption, although these are rarely enforced, particularly regarding governmental figures.⁸

Burundi is a signatory to numerous international treaties and agreements such as the Geneva Conventions, Protocol on the Involvement of Children in Armed Conflict and the Framework Convention of Climate Change. Burundi is also a member of the Common Market for Eastern and Southern Africa, the East African Community, the Economic Community of Central African States, World Trade Organisation and International Monetary Fund. Burundi's constitution also enshrines its abidance of

¹ https://www.constituteproject.org/constitution/Burundi_2005.pdf?lang=en.

² http://www.nyulawglobal.org/globalex/Burundi1.html#_edn20.

³ http://www.nyulawglobal.org/globalex/Burundi1.html#_edn20; <https://www.cia.gov/library/publications/the-world-factbook/geos/by.html>.

⁴ <https://www.theguardian.com/world/2015/may/05/senior-burundi-judge-flees-rather-than-approve-presidents-candidacy>.

⁵ https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Burundi.pdf;

<http://contranocendi.org/index.php/en/news/154-corruption-in-burundi>.

⁶ <http://www.droit-afrique.com/upload/doc/burundi/Burundi-Code-civil.pdf> (Fr).

⁷ <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94549/110980/F1363939633/BDI-94549.pdf> (Fr);

<http://investmentpolicyhub.unctad.org/InvestmentLaws/laws/41>.

⁸ http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=34355&p_country=BDI&p_count=184&p_classification=01.02&p_classcount=3 (Fr); http://www.wipo.int/wipolex/en/text.jsp?file_id=309786 (Fr).

the Universal Declaration of Human Rights, and further human rights acts.⁹ Nevertheless, Burundi's adherence to international human rights and humanitarian law has repeatedly been questioned.

BUSINESS OVERVIEW

In addition to negligible growth rates, Burundi's inflation rate is severely unstable, at 18% and forecast to increase to 23.5% in 2019.¹⁰ Overall the economy is in turmoil as two thirds of the population live below the poverty line and the value of the Burundian Franc to US Dollar has continued its inexorable trend downwards: the country ranks 184 of 188 in the UN's Human Development Report. Economic reforms have not been implemented, meaning that there is an overwhelming reliance on agriculture and particularly subsistence farming. Tea and coffee form almost 50% of export earnings and are an important source of foreign currency, but these are highly susceptible to global demand and the economy's overall is vulnerable to external shocks.¹¹ Also, the nation is geographically isolated, and its domestic infrastructure is lacking. Bribery, embezzlement, nepotism and clientelism are all rife in Burundi and is most pervasive in government procurement, land procurement and customs. The ongoing political unrest, over President Nkurunziza's third term and the proposed constitutional changes, and agricultural land shortages threaten a resurgence of ethnic violence, whilst a climate of lawlessness may discourage investment.¹² Thus, Burundi is ranked 164 of 190 in the World Bank's Doing Business Index but is ranked 42 of 190 in the Starting a Business Index.¹³

Despite this, some opportunities do exist. Burundi's government actively seeks foreign investment and has no laws or strategies that discriminate against foreign investors, save in the defence sector. Indeed, amendments to the Investment Code grant substantial tax benefits to foreign business that hire Burundian workers.¹⁴ Burundi's Investment Promotion Authority outlines its key sectors and opportunities for investment and development. Given the importance of tea and coffee to the economy, significant opportunities exist in the sector particularly in initialising commercial farming schemes, which have been supported by EU and World Bank finances in the past.¹⁵ Burundi's location between trading blocs and entry into the EAC have created a market for educational services, particularly capacity-building centres for government officials. Burundi also seeks major investment into its transport infrastructure, both onshore and maritime.¹⁶

COUNTRY OVERVIEW

The Republic of Burundi is a Central African nation bordering the Democratic Republic of Congo, Rwanda and Tanzania. Burundi has a population of 11.47 million and is densely populated, with the population concentrated on areas of fertile soil, particularly in the North and along the shore of Lake Tanganyika. The capital, Bujumbura, has a population of 751,000. Kirundi, French and English are all official languages, although the former is the most widely spoken. Burundi has a history of severe ethnic divides; 85% of the population are Hutu, 14% are Tutsi and roughly 1% are Twa. Furthermore, the population is largely Christian, with 62.1% following the Roman Church and 23.9% adhering to Protestantism.¹⁷

Burundi's political and business climate are both high risk. This is owing to its unstable political environment, currently entrenched in crisis, and numerous economic deficiencies, both of which are

⁹ https://www.constituteproject.org/constitution/Burundi_2005.pdf?lang=en.

¹⁰ <http://www.imf.org/external/datamapper/PCPIPCH@WEO/BDI>.

¹¹ <https://atlas.media.mit.edu/en/profile/country/bdi/>.

¹² <https://www.state.gov/documents/organization/241714.pdf>.

¹³ <http://www.doingbusiness.org/data/exploreeconomies/burundi>.

¹⁴ <https://www.state.gov/documents/organization/241714.pdf>.

¹⁵ <http://www.investburundi.bi/index.php/23-articles-du-slide/22-agriculture-elevage-et-peche>.

¹⁶ <http://www.investburundi.bi/index.php/23-articles-du-slide/27-education>.

¹⁷ <https://www.cia.gov/library/publications/the-world-factbook/geos/by.html>.

frustrated by deep ethnic schisms.¹⁸Corruption is a major problem in Burundi and hampers commercial activity. Bribery, nepotism and embezzlement pervade through society, politics, the economy and judiciary and little anti-corruption progress has been made. As such, Burundi is ranked 157 of 180 in Transparency International's 2017 Corruption Index.¹⁹

Burundi is one of the world's smallest economies. Burundi's GDP currently stands at just US\$3.39 billion and following three years of negative or zero percent growth, real GDP is expected to expand by up to 0.5% annually through 2022.²⁰ Burundi is a presidential republic, in which the president is both chief of state and head of government. The incumbent is President Pierre Nkurunziza, who has held power since 2005. The president is directly elected by absolute majority vote for a five-year term and is eligible for a second term. However, a controversial constitutional referendum is currently being promoted which would extend the presidential term to seven years whilst still allowing two terms. As such, given the Hutu majority, the referendum is widely viewed as a means for Nkurunziza to stay in power and establish Hutu dominance until 2034.²¹ The legislative branch is formed by the bicameral parliament. Of the Senate's 43 members, 36 are indirectly elected by electoral college of provincial councils. The National Assembly forms the lower house and consists of 121 members, 100 of which are directly elected in multi-constituency proportional representation vote and the remaining 21 are co-opted. The next elections for the Senate and National Assembly are to be held in 2019 and 2020, respectively.²²



¹⁸ <http://www.coface.com/Economic-Studies-and-Country-Risks/Burundi>.

¹⁹ https://www.transparency.org/news/feature/corruption_perceptions_index_2017.

²⁰ <http://www.imf.org/external/datamapper/NGDPD@WEO/BDI>; http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/BDI.

²¹ http://www.xinhuanet.com/english/2017-12/16/c_136829498.htm.

²² <https://www.cia.gov/library/publications/the-world-factbook/geos/by.html>.