

4

Burundi



1 INTRODUCTION

The Republic of Burundi has a population of approximately 11.5 million people¹ and is the world's poorest country, according to International Monetary Fund statistics cited by international news agency *Agence France Presse* (AFP) in April 2016.² Even a cursory glance at the history of this landlocked country in the Great Lakes region of Eastern Africa shows why.

Until incorporated into German East Africa in the early 20th century, Burundi had been a Tutsi-dominated independent kingdom for more than 200 years. During the First World War, Belgium occupied Burundi and neighbouring Rwanda, ruling them as a colony, called Ruanda-Urundi. This continued even when the two countries became a League of Nations mandate territory in 1924, and a United Nations (UN) trust territory after the Second World War. Germans and Belgians both accepted the status quo of Tutsi dominance, despite the fact that Hutus comprised about 85% of the population, Tutsis about 14% and Twa (Pygmies) about 1%.³ This was the situation in January 1959, when Burundi's ruler, Mwami (King) Mwambutsa IV, formally requested Burundi's independence from Belgium and dissolution of the Ruanda-Urundi union.

Democratic elections held in September 1961 resulted in a victory for the Union for National Progress, a party with both Hutu and Tutsi membership led by the king's son, Louis Rwagasore of the Tutsi-related Ganwa ethnic group. Rwagasore was assassinated 25 days later. He was succeeded in office by his Tutsi brother-in-law,

André Muhirwa, the last prime minister of the self-governing colony and the first under independence, which was attained on 1 July 1962. In a bid to secure greater Hutu political cooperation, Muhirwa was replaced less than a year after independence by a Hutu, Pierre Ngendandumwe, who was assassinated by a Tutsi gunman less than 10 months later.

Elections in May 1965 resulted in a Hutu majority in the National Assembly. Mwambutsa IV disregarded this, however, appointing his Tutsi private secretary, Pié Masumbuko, acting prime minister, which prompted an attempted coup by Hutu officers. Masumbuko's term in office lasted only 10 days before he was replaced in quick succession by Joseph Bamina (Hutu) and Prince Léopold Biha (Tutsi).⁴

On 18 October 1966, Hutus launched another coup attempt. Defence Minister Michel Micombero, a Tutsi graduate of the Belgian Royal Military Academy, rallied the army and its largely Tutsi officers against the coup. Just over three months later Micombero overthrew the monarchy and declared Burundi a republic, with himself president. He imposed a law-and-order regime, including suppression of Hutu militarism.⁵

Micombero ruled for almost 10 years before being ousted himself in a military coup led by Tutsi Army Deputy Chief of Staff Colonel Jean-Baptiste Bagaza. In 1981, a new constitution was endorsed by a popular referendum and Burundi became a one-party state with Bagaza as president. In power for almost 11 years, he was criticised for rigging elections, press censorship, police violence, and political and religious repression.⁶ Bagaza was overthrown by Major Pierre Buyoya, also a Tutsi, who proceeded to suspend the constitution, dissolve political parties, and reinstate military rule.

While proclaiming a liberalisation agenda, Buyoya's ruling junta was predominantly Tutsi, leading to another Hutu uprising in which approximately 20,000 people died. Buyoya appointed a commission to mediate, resulting in a new constitution calling for a non-ethnic government. The democratic election of June 1993 was won by Melchior Ndadaye, who became the first Hutu president.⁷

Ndadaye was in office for only 103 days before being killed by Tutsi army officers. Thousands of Hutus rebelled, and the consequent civil war resulted in perhaps as many as 300,000 deaths that year alone, with perhaps a million people fleeing to neighbouring countries.⁸

Tutsi Sylvie Kinigi, prime minister in the Ndadaye government, took over as acting president briefly. She resigned as prime minister after Parliament's election of former

agriculture minister Cyprien Ntaryamira, a Hutu, as president. Sixty days after assuming office, Ntaryamira was killed when the aircraft in which he was flying with Rwandan president Juvénal Habyarimana was shot down.⁹

Ntaryamira's successor, Sylvestre Ntibantunganya, a Hutu, was in office for a little over two years and three months before being deposed in a coup led by former President Buyoya, who instituted an ethnically inclusive government. His second period in office lasted more than six years, after which he handed over power and became a senator for life, continuing to play a significant role in the country's affairs.¹⁰

On 26 August 2005, Pierre Nkurunziza, son of a Hutu father and Tutsi mother, was elected president by the National Assembly and Senate. He was the only candidate. He was re-elected five years later by direct election in which he was again the only candidate. In 2015, Nkurunziza was nominated for a third term despite a constitutional limit on presidents serving more than two terms. Opponents attempted a coup, but Nkurunziza survived and, on 21 July, was declared the winner of a disputed election.¹¹

A United Nations Electoral Observation Mission sent to report on the electoral process stated that freedoms of expression, assembly and association – essential conditions for the effective exercise of the right to vote – remained severely impaired, and media freedom was severely restricted, '... despite national and international appeals to the government to enable media to operate. State-owned media did not provide a balanced media coverage to all presidential candidates'.¹²

Violence continued, prompting the African Union (AU) to announce a plan to send in peacekeepers. Nkurunziza responded that the army would fight back if the AU tried to deploy in Burundi.¹³

In late April 2016, AFP published its report stating that a year into a political crisis that had claimed about 500 lives, driven a quarter of a million into exile and prompted Western donors to suspend government aid, Burundi's economy was 'on the ropes'.¹⁴ The economy shrank by 7.4% in 2015, taking Burundi from the world's third-poorest country to the poorest, with a gross domestic product per capita of US\$315.20.¹⁵ Loss of foreign aid is critically important given that in 2014 it represented 42% of national income.¹⁶

At this point, the country's future looks bleak. More than half a century of almost continual chaos, including two genocides, has stalled social and economic progress. Only about half of all children go to school, and food and medicine remain in short

supply. In the 2013 Global Hunger Index, Burundi had the most severe hunger and malnutrition rates of all 120 countries ranked.¹⁷ Less than 2% of the population have electricity in their homes. Perhaps unsurprisingly, Burundi ranks 184th out of 188 countries on the Unicef Human Development Index.¹⁸ Development is hindered by a weak legal system, poor transport network, overburdened utilities and low administrative capacity.

The country is poorly served in terms of media – an issue complicated by the low literacy rate, self-censorship and government censorship.

There is only one daily newspaper, the government-owned *Renouveau (Renewal)*. In addition, there are the following weekly papers:

- *Arc-en-ciel (Rainbow)* – private, French-language
- *Iwacu* – private, online content in English/French
- *Ndongezi (Pacesetter)* – founded by the Catholic Church
- *Ubumwe (Unity)* – government-owned.

There are two television stations. The government-controlled *Television Nationale du Burundi* broadcasts in Kirundi, Swahili, French and English. *Télé Renaissance*, a private commercial service, broadcasts in Kirundi and French.

Radio Burundi is government controlled, broadcasts in Kirundi, Swahili, French and English, and operates an educational network. In addition, there are five quasi-independent radio stations.

The *Agence Burundaise de Presse (ABP)* is the state news agency, in addition to which there is a privately owned service, Net Press.

Both telephone density and internet usage are among the lowest in the world. There were an estimated 526,372 internet users as of June 2016 (a 4.7% penetration rate) and 340,000 Facebook subscribers in November 2015 (a 3.1% penetration rate).¹⁹

The official languages of Burundi are Kirundi and French, and in addition many speak Swahili as the language of trade in Eastern Africa.²⁰

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Burundi. The chapter is divided into five sections:

- Media and the constitution

- Media-related legislation
- Media-related regulations
- Media self-regulation
- Media-related case law

The aim of this chapter is to equip the reader with an understanding of the main laws governing the media in Burundi. Key weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Burundi, to better enable the media to fulfil its role of providing the public with relevant news and information, and to serve as a vehicle for government–citizen debate and discussion.

2 THE MEDIA AND THE CONSTITUTION

In this section you will learn:

- The definition of a constitution
- What is meant by constitutional supremacy
- How a limitations clause operates
- Which constitutional provisions protect the media
- Which constitutional provisions might require caution from the media or might conflict with media interests
- What key institutions relevant to the media are established under the Constitution of Burundi
- How rights are enforced under the Constitution
- What is meant by the ‘three branches of government’ and ‘separation of powers’
- Whether there are any clear weaknesses in the Constitution of Burundi that ought to be amended to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Such constitutions set out the rules by which members of the organisation agree to operate. However, constitutions can also govern much larger entities, indeed, entire nations.

The Constitution of Burundi sets out the foundational rules for the Republic of Burundi. These are the rules upon which the entire country operates. The Constitution contains the underlying principles, values and laws of Burundi. A key constitutional provision in this regard is Chapter 2 headed ‘Fundamental Values’ of

Part I of the Constitution which part is headed ‘State and Sovereignty’. Articles 13–18 of Chapter 2 articulate the fundamental values of Burundi which are the following:²¹

- *Equality* – article 13
 - All citizens are equal and deserving of equal respect.
 - Equality before the law.
 - No citizen can be excluded from social and economic life based on race, language, religion, gender or ethnic origin.

- *Peace and security* – article 14
 - All citizens have the right to live in Burundi in peace and security. They must live together in harmony while respecting human dignity and being tolerant of differences.

- *Government of the people* – article 15
 - The government is based on the will of the people.
 - It is accountable to the people and must respect their freedoms and their fundamental rights.

- *Principles of government* – article 16
 - The government must represent all the people of Burundi.
 - Everyone must have an equal opportunity to be part of the government of Burundi.
 - Everyone must have access to public services and access to the decision-making processes of government.

- *Duties of government* – article 17
 - The government must bring about the realisation of the aspirations of the Burundian people, in particular, healing the divisions of the past, improving the quality of life for all in Burundi and enabling a life free from fear, discrimination, sickness and hunger.

- *Purpose of the political system* – article 18
 - The purpose of the political system is to bring about unity, stability and reconciliation.
 - The political system ensures that the government exists to serve the people that elected it.
 - The government must respect the principle of separation of powers, the rule of law and principles of good governance and transparency in public affairs.

The fundamental values contained in Chapter 2 are clearly geared to overcoming the legacy of genocide that haunts Burundi's recent history. The focus on peace, security and reconciliation speaks to Burundians' desire to move away from the past.

2.2 Definition of constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is important to ensure that a constitution has legal supremacy: if a government passed a law that violated the constitution – was not in accordance with or conflicted with a constitutional provision – such law could be challenged in a court of law and could be overturned on the ground that it is 'unconstitutional'.

The Constitution of Burundi makes provision for constitutional supremacy. The preamble to the Constitution provides: 'We, the Burundian people, solemnly declare this Constitution to be the fundamental law of the Republic of Burundi.' Further, article 48 provides that the Constitution 'is the supreme law. The legislature, the Executive and the Judiciary must respect the Constitution. Any law that does not comply with the Constitution is null and void'.

The effect of these provisions is that all three branches of government are required to comply with the Constitution and that the constitutional provisions take precedence over any other law, whether statutory, subordinate legislation such as regulations made by a member of the executive, or judge-made law.

It is, however, important to note that in a number of places, particularly in the Bill of Rights, the Constitution itself subordinates certain rights or aspects of the rights to the ordinary laws of the land, thereby undermining the principle of constitutional supremacy.

2.3 Definition of a limitations clause

It is clear that rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth.

Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can only be done in accordance with the constitution.

The Constitution of Burundi makes provision for three kinds of legal limitations on the exercise and protection of rights contained in Part II of the Constitution of Burundi, ‘Fundamental Rights and Duties’.

2.3.1 Internal limitations

A number of rights contain internal limitations or qualifiers to the right in the text of the right itself. For example, the right to freedom of association has its own internal limitation.

Consequently, it is clear that certain of the rights contained in Part II of the Constitution of Burundi are subject to the limitations contained within the provisions of the right itself. Where a right that is relevant to the media has its own internal limitations clause, this is dealt with below.

2.3.2 General limitations clause

Article 47 of the Burundian Constitution contains a general limitations clause applicable to all rights and freedoms provided for in Part II of the Constitution. It provides as follows: Any restriction of a fundamental right must have a legal basis, must be justified in the public interest or for the protection of the fundamental right of another, and it must be proportionate to the purpose of the limitation.

This requires some discussion.

- The first and most basic requirement is legality. Consequently, arbitrary limitations of rights are not allowed.
- Second, rights can be limited on two general bases:
 - In the public interest, or
 - To protect the fundamental right of another.
- Third, it is critical to note that the limitation of a right must be proportionate to the purpose the limitation is meant to serve, whether this is the protection of another’s rights or in the public interest.

Similarly, article 19, which is in Part II dealing with fundamental rights, provides that the rights contained in Part II are not subject to any restriction or derogation except in certain circumstances where the restriction is in the public interest or to protect another’s rights. Despite the emphatic language used, it is clear, sadly, that there are many instances where fundamental rights are in fact limited.

2.3.3 Limitations in the Constitution

In certain circumstances, a constitution may provide for limitations of rights outside of the context of a general or internal limitations clause. The provisions in the Burundian Constitution relating to states of emergency is one such example.

Article 115 empowers the president, after consulting with the Cabinet, Parliament, the National Security Council and the Constitutional Court, to declare a state of emergency. The grounds for declaring a state of emergency are when the state, the independence of the nation, the territorial integrity or the performance of its international obligations are under serious and imminent threat such that the normal functioning of state institutions are interrupted.

It is important to note that the Burundian Constitution is entirely silent as to which rights can be derogated from during a state of emergency and which rights cannot be derogated from. Consequently, we are of the view that all rights can be derogated from during a state of emergency. This is particularly likely given wording in article 115 to the effect that the president is empowered to take ‘any measures necessary in the circumstances’.

Similarly, article 42 of the Constitution of Burundi provides essentially that ‘no one may be subjected to security measures except in accordance with a law, in particular, for reasons of public order and state security’. This suggests that rights can be limited for reasons of public order and state security.

It is important to note that the term ‘security measures’ is not defined, but it clearly indicates that a person can be subjected to these, and the implication is that these might be at variance with the fundamental rights provided for in Part II.

Secondly, security measures can be imposed in terms of a law, in particular for reasons of public order and state security. This is extremely broadly framed and has the potential impact of undermining the constitutional supremacy of the whole of Part II because, provided the law is passed in the interests of protecting public order and state security, it seems that the security measures that can be imposed are open-ended.

2.4 Constitutional provisions that protect the media

The Constitution of Burundi contains a number of important provisions in Part II of the Constitution, the ‘Bill of Fundamental Rights and Duties’, which directly protect the media, including publishers, broadcasters, journalists, editors and producers.

2.4.1 Freedom of expression

The most important provision that protects the media is article 31, which states:

Freedom of expression is guaranteed. The state must respect freedom of ... thought ... and opinion.

This provision needs some detailed explanation.

- The guarantee of freedom of expression applies to all persons and not just to certain people, such as citizens. Hence, everybody (both natural persons and juristic persons, such as companies) enjoy this fundamental right.
- The freedom is not limited to speech (oral or written) but extends to non-verbal or non-written expression. There are many different examples of this, including physical expression, such as mime or dance, photography or art.
- Article 31 expressly provides that the state must respect freedom of opinion, thereby protecting the media's right to write opinion pieces and commentary on important issues of the day.

2.4.2 Privacy

A second protection is contained in article 28 of the Constitution of Burundi which guarantees the right to privacy. It provides that '[e]veryone has the right to privacy, in respect of their private lives, their families, their homes and their personal communications'.

The fact that this right protects personal communications is a significant protection for journalists in their day-to-day work.

2.4.3 Protection of freedom of conscience

A third protection is again contained in article 31, which states: '... the state must respect freedom of ... conscience'

2.4.4 Protection of right to assembly and association

Article 32 of the Constitution of Burundi provides that 'freedom of association is guaranteed as well as the right to form associations and organisations in accordance with the law'.

This right requires some explanation. While the right to freedom of association is guaranteed in article 32, it is noteworthy that the right to actually form associations and organisations is subject to first being ‘in accordance with the law’. This is a so-called ‘internal limitation’ to the right of freedom of association. The wording is extremely problematic because essentially it subjects the right to form associations and organisations to the ordinary laws of the land. This takes away from the constitutional power of the right because statutes can trump the constitutional rights to form associations and organisations.

2.4.5 Right to form trade unions

Article 37 of the Constitution of Burundi provides that ‘the right to form trade unions is guaranteed as is the right to strike’. There are exceptions to this. There is a blanket prohibition on members of the armed and security forces from exercising these rights. Further, article 37 contains another internal limitation to the effect that laws can regulate the exercise of these rights and may prohibit certain categories of workers from striking. Article 37 requires some explanation.

- The right to form trade unions is an important right for the media because it allows for media workers such as journalists to form a trade union to fight for their rights in the workplace. Traditionally, journalistic trade unions have supported rights which impact on their working lives, such as freedom of expression.
- Article 37 contains a number of internal limitations, namely, a blanket prohibition on members of the armed and security forces from forming trade unions and going on strike as well as a general internal limitation, which provides that the exercise of the right to form trade unions and to strike may be regulated by law and may prohibit certain categories of workers from striking. This is not unusual internationally as certain categories of workers, such as emergency medical personnel, are often prohibited from striking. However, the particular wording of this aspect of article 37 is broadly framed and has the potential to allow a statute effectively to trump the constitutional rights to form trade unions and to strike.

2.5 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals and institutions *from* the media. It is important for journalists to understand which provisions in the Constitution can be used against the media.

2.5.1 The right to dignity

Article 21 guarantees the right to dignity. It provides that ‘human dignity is respected and protected. Any infringement of human dignity is punishable in terms of the Penal Code’.

The right to dignity requires caution on the part of the media because it is a fundamental aspect upon which the right to reputation is based, and this in turn is foundational to the legal right to claim damages for defamation. Defamation suits, whether civil or criminal, are a significant worry for journalists personally and for the media houses that employ them. Journalists therefore need to be aware of the right to dignity and need to ensure that a person’s right to his or her reputation is not unlawfully undermined in the course of reporting a story.

2.5.2 The right to privacy

A second right that requires caution from the media is contained in article 28 of the Constitution of Burundi, which guarantees the right to privacy. It provides that ‘[e]veryone has the right to privacy, in respect of their private lives, their families, their homes and their personal communications’.

The right of privacy is an interesting right because it protects journalists themselves, particularly through the protection of personal communications, but also requires caution on their part when reporting the news or investigating the conduct of individuals. While the right to privacy can give way to the public interest, there is a zone of privacy around a person’s private and family life which is relevant to the public only in fairly exceptional circumstances.

2.5.3 Security provisions

Article 42 of the Constitution of Burundi is extremely vaguely worded. It provides essentially that ‘no one may be subjected to security measures except in accordance with a law, in particular, for reasons of public order and state security’. This article requires explanation as it is of concern to media practitioners and to the practise of journalism more generally.

First, the term ‘security measures’ is not defined but it clearly indicates that a person can be subjected to these, and the implication is that these might be at variance with the fundamental rights provided for in Part II.

Second, security measures can be imposed in terms of a law, in particular for reasons

of public order and state security. This is extremely broadly framed and has the potential impact of undermining the constitutional supremacy of the whole of Part II because, provided the law is passed in the interests of protecting public order and state security, it seems that the security measures that can be imposed are open-ended. Consequently, the provisions of article 42 are extremely problematic.

2.5.4 State of emergency provisions

Article 115 empowers the president, after consulting with the Cabinet, Parliament, the National Security Council and the Constitutional Court, to declare a state of emergency. The grounds for declaring a state of emergency are when the state, the independence of the nation, the territorial integrity or the performance of its international obligations are under serious and imminent threat such that the normal functioning of state institutions are interrupted.

It is important to note that the Burundian Constitution is entirely silent as to which rights can be derogated from during a state of emergency and which rights cannot be derogated from. Consequently, we are of the view that all rights can be derogated from during a state of emergency. This is particularly likely given wording in article 115 to the effect that the president is empowered to take ‘any measures necessary in the circumstances’.

2.6 Key institutions relevant to the media established under the Constitution of Burundi

The Constitution of Burundi establishes a number of institutes that indirectly affect the media, namely, the National Council of Communication, the ombudsman and the judiciary.

2.6.1 The National Council of Communication

Part XII of the Constitution of Burundi deals with national councils established in terms of the Constitution. Chapter 5 thereof is headed ‘the National Council of Communication’ (NCC).

In terms of article 284 of the Burundian Constitution, the role of the NCC is to protect the freedom of the print and broadcast media while respecting laws, public order and good morals. To this end, the NCC is empowered to promote press freedom and to ensure that diverse political, social, economic and cultural opinions have equitable access to the public media. The NCC is also required to play a consultative role to the Cabinet on communications matters.

In terms of article 285, the NCC is composed of members chosen from the communications and media sector, and is based on their involvement in social communications and their commitment to freedom of the press, of expression and of opinion.

Article 286 deals with the appointment of members of the NCC. Essentially, the members are appointed by the president of the Republic of Burundi in consultation with the vice president. Article 287 requires the NCC to produce an annual report which is submitted to the president of Burundi, the Cabinet, the National Assembly and the Senate. Article 288 provides that a statute is to provide for the organisation and functions of the NCC.

The provisions of Chapter 5 of Part XII require some explanation. On the one hand, it is extremely significant that the Constitution of Burundi provides for the establishment of the NCC, because so often national constitutions are silent on the issue of media regulation. On the other hand, it is clear that the NCC is not an independent body that is answerable to a multi-party organ such as the Parliament. The NCC's members are appointed essentially by the president and the vice president of the country, the leaders of the executive branch of government. This appointment power weakens the NCC's ability to protect the freedom of the print and broadcast media given the members' reliance on the executive for their positions on the NCC.

A more detailed examination of the laws governing the operations of the NCC is set out elsewhere in this chapter.

2.6.2 The ombudsman

Part IX of the Burundian Constitution is headed 'the Ombudsman'. In terms of article 237, the role of the ombudsman is to receive and to investigate complaints about maladministration and violations of citizens' rights by public officials and the judiciary, and to make recommendations regarding such matters to the competent authorities. Other roles are to mediate between the administration and citizens and between executive ministers and the administration, and it plays an observation role in regard to the functioning of public administration. The performance of the ombudsman's functions is determined by law. In this regard, the law governing the ombudsman's functions is the Organisation and Functioning of the Ombudsman Act, 1/03 of 2010.

Article 238 requires the ombudsman to produce an annual report, which is submitted to the National Assembly and the Senate. Article 239 deals with the appointment of the ombudsman. Nominations are required to be made by three-quarters of the

members of the National Assembly. The nomination is required to be approved by two-thirds of the members of the Senate. The ombudsman is appointed for a single six-year term.

The provisions of Part IX require some explanation. First, it is clear that the ombudsman enjoys a greater level of independence from the executive than is the case with the NCC. This is because the nominations and appointment process takes place in the two houses of Parliament rather than at an executive level.

2.6.3 The judiciary

The judiciary (or judicature) is an important institution for the media because the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and its role as one of the branches of government, and the media is essential to building public trust and respect for the judiciary, which is the foundation of the rule of law in a society. The media needs the judiciary because of the courts' ability to protect the media from unlawful action by the state and from unfair damages claims by litigants.

Part VIII of the Constitution of Burundi is headed 'Judicial Power'. Articles 205–209 set out generally applicable principles in regard to the exercise of judicial authority in Burundi.

In terms of article 205, judicial power in Burundi is vested in courts and tribunals. In terms of article 205, prosecutorial magistrates fulfil the roles and functions of the prosecuting authority. However, judges of local courts and police officers may fulfil the duties of the prosecuting authority under the supervision of the state prosecutor. In this regard, it is important to remember that Burundi, like many former Belgian colonies, follows a civil law system and not a common law system as is common with former British colonies. Civil law systems are characterised by a prosecutorial form of judicial processes in terms of which the magistrate or judge is actively and closely involved in the prosecutorial aspects of the case, including the investigation thereof, as well as the final adjudication thereof. Also, in terms of article 205, the structure and competence of the judiciary are determined in accordance with statute.

Article 206 provides that court proceedings are open to the public unless the judicial officer requires them to be held in camera on the basis that publicity might adversely affect public order or good morals.

Article 207 requires that reasons for judicial decisions be provided when the judgment is given in public.

Article 208 requires that the members of the judiciary reflect the population of Burundi in its entirety. Further, the procedures for recruitment and nomination of members of the judiciary must recognise the imperative to ensure a balanced representation of regions, ethnicities and genders.

Article 209 provides that the judiciary is impartial, and independent of legislative and executive power. In exercising judicial powers, a judge is bound only by the Constitution and the law.

Further, the president of the Republic, as head of state, guarantees the independence of the magistracy, with the assistance of the High Council of the Magistracy.

THE HIGH COUNCIL OF THE MAGISTRACY

Chapter 1 of Part VII is headed ‘High Council of the Magistracy’. Articles 210–216 set out the powers and functions thereof. In brief these are:

- To ensure the provision of an excellent administration of justice and to guarantee the independence of magistrates in the exercise of their functions – article 210
- To oversee disciplinary matters involving magistrates – article 211
- To oversee the removal of magistrates on the basis only of professional misconduct or incompetence – article 212
- To advise the president of the Republic of Burundi and the Cabinet on:
 - Matters involving the development of policy regarding the administration of justice
 - Developments within the judicial domain and with regard to human rights
 - Strategies to combat impunity in general – article 213
- To advise the Minister of Justice on appointments of magistrates, and the Ministry of Justice in turn makes the necessary recommendations to the president of the Republic of Burundi who makes the appointments by decree – article 214
- To advise the Minister of Justice on appointments of all the judicial officers referred to in article 187(9) (except for judges of the Constitutional Court) and the Ministry of Justice in turn makes the necessary recommendations (with the approval of the Senate) to the president of the Republic of Burundi who makes the appointments – article 215 read with article 187(9)

- To provide an annual report on the status of justice in the country to the Cabinet, the National Assembly and the Senate – article 216.

Articles 217–220 deal with the composition and appointment of members of the High Council of the Magistracy. In brief these provide the following:

- The members thereof must have an ethnic, regional and gender balance and be composed of the following members:
 - Five members designated by the Cabinet
 - Three judges from the superior courts
 - Two magistrates from the prosecuting authority
 - Two judges from local courts
 - Three members from the legal profession who are in private practice.

Further, except for the members designated by the Cabinet, all the other members must be chosen by their peers – article 217

- The members of the High Council of the Magistracy are appointed by the president of the Republic of Burundi after the nominations have been approved by the Senate – article 218.
- The High Council of the Magistracy is presided over by the president of the Republic of Burundi, assisted by the Minister of Justice – article 219.
- The structures and functioning of the High Council of the Magistracy and the procedures for determining its members are to be set out in a statute – article 220.

THE SUPREME COURT

- Chapter 2 of Part VIII of the Constitution of Burundi deals with the Supreme Court. The Supreme Court is the apex court of Burundi and is the final court of appeal on non-constitutional matters in terms of article 221.
- Article 222 deals with the appointment of judges to the Supreme Court. The process is that judges are recommended by the High Council of the Magistracy to the Ministry of Justice which makes the recommendations, after approval by the Senate, to the president of the Republic of Burundi for appointment.
- Article 223 provides that the Supreme Court has its own body of state prosecutors that function within the Supreme Court and who are appointed in the same manner as judges to the Supreme Court.

- The composition, structures and functioning of the Supreme Court are to be set out in a statute – article 224.

THE CONSTITUTIONAL COURT

- Chapter 3 of Part VIII of the Constitution of Burundi, deals with the Constitutional Court. The Constitutional Court is the only court in Burundi that may deal with constitutional matters and its decisions are not subject to appeal – articles 225, 230 and 231. Articles 228 and 229 (and a number of other cross-referenced articles) detail the specific powers of the Constitutional Court. These are, in brief:
 - Determining the constitutionality of laws and regulations. In this regard all statutes and regulations passed by the National Assembly and the Senate must be sent to the Constitutional Court for a determination of constitutionality prior to their promulgation
 - Ensuring adherence to the Constitution, including the Bill of Rights, by organs of state and other institutions
 - Interpreting the Constitution on the request of:
 - The president of the Republic of Burundi, the National Assembly, or the Senate, or
 - A quarter of the members of the National Assembly or of the Senate
 - Adjudicating upon the legitimacy of presidential and legislative elections and on referendums, and proclaiming the final results thereof
 - Swearing in the president and vice president of the Republic of Burundi and the members of the Cabinet
 - Declaring a vacancy in the Office of the President of the Republic
 - Consulting the president of the Republic of Burundi with regard to any proposed state of emergency – read with article 115
 - Determining whether or not there are sufficient grounds for moving the seats of the National Assembly and the Senate – read with article 157
 - Consulting with the president of the Republic of Burundi with regard to any proposed amendments to subordinate legislation – read with articles 160 and 161
 - Determining whether legislation is required to be passed by the Senate or the National Assembly – read with article 188
 - Determining whether or not an international treaty or agreement is in accordance with the Constitution or not after the agreement has been referred to it by the presidents of the Republic, the National

Assembly, the Senate (as the case may be), or by a quarter of the members of the National Assembly or of the Senate – read with article 296.

- Article 226 deals with the appointment of judges to the Constitutional Court. The Constitutional Court is made up of seven judges appointed for a single six-year term by the president, upon the approval of the Senate. The seven members are as follows:
 - Three members of the Constitutional Court must have been career magistrates.
 - All Constitutional Court judges must be eminent jurists appointed on the basis of their moral integrity, impartiality and independence.
 - The president and vice president of the Constitutional Court and the three career magistrates must take part in all hearings of the Constitutional Court (see also article 227).
- Article 227 provides that the minimum quorum for the Constitutional Court to sit is five judges (namely, the president and vice president of the Constitutional Court and the three career magistrates) and decisions of the court are taken by a simple majority. The president of the Constitutional Court has a casting vote where there is no majority.
- Article 232 provides that the organisation and functioning of the Constitutional Court must be provided for in legislation.

HIGH COURT OF JUSTICE

- The High Court of Justice is made up of the Supreme Court and the Constitutional Court acting together. The presiding officer of the High Court of Justice is the president of the Supreme Court and the prosecuting authority is represented by the national attorney general in all cases before the High Court of Justice – article 233.
- The High Court of Justice has very limited jurisdiction, namely: to try the president of the Republic with high treason and to try the presidents of the National Assembly, the Senate and the vice presidents of the Republic for crimes and delicts (that is, civil wrongs) committed while in office – article 234.
- Upon conviction, these public officials are stripped of their offices – article 235.
- While decisions of the High Court of Justice are not subject to appeal, it is

important to note that the decisions can be overturned by presidential pardon – article 234.

- Article 236 provides that the organisation and functioning of the High Court of Justice must be provided for in legislation.

Unfortunately, there is a key weakness with regard to the judiciary which needs to be understood by media practitioners working in Burundi. While lip service is paid to the concept of judicial independence, it is clear that, as the president of the Republic is also the president of the High Council of the Magistracy, this undermines judicial independence and the concept of the separation of powers, which is dealt with in more detail below.

2.7 Enforcing rights under the Constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be enforced.

Article 230 of the Constitution of Burundi provides that any person, whether natural or juristic (for example, a company or an organisation) may approach the Constitutional Court directly for a ruling on the constitutionality of laws or indirectly (for example, when before another court which will then refer the matter to the Constitutional Court).

Usually, one of the most effective ways in which rights are protected is through special protections granted to the provisions of a bill of rights when considering amendments thereto. Unfortunately, the Burundian Constitution does not contain any special protections to safeguard the Bill of Rights from constitutional amendments. Part XIV of the Constitution is headed ‘Amendment of the Constitution’. Essentially, it provides that consideration of a constitutional amendment can only be undertaken by the president of the Republic after consultation with the Cabinet, the National Assembly or the Senate and with the concurrence of a majority of the members of those bodies – article 297. Note that in terms of article 299, there is a blanket prohibition on constitutional amendments that undermine national unity, cohesion among the people of Burundi, the secular nature of the state, reconciliation and democracy, and the territorial integrity of the Republic.

Article 300 deals with the process for amending the Constitution. Essentially, it requires a vote by four-fifths of the members of the National Assembly and by two-thirds of the members of the Senate. Article 298 also empowers the president but

does not require him to hold a referendum on the constitutional amendment in question.

2.8 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as ‘branches of government’ and ‘separation of powers’, yet working journalists may not have a clear idea what these terms mean.

2.8.1 Branches of government

It is generally recognised that governmental power is exercised by three branches of government, namely: the executive; the legislature; and the judiciary.

THE EXECUTIVE

Part V of the Constitution of Burundi deals with executive power in Burundi, and article 92 provides that the executive power of Burundi vests in the president of the Republic, the two vice presidents of the Republic and members of the Cabinet. Article 94 requires the members of the executive to declare their financial interests in writing.

Chapter 1 of Part V deals with the Office of the President. In terms of article 95, the president must embody national unity, respect for the Constitution and must ensure the functionality of the state and its institutions. The Office of the President guarantees national independence, territorial integrity and adherence to international treaties and agreements.

The criteria to stand for election as president are set out in article 97 and they include: being qualified to vote in terms of the electoral legislation; being a Burundian national by birth; being at least 35 years old at the time of the election; being a resident in Burundi when becoming a candidate; must be in a position to exercise all of his or her civil and political rights; and must adhere to the Constitution and the Charter of National Unity (a precursor to the current Constitution). Further, a presidential candidate cannot have been convicted of a crime or of a civil offence. Note, however, that the electoral law does provide for the restoration of a person’s eligibility to stand as a candidate for presidential election once his or her sentence has been served.

The process of electing the president is set out in articles 98–103. In brief, the key aspects thereof are as follows:

- A candidate may represent a political party or be independent – article 98.
- A candidate must have the support of at least 200 people representing different ethnic groups and being of different genders – article 99.
- A successful candidate must cease to hold all other offices, whether public or private, upon the announcement of the election results – articles 100 and 101.
- Elections are held in two rounds. The successful candidate is the person who obtains an absolute majority of all votes cast. Where this does not take place after the first round of voting, a second round of voting must take place within 15 days. In the second round of voting, only the two candidates who secured the highest number of votes in round one will participate. Note that there are provisions for the candidate/s who came third and/or fourth to contest round two in the event of one or more of the candidates securing the highest number of votes in round one declining to participate in round two. In round two, the candidate who secures the highest number of votes is declared the winner – article 102.
- Presidential elections must take place before the expiration of the term of office of the sitting president, but the elections must be scheduled so that they do not take place more than two months or less than one month before the expiration of the term of office of the sitting president – article 103.

Article 96 has proved to be extremely controversial in Burundi. It requires that the president is elected as a result of a vote based on universal suffrage and that the president serves for a five-year term renewable once. The Constitutional Court has interpreted article 96 as not applying to the sitting president's initial term in office as that did not result from an election. Consequently, the president is currently serving his third term in office, which has resulted in a great deal of political instability arising from ongoing political protests at the president's refusal to leave office.

The president is required to take an oath of office before the Constitutional Court and Parliament. The oath essentially provides that the president undertakes to uphold the Constitution, the Charter of National Unity and the laws of the Republic, to defend the interests of the nation, and to preserve national unity, peace and social justice. The president also undertakes to combat ideas of genocide, exclusion and to promote and defend rights and freedoms – article 106.

Articles 107–115 set out the powers of the president. In brief, these are the power to:

- Make decrees, except when a sitting president is also a candidate for an upcoming

presidential election (article 104). Ordinarily, such decrees are also signed by one of the vice presidents and the minister concerned.

However, in certain circumstances article 107 empowers the president to enact decrees without such additional signatures (and note that the president may not delegate such decree-making powers). These circumstances include:

- Making a declaration of war after consulting the Cabinet, the National Assembly and the Senate – article 110
- Making presidential pardons after consultation with both vice presidents of the Republic and the High Council of the Magistracy – article 113
- Conferring national orders and decorations of the Republic – article 114
- Declaring a state of emergency after consultation with the Cabinet, the National Assembly, the Senate, the National Security Council and the Constitutional Court – article 115
- Signing into law statutes passed by Parliament after the Constitutional Court has verified the constitutionality thereof – article 197
- Subjecting any proposed law (that is, statute, constitutional amendment or any other) to a national referendum after consulting with the two vice presidents of the Republic and the presidents of the National Assembly and the Senate – article 198
- Initiating any proposed constitutional amendment after consultation with the Cabinet and either the National Assembly or the Senate provided that a majority of the sitting members of either of those bodies was present – article 297
- Subjecting any proposed constitutional amendment to a national referendum – article 298. Note that this article requires some explanation as it appears to contradict the provisions of article 198 in relation to the consultation required. However, it is clear that the president can elect between two different processes in relation to subjecting constitutional amendments to national referendums, namely that provided for in article 198 (which requires consultation with the vice presidents and the president of the National Assembly and the Senate) or that provided for in article 298 in terms of which the president is entitled to act alone
- Obviously, in regard to the president's powers outlined above, the president has those particular powers (for example, presidential pardons, etc.) independently of his power in terms of article 107 to make decrees thereon.

- Appoint and dismiss members of the Cabinet – article 108
- Preside over meetings of the Cabinet – article 109. Note that this function can be delegated from time to time to the first vice president or, failing his or her presence, to the second vice president in terms of article 125
- Act as commander-in-chief of the armed forces – article 110
- Appoint high-ranking civil and military officials subject to approval by the Senate – article 111
- Appoint and recall ambassadors and special envoys to foreign states and to receive diplomatic credentials by foreign ambassadors and special envoys – article 112.

Except in respect of these powers outlined above, any administrative action taken by the president can be challenged before a competent court in terms of article 119.

Article 116 deals with the impeachment and removal of the president. There are three grounds for impeaching a president: grave misconduct; abuse of power; or corruption. A president can be removed by a resolution of two-thirds of the members of the National Assembly and of the Senate in a joint sitting.

Article 117 provides that, notwithstanding the impeachment and removal of a president, a president enjoys on-going immunity from criminal prosecution for any acts committed while in office save for the crime of high treason. High treason is defined as any violation of the Constitution or of the law in circumstances in which the president's conduct constitutes a deliberate violation thereof, which seriously compromises national unity, peace, social justice, national development, or human rights, the integrity of the Republic or national independence and sovereignty. Only the High Court of Justice has jurisdiction to try the president for high treason, and the only body capable of instituting charges of high treason against the president are two-thirds of the members of the National Assembly and the Senate in a joint sitting and with a secret ballot. The investigation of alleged high treason committed by the president must be conducted by at least three state prosecutors and must be presided over by the attorney general of the Republic. Once an investigation into high treason by the president has begun, article 118 provides that the president is prohibited from dissolving Parliament for any reason whatsoever and Parliament is to continue until the judicial process has been completed.

Article 121 provides that where the president, for whatever reason, has permanently vacated his or her post, the president of the National Assembly or, failing him, the

vice presidents of the Republic and the Cabinet, assume the functions of the president. However, this can happen only after the Constitutional Court has definitively declared that there is such a permanent vacancy. The acting president may not form a new government. Further, the acting president may deal only with matters pending at the time that the vacancy arose and may not consider new matters until the formation of a new government. New presidential elections to fill an existing vacancy must take place no longer than three months after and no sooner than one month after the vacancy has occurred, unless the Constitutional Court determines otherwise.

The role of the first vice president is to coordinate the political and administrative affairs of the government, while the role of the second vice president is to coordinate the economic and social affairs of the government in terms of article 122 of the Constitution. In terms of article 126, each of the vice presidents may issue decrees in relation to their roles and functions.

The vice presidents are appointed from among the members of Parliament and are appointed by the president after confirmation by the majority of the members of the National Assembly and of the Senate, sitting separately, in terms of article 123. Interestingly, article 124 provides that the vice presidents must belong to different ethnic groups and political parties. In terms of article 127, both vice presidents are required to take an oath of office, which is similar to the oath taken by the president, dealt with in more detail above.

Articles 129–137 deal with the Cabinet. As Burundi has also suffered an ethnic genocide, it is important to note that article 129 requires that, of the ministers and vice ministers, 60% must be Hutu, 40% Tutsi and 30% women. Interestingly, article 129 also requires that representatives of political parties that obtained more than 20% electoral support in the previous election be part of the Cabinet, on the basis of proportional representation, if they so wish. Therefore, the constitution makes provision for, essentially, a multi-party Cabinet.

Article 131 provides that the Cabinet is responsible for developing government policy. Decisions of the Cabinet are implemented by way of ministerial regulations which give effect to presidential decrees. The Cabinet is routinely involved in making nominations for administrative posts in the public sector in terms of article 135, taking into account ethnic, regional, political and gender considerations.

THE LEGISLATURE

Legislative or law-making power in Burundi vests in Parliament which, in terms of article 147 of the Burundian Constitution, consists of the National Assembly and the

Senate. In terms of article 164, the National Assembly consists of at least 100 elected members, of whom 60% must be Hutu, 40% must be Tutsi and at least 30% must be women. Also, at least three members must be from the Twa community. Members serve for a five-year period. The process for the election of members of the National Assembly shall be direct, by universal adult suffrage. Elections are carried out under the auspices of the National Electoral Commission. The quorum for the National Assembly is two-thirds of the elected members.

Articles 179 and 180 deal with the Senate. Members of Senate must be Burundian nationals who are at least 35 years old and 30% of the senators are required to be women. In terms of article 180, the Senate is composed of:

- Two delegates from each province (there are 17 provinces in all)
- Three representatives of the Twa community
- All former presidents.

The quorum for the Senate is two-thirds of the members.

Article 149 of the Burundian Constitution is interesting in that it provides that members of the National Assembly and of the Senate are entitled to vote in accordance with their personal convictions and not in accordance with party political dictates. However, it is important to note that the separation of law-making powers between the legislature and the executive is not well developed in the Burundian Constitution given the extensive law-making powers accorded to the president via his ability to make presidential decrees in terms of article 107 and as more fully set out above.

THE JUDICIARY

Judicial power, as discussed previously in this chapter, vests in the courts. Essentially, the role of the judiciary is to interpret the law and to adjudicate legal disputes in accordance with the law. However, it is important to note that Burundi's courts do not have a reputation for independence and are seen to be subject to interference by both the executive and the legislature.²²

2.8.2 Separation of powers

It is important in a functioning democracy to divide governmental power between different organs of the state in order to guard against the centralisation of power, which may lead to abuses of power. This is known as the separation of powers doctrine. The aim, as the Constitution of Burundi has done, is to separate the

functions of the three branches of government – the executive, the legislature and the judiciary – so that no single branch is able to operate alone, assume complete state control and amass centralised power. While each branch performs a number of different functions, each also plays a ‘watchdog’ role in respect of the other. This helps to ensure that public power is exercised in a manner that is accountable to the general public and in accordance with the Constitution.

2.9 Weaknesses in the Constitution that ought to be strengthened to protect the media

There are a number of respects in which the Constitution of Burundi is weak. If these provisions were strengthened, there would be specific benefits for Burundi’s media and democratic credentials more broadly.

2.9.1 Remove internal constitutional qualifiers to certain rights

The Constitution of Burundi, as has been set out above, makes provision for certain rights to be subject to ‘internal’ limitations – that is, the provision dealing with a right contains its own limitations clause, setting out ways in which a government can legitimately limit the ambit of the right. These internal limitations occur within a number of articles on rights in the Constitution of Burundi. They deal specifically and only with the limitation or qualification of the particular right that is dealt with in that article. As has been more fully discussed above, the rights to freedom of association and to form trade unions contain such internal limitations. In other words, the article that contains the right also sets out the parameters or limitations allowable in respect of that right.

The rights contained in the provisions dealing with fundamental human rights and freedoms, set out in Part II of the Constitution of Burundi, would be strengthened if the rights were subject to a single generally applicable limitations clause rather than each having their own limitations clause. Indeed, such a general limitations clause already exists in article 47 of the Burundian Constitution and so it is not clear why the internal limitations clauses are, in fact, necessary.

2.9.2 Clarifying what rights are non-derogable during a state of emergency or for reasons relating to state security

The Burundian Constitution at article 115 empowers the president to declare a state of emergency. In so doing, a number of rights that protect the media can be derogated or departed from although these are not specified. Article 115 is extremely broad and allows the president to ‘take any measures necessary in the circumstances’ during a

state of emergency. Similarly, article 42 allows individuals to be subjected to ‘security measures’ in particular for ‘reasons of public order and state security’ although again, these are not specified. The Constitution is entirely silent on whether or not there are any rights at all that are non-derogable during a state of emergency or security measures. In our view, providing that certain rights are non-derogable during a state of emergency or in respect of security measures would provide additional safeguards to the exercise and protection of a number of important civil rights.

2.9.3 Independent broadcasting regulator and public broadcaster

There is no doubt that the broadcasting sector would be greatly strengthened if the Burundian Constitution gave constitutional protection for a truly independent broadcasting regulator and public broadcaster. Given the importance of both of these institutions for ensuring access to news and information by the public, it is suggested that such amendments to the Constitution would be in the public interest and would serve to strengthen both the media and democracy more generally in Burundi.

2.9.4 Strengthen the independence of the judiciary

As has been set out above, the executive, particularly the president, is extremely involved in the judiciary and in particular sits as president of the High Council of the Magistracy. In our view, the structural independence and appointments procedures of judicial institutions are not provided for sufficiently in the Constitution and this undermines their independence.

2.9.5 Strengthen the separation of powers between the different branches of government

As has been set out above, the executive, particularly the president, has law-making powers through his power to make presidential decrees. This undermines the concept of the separation of powers between the executive and the legislature as the legislature ought to be the law-making body and the executive the implementation body. It is clear that the most powerful institution in the Burundian government is the Office of the President and that this is not sufficiently separated from either judicial powers or law-making powers that ought properly to vest in Parliament.

3 THE MEDIA AND LEGISLATION

In this section you will learn:

- What legislation is and how it comes into being, and what reference to ‘the Minister’ means in Burundian laws

- Legislation governing the print media (note in many instances this includes online media too)
- Legislation governing the making of films
- Legislation governing the broadcasting media generally
- Legislation governing the state broadcast media
- Legislation governing broadcasting signal distribution
- Legislation governing the state newsgathering agency
- Legislation that threatens a journalist's duty to protect sources
- Legislation that prohibits the publication of certain kinds of information
- Legislation that specifically assists the media in performing its functions

3.1 Legislation: An introduction

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by Parliament, the legislative authority. As we know, legislative authority in Burundi vests in Parliament, which is made up of the National Assembly and the Senate. However, it is also important to note that laws in the form of presidential decrees can also be proclaimed by the president. Again, this is an unfortunate blurring of the separation of powers doctrine.

As a general rule, the National Assembly and the Senate are ordinarily involved in passing legislation other than presidential decrees. There are detailed rules in the Constitution of Burundi which set out the different law-making processes that apply to different types of legislation. It is important for journalists and others in the media to be aware that the Constitution of Burundi requires different types of legislation to be passed in accordance with particular procedures. The procedures are complicated and need not be explained here. Journalists should, however, be aware that, in terms of the Constitution of Burundi, there are three kinds of legislation, each of which has particular procedures and/or rules applicable to it. These are:

- Presidential decrees – the procedures and/or applicable rules are set out in article 107 of the Constitution
- Ordinary legislation – the procedures and/or applicable rules are set out in articles 175 and 186, respectively, of the Constitution. Essentially, laws must be passed by two-thirds of the members present in both the National Assembly and the Senate, sitting separately

- Legislation to change the Constitution – the procedures and/or applicable rules are set out in articles 297 and 300 of the Constitution.

3.1.2 The difference between a bill and an act

A bill is a piece of draft legislation that is debated and usually amended by Parliament during the law-making process.

If a bill is passed by Parliament in accordance with the various applicable procedures required for different types of bills, as set out above, it becomes an act once it is assented to by the president, in terms of article 197 of the Constitution of Burundi (which he is required to do within 30 days).

Also be aware that some laws governing certain media-related aspects came into force prior to the coming into effect of the 2005 Constitution of Burundi. As they were passed by the governing authority of the time and have yet to be repealed, they are still good law.

3.1.3 References to various ministers in Burundian legislation

There are obviously a number of references to particular ministers in the Burundian statutes, decrees, etc. Currently the relevant minister in charge of media- and broadcasting-related matters is the Minister of Posts, Information Technology, Communication and Media. Consequently, unless otherwise specified, any reference to a minister in this chapter is to the Minister of Posts, Information Technology, Communication and Media.

3.2 Legislation governing the print media

3.2.1 Legislation that regulates the print media generally

Generally, the print media in Burundi is regulated in terms of:

- The National Council of Communication Act (NCC), Act 1/18 of 2007 (NCC Act)
- The Press Act, Act 1/15 of 2015 (2015 Press Act).

3.2.2 Establishment of the NCC

Article 1 of the NCC Act establishes the NCC as an independent administrative body. Article 14 constitutes the 15-member NCC, which performs the functions of the NCC under the NCC Act.

3.2.3 Main functions of the NCC

In terms of article 1 of the NCC Act, the NCC's overall function is to oversee freedom of the print media subject to the law, public order and good morals.

Articles 4–13 set out a number of the NCC's specific functions, and these include to:

- Promote a pluralistic and diverse communications sector – article 4
- Protect public and private media from interference in its distribution of information – article 6
- Ensure access to information – article 6
- Ensure that media outlets function in accordance with their undertakings – article 6
- Ensure that the media has equitable access to written content and to the internet – article 7
- Provide for the accreditation of print media journalists – article 8
- Provide a consultative role (presumably for government as well as other relevant institutions) in respect of – article 9:
 - The promotion of national culture and values
 - The training of journalists
- Make recommendations to the minister with regard to legislation pertaining to the media in general, ethics and codes of conduct for journalists – article 10, particularly:
 - On media outlets active on the internet
 - Newspapers and periodical publications (such as magazines) whether public or private
 - Journalists
- Hold workshops for accredited journalists – article 10
- Impose sanctions upon media outlets in cases of dereliction of duties – article 12
- Arbitrate conflicts between media houses, which decisions are subject to review by a court – article 13.

In terms of article 5 of the 2015 Press Act, in order to practise their profession all journalists have to be in possession of a press card issued by the NCC. Article 6 sets out the requirements for such a press card and they include a diploma in journalism or a certificate following a two-year internship in a media enterprise.

In terms of article 8 of the 2015 Press Act, foreign journalists are also required to be accredited by the NCC.

The NCC must give reasons for refusing to accredit a foreign journalist or to issue a press card to a local journalist in terms of article 9 of the 2015 Press Act.

3.2.4 Appointment of NCC board members

In terms of article 15 of the NCC Act, the 15 members of the NCC (who hold office for a renewable period of three years, in terms of article 18) are appointed by the president, after consultation with both vice presidents, from within the communications and media sectors.

Members are appointed on the basis of expertise, experience and a commitment to communication, and freedom of the press, expression and opinion – article 14.

3.2.5 Funding for the NCC

Article 27 of the NCC Act provides that the funding for the NCC is derived from moneys appropriated by Parliament – in other words, funding that is specified annually in the national budget.

3.2.6 Making print media-related regulations

The NCC Act is entirely silent on the making of regulations and it seems that the NCC does not have this power.

3.2.7 Rights and duties of journalists and media outlets

Chapter IV of the 2015 Press Act deals with the rights and duties of journalists and media outlets. Similarly, Chapter VI also deals with the right of reply, correction and damages. In brief these provide the following:

■ *Rights of journalists*

- Article 10 gives journalists the right to have access to sources of information, to investigate and comment freely on every facet of

public life. However, in doing so they must respect the laws and the rights and liberties of others.

- Article 11 gives journalists the right to security of their person and of their equipment within Burundi.
 - Article 12 gives a journalist the right to follow his or her conscience in refusing to comply with an employer's contractual requirements without losing any employment benefits.
 - Article 13 provides that a journalist has the right to join a trade union or a professional association of his or her choice.
 - Article 14 entitles a journalist to collaborate with other press organisations but this is subject to the terms of his or her employment contract.
 - Article 15 entitles a journalist to access government facilities as required to perform his or her professional functions.
 - Articles 16 recognises and guarantees the protection of a journalist's sources of information.
- *Duties of journalists*
- Article 17 provides that, in light of professional ethical requirements, a journalist is required to provide balanced information and sources of information must be rigorously verified.
- *Rights and duties of media house*
- Article 18 requires a media house to adhere to the provisions of its memorandum of incorporation and makes it liable for any violations of the 2015 Press Act.
 - Article 19 provides that the state must assist media houses which contribute to the development of the right to information.
 - Article 20 exempts media houses from paying value added tax on the purchase of material and equipment.
 - Article 21 allows Burundian media outlets to access state subsidies as well as donations from private sources of funding.
 - Article 22 prohibits media outlets from making use of illicit sources of funds and requires all media outlets to submit annual financial statements to the NCC by 31 March.
 - Articles 41 and 42 of the 2015 Press Act provide that a publication, press agency or website must have an editor. The editor must be a natural adult person fully capable of exercising his or her civil and political rights, not subject to any immunity, and must meet the requirements for a practising journalist as set out in article 6 of the 2015 Press Act dealt with above.

■ *Right of reply*

- Articles 45 and 46 grant any person the right to reply to information published about him, her or it in that same publication.
- Article 47 contains certain requirements for making a request for a right of reply and these include giving sufficient particulars on the publication concerned.
- Article 49 provides that a media outlet may refuse to grant a person the right of reply in certain circumstances, namely: where it is injurious or contrary to the law or good morals; where a third party is unnecessarily implicated; the complaint does not relate to the publication; the complaint is in a language different to that of the publication; and where the complaint itself is longer than the original article.
- Articles 48 and 50 contain a number of requirements on exactly how the right to reply is to be provided for in a publication, programme or website, including with regard to the timing of the reply. Article 50 gives the right of recourse to the NCC should a complainant be unhappy in regard to the exercise of his or her right to reply.

■ *Right to correction*

- Article 51 grants the right to correct factually inaccurate information published only to a public authority. Article 51 provides that a media outlet must correct the information free of charge in the next publication.

■ *Damages*

- Article 52 provides that a media outlet is legally responsible for any damage suffered by any person as a result of its publication.

3.2.8 Requirements for publication

Chapter V of the 2015 Press Act contains a number of requirements for publications. In brief, these are as follows:

- Article 26 requires that before any publication is published for the first time, including on a website, a copy thereof has to be submitted to both the NCC and to the prosecutor general of Burundi, together with required information signed-off by the editor such as the name, address, editor, languages, etc. of the publication.
- Article 29 requires a copy of the first edition of every publication to be provided to the national archives.

It is important to note that in terms of articles 54 and 55, a failure to comply with an obligation under the 2015 Press Act can result in the NCC issuing a warning to the media outlet or journalist concerned. Repeat violations may result in the publication being suspended or entirely prevented from publishing further; however, such a decision must be justified. Article 53 of the Press Act is interesting in that it makes provision that both the journalist and the media outlet is responsible for anything published in one of its publications. However, printers are not liable unless they fail to ensure that the editor's details appear in the publication. Article 55 provides that NCC decisions are subject to judicial review.

3.3 Legislation governing the making of films

The making of films is governed by the Press Act, Act 1/15 of 2015 (2015 Press Act). Article 43 of the 2015 Press Act provides that the NCC is responsible for authorising the making of films in Burundi. No film may be made in Burundi without such authorisation. An application to the NCC for authorisation to make the film in Burundi must contain:

- The identity of the film's director and the production house responsible for the making of the film
- The film script together with a statement regarding the subject matter and object of the film
- Proof that the film is being made by professional filmmakers
- Technical information regarding the equipment to be used.

In terms of article 44 of the 2015 Press Act, the NCC must give a decision on an application to make a film in Burundi within two months, failing which the authorisation is deemed to have been granted. A decision to refuse authorisation must be justified. The decision by the NCC is subject to judicial review.

3.4 Legislation governing the broadcast media generally

3.4.1 Legislation that regulates broadcasting generally

Generally, broadcasting in Burundi is regulated in terms of:

- The National Council of Communication Act (NCC) Act 1/18 of 2007 (NCC Act)
- The Press Act, Act 1/15 of 2015 (2015 Press Act)

- Telecommunications Regulatory Agency Decree 100/112 of 2012 (TRA Decree).

3.4.2 Establishment of the NCC

Article 1 of the NCC Act establishes the NCC as an independent administrative body. Article 14 constitutes the 15-member NCC, which performs the functions given to it under the NCC Act.

3.4.3 Main functions of the NCC

In terms of article 1 of the NCC Act, the NCC's overall function is to oversee freedom of broadcasting subject to the law, public order and good morals.

Articles 4–13 of the NCC Act set out a number of the NCC's specific functions, and these include to:

- Promote a pluralistic and diverse communications sector – article 4
- Protect public and private media from interference in its distribution of information – article 6
- Ensure access to information – article 6
- Ensure that media outlets function in accordance with their undertakings – article 6
- Ensure that the media has equitable access to media-related infrastructure particularly with regard to signal distribution, as well as to audio-visual content and to the internet – article 7
- Provide for the accreditation of broadcasting journalists – article 8
- Provide a consultative role (presumably for government as well as other relevant institutions) in respect of – article 9:
 - The quality and content of the broadcast media
 - The promotion of national culture and values
 - The training of journalists
- Make recommendations to the minister with regard to legislation pertaining to the media in general, ethics and codes of conduct for journalists – article 10, particularly:

- On media outlets active on the internet
 - Public and private broadcasting enterprises
 - Journalists
- Hold workshops for accredited journalists – article 10
 - Impose sanctions upon broadcasters in cases of dereliction of duties on their part – article 12
 - Arbitrate conflicts between broadcasters, which decisions are subject to review by a court – article 13.

In term of the 2015 Press Act, the NCC is given additional functions. These include the power to license broadcasters in terms of article 34.

3.4.4 Appointment of NCC board members

In terms of article 15 of the NCC Act, the 15 members of the NCC (who hold office for a renewable period of three years, in terms of article 18) are appointed by the president, after consultation with both vice presidents, from within the communications and media sectors. Article 14 sets out criteria for members, and members are appointed on the basis of expertise, experience and a commitment to communication, and freedom of the press, expression and opinion.

3.4.5 Funding for the NCC

Article 27 of the NCC Act provides that the funding for the NCC is derived from moneys appropriated by Parliament – in other words, funding that is specified annually in the national budget.

3.4.6 Making broadcasting-related regulations

The NCC Act is entirely silent on the making of regulations and it seems that the NCC does not have this power.

3.4.7 Licensing regime for broadcasters in Burundi

BROADCASTING LICENCE REQUIREMENT

In terms of article 34 of the 2015 Press Act, a licence issued by the NCC is required in order to provide a broadcasting service.

CATEGORIES OF BROADCASTING LICENCES

We were unable to find any statutory reference to categories of broadcasting licence other than the recognition that broadcasting includes both radio and television.

Article 39 of the 2015 Press Act makes it clear that broadcasting licences are given for an open-ended period.

BROADCASTING LICENSING PROCESS

Articles 35–37 of the 2015 Press Act set out the broadcasting licensing process. Article 37 provides that the NCC has to give a decision on a broadcast licence application within two months of the receipt of the application.

Article 35 sets out the information that must be provided by a broadcasting licence applicant and this includes:

- The identity of the owner
- The founding documentation of the company including its memorandum of incorporation and similar documentation
- The shareholding
- Details of the management and directors
- Projected income and expenses
- Sources and amount of funding required.

Article 35 sets out the evaluation criteria used by the NCC in assessing whether or not to grant an applicant a broadcast licence. These are:

- The public interest
- Whether or not the broadcasting service would contribute to the diversity of views available to the public
- The experience and expertise of the applicant in relation to broadcasting.

Article 37 deals with the information that is required by the NCC on the actual

broadcasting service to be provided. This information must include:

- The hours of broadcasting and the nature of the broadcasting service to be provided
- The coverage area
- The technical equipment that is to be used in providing the service
- The time that is to be given to advertisements and sponsored programming as part of a broadcasting service
- The type of programming to be provided
- Whether or not educational and children's programming is to be provided.

It is critical to note the provisions of article 40 of the 2015 Press Act, which give the minister the power to approach a court for an order revoking a licence issued by the NCC, where the minister is of the view that the granting of the licence was contrary to law or the public interest.

FREQUENCY SPECTRUM LICENSING

It is clear from the provisions of article 38 of the 2015 Press Act that frequency spectrum licensing for broadcasters is carried out by the Telecommunications Regulatory Agency (TRA) established under the TRA Decree, in consultation with the NCC.

3.4.8 Responsibilities of broadcasters under the NCC Act

Chapters IV–VI of the 2015 Press Act deal with the rights and duties of journalists (including broadcast journalists) and media outlets (including broadcasters). They also deal with the right of reply, correction and damages. In brief these provide:

- *Rights of journalists*
 - Article 10 gives journalists the right to have access to sources of information, to investigate and comment freely on every facet of public life. However, in doing so they must respect the laws and the rights and liberties of others.
 - Article 11 gives journalists the right to security of their person and of their equipment within Burundi.

- Article 12 gives a journalist the right to follow his or her conscience in refusing to comply with an employer's contractual requirements without losing any employment benefits.
 - Article 13 provides that a journalist has the right to join a trade union or a professional association of his or her choice.
 - Article 14 entitles a journalist to collaborate with other press organisations but this is subject to the terms of his or her employment contract.
 - Article 15 entitles a journalist to access government facilities as required to perform his or her professional functions.
 - Articles 16 recognises and guarantees the protection of a journalist's sources of information.
- *Duties of journalists*
- Article 17 provides that, in light of professional ethical requirements, a journalist is required to provide balanced information and sources of information must be rigorously verified.
- *Rights and duties of media outlets*
- Article 18 requires a media outlet to adhere to the provisions of its memorandum of incorporation and makes it liable for any violations of the 2015 Press Act.
 - Article 19 provides that the state must assist media organs which contribute to the development of the right to information.
 - Article 20 exempts media outlets from paying value added tax on the purchase of material and equipment.
 - Article 21 allows Burundian media outlets to access state subsidies as well as donations from private sources of funding.
 - Article 22 prohibits media outlets from making use of illicit sources of funds and requires all media outlets to submit annual financial statements to the NCC by 31 March.
 - Articles 41 and 42 of the 2015 Press Act provide that a radio or television broadcasting service must have an editor. The editor must be a natural adult person fully capable of exercising his or her civil and political rights, not subject to any immunity, and must meet the requirements for a practising journalist as set out in article 6 of the 2015 Press Act dealt with above.
- *Right of reply*
- Articles 45 and 46 grant any person the right to reply to information broadcast about him, her or it in that same programme.

- Article 47 contains certain requirements for making a request for a right of reply and these include giving sufficient particulars on the particular broadcast concerned.
 - Article 49 provides that a media outlet may refuse to grant a person the right of reply in certain circumstances, namely: where it is injurious or contrary to the law or good morals; where a third party is unnecessarily implicated; the complaint does not relate to the broadcast; the complaint is in a language different to that of the broadcast; and where the complaint itself is longer than the original programme.
 - Articles 48 and 50 contain a number of requirements on exactly how the right to reply is to be provided for in a programme, including with regard to the timing of the reply. Article 50 gives the right of recourse to the NCC should a complainant be unhappy in regard to the exercise of his or her right to reply.
- *Right to correction*
- Article 51 grants the right to correct factually inaccurate information broadcast only to a public authority. Article 51 provides that a media outlet must correct the information free of charge in the next broadcast.
- *Damages*
- Article 52 provides a media outlet is legally responsible for any damage suffered by any person as a result of its broadcasts.

It is important to note that in terms of articles 54 and 55, a failure to comply with an obligation under the 2015 Press Act can result in the NCC issuing a warning to the broadcaster or journalist concerned. Repeat violations may result in the broadcasting service being suspended or entirely prevented from broadcasting further; however, such a decision must be justified. Article 53 of the 2015 Press Act is interesting in that it makes provision that both the journalist and the broadcaster is responsible for anything broadcast in one of its programmes. Article 55 provides that NCC decisions are subject to judicial review.

3.4.9 Is the NCC an independent regulator?

Despite the provisions of article 1 of the NCC Act, which specifically state that the NCC is an 'independent' administrative body, the NCC cannot be said to be independent of the executive at all. It is appointed entirely by the president in consultation with the vice presidents and no multi-party body has any say in the

process. Essentially, it operates as an arm of the government. Appointments ought to be made by the president on the recommendation of the National Assembly.

Further, the National Assembly must require public nominations, and must conduct a public interview and short-listing process. Lastly, it is disappointing that the relevant statutes are silent about who makes broadcasting regulations. The NCC ought to be able to make broadcasting regulations on its own without any ministerial intervention.

3.5 Legislation governing the state broadcast media

The state broadcaster, *Radio Television National de Burundi* (RTNB), is governed by a presidential decree, the Creation of the *Radio Television National de Burundi* Decree, 100/11 of 1986 (RTNB Decree).

3.5.1 Establishment of the RTNB

Article 1 of the RTNB Decree establishes the RTNB as a public administrative institution and as a juristic person, and that with regard to its internal management processes, it is autonomous. However, as will be seen immediately below, this is not in fact the case as the RTNB actually operates under the very clear direction of the minister.

3.5.2 The RTNB's mandate

Article 4 of the RTNB Decree sets out the mission of the RTNB. In brief, this is to:

- Inform, educate and entertain the people of Burundi
- Promote a sense of national culture
- Ensure a diversity of high-quality programming that elevates the status of Burundi as a nation
- Broadcast programming that is in line with governmental objectives with regard to education, the economy and society
- Produce programming for sale or distribution to other broadcasters
- Enter into advertising contracts subject to the approval of the minister
- Ensure the appropriate broadcasting-related training of staff members

- Develop film and video production capacity.

3.5.3 Appointment of the RTNB Board

The RTNB is controlled by a board of directors. In terms of article 5 of the RTNB Decree, the RTNB Board is made up of seven directors. In terms of article 6, the directors are appointed by the president on the advice of the minister.

In terms of article 7 of the RTNB Decree, the directors hold office for a renewable period of three years. It is important to note the effect of the 1989 Amendment Decree (Decree 100/072 of 1989) which repealed the provisions of the RTNB Decree setting out the criteria for RTNB board membership. As a result of the repeal, the president now has unfettered discretion as to who is appointed.

3.5.4 Funding for the RTNB

Article 22 of the RTNB Decree sets out the allowable sources of funding for the RTNB. These are:

- State subsidies
- Advertising revenues
- Revenues from consulting
- Revenues from public events
- Any other forms of revenues
- Taxes or levies that may be instituted upon users. Note the RTNB Decree does not provide for a television licence fee as such
- Donations.

3.5.5 The RTNB: Public or state broadcaster?

It is clear that the RTNB is a state as opposed to a public broadcaster. Indeed, its very mission includes providing programming that supports government objectives and, in terms of article 28 of the RTNB Decree, the RTNB itself is openly stated to be ‘under the authority of the minister’.

Further, the entire board is appointed directly by the president with no involvement of a multi-party body such as Parliament. It is also important to note that the RTNB Board, although it is hand-picked by the executive, is not entitled to appoint the director general of the RTNB. The director general is, too, appointed directly by the president in terms of article 15 of the RTNB Decree. Indeed, in terms of articles 28–30 of the RTNB Decree, the minister is empowered to cancel, veto, revoke or

annul any decision taken by the RTNB Board. The RTNB's quarterly reports are provided to the minister in terms of article 28 of the RTNB Decree. Again, if the RTNB was a public broadcaster, it would be appropriate for it to report to a multi-party body such as the National Assembly.

3.5.6 Weaknesses in the RTNB Decree which should be amended

A number of important weaknesses ought to be addressed through legislative amendments.

- First, the RTNB ought to be an independent public broadcaster, as opposed to a state broadcaster subject to the authority of the minister.
- Appointments of RTNB board members ought to be made by the president on the recommendation of the National Assembly following a public nominations, interview and short-listing process.
- The RTNB Board ought to enjoy functional independence with regard to the operations of the RTNB, and its decision-making ought to be subject only to judicial review, as opposed to being able to be set aside at the discretion of the minister.
- The RTNB Board ought to be able to appoint and dismiss the director general of the RTNB without any involvement of the minister.
- The RTNB Decree ought to be amended to provide for the above and to provide for:
 - It being a public as opposed to a state broadcaster
 - Editorial and functional independence of the RTNB from both political and commercial interference
 - A mandate that focuses entirely on meeting the needs of the public as opposed to promoting the objectives of the government
 - The RTNB's quarterly reports, which are currently provided to the minister in terms of article 28 of the RTNB Decree, ought to be made directly to the National Assembly.

3.6 Legislation that governs broadcasting signal distribution

Broadcasting signal distribution is governed by the:

- Telecommunications Decree of 1997 (Telecommunications Decree)

- Telecommunications Regulatory Agency Decree 100/112 of 2012 (TRA Decree).

Signal distribution is the physical processes of delivering the signal from a broadcasting studio to the audience. In Burundi, signal distribution is dealt with as a telecommunications matter as it is defined as being included in the definition of telecommunications in article 1 of the Telecommunications Decree. It is clear from the provisions of article 3 of the Telecommunications Decree that the Burundian state has an effective monopoly in respect of telecommunications infrastructure installation in Burundi, including signal distribution towers and the like. However, article 3 does enable the state to permit other persons to do so too, on a sub-contracting basis. What is less clear is whether or not a private person may apply to the TRA for a licence to engage in such telecommunication infrastructure development and provisioning.

3.7 Legislation governing the state newsgathering agency

The state newsgathering agency is the *Agence Burundaise de Presse* (ABP) which is governed by Decree 100/092 of 1990 (ABP Decree).

3.7.1 Establishment of the Burundi Press Agency

Article 1 of the ABP Decree states that the ABP is a state administrative body with juristic personality and which is autonomous. However, it is under the authority of the minister.

3.7.2 The ABP's mandate

Article 2 of the ABP Decree provides that the ABP's mission is to:

- Gather information in an objective manner
- Cooperate with other press agencies internationally
- Provide information gathered by the agency to any other person, subject to the payment of a fee.

3.7.3 The ABP's governing structures

Articles 4–9 of the ABP Decree deal with the governing structures of the ABP. In brief these provide the following:

- The ABP is governed by a director assisted by three deputies – the ABP directorate – responsible for the day to day operations of the ABP.

- The ABP also has a board of directors responsible for:
 - Overall strategic direction
 - Developing the annual budget
 - General oversight of the organisation
 - Setting out internal rules and regulations of the ABP.

- Those responsible for the ABP, namely the ABP directorate and the board of directors, are all appointed by the president on the advice of the minister. Members of the directorate or the board are required to have ‘a specific set of skills’ but these are not specified.

It is also important to note that the annual report of the ABP is presented to the minister, in terms of article 12 of the ABP Decree, and not to a multi-party body such as the National Assembly.

3.7.4 Funding for the ABP

In terms of article 13 of the ABP Decree, the ABP is funded through a range of sources, including:

- State subsidies
- Monies received from the sale of information
- Monies received from assistance provided to other media outlets.

3.8 Legislation that undermines a journalist’s duty to protect sources

A journalist’s sources are the life-blood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often be prepared to provide critical information only if they are confident that their identities will remain confidential and will be respected and protected by a journalist. This is particularly true of so-called whistleblowers – inside sources that are able to provide journalists with information regarding illegal activities, whether by company or government personnel.

Consequently, democratic countries often provide special protection for journalists’ sources. It is recognised that without such protection, information that the public needs to know would not be given to journalists.

❖ The 2013 Press Act, Act 1/11 of 2013

Article 20 of the 2013 Press Act provides that journalists are required to reveal their sources in court proceedings where:

- Crimes against state security have been committed – article 20(1)
- Crimes against public order have been committed – article 20(2)
- Crimes against national defence have been committed – article 20(3)
- Crimes against the moral or physical wellbeing of one or more persons have been committed – article 20(4).

❖ **The 2015 Press Act, Act 1/15 of 2015**

The 2015 Press Act is unusual in that article 16 thereof guarantees the rights of journalists to protect their sources. However, it is not clear as to whether or not this statutory right is respected and protected in practice. Further, it is also clear that given the general nature of this right, article 16 of the 2015 Press Act does not repeal article 20 of the 2013 Press Act.

❖ **Criminal Procedure Act, Act 1/10 of 2013**

The Criminal Procedure Act was enacted in 2013. At least one provision of the Criminal Procedure Code might be used to compel a journalist to reveal confidential sources. Article 79 of the Criminal Procedure Act empowers the prosecuting authority of Burundi or a court to issue a summons to any person requiring his or her attendance before the authority or court. Failure to comply with such a summons can result in a period of imprisonment or the payment of a fine or both in terms of article 189 of the Criminal Procedure Act.

❖ **The Penal Code, Act 1/05 of 2009**

The Penal Code sets out a range of criminal offences in Burundi and is, effectively, the codification of criminal law in Burundi. Most of its articles do not affect the media. However, there are some that do.

Article 250 of the Penal Code prohibits a journalist from revealing confidential sources of information unless required to do so in court proceedings. The penalty is a period of imprisonment or a fine. We note this provision because of its inherent recognition of the need for journalists to protect their sources.

Clearly, article 20 of the 2013 Press Act and article 79 of the Criminal Procedure Act might well conflict with a journalist's ethical obligation to protect his or her sources. However, it is important to note that whether or not requiring a journalist to reveal a source is in fact an unconstitutional violation of the right to freedom of expression will be dependent on the particular circumstances in each case, particularly on whether the information is available from any other source. Consequently, it is extremely difficult to state that these provisions by themselves violate the right to freedom of expression under the Constitution.

3.9 Legislation that prohibits the publication of certain kinds of information

A number of statutes contain provisions which, looked at closely, undermine the public's right to receive information and the media's right to publish information, namely:

- The Press Act, Act 1/025 of 2003
- The Press Act, Act 1/11 of 2013
- The Penal Code, Act 1/05 of 2009.

These statutes are targeted and prohibit the publication of certain kinds of information, including:

- Prohibition of publications relating to legal proceedings held in camera
- Prohibition of publications relating to legal proceedings – prejudice to investigations
- Prohibition of publications relating to legal proceedings involving minors
- Prohibition of publications relating to legal proceedings that undermine the presumption of innocence
- Prohibition of publications relating to legal proceedings that would identify victims of rape
- Prohibition of publications relating to legal proceedings that constitute commentary with the intention of influencing the testimony of witnesses
- Prohibition of publications that constitute incitement
- Prohibition of publications that constitute enemy propaganda in times of war
- Prohibition of publications containing secret information regarding military operations
- Prohibition of publications containing secret information regarding national defence
- Prohibition of publications containing secret information regarding diplomatic activity

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- Prohibition of publications containing secret information regarding scientific research
 - Prohibition of publications containing secret information regarding judicial commissions
 - Prohibition of publications that undermine national unity
 - Prohibition of publications that undermine national sovereignty
 - Prohibition of publications that undermine public order or public safety
 - Prohibition of publications that discredit the Republic of Burundi internationally
 - Prohibition of publications that undermine the Burundian economy
 - Prohibition of publications that undermine the Burundian currency
 - Prohibition of publications that justify criminal conduct
 - Prohibition of publications that may lead to blackmail
 - Prohibition of publications that may lead to fraud
 - Prohibition of publications that incite ethnic or racial hatred
 - Prohibition of publications that insult the president
 - Prohibition of publications that are defamatory
 - Prohibition of publications that undermine personal dignity and honour
 - Prohibition of publications that are offensive and injurious
 - Prohibition of publications that undermine the private life of another, including regarding medical records and personal confidential information
 - Prohibition of publications that constitute an abuse of the right to freedom of expression
 - Prohibition of publications that undermine public morality and good morals

- Prohibition of publications that expose minors to obscene or shocking images
- Prohibition of publications that do not correctly identify the author or printer.

3.9.1 Prohibition of publications relating to legal proceedings held in camera

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of reportage of judicial proceedings held in camera and provides that the punishment is a period of imprisonment and a fine.

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(k) of the 2013 Press Act effectively prohibits the publication or broadcast of information relating to ‘legal proceedings held in camera’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.2 Prohibition of publications relating to legal proceedings – prejudice to investigations

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in

force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act. Article 19(d) of the 2013 Press Act effectively prohibits the publication or broadcast of information relating to legal proceedings and that ‘undermines judicial investigations prior to the court hearing’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.3 Prohibition of publications relating to legal proceedings involving minors

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of reportage of judicial proceedings involving minors and provides that the punishment is a period of imprisonment and a fine.

3.9.4 Prohibition of publications relating to legal proceedings that undermine the presumption of innocence

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 18(g) of the 2013 Press Act prohibits the publication or broadcast of information that ‘undermines the presumption of innocence’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.5 Prohibition of publications relating to legal proceedings that would identify victims of rape

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(l) of the 2013 Press Act prohibits the publication or broadcast of information that would ‘identify victims of rape’. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.6 Prohibition of publications relating to legal proceedings that constitute commentary with the intention of influencing the testimony of witnesses

❖ The Penal Code, Act 1/05 of 2009

The Penal Code sets out a range of criminal offences in Burundi and is, effectively, the codification of criminal law in the country. Most of its articles do not affect the media. However, there are some that do.

Article 405 of the Penal Code prohibits ‘the publication and broadcasting of commentary with the intention of influencing the testimony of witnesses during a trial’. The penalty is a period of imprisonment or a fine.

3.9.7 Prohibition of publications that constitute incitement

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of ‘incitement to civil

disobedience’ (note that the words ‘incitement to civil disobedience’ are not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ **The Press Act, Act 1/11 of 2013**

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(f) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘incites the public to revolt, civil disobedience and to unauthorised public protest’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.8 Prohibition of publications that constitute enemy propaganda in times of war

❖ **The Press Act, Act 1/025 of 2003**

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of ‘propaganda in time of war’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ **The Press Act, Act 1/11 of 2013**

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(h) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘constitutes enemy propaganda in times of war’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.9 Prohibition of publications containing secret information regarding military operations

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of ‘secret information regarding military operations’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(j) of the 2013 Press Act effectively prohibits the publication or broadcast of ‘secret information regarding military operations’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.10 Prohibition of publications containing secret information regarding national defence

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect.

Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of ‘secret information regarding national defence’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ **The Press Act, Act 1/11 of 2013**

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(a) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘reveal[s] national defence secrets’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.11 Prohibition of publications containing secret information regarding diplomatic activity

❖ **The Press Act, Act 1/025 of 2003**

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of ‘secret information regarding diplomatic activity’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

3.9.12 Prohibition of publications containing secret information regarding scientific research

❖ **The Press Act, Act 1/025 of 2003**

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier

provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of ‘secret information regarding scientific research’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

3.9.13 Prohibition of publications containing secret information regarding judicial commissions

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of ‘secret information regarding judicial commissions’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

3.9.14 Prohibition of publications that undermine national unity

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 18(a) of the 2013 Press Act prohibits the publication or broadcast of information that ‘undermines national unity’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.15 Prohibition of publications that undermine national sovereignty

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 18(e) of the 2013 Press Act prohibits the publication or broadcast of information that ‘undermines national sovereignty’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.16 Prohibition of publications that undermine public order or public safety

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 18(b) of the 2013 Press Act prohibits the publication or broadcast of information that ‘undermines public order or public safety’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.17 Prohibition of publications that discredit the Republic of Burundi internationally

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits publications that ‘discredit the Republic of Burundi internationally’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

3.9.18 Prohibition of publications that undermine the Burundian economy

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(i) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘undermines the Burundian economy’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.19 Prohibition of publications that undermine the Burundian currency

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(b) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘undermines the national currency’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.20 Prohibition of publications that justify criminal conduct

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect.

Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits publications that ‘justify criminal conduct’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ **The Press Act, Act 1/11 of 2013**

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(f) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘justifies criminal conduct’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.21 Prohibition of publications that may lead to blackmail

❖ **The Press Act, Act 1/025 of 2003**

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits publications that ‘may lead to blackmail’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ **The Press Act, Act 1/11 of 2013**

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is

important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(f) of the 2013 Press Act effectively prohibits the publication or broadcast of information ‘that may lead to blackmail’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.22 Prohibition of publications that may lead to fraud

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits publications that ‘may lead to fraud’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(f) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘may lead to fraud’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.23 Prohibition of publications that incite ethnic or racial hatred

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier

provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits publications that ‘incite ethnic or racial hatred’ (note that this is not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

❖ **The Press Act, Act 1/11 of 2013**

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(f) of the 2013 Press Act effectively prohibits the publication or broadcast of information that ‘incites ethnic or racial hatred’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.24 Prohibition of publications that insult the president

❖ **The Press Act, Act 1/025 of 2003**

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of information that is ‘offensive and injurious to the president’ (note that the words ‘offensive and injurious’ are not defined in the 2003 Press Act) and that punishment is a period of imprisonment and a fine.

❖ **The Press Act, Act 1/11 of 2013**

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The

legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(e) of the 2013 Press Act effectively prohibits the publication or broadcast of information that is ‘offensive and injurious to the President’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.25 Prohibition of publications that are defamatory

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of any writing or words that are ‘defamatory’ (note that the word ‘defamatory’ is not defined in the 2003 Press Act) and the punishment is a period of imprisonment and a fine.

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(g) of the 2013 Press Act effectively prohibits the publication or broadcast of information that is ‘defamatory’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.26 Prohibition of publications that undermine personal dignity and honour

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 18(d) of the 2013 Press Act prohibits the publication or broadcast of information that ‘undermines personal dignity and honour’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.27 Prohibition of publications that are offensive and injurious

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 50 of the 2003 Press Act prohibits the publication of any writing or words that are ‘offensive and injurious to any public figure or private person’ (note that the words ‘offensive and injurious’ are not defined in the 2003 Press Act) and that the punishment is a period of imprisonment and a fine.

3.9.28 Prohibition of publications that undermine the private life of another, including regarding medical records and personal confidential information

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 18(f) of the 2013 Press Act prohibits the publication or broadcast of information that ‘undermines the private life of another’. Note that this is not defined. Further, article 19(c) of the 2013 Press Act also effectively prohibits the publication or broadcast of information that reveals medical records and confidential personal documents. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.29 Prohibition of publications that constitute an abuse of the right to freedom of expression

❖ The Press Act, Act 1/025 of 2003

The 2003 Press Act is different from the later versions, namely the 2013 and 2015 Press Acts. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2003 Press Act which are still in force notwithstanding the later iterations of the Press Act, namely the 2013 and 2015 Press Acts.

Article 45 of the 2003 Press Act provides for the notion of an ‘offence by the press’. This is defined as being ‘the abuse of the right to freedom of expression’. However, it is important to note that there are no sanctions provisions in the 2003 Press Act and therefore enforcement is extremely problematic.

3.9.30 Prohibition of publications that undermine public morality and good morals

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 18(c) of the 2013 Press Act prohibits the publication or broadcast of information that ‘undermines public morality and good morals’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.31 Prohibition of publications that expose minors to obscene or shocking images

❖ The Press Act, Act 1/11 of 2013

The 2013 Press Act is different from the later version, namely the 2015 Press Act. The legal system in Burundi operates in such a way that if an earlier provision in a statute is not specifically amended or repealed by a later law on the same subject then the original provisions continue to be of full force and effect. Consequently, it is important to note that there are provisions of the 2013 Press Act which are still in force notwithstanding the later iteration of the Press Act, namely the 2015 Press Act.

Article 19(m) of the 2013 Press Act prohibits the publication or broadcast of information that ‘expose[s] children to obscene or shocking images’. Note that this is not defined. Article 58 of the 2013 Press Act prescribes the relevant sanction and it is the suspension or withdrawal of accreditation but only after three warnings.

3.9.32 Prohibition of publications that do not correctly identify the author or printer

❖ The Penal Code, Act 1/05 of 2009

The Penal Code sets out a range of criminal offences in Burundi and is, effectively, the codification of criminal law in the country. Most of its articles do not affect the media. However, there are some that do.

Article 385 of the Penal Code prohibits the publication and distribution of a publication that fails to accurately identify the author or printer thereof. The penalty is a period of imprisonment or a fine.

3.10 Legislation that specifically assists the media in performing its functions

In countries that are committed to democracy, governments pass legislation which specifically promotes accountability and transparency of both public and private institutions. Such statutes, while not specifically designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest.

We have not been provided with any legislation that can be said to assist the media apart from certain general and ostensibly pro-media provisions in the 2015 Press Act and the NCC Act that are dealt with under the provisions of statutes that regulate the print or broadcast media above.

4 REGULATIONS AFFECTING THE MEDIA

Regulations are subordinate legislation. They are legal rules that are made in terms of a statute. Regulations are legal mechanisms for allowing a body other than parliament to make legally binding rules governing an industry or sector, without needing parliament to pass a specific statute thereon. Often regulations are made by the regulator of a particular sector or by the minister in charge of a particular ministry of the executive. We were not provided with any regulations of relevance to the minister.

5 MEDIA SELF-REGULATION

In this section you will learn:

- What self-regulation is
- Key self-regulatory provisions intended to govern the media in Burundi, including the establishment of the Observatory of the Press in Burundi and its functions

5.1 Definition of self-regulation

Self-regulation is a form of regulation that is established voluntarily. A grouping or body establishes its own mechanisms for regulation and enforcement that are not imposed, for example, in a statute or regulation. Media bodies often introduce self-regulation in the form of codes of media ethics and good governance.

5.2 The Observatory of the Press in Burundi

The Observatory of the Press in Burundi (OPB) was officially launched in October 2014 as a self-regulatory body for journalists and media owners, according to the preamble of its founding constitution. The OPB was established as a non-profit organisation in terms of article 1. Its objectives, according to article 4 of its founding constitution, are to:

- Promote and defend press freedom
- Ensure that its code of ethics is respected by the media
- Protect the public's right to the free flow of accurate information
- Raise awareness of, and train journalists in, the ethics of the profession
- Act as a self-regulatory tribunal
- Recognise examples of high professional conduct
- Ensure the security of journalists in performing their functions
- Conduct workshops and seminars on media-related topics

- Mediate disputes between journalists and their employers
- Monitor the development of the media in Burundi.

In performing its functions, the OPB is guided solely by the code of ethics which it developed for the press, in terms of article 5 of its founding constitution. In brief, the OPB's code of ethics deals with, among other things, the obligations and rights of journalists:

■ *Obligations of journalists*

- To respect human dignity
- To avoid hate speech
- To avoid obscenity
- To avoid the identification of minors in sexual offences cases
- To avoid the identification of victims in sexual offences cases without their consent
- To avoid publicising images of violence without due justification
- To avoid publishing information that is false, insulting, defamatory, a misrepresentation of the facts
- To retain responsibility for all his/her writings including those that are not bylined in the publication
- To ensure that the title does not misrepresent the content of the article
- To make a clear distinction between reporting and commentary
- In relation to reporting, to stick to the basic factual enquiries of who, what, where, when, how and why
- To defend freedom of expression, information, and balanced reporting as well as the freedom to receive gather and distribute information that is verifiable in relation to credible sources
- To not associate him- or herself with advertising material
- To not commit plagiarism
- To not accept financial reward for crafting a story in a particular way
- To in no way act as a public relations practitioner or propagandist
- To in no way utilise underhand or unfair practices in order to obtain information unless this is specifically required in the public interest
- To not entrap sources to reveal information by failing to reveal his/her own identity or occupation
- To not act contrary to his/her professional requirements
- To rectify inaccurate reporting immediately upon becoming aware thereof
- To conduct him- or herself in a manner consistent with building the solidarity of the media profession and to avoid acting in any way that undermines the profession

- To accept the jurisdiction of the OPB as a tribunal of peers
 - To utilise the OPB as the primary source of mediation in disputes between journalists and their employers
 - To refrain from reporting on matters in which there is a conflict of interest.
- *Rights of journalists*
- To have unfettered access to all sources of information in the exercise of his/her profession and to freely investigate all facts relating to public life
 - To confidentiality, particularly in regard to sources
 - To act in accordance with the precepts of his/her conscience in relation to carrying out instructions of his/her employers without prejudice to his/her employment benefits
 - To be secure in relation to his/her personal safety and dignity and the safety of his/her professional equipment
 - To join or form a trade union
 - To collaborate with other media houses that are not competitors to his/her employer, and subject to the terms of his/her employment agreement
 - To enjoy basic employment rights including with respect to salary and other benefits in his/her employment.

In terms of article 29 of its founding constitution, the OPB is funded through membership fees paid by journalists and media houses as well as donations and other revenues generated by its own activities.

Unfortunately, the OPB's founding constitution is entirely silent on disciplinary procedures and sanctions that can be imposed with respect to violations of its code of ethics. This is problematic because the effectiveness of self-regulation and the public's faith in self-regulation is only as good as the ability of the self-regulatory body to enforce compliance with its codes of conduct such as the OPB's code of ethics. It is also noteworthy that the OPB's website²³ has not been updated for over a year and that it is not clear if it remains as effective as it appears to have been in the past.

6 CASE LAW AND THE MEDIA

Burundi's court and jurisprudential system is based on Belgian civil codes and customary law. Consequently, the case law is not as strictly based on precedent, as is the case in common law systems (usually found in former British colonies).

Case law in Burundi certainly affects the media and working journalists. However,

accessing Burundian case law is extremely difficult and we have not been provided with any judgments.

NOTES

- 1 <http://data.un.org/CountryProfile.aspx?crName=burundi>, last accessed 2 August 2016.
- 2 <http://mgafrica.com/article/2016-05-01-burundi-battered-by-year-long-crisis-it-has-now-fallen-to-the-poorest-nation-in-the-world>, last accessed on 9 July 2016.
- 3 https://www.wcl.american.edu/humright/center/rwanda/documents/Jigsaw1_History.pdf, last accessed 8 July 2016.
- 4 Harris M. Lentz (ed), *Heads of States and Governments Since 1945*. Routledge, 2014.
- 5 Paul Robert Bartrop, *A Biographical Encyclopedia of Contemporary Genocide*. ABC-CLIO, 2012.
- 6 <http://www.nytimes.com/1987/09/04/world/burundi-s-president-is-ousted-by-army.html>, last accessed 13 July 2016.
- 7 <http://assiangency.com/who-is-major-pierre-buyoya-in-burundian-politics/>, last accessed 13 July 2016.
- 8 <http://www.bbc.com/news/world-africa-13085064>, last accessed 1 August 2016.
- 9 www.nytimes.com/1994/04/07/obituaries/cyprien-ntaryamira-39-tried-to-end-burundi-s-strife.html, last accessed 29 July 2016.
- 10 www.revolvy.com/main/index.php?s=Pierre%20Buyoya&item_type=topic, last accessed 29 July 2016.
- 11 www.theguardian.com/world/2015/jul/24/burundi-pierre-nkurunziza-wins-third-term-disputed-election, last accessed 29 July 2016.
- 12 <http://reliefweb.int/report/burundi/presidential-elections-21-july-2015-preliminary-statement-27-july-2015>, last accessed 10 July 2016.
- 13 www.aljazeera.com/news/2015/12/burundi-president-threatens-fight-au-peacekeepers-151230102845333.html, last accessed 29 July 2016.
- 14 <http://mgafrica.com/article/2016-05-01-burundi-battered-by-year-long-crisis-it-has-now-fallen-to-the-poorest-nation-in-the-world>, last accessed on 9 July 2016 and www.nation.co.ke/news/africa/Burundi-economy-on-the-ropes-amid-political-crisis/-/1066/3184854/-/bdd4wxz/-/index.html, last accessed 10 July 2016.
- 15 <http://www.nation.co.ke/news/africa/Burundi-economy-on-the-ropes-amid-political-crisis/-/1066/3184854/-/bdd4wxz/-/index.html>, last accessed 10 July 2016.
- 16 <https://www.cia.gov/library/publications/the-world-factbook/geos/by.html>, last accessed 10 July 2016.
- 17 <http://www.ruralpovertyportal.org/country/home/tags/burundi>, last accessed 10 July 2016.
- 18 http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf, last accessed 10 July 2016.
- 19 www.internetworldstats.com/africa.htm, last accessed 13 July 2016.
- 20 http://www.burundiembassy-germany.de/index.php?en_people-religion-language, last accessed 2 August 2016.
- 21 The author is paraphrasing the title of the articles here as they are untitled in the Constitution. For ease of finding one's way around the issues covered we have highlighted what the main theme of the article is in each case.
- 22 See, for example, A. Niyonkuru, 'The Independence of the Judiciary vis-à-vis the Executive', and sources cited therein. Available at <http://www.hamann-legal.de/upload/7Aime-Parfait.pdf>, last accessed 11 July 2016.
- 23 <http://www.opb-burundi.org/>, last accessed 28 July 2016.

