



ANTI-CORRUPTION, STOLEN ASSET RECOVERY AND CIVIL SOCIETY IN BURUNDI

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KEY MESSAGES

- While Burundi continues to develop its legal framework for the fight against corruption, setbacks and gaps in specific anti-corruption laws remain.
- Issues which require urgent attention are the existence of several specialized anti-corruption institutions, the absence of a specific law on asset recovery, and the need to strengthen the capacity of state bodies to fight corruption.
- In the absence of a special law on asset recovery, the process is governed by the law on the fight against money laundering and the financing of terrorism and Burundian law does not allow for the execution of foreign confiscation orders or the confiscation of the proceeds of crime of foreign origin.
- Due to a difficult operational environment and a lack of NGO capacity, there has been only limited cooperation between civil society and lawmakers on new laws to curtail corruption and illicit financial flows.

Paper prepared by Ella Ndikumana and Lucia Cizmaziova (CiFAR), and reviewed by Jackson Oldfield (CiFAR), Karin Mwaita (EACSOE), and Oloo Adhiambo (EACSOE). The authors have made reasonable steps to ensure that the content is accurate.

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ANTI-CORRUPTION OVERVIEW

According to Transparency International's 2020 Corruption Perception Index,¹ Burundi occupies 165th place, with a score of 19 out of 100, indicating high levels of perceived corruption. Out of 49 countries assessed in sub-Saharan Africa, Burundi is at 46th place, receiving the third-lowest score. These results show that while the political speeches of Burundian leaders proclaim zero tolerance for corruption,² and enthusiasm for reform at least in a fraction of the ruling political party exists, political will is not being implemented. As a consequence, Burundi remains among the most corrupt countries worldwide.

Burundi has no consistent and updated national anti-corruption strategy and only fragmented anti-corruption laws and political commitments to fight corruption. At the international and regional levels, Burundi has ratified the United Nations Convention against Corruption³ and the African Union Convention on Prevention and Fight against Corruption.⁴

Burundi adopted a law on Measures for the Prevention and Suppression of Corruption and Related Offenses in 2006,⁵ which is one of the main laws implementing the provisions of the anti-corruption conventions. Its purpose is to prevent and punish corruption and related offenses committed by officials in public and private service bodies and non-governmental organizations. This law establishes the institutional framework, in particular the Special Anti-Corruption Brigade, created for the implementation of the national policy against corruption and related corruption offenses, as well as the organization and jurisdiction of the Anti-Corruption Court. The law further sets out the positions for which asset declarations are required and includes measures relating to the prevention and suppression of corruption

and related offenses.

A number of shortcomings and loopholes have been identified in the law, particularly with regard to the protection of whistleblowers, the recovery of assets, and asset declarations. Further, while senior public officials are required to declare their assets by the law, assets are not being declared in practice.⁶

After the establishment of the Transitional Government resulting from the Arusha Peace and Reconciliation Agreement in Burundi, a ministry responsible for good governance was established in 2005.⁷ This ministry has however ceased to exist following the change in government in 2020.

Currently, there are several institutions for the prevention and fight against corruption in the country: the Court of Auditors, the General Inspectorate of the State, the Burundian Revenue Office, the Anti-Corruption Special Brigade, the General Prosecutor's Office, the Anti-Corruption Court, the Public Prosecutor's Office of the Republic, and the Supreme Court.

- The **Court of Auditors**, as an external and independent auditor, ensures the proper management of public accounts, and is mandated to prevent errors in the management of public finances.
- The **General Inspectorate of the State** is a higher control and inspection institution, focusing on the functioning and management of public services, state institutions, autonomous public bodies, public enterprises, and associations subject to its control.
- The **Burundian Revenue Office** has a mandate, among other things, to

establish, administer, and oversee the accounts of the Finance Ministry. Public Prosecutor's Office oversees the work of public prosecutors, who may be assigned to various departments within the Office, the judiciary, and other parts of the public administration.⁸

A special role in the fight against corruption in Burundi has been played by three institutions:

- the Special Anti-Corruption Brigade,
- the General Prosecutor's Office, and
- the Anti-Corruption Court.

All three institutions were established by the 2006 Anti-corruption Law, which in Articles 3-28 provides for their organization and competence. On April 28, 2021, however, a draft organic law⁹ reassigning the powers of these three institutions was analysed and adopted by the National Assembly of Burundi.

During oral questions to the National Assembly, the Minister of Justice said that this law will determine a new approach of the government in the fight against corruption and that by restructuring and decentralising the institutions responsible for the fight against corruption and related offenses, it will bring anti-corruption criminal justice closer to citizens and companies.¹⁰ This law, adopted unanimously by the members of the parliament, therefore abolishes the Anti-Corruption Court and sends cases to the High Courts and the Courts of Appeal. Moreover, the Special Anti-Corruption Brigade's investigative mandate will now fall to a specialized anti-corruption unit created within the judicial police, with the aim of increasing the effectiveness of investigations.

According to the opinions of civil society leaders engaged in the fight against corruption in Burundi,¹¹ while the initial objective of the anti-corruption law was the fight against illicit enrichment, money laundering, misuse of private assets, and other financial crimes, the recent amendment of the law raises concerns. Instead of suppressing anti-corruption bodies, the anti-corruption law should rather be revised with the aim of making the institutions more efficient and useful for the benefit of the citizens.

ASSET RECOVERY IN BURUNDI

Burundi does not have a special law on asset recovery. The applicable legal framework is the law on the fight against money laundering and the financing of terrorism.¹² To this end, the National Financial Intelligence Unit¹³ has been set up to prevent money laundering. It is an administrative unit with a legal personality and is placed under the supervision of the Ministry of Finance.

Regarding the prevention and detection of transfers of the proceeds of crime, Article 4 of the Law on Combating Money Laundering and Terrorist Financing provides for the obligation to verify the identity of clients for all transactions. Furthermore, according to Article 5 of this law, financial institutions must exercise increased vigilance when entering into relationships with politically exposed persons. However, the law does not extend the obligation of increased supervision to family members or close associates of such a politically exposed person. Nor does it provide for measures to identify the beneficial owners of funds deposited in large accounts.

When it comes to international asset recovery, a gap exists in the legislation on the confiscation of criminal proceeds in foreign jurisdictions. Burundian law does not allow for the execution of foreign confiscation orders for assets located in Burundi, nor for the confiscation of the proceeds of crime of foreign origin linked to money laundering offenses and other offenses established by the United Nations Convention Against Corruption (UNCAC). Moreover, Burundi does not have a non-conviction-based forfeiture law.

Burundi currently also does not regulate the restitution and disposal of assets. Article 62 of the Penal Code provides that confiscated property shall in principle vest in the State. However, bona fide third parties retain their legally acquired rights to the property. Damages are calculated according to a particular method detailed in the internal regulations of the courts and tribunals.

Burundi relies on the UNCAC to allow the deduction of reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposal of confiscated property.

BIGGEST CORRUPTION CASES AND ASSET RECOVERY PROGRESS

There is very little information available on the cases of misappropriation of public assets and the efforts of Burundian authorities to recover them. There are no consistent, regularly published statistics available online via government institutions. Only some isolated instances of aggregate data publicised in the media exist.

For example, in 2017, decisions of Anti-Corruption Court¹⁴ in cases of embezzlement of public funds that included an order to return these funds to the State amounted to BIF 3,280,357,789 (approx. USD 1,6 million). From this sum, an amount of BIF 357,053,852 (approx. USD 176,000) had been successfully recovered. The recovery rate for that year was thus 11%. In the first half of 2018, the joint efforts of the Anti-Corruption Court and the General Prosecutor's Office have been said to lead to the recovery of over BIF 980 million (approx. USD 500,000). According to Burundian civil society, such low recovery numbers point to the lack of skills as well as a limited mandate of these institutions.¹⁵

One of the few recent publicised corruption cases concerns four individuals who have been in detention for embezzling funds from the Mugamba commune in Bururi province since March 2021.¹⁶ Some of these individuals were caught with false books of receipts intended for the collection of communal taxes worth BIF four million (approx. USD 2000). According to the communal authority, the case is being investigated and attempts are underway to uncover this network and arrest all persons involved in the embezzlement. A similar case appeared in 2020 in the same municipality, when the administrator and accountant were arrested and detained for

having diverted municipal taxes on green tea leaves. However, the municipality has not yet recovered the funds.¹⁷

Due to a lack of legislation, there do not seem to have been any cases of a successful international asset recovery. The Stolen Asset Recovery Initiative (StAR) Database of cross-border corruption cases with asset recovery element does not mention any cases related to Burundi.

REGIONAL AND INTERNATIONAL INSTITUTIONAL ENGAGEMENT

In addition to the ratification of the UNCAC and African Union Convention, Burundi is a member of the Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA) and of the Network of National Anti-Corruption Institutions in Central Africa (RINAC). The country is also an observer with the Southern African Inter-Institutional Network for Asset Recovery (ARINSA). Furthermore, Burundi is also a member of the East African Association of Anticorruption Authorities (EAAACA). All these networks provide opportunities for law enforcement officers from Burundi to share experiences and good practices with

members from other countries. Network members also receive training according to their areas of expertise, for example, the International Centre for Asset Recovery (ICAR) supported ARIN-EA members in gaining new knowledge on financial investigation and asset recovery.¹⁸

Burundi is an observer jurisdiction to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). Burundi is not on the list of FATF monitored jurisdictions and has not participated in a mutual evaluation reporting process.

CIVIL SOCIETY ENGAGEMENT IN ASSET RECOVERY

While the situation for civil society in Burundi has improved in the last two years and several NGOs have resumed their operations, civil society still faces considerable restrictions on and surveillance of their activities.¹⁹ On the policy level, CSOs have been active, for example, around asset declarations of politicians. However, due to the difficult operational environment and a low capacity of NGOs, there has been only a limited cooperation of civil society with lawmakers on establishing new laws to curtail corruption and illicit financial flows.

OPERATIONAL FRAMEWORKS FOR CIVIL SOCIETY

In Burundi, civil society organizations are governed by a law on non-profit associations, which provides ample room for discretion and abuse from public officials

due to its vague approval procedure.²⁰ After the political and economic crises in 2015 following election disputes, a number of organisations were banned and some of their members imprisoned.²¹

With the new political leadership declaring a fight against corruption, there might be a window of opportunity to make progress in tackling corruption. However, since Burundian civil society, academia and journalists have faced opposition, they rely heavily on support and resources from international partners. As international NGOs have also experienced restrictions on their activities in the past²² and many of the international and multilateral organisations present focus their attention primarily towards the government,²³ civil society is currently receiving only limited support from international partners to engage in conversations with the government.

EXPERT ANALYSIS, ADVOCACY, AND CAMPAIGNING

Due to the difficult operating environment, anti-corruption NGOs work predominantly on public awareness campaigns in the areas of good governance, corruption and consumer rights linked to corruption in the private sector. Despite this, civil society has been vocal on the shortcomings in the government's approach to the fight against corruption, including related to the need to increase institutional efforts to recover stolen assets.²⁴

While capacity, capability, and civic space to openly conduct public campaigns on the issues of illicit financial flows and corruption are limited, there are some signs of improvement. This year, PARCEM, one of the leading anti-corruption organisations previously active in the country has been allowed to operate again. This decision lifted a nearly two-year ban on their activities, imposed after they conducted an awareness campaign on issues the country was facing, such as malaria and food insecurity.²⁵

Engagement between the government and civil society has been made difficult by low levels of trust, after years of civil society being portrayed as an enemy. Moreover, some cases of assassinations and assassination attempts of politicians have occurred,²⁶ making government officials cautious of attending bigger meetings or gatherings with activists and the public. Therefore, there are few opportunities for civil society actors and others to participate in policymaking.

However, after the change in the president in 2020, a new window of opportunity is being seen for civil society to resume its work which has stalled for the past five years. Several pressing anti-corruption challenges exist in the country, and civil

society could drive the setting of the agenda for change, including on asset recovery. Regional channels of engagement could be especially effective to move forward anti-corruption legislation, for example via the African Parliamentarian's Network Against Corruption (APNAC), which has acted as an effective coordination body in the past.²⁷

INVESTIGATIVE JOURNALISM

After a new president and a leader of the ruling party Ndayishimiye took to power in 2020, he took steps to fulfil his promises of improving the economic and political landscape, including curbing corruption and opening Burundi up. While the situation has improved in a number of areas, including the mentioned lift of sanctions on the activity of some good governance organisations, accounts of other arrests have emerged. Similarly to civil society activists, some journalists have been pardoned by the new president, while others still face prosecution and intimidation.²⁸

Even though the constitution guarantees freedom of expression, in practice it is severely curtailed. The government has used laws governing the work of NGOs and the media to control their reporting and activities, for example through the requirement that journalists have permission to carry out their work in municipalities and to publish certain stories about developments in the country. This applies to both, local and international media, with organisations such as the British Broadcasting Corporation also being put under a suspension order. As a consequence, the majority of news is controlled by and aligned with the government, including TV and radio stations, and the only daily newspaper in the country.²⁹

Burundi has not yet adopted a law on access to information, which makes any anti-corruption and investigative work more challenging. Importantly, even though the new administration has been less hostile to the media, stark surveillance and monitoring of media activities still make independent investigative work impossible. Therefore, investigative and independent journalists tend to operate outside of the country.³⁰

CONCLUSION AND RECOMMENDATIONS

Levels of corruption in Burundi continue to be extremely high, which is reflected in the placement of the country at the bottom of anti-corruption indexes. While Burundi continues to develop its institutional and legislative framework for the fight against corruption, setbacks and gaps in specific anti-corruption laws remain, such as the absence of an obligation on institutions to exercise increased financial due diligence of family members and close associates of politically exposed persons. Also lacking is legislation that would allow for non-conviction-based forfeiture, as well as for the confiscation of the proceeds of crime of foreign origin linked to money laundering offences.

The new leadership of the country that assumed power two years ago promised concentrated action on corruption but is yet to develop a coherent anti-corruption strategy. While the lifting of sanctions on the activity of some anti-corruption activists and journalists should be applauded, civil society still faces considerable obstacles to their work. Moreover, the recent abolition of the Anti-Corruption Court by parliament, as well as restricted media freedom and the lack of an access to information law, are all challenges in truly tackling corruption and recovering stolen assets.

Burundi needs to urgently put the declared political will to fight corruption into practice and collaborate with all societal actors in the process. Based on the findings of our desk-based research and interviews with CSO representatives conducted by CiFAR, and bearing in mind the current operational environment, this research offers several policy recommendations where the efforts of government and civil society should be

concentrated:

- Establish a national **anti-corruption strategy** which will identify current gaps in addressing corruption and asset recovery, as well as the path to successfully overcoming them.
- **Revise existing anti-corruption legislation** in accordance with international conventions, including reviewing the recent decision to abolish several specialized anti-corruption institutions.
- Adopt a **specific law on asset recovery** in accordance with international standards.
- Adopt a **law on access to information** to enhance government openness, citizen engagement and cooperation with the civil society.
- Strengthen **relations and information exchange between government and CSOs** in the fight against corruption.

Civil society is well placed to resume its work, which has stalled in past years due to operational challenges, and to drive an agenda for change, including on asset recovery.

Areas where the role of civil society fighting the misappropriation of public funds can be particularly strengthened and supported are:

- Support **capacity building of civil society organizations on asset recovery** so that they can more effectively engage the public and the government on this issue. This should include knowledge on their

role in supporting the asset recovery process, as well as strategies to advocate for transparency and accountability in asset recovery.

- Support to **CSO-led campaigning** and awareness-raising about the importance and possibilities of monitoring the return of stolen assets to strengthen the overall governance environment.
- Enhance promising **regional cooperation channels** for civil society, as well as inter-sectoral spaces for civil society and government, which provide space for regional learning and coordination. In a situation when the legislative coordination across the region is likely to continue to expand, the effectiveness of bodies such as the African Parliamentarian's Network Against Corruption (APNAC) and the East African Legislative Assembly could be especially effective to move forward anti-corruption legislation.
- Push for the **adoption of national and regional laws and standards** that provide for an enabling operating environment for CSOs.
- Support and facilitate CSOs to **gain knowledge and capacity** to engage in policy discussions with government officials.
- Support **implementation of legislation and effective dialogue between CSOs, private sector and government** on corruption and the recovery of stolen assets.

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