

REPUBLIC OF BURUNDI  
CONSTITUTIONAL COURT

RCCB 303

*Republic of Burundi*

*The Constitutional Court renders the following Judgement*

*On behalf of the People of Burundi:*

THE CONSTITUTIONAL COURT OF BURUNDI, SITTING IN BUJUMBURA  
IN THE MATTER OF THE INTERPRETATION OF THE CONSTITUTION,  
RENDERS THE FOLLOWING JUDGEMENT:

Considering the Motion dated 17 April 2015 filed by 14 senators with the President of the Constitutional Court and received at the Court Registry on 28 April 2015 in which the senators requested the interpretation of Articles 96 and 302 of the Constitution of 18 March 2005 by the said Court;

Considering the registration of the Motion at the Registry of the Court on 28 April 2015 as Motion No. RCCB 303;

Considering the report of a member of the Court;

Considering the Court's analysis of the Motion at its session held on 30 April 2015;

1. Regarding the lawfulness of the Motion

Considering that the Motion was filed by 14 senators requesting the interpretation of Articles 96 and 302 of the Constitution;

Considering that the modalities of the referral of the matter relating to the interpretation of the Constitution are provided for in Articles 228 (3) of Law No 1/010 of 18 March 2005 promulgating the Constitution of Burundi;

Considering that paragraph 3 of the Article provides that the Constitutional Court is competent to



Interpret the Constitution, at the request of the President of the Republic, of the President of the National Assembly, of the President of the Senate, of one quarter of the Deputies or of one quarter of the Senators;

Considering that the matter was brought before the Court by 14 of the 41 senators;

Considering that one quarter of the senators is estimated to be 11 senators;

That consequently, the number of senators who filed the Motion meets the requirement of Article 228 (3) of Law No.1/010 of 18 March 2005;

Considering that the matter of the referral of the case to the Constitutional Court is also enshrined in Articles 4 and 5 of Law No. 1/03 of 11 January 2007 amending some of the provisions of Law No.1/018 of 19 December 2002 on the organization and operations of the Constitutional Court as well as the procedure applicable before it;

Considering that, pursuant to Article 5 of Law No. 1/03 of 11 January 2007 amending some of the provisions of Law No.1/018 of 19 December 2002 on the organization and operations of the Constitutional Court as well as the procedure applicable before it, the Applicants notified the authorities mentioned in Article 4 of that same Law of the matter they had brought before the Court.

Considering that they also submitted a joint letter to the Court as required by Article 6 of the above-cited Law;

That in the light of the above, the Court finds the referral legitimate.

## 2. Regarding the competence of the Court:

Considering that the matter brought before the Court by the Applicants is a matter relating to the interpretation of the Constitution;

Considering that Article 228(3) of the Constitution stipulates that the Constitutional Court is competent to interpret the Constitution;

That consequently, the Constitutional Court is competent to examine the Motion brought before it.



### 3. Regarding the admissibility of the Motion

Considering that Article 230(1) of its Constitution provides that “The Constitutional Court is referred to [a matter] by one-quarter of the members of the Senate;”

Considering that the Applicants are undeniably members of the Senate who have submitted the matter relating to the interpretation of the provisions of the Constitution in conformity with the provision of Article 228 of the said Constitution;

That, consequently, the Motion is admissible.

### 4. Regarding the interpretation of Articles 96 and 302 of the Constitution

Considering that the Applicants are requesting the interpretation of Articles 96 and 302 of the Constitution;

Considering that Article 96 reads as follows: “The President of the Republic is elected by direct universal suffrage for five years renewable once;”

Considering that Article 302 reads as follows: “Exceptionally, the first President of the Republic of the post-transition period is elected by the [elected] National Assembly and the elected Senate meeting in Congress, with a majority of two-thirds of the members. If this majority is not obtained on the first two ballots, it immediately proceeds to other ballots until a candidate obtains the suffrage equal to two-thirds of the members of the Parliament.

In the case of vacancy of the first President of the Republic of the post-transition period, his successor is elected according to the same modalities specified in the preceding paragraph. The President elected for the first post-transition period may not dissolve the Parliament;”

In order to analyze the provisions for which interpretation is being sought, there is need to, first of all, remember the background against which and when they were drafted.

Although it may not be difficult to interpret the letter of Article 96, the same cannot be said of Article 302. The word “exceptionally” casts doubt on the real intentions of the drafters of the Constitution.



In order to understand the spirit of the Constitution, it is useful to first, understand the document which mostly inspired the drafters of the 2005 Constitution.

To establish the intention of the drafters, one may examine the documents which inspired the Burundian drafters and therefore, special attention will be given to the Arusha Peace and Reconciliation Agreement for Burundi, a genuine, unavoidable and indispensable document from which the inspiration was drawn by the Burundian Constitution drafters.

That it was not only the Arusha Peace and Reconciliation Agreement that the drafters drew inspiration from.

That other documents, particularly, the Burundi Charter of National Unity Referendum, 1991, inspired the Burundian drafters but never became supra constitutional.

Additionally, it is useful to recall that the Arusha Peace and Reconciliation Agreement underwent a juridification process in order to make it part of the national legal system by a vote in Parliament on Law No. 1/017 of 1 December 2000 on the Adoption of the Arusha Peace and Reconciliation Agreement for Burundi.

Considering, consequently, that the interpretation of the provisions in question will require trying to establish what the lawmakers had in mind when they were drafting the fundamental law of 2005.

Considering that, though the Arusha Peace and Reconciliation Agreement is not supra constitutional, it is nonetheless the Constitution's bedrock particularly the sections relating to constitutional principles.

That whosoever violates the main constitutional principles of the Arusha Agreement cannot claim to respect the Constitution.

That even the matter relating to the exercise of presidential powers enshrined in Protocol II of the Arusha Agreement is clear on this issue.



Considering that the negotiators indeed wanted to prevent any president serving more than two terms as enshrined in Chapter 1, Article 7, Protocol II of the Arusha Peace and Reconciliation Agreement for Burundi relating to the constitutional principles of the Post-Transition Constitution.

Considering that drawing inspiration from the Arusha Peace and Reconciliation Agreement:

- a. The Constitution provides that save for the very first election of a President, the President of the Republic shall be elected by direct universal suffrage ...
  - b. ....
  - c. For the first election, to be held during the transition period, the President shall be indirectly elected as specified in article 20, paragraph 10 below
3. She/he shall be elected for a term of five years, renewable only once. No one may serve more than two presidential terms.

Considering that a reading of the Article above clearly shows that the intention of the Arusha Agreement negotiators was to limit the number of terms to two and they simply wanted to make a distinction between the forms of election as Burundians were not yet enjoying peace as mentioned in the Explanatory Commentary on Protocol II.

Considering that specifically regarding Article 7(1) of Chapter 1 on constitutional principles, the Electoral Commission noted that no agreement was reached on the form of presidential election as political alternation of the presidency had been deemed unachievable and democratically untenable or had even been considered to be a source of instability.

Considering therefore that, the proposals were mutually exclusive for, on the one hand, were some actors wanting the President of the Republic to be elected by the National Assembly or by the Senate, and, on the other, were those in favour of a universal direct suffrage conferring on the president elected in this manner an extremely popular and very legitimate mandate.

That faced with such a situation, the Electoral Commission came up with a compromise solution, that given the political context prevailing in Burundi and,



in an effort to gradually bring political life back to normal, it was absolutely necessary to avoid fresh elections at the end of the transition and, by so doing, seek widespread support for the first president whose first priority would be to stabilize the political situation.

Considering that it must be stated that the drafters of the 2005 constitution erroneously interpreted the Arusha Agreement recommendation.

Considering that since, rather than objecting to the form of election enshrined in Article 96 as the Agreements had wanted, Article 302 of the Constitution, given where it appears in the Constitution- under “Provisions for the First Post Transition Period”- and the vagueness of the word “exceptionally” appears to be independent of Article 96 of the same Constitution thereby creating a completely exceptional and special mandate which is unrelated to Article 96.

Considering that the application of Article 302 will also delay limiting the number of presidential terms by universal direct suffrage provided for in Article 96.

Moreover, that the idea is in conformity with Article 190 of the Electoral Code of April 2005 voted just one month after the promulgation of the Constitution which is similar to Article 302 of the Constitution as it states that it is the exception to the principles enshrined in Article 186 of the electoral Code of 2005 which is also similar to Article 96 of the Constitution.

That though the Arusha Peace and Reconciliation Agreement had recommended that no President serves two terms, the vague nature of Article 302 of the Constitution made a third term possible for a president who headed the first post-transition period.

Considering that in their Motion, the Applicants requested the Court to interpret Articles 96 and 302 of the Constitution and state if a renewal once of the term of the current president is in conformity with the Constitution.

Considering that Article 302., for its part, came up with a special universal indirect suffrage mandate and had nothing to do with the mandate provided for in Article 96.



Considering that as stated above, the spirit and the letter of Arusha Peace and Reconciliation Agreements must be respected and that no president can serve more than two terms, the president elected under Article 302 of the current constitution may renew his term once by universal direct suffrage without violating the Constitution.

## FOR ALL THESE REASONS

The Court

Considering the Constitution of the Republic of Burundi, in particular, Articles 96 and 203;

Considering Law No. 1/03 of 11 January 2007 on the amendments of some of the provisions of Law No. 1/018 of 19 December 2002 on the organization and operations of the Constitutional Court as well as the procedure applicable before it, in particular, Articles 4, 1, 5 and 6

Ruling on the Motion of the 14 Senators, after deliberations

- 1) Finds the motion valid
- 2) Finds that the Court has competence to rule on the Motion on the interpretation of Articles 95 and 302 of the Constitution
- 3) Finds the Motion admissible
- 4) Rules that Article 96 means that the number of direct universal suffrage terms is limited to only two and that Article 302 creates a special indirect universal suffrage term which has nothing to do with the terms described in Article 96.
- 5) Rules that the renewal, for at least one last time, of the current presidential term for five years is not contrary to the Constitution of the Republic of Burundi.

Judgement rendered on 4 May 2015 in Bujumbura by Charles Ndagijimana,



President of the Court, Sylvere Nimpagaritse, Vice President, Salvator Ntibazonkiza, Benoit Simbarakiye, Pascal Niyongabo, Aimée-Laurentine Kanyana and Claudine Karenzo, members, assisted by Béatrice Nahimana, Registrar.

President of the Court,

Charles Ndagijimana [signed]

Salvator Ntibazonkiza [signed]

Benoit Simbarakiye [signed]

Vice President

Sylvere Nimpagaritse [signed]

Pascal Niyongabo [signed]

Registrar

Béatrice Nahimana [signed]

Aimée-Laurentine Kanyana  
[signed]

Claudine Karenzo [signed]

