

ARUSHA PEACE AND RECONCILIATION AGREEMENT FOR BURUNDI

We, the representatives of:

- The Government of the Republic of Burundi,
- The National Assembly,
- The *Alliance Burundo-Africaine pour le Salut* (ABASA),
- The *Alliance Nationale pour le Droit et le Développement* (ANADDE),
- The *Alliance des Vaillants* (AV-INTWARI),
- The *Conseil National pour la Défense de la Démocratie* (CNDD),
- The *Front pour la Démocratie au Burundi* (FRODEBU),
- The *Front pour la Libération Nationale* (FROLINA),
- The *Parti Socialiste et Panafricaniste* (INKINZO),
- The *Parti pour la Libération du Peuple Hutu* (PALIPEHUTU),
- The *Parti pour le Redressement National* (PARENA),
- The *Parti Indépendant des Travailleurs* (PIT),
- The *Parti Libéral* (PL),
- The *Parti du Peuple* (PP),
- The *Parti pour la Réconciliation du Peuple* (PRP),
- The *Parti Social-Démocrate* (PSD),
- The *Ralliement pour la Démocratie et le Développement Economique et Social* (RADDES),
- The *Rassemblement du Peuple Burundais* (RPB) and
- The *Union pour le Progrès National* (UPRONA),

Hereinafter referred to as "the Parties",

Considering the rounds of talks held in Mwanza in 1996,

Having participated in the negotiations held in Arusha pursuant to the Declaration by the Participants in the Burundi Peace Negotiations involving all the Parties of the Burundi Conflict signed at Arusha on 21 June 1998 ("the Declaration of 21 June 1998") under the facilitation of the late Mwalimu Julius Kambarage Nyerere, and subsequently of Mr. Nelson Rolihlahla Mandela, on

behalf of the States of the Great Lakes region and the international community,

Expressing our deep appreciation for the persistent efforts of the Facilitators, the late Mwalimu Julius Kambarage Nyerere and Mr. Nelson Rolihlahla Mandela, the States of the Great Lakes region and the international community with a view to assisting the people of Burundi to return to peace and stability,

Determined to put aside our differences in all their manifestations in order to promote the factors that are common to us and which unite us, and to work together for the realization of the higher interests of the people of Burundi,

Aware of the fact that peace, stability, justice, the rule of law, national reconciliation, unity and development are the major aspirations of the people of Burundi,

Reaffirming our unwavering determination to put an end to the root causes underlying the recurrent state of violence, bloodshed, insecurity, political instability, genocide and exclusion which is inflicting severe hardships and suffering on the people of Burundi, and seriously hampers the prospects for economic development and the attainment of equality and social justice in our country,

Reaffirming our commitment to shape a political order and a system of government inspired by the realities of our country and founded on the values of justice, democracy, good governance, pluralism, respect for the fundamental rights and freedoms of the individual, unity, solidarity, mutual understanding, tolerance and cooperation among the different ethnic groups within our society,

In the presence of:

- Jean-Baptiste Bagaza and Sylvestre Ntibantunganya, former Presidents of Burundi.
- The representatives of Burundian civil society and women's organizations and Burundian religious leaders,
- H. E. Mr. Nelson Rolihlahla Mandela, Facilitator,
- H. E. General Gnassingbé Eyadéma. President of the Republic of Togo and current Chairman of the Organization of African Unity,
- H. E. Yoweri Kaguta Museveni, President of the Republic of Uganda,
- H. E. Daniel T. arap Moi, President of the Republic of Kenya,
- H. E. Benjamin William Mkapa, President of the United Republic of Tanzania,
- H. E. Frederick J. T. Chiluba, President of the Republic of Zambia,
- H. E. Major-General Paul Kagame, President of the Republic of Rwanda,
- H. E. Laurent Désiré Kabila, President of the Democratic Republic of the Congo,
- H. E. Meles Zenawi, Prime Minister of the Republic of Ethiopia,
- H. E. Mr. Kofi Annan, Secretary-General of the United Nations,
- H. E. Dr. Salim Ahmed Salim, Secretary-General of the Organization of African Unity,
- Hon. Charles Josselin, Minister of Cooperation of the French Republic, representing the European Union,
- H. E. Dr. Boutros Boutros Ghali, Secretary-General of the International Organization of la Francophonie, and
- Mr. Joseph Waryoba Butiku, Executive Director of the Mwalimu Nyerere Foundation,

Do hereby resolve and commit ourselves to be bound by the provisions of the Arusha Peace and Reconciliation Agreement for Burundi, hereinafter referred to as "the Agreement".

Article 1

The Parties accept as binding the following Protocols and Annexes thereto, which form an integral part of the Arusha Peace and Reconciliation Agreement for Burundi:

	Protocol I:	Nature of the conflict, problems of genocide and exclusion and their solutions;
II:	Protocol	Democracy and good governance;
III:	Protocol	Peace and security for all;
IV:	Protocol	Reconstruction and development;
V:	Protocol	Guarantees on the implementation of the Agreement.

ANNEXES

Annex I:	Pledge by participating parties;
Annex II:	Structure of the National Police Force;
Annex III:	Ceasefire agreement;
Annex IV:	Report of Committee IV;
Annex V:	Implementation timetable.

2. The Parties, recognizing the need to provide in the Agreement for contingencies unforeseen at the time that the protocols were finalized, agree that the provisions of the

Agreement over-ride any contrary provisions within the protocols, and further agree as follows.

- a. Where the Protocols of the Agreement contemplates that decision was to be taken by the Parties at the time of signature of the Agreement, and such matters or decisions have not been so taken at the date of signature of the Agreement, they shall be taken by the signatory parties, with or without the assistance of the Facilitator, within 30 days of signature.
- b. Any provision of the Agreement or the protocols may be amended as provided for in article 20 of Protocol II or, pending the establishment of the Transitional National Assembly, with the consent of nine-tenths of the Parties;
- c. Pending the negotiation and agreement of a comprehensive cease-fire agreement with the armed wings of non-signatory parties, Chapter III of Protocol III to the Agreement shall not come into effect; following the conclusion of the ceasefire agreement, it shall be deemed to be amended so as to be consistent with the provisions thereof.

Members of the parties to the Burundi Peace Negotiations in Arusha which do not sign the Agreement shall not be entitled to participate or hold office in the transitional Government or the transitional Legislature unless such parties are admitted as participating parties in accordance with article 14 of Protocol II to the Agreement with the consent of four-fifths of the Parties.

Article 2

1. The Parties acknowledge the need for the Agreement to be accompanied by and to be a condition for lasting peace and a cessation of violence in Burundi.

2. The Parties accordingly call upon armed wings of non-signatory parties to suspend hostilities and violent actions immediately, and invite such non-signatory parties to participate in or engage in serious negotiations towards a cease-fire. The Parties agree that in addition to this public invitation included herein, they will as a priority take all reasonable and necessary steps to invite such Parties to participate in cease-fire negotiations.
3. The Parties pledge that in the event of belligerent parties spurning or refusing such an invitation and continuing their belligerent activities against the people of Burundi, or any section of them, the violent acts of such parties will be deemed to be constitute an attack on all the Parties comprising this national platform of the Burundian people, as well as on this endeavour to establish an inclusive democratic Burundian state. In such an event the Parties agree to call collectively, through the appropriate agencies including the Implementation Monitoring Committee, upon the Governments of neighbouring States, the international agencies which are guarantors of the Agreement and other appropriate national and international bodies to take the necessary steps to prohibit, demobilize, disarm, and if necessary arrest, detain and repatriate, members of such armed groups, and further to take such steps as are appropriate against any Party which encourages or supports such activities.

Article 3

The Parties commit themselves to refrain from any act or behaviour contrary to the provisions of the Agreement, and to spare no effort to ensure that the said provisions are respected and implemented in their letter and spirit in order to ensure the attainment of genuine unity, reconciliation, lasting peace, security for all, solid democracy and on equitable sharing of resources in Burundi.

Article 4

The Agreement shall be signed by the Parties. The Facilitator, the President of the Republic of Uganda as the Chairman of the Regional Peace Initiative on Burundi, the President of the Republic of Kenya as the region's elder statesman and the President of the United Republic of Tanzania as the host, and the representatives of

the United Nations, the Organization of African Unity, the European Union and the Mwalimu Nyerere Foundation shall also affix their signatures hereto as witnesses and as an expression of their moral support for the peace process.

Article 5

The Agreement shall enter into force on the date of its signature.

Article 6

All of the final documents shall be drawn up in English, French and Kirundi. The English and French texts be equally authentic. The French text, being the original, shall be deposited with the Secretary-General of the United Nations, the Secretary-General of the Organization of African Unity and the Government of Burundi, and certified true copies thereof shall be transmitted by the Government to all Parties.

Signed in Arusha on the 28th day of the month of August 2000.

SIGNATORY PARTIES

For the **Government of Burundi**

Name of Representative: Mr. Ambroise NIYONSABA

Title: Minister for the Peace Process

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For the **National Assembly**

Name of Representative: Hon. Léonce NGENDAKUMANA

Title: Speaker of the National Assembly

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For **ABASA**

Name of the Party's representative: Amb. T rence NSANZE

Title: Chairman

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For **ANADDE**

Name of the Party's representative: Prof. Patrice NSABABAGANWA

Title: Chairman

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For **AV-INTWARI**

Name of the Party's representative: Prof. Andr  NKUNDIKIJE

Title: Chairman

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For **CNDD**

Name of the Party's representative: Mr. Leonard NYANGOMA

Title: Chairman

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For **FRODEBU**

Name of the Party's representative: Dr. Jean MINANI

Title: Chairman

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For **FROLINA**

Name of the Party's representative: Mr. Joseph KARUMBA

Title: Chairman

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For **INKINZO**

Name of the Party's representative: Dr. Alphose RUGAMBARARA

Title: Chairman

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For **PALIPEHUTU**

Name of the Party's representative: Dr. Étienne KARATASI

Title: Chairman

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For **PARENA**

Name of the Party's representative: H. E. Jean-Baptiste BAGAZA

Title: Chairman

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For **PIT**

Name of the Party's representative: Prof. Nicéphore NDIRURUKUNDO

Title: Chairman

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For **PL**

Name of the Party's representative: Mr. Gaëtan NIKOBAMYE

Title: Chairman

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For **PP**

Name of the Party's representative: Mr. Shadrack NIYONKURU

Title: Chairman

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For **PRP**

Name of the Party's representative: Mr. Mathias HITIMANA

Title: Chairman

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For **PSD**

Name of the Party's representative: Mr. Godefroy HAKIZIMANA

Title: Chairman

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For **RADES**

Name of the Party's representative: Mr. Joseph NZEYIMANA

Title: Chairman

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For **RPB**

Name of the Party's representative: Mr. Balthazar BIGIRIMANA

Title: Chairman

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For **UPRONA**

Name of the Party's representative: Mr. Lib??re BARARUNYERETSE

Title: Chairman

COSIGNATORIES

H. E. Mr. Nelson Rolilhalha Mandela, Facilitator;

H. E. Yoweri Kaguta Muscveni, President of the Republic of
Uganda,

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H. E. Daniel T. arap Moi, President of the Republic of Kenya,

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H. E. Benjamin William Mkapa, President of the United Republic of
Tanzania

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H. E. Mr. Kofi Annan, Secretary-General of the United Nations,

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H. E. Dr. Salim Ahmed Salim, Secretary-General of the
Organization of African Unity,

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Hon. Charles Josselin, Minister of Cooperation of the French
Republic, representing the European Union,

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Mr. Joseph Waryoba Butiku, Executive Director of the Mwalimu
Nyerere Foundation

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PROTOCOL II

DEMOCRACY AND GOOD GOVERNANCE

PREAMBLE

We, the Parties,

Aware of the vital need to promote lasting peace in Burundi and to
put an end to the conflict, division and suffering inflicted on the
Burundian people,

Reaffirming our commitment to a democratic system of
government, inspired by the realities of our country, that guarantees
security and justice for all, and is founded on the values of unity
without exclusion,

Have agreed:

1. To ensure that a constitutional text for the people of Burundi is drafted during the transition period that is in conformity with the principles set forth in Chapter I of the present Protocol, and to ensure that such a text is adopted and brought into force in accordance with the time-frames and procedures herein, in conformity with a vision of democracy and good governance and the principles listed hereunder.
2. To provide for a transition period that is in conformity with the transitional arrangements set forth in Chapter II of the present Protocol.
3. To give effect, within the designated time limits, to the obligations set forth in this and other protocols with regard to the establishment of the transitional institutions.

CHAPTER I

CONSTITUTIONAL PRINCIPLES OF THE POST-TRANSITION CONSTITUTION

Article 1

Fundamental values

1. All Burundians are equal in value and dignity. All citizens are entitled to equal rights and to equal protection of the law. No Burundian shall be excluded from the social, economic or political life of the nation on account of her/his race, language, religion, gender, or ethnic origin.
2. All Burundians are entitled to live in Burundi in security and peace, and must live in harmony with one another while respecting one another's dignity and tolerating one another's differences.
3. Government shall be based on the will of the Burundian people, shall be accountable to them, and shall respect their fundamental rights and freedoms.
4. The Government of Burundi shall be so structured as to ensure that all Burundians are represented in and by it; that there is equal opportunity to serve in it; that all citizens have access to

government services; and that the decisions and actions of government enjoy the widest possible level of support.

5. The task of government shall be to realize the aspirations of the Burundian people, and in particular to heal the divisions of the past, to improve the quality of life of all Burundians, and to ensure that all Burundians are able to live in Burundi free from fear, discrimination, disease and hunger.
6. The function of the political system shall be to unite, reassure and reconcile all Burundians while ensuring that the Government is able to serve the people of Burundi, who are its source of power and authority. In its functioning the Government shall respect the separation of powers, the rule of law, and the principles of good governance and transparency in the management of public affairs.

Article 2

General principles

1. Burundi shall be a sovereign independent nation, united but respecting its ethnic and religious diversity and recognizing the Bahutu, the Batutsi and the Batwa, who make up the one nation of Burundi.
2. The national territory of Burundi shall be inalienable and indivisible subject to the provisions of the Constitution. Its frontiers shall be those recognized by international law.
3. Burundi shall be divided into provinces, communes and *collines* or zones, and such other subdivisions as are provided for by law. Their organization and operation shall be determined by the Constitution and by law.
4. The National Assembly shall take a decision regarding the status and revival of the monarchy, and any party peacefully promoting the restoration of the monarchy shall be allowed to function.
5. The national language of Burundi shall be Kirundi. The official languages shall be Kirundi and any other languages decided upon by the National Assembly.

Article 3

Charter of Fundamental Rights

1. The rights and duties proclaimed and guaranteed *inter alia* by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African

Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights shall not be limited or derogated from, except in justifiable circumstances acceptable in international law and set forth in the Constitution.

2. All citizens shall have rights and obligations.
3. Human dignity shall be respected and protected.
4. All women and men shall be equal. No one may be discriminated against, *inter alia*, on grounds of origin, race, ethnicity, gender, colour, language, social situation, or religious, philosophical or political convictions, or by reason of a physical or mental handicap. All citizens shall enjoy equal protection of the law, as well as equal treatment under the law.
5. No person shall be arbitrarily dealt with by the State or its organs.
6. All women and men shall have the right to life.
7. All women and men shall have the right to personal freedom, including to physical and mental integrity, and to freedom of movement. Torture and any other kind of cruel, inhuman, degrading treatment or punishment shall be prohibited. Everyone shall have the right to be free from violence from either public or private sources.
8. No one shall be held in slavery or servitude. Slavery and the slave trade shall be prohibited in all their forms.
9. The State shall to the extent possible ensure that all citizens have the means to lead an existence consistent with human dignity.
10. All women and men shall have the right to respect for their private and family life, residence and personal communications.
11. There shall be freedom of marriage, including the right to choose one's partner. Marriage shall be entered into only with the free and full consent of the intending spouses.
12. The family, as the fundamental unit of society, shall be entitled to protection by society and the State.
13. Freedom of expression and of the media shall be guaranteed. The State shall respect freedom of religion, belief, conscience and opinion.
14. Freedom of assembly and association shall be guaranteed, as shall freedom to form non-profit-making associations or organizations in conformity with the law.

15. All Burundian citizens shall have the right to move and settle freely anywhere in the national territory, as well as to leave it and return to it.
16. No one shall be arbitrarily deprived of her/his nationality or denied the right to change it.
17. No one may be denied access to basic education. The State shall organize public education, and shall develop and promote access to secondary and post-secondary education.
18. The State shall ensure the good management and utilization of the nation's natural resources on a sustainable basis, conserving such resources for future generations.
19. Property rights shall be guaranteed for all women and men. Compensation that is fair and equitable under the circumstances shall be payable in case of expropriation, which shall be allowed only in the public interest and in accordance with a law which shall also set forth the basis of compensation.
20. The right to form and join trade unions and to strike shall be recognized. The law may regulate the exercise of these rights and prohibit certain categories of persons from going on strike.
21. Everyone shall have the right, in judicial or administrative proceedings, for her/his case to be dealt with equitably and decided within a reasonable time limit. Everyone shall have the right to due process and a fair trial.
22. No one may be deprived of her/his liberty other than in conformity with the law.
23. The State shall be under an obligation to promote the development of the country, especially rural development.
24. Each individual shall have the duty to respect and show consideration for her/his fellow citizens without any discrimination.
25. All citizens shall be required to discharge their civic obligations, and to defend their homeland.
26. Every child shall have the right to special measures to protect or promote her/his care, welfare, health and physical security, and to be protected from maltreatment, abuse or exploitation.
27. No child shall be used directly in armed conflict, and children shall be protected in times of armed conflict.
28. No child shall be detained except as a measure of last resort, in which case the child may be detained only for the shortest appropriate period of time and shall have the right to be kept separately from detained persons over the age of 16 years and to be treated in a manner, and kept in conditions, that take account of her/his age.
29. Any restriction of a fundamental right must have a legal basis; it must be justified by the public interest or by the protection of

another person's fundamental right; it must be proportional to the objective pursued.

30. Fundamental rights must be respected throughout the legal, administrative and institutional order. The Constitution shall be the supreme law and must be upheld by the Legislature, the Executive and the Judiciary. Any law that is not in conformity with the Constitution shall be invalid.

Article 4

Political parties

1. The multiparty system shall be recognized in the Republic of Burundi.
2. Political parties may be formed freely in conformity with the law.
3. A political party shall be a non-profit association uniting citizens around a democratic blueprint for society founded on national unity, and having a political programme with precise objectives dictated by the desire to serve the public interest and ensure the development of all citizens.
4. Political parties must comply with democratic principles in their organization and functioning, be open to all Burundians and be national in character and leadership, and shall not promote ethnic, regional or religious violence and hatred.
5. Political parties - and coalitions of political parties - shall promote the free expression of suffrage and shall participate in political life by peaceful means.
6. For the purposes of promoting democracy, a national law may authorize the financing of political parties on an equitable basis in proportion to the number of seats they hold in the National Assembly. Such financing may apply both to the functioning of the political parties and to electoral campaigns, and shall be transparent. The law shall define the types of subsidies, benefits and facilities that the State may grant political parties.
7. Registration of political parties shall fall within the competence of the Ministry of the Interior.
8. The law shall guarantee non-interference by the public authorities in the internal functioning of political parties, save for such restrictions as may be necessary for the prevention of ethnic hatred and the maintenance of public order.
9. Political parties may form coalitions during elections in accordance with the electoral law.

Article 5
Elections

1. The right to vote shall be guaranteed.
2. Elections shall be free, fair and regular in accordance with the electoral law and the law governing political parties.
3. Elections shall be organized impartially at the national, commune and *colline* levels and at other levels prescribed by the Constitution or by law.
4. Until amended in accordance with the post-transition Constitution, the rules relating to the electoral system shall be the same as those governing the elections for institutions at the national, commune and *colline* levels to be held during the transition period.
5. An Independent National Electoral Commission constituted in conformity with the provisions of article 20 of the present Protocol shall guarantee the freedom, impartiality and independence of the electoral process.

Article 6
The Legislature

1. Legislative power shall be exercised by the National Assembly and, where specified herein, by the National Assembly and the Senate. A law adopted by a legislative body or bodies may only be amended by the same body or bodies.
2. The number of members of the National Assembly shall be specified in the Constitution, and in the first instance shall be 100. The Constitution may allow for the number of members to be determined in accordance with a designated ratio per number of inhabitants or by setting an absolute number.
3. The National Assembly shall pass legislation, oversee the actions of the Government and exercise all other functions assigned to it by the Constitution. The National Assembly shall be responsible for approving the national budget. This provision shall not preclude the submission of matters for popular approval by way of referendum.
4. A Court of Audit responsible for examining and certifying the accounts of all public services shall be established and organized by law. Its composition shall be specified in the post-transition Constitution. It shall be given the resources required for the

performance of its duties. Administrative departments shall not withhold their co-operation from the Court of Audit. The Court of Audit shall submit to the National Assembly a report on the regularity of the general account of the State, and shall also ascertain whether public funds have been spent in accordance with the proper procedures and in accordance with the budget approved by the National Assembly.

5. The Constitution may not be amended except with the support of a **four-fifths** majority in the National Assembly and a **two-thirds** majority in the Senate.
6. Organic laws may not be amended except by a **three-fifths** majority in the National Assembly and with the approval of the Senate.
7. Members of the National Assembly and the Senate may not be prosecuted, made the subject of a warrant, arrested, detained or subjected to a penalty for acts performed as a member of the National Assembly or of the Senate.
8. Any criminal case involving a person holding political office shall be referred to a Chamber of the Supreme Court, and in the event of conviction, any appeal shall be receivable by the Chambers of the Supreme Court sitting together.
9. During sessions, a member of the National Assembly or the Senate may be prosecuted in respect of acts other than those referred to in paragraph 7 above only with the authorization of the National Assembly or the Senate, as the case may be.
10. The mechanisms for replacing members of the National Assembly or the Senate in the event of the vacancy of a seat shall be determined by law.
11. The National Assembly and the Senate shall adopt the rules of procedure governing their respective organization and functioning and the election of their bureaux. The post-transition Constitution must specify the duties of the bureaux, when the National Assembly shall convene for the first time and who shall preside at the initial meeting. The National Assembly's Bureau shall have a multiparty character, while the Senate's Bureau shall be of a multi-ethnic character.
12. The compensation and benefits regime, as well as the incompatibility regime, for members of the National Assembly and of the Senate shall be established by law.
13. The opposition parties within the National Assembly shall participate by right in parliamentary commissions, whether sectoral or of inquiry.
14. There shall be a Senate having the functions set forth herein, and such other functions as are allocated to it in the Constitution or in any law. The Senate shall comprise two delegates from each province. They shall be elected by an Electoral College comprising

members of the commune councils in the province in question, shall be from different ethnic communities and shall be elected in separate ballots.

15. A former president shall be entitled to sit in the Senate. The Senate may co-opt up to three members of the Batwa group so as to ensure representation of this community.
16. The Senate shall have the following functions:
 - a. To approve constitutional amendments and organic laws, including laws governing the electoral process;
 - b. To receive the report of the Ombudsperson on any aspect of the public administration;
 - c. To conduct inquiries into the public administration and where necessary recommend action, to ensure that no region or group is excluded from the delivery of public services;
 - d. To monitor compliance with those prescripts of the Constitution requiring representativeness or balance in the composition of any part of the public service, including the defence and security forces;
 - e. To advise the President and the National Assembly on any matter, including legislation;
 - f. To monitor compliance with the present Protocol;
 - g. To comment on or suggest amendments to legislation adopted by the National Assembly, as well as to initiate and introduce bills for consideration by the National Assembly;
 - h. To approve laws dealing with the boundaries, functions and powers of provinces, communes and *collines*.
17. The Senate shall approve solely the following appointments:
 - a. The heads of the defence forces, the police and the intelligence service;
 - b. The provincial governors appointed by the President of the Republic;
 - c. The Ombudsperson;
 - d. The members of the Judicial Service Commission;
 - e. The members of the Supreme Court;
 - f. The members of the Constitutional Court;
 - g. The Principal State Prosecutor and members of the National Department of Public Prosecutions;
 - h. The presidents of the Court of Appeal and the Administrative Court;
 - i. The principal State Prosecutor in the Court of Appeal;
 - j. The presidents of the Court of First Instance, the Commercial Court and the Labour Court;
 - k. The State Prosecutors.

18. The Senate shall ensure that commune councils in general reflect the ethnic diversity of their constituencies; if the composition of any Commune Council does not do so, it may order the co-optation of persons by the Commune Council from an underrepresented ethnic group to that Council, provided that no more than **one-fifth** of the Council may consist of such co-opted persons. The persons to be co-opted shall be identified by the Senate from a list of names supplied to it by the Commune Council or by any *colline* chief within the commune.
19. Where the Senate proposes amendments to laws other than those in respect of which its consent is necessary, the National Assembly must consider those proposed amendments, and may if it so chooses give effect to them, before referring the bill to the President for his formal assent.
20. Members of the National Assembly and of the Senate shall have the right to debate the Government's actions and policies.
21. The Constitution shall grant the Senate the powers and resources necessary to perform its functions.

Article 7

The Executive

1.
 - a. The Constitution shall provide that, save for the very first election of a President, the President of the Republic shall be elected by direct universal suffrage in which each elector may vote for only one candidate. The President of the Republic shall be elected by an absolute majority of the votes cast. If this majority is not obtained in the first round, a second round shall follow within 15 days.
 - b. Only the two candidates who have received the greatest number of votes during the first round may stand in the second round. The candidate who receives the majority of votes cast in the second round shall be declared the President of the Republic.
 - 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.
2. The President of the Republic shall exercise regulatory power and shall ensure the proper enforcement and administration of

legislation. She/he shall exercise her/his powers by decrees, countersigned, where required, by a Vice-President or a minister concerned.

3. She/he shall be elected for a term of five years, renewable only once. No one may serve more than two presidential terms.
4. In the exercise of her/his functions, the President of the Republic shall be assisted by two Vice-Presidents. They shall be appointed by the President of the Republic, who shall previously have submitted their candidacy for approval by the National Assembly and the Senate, voting separately, by a majority of their members. The President of the Republic may dismiss the Vice-Presidents. They shall belong to different ethnic groups and political parties.
5. The President of the Republic, after consultation with the two Vice-Presidents, shall appoint the members of the Government and terminate their appointments.
6. Parties or coalitions thereof shall be invited, but not obliged, to submit to the President a list of persons to serve as ministers if such parties or coalitions have received more than **one-twentieth** of the vote. They shall be entitled to at least the same proportion, rounded off downwards, of the total number of ministers as their proportion of members in the National Assembly. If the President dismisses a minister, she/he must choose a replacement from a list submitted by the party or coalition of the minister in question.
7. The President of the Republic shall be the Head of State and Commander-in-Chief of the defence and security forces. She/he shall declare war and sign armistices following consultation with the Government and the bureaux of the National Assembly and of the Senate.
8. The President of the Republic may be impeached for serious misconduct, impropriety or corruption by resolution of **two-thirds** of the members of the National Assembly and the Senate sitting together.
9. The President of the Republic may be charged only with the crime of high treason. The case shall be heard by the Supreme Court and the Constitutional Court sitting together and presided over by the President of the Supreme Court.
10. The Supreme Court shall receive a written statement of the assets and property of the President, the Vice-Presidents and members of the Government when they assume and relinquish office.

Article 8

Local government

1. The provinces shall be administered by civilian governors appointed by the President of the Republic and confirmed by the Senate.
2. Communes shall be decentralized administrative entities. They shall be the basis of economic and social development, and shall be divided into *collines* or zones and such other subdivisions as are provided for by law.
3. The law shall make provision for the circumstances under which a commune administrator may be dismissed or suspended, by the central authorities or by the Commune Council, for good cause including incompetence, corruption, gross misconduct or embezzlement.

Article 9

The Judiciary

1. The judicial authority of the Republic of Burundi shall be vested in the courts.
2. The Judiciary shall be impartial and independent and shall be governed solely by the Constitution and the law. No person may interfere with the Judiciary in the performance of its judicial functions.
3. The Judiciary shall be so structured as to promote the ideal that its composition should reflect that of the population as a whole.
4. The courts and tribunals shall operate in Kirundi and the other official languages. Laws shall be enacted and published in Kirundi and the other official languages.
5. The Constitution shall provide for a Supreme Court of Burundi. Its Rules of Procedure, composition and chambers, and the organization of its chambers, shall be determined by an organic law.
6. The judges of the Supreme Court shall be appointed by the President from a list of candidates nominated by the Judicial Service Commission and approved by the National Assembly and the Senate.
7. There shall be a National Department of Public Prosecutions attached to the Supreme Court; its members shall be appointed in the same manner as the judges of the Supreme Court.
8. The other courts and tribunals recognized in the Republic of Burundi shall be the Court of Appeal, the High Courts, the Resident Magistrates' Courts and such other courts and tribunals as are provided for by law. The *Ubushingantahe* Council shall sit at

the level of the *colline*. It shall administer justice in a conciliatory spirit.

9. The President of the Court of Appeal, the presidents of the High Courts, the public prosecutors and the state counsels shall be appointed by the President of the Republic following nomination by the Judicial Service Commission and confirmation by the Senate.
10. The Government, within the limits of its resources, shall ensure that magistrates possess the desired qualifications and necessary training for the performance of their duties, and that the resources needed by the Judiciary are made available to it.
11. No one shall be denied a post in the magistracy on grounds of ethnic origin or gender.
12. A Judicial Service Commission with an ethnically balanced composition shall be established. It shall be made up of five members nominated by the Executive, three judges of the Supreme Court, two magistrates from the National Department of Public Prosecutions, two judges from the resident magistrates' courts and three members of the legal profession in private practice. The judges, magistrates and members of the legal profession shall be chosen by their peers. All members of the Commission shall be approved by the Senate.
13. The Commission shall have a secretariat. It shall be chaired by the President of the Republic, assisted by the Minister of Justice. It shall meet on an *ad hoc* basis. Its members who are not members of the Judiciary shall not be construed as members of the Judiciary solely because they are members of this oversight commission.
14. The Judicial Service Commission shall be the highest disciplinary body of the magistracy. It shall hear complaints by individuals, or by the Ombudsperson, against the professional conduct of magistrates, as well as appeals against disciplinary measures and grievances concerning the career of magistrates. No magistrate may be dismissed other than for professional misconduct or incompetence, and solely on the basis of a finding by the Judicial Service Commission.
15. Trials shall be public except where the interests of justice or a compelling public interest require otherwise. Judgements shall be reasoned and shall be handed down in public.
16. Magistrates shall be appointed by decree of the President on the proposal of the Judicial Service Commission. The presidents of resident magistrates' courts shall be appointed in the same manner except that the nominees shall be proposed to the President after obtaining the approval of the Senate.
17. The Constitutional Court shall be the highest court for constitutional matters. Its jurisdictions shall be those set forth in the 1992 Constitution. The organization of the Court shall be laid

down in an organic law. Reference is made for this purpose to the elements contained in Chapter II of the present Protocol.

18. The members of the Constitutional Court, seven in number, shall be appointed by the President of the Republic and confirmed by the Senate by a **two-thirds** majority. They shall have a term of office of six years non-renewable. The first Constitutional Court shall be that established under Chapter II of the present Protocol for the transition period. The members shall have the qualifications set forth in Chapter II of the present Protocol.
19. Matters shall be referred to the Constitutional Court by the President of the Republic, the President of the National Assembly or the President of the Senate, by petition by **one quarter** of the Members of the National Assembly or **one quarter** of the Members of the Senate, or by the Ombudsperson. In addition, every natural person with a direct interest in the matter, as well as the Public Prosecutor, may request the Constitutional Court to rule on the constitutionality of laws, either directly by means of an action or by an exceptional procedure for claiming unconstitutionality raised in a matter which concerns that person before an authority.
20. The Constitutional Court may sit validly only if at least five of its members are present.
21. Decisions of the Constitutional Court shall be taken by an absolute majority of its members, except that the President of the Court shall have a casting vote if the Court is evenly split on any matter.
22. The Constitutional Court shall be competent to:
 - a. Rule on the constitutionality of adopted laws and regulatory acts;
 - b. Rule on the constitutionality of executive action;
 - c. Interpret the Constitution and rule on vacancies in the posts of President of the Republic and President of the National Assembly if a dispute arises in regard thereto;
 - d. Rule on the regularity of presidential and legislative elections;
 - e. Administer the oath to the President of the Republic before she/he assumes office;
 - f. Verify the constitutionality of organic laws before their promulgation, and of the Rules of Procedure of the National Assembly before their application;
 - g. Rule on any other matters expressly provided for in the Constitution.

Article 10

The administration

1. The administration shall function in accordance with the democratic values and principles enshrined in the Constitution, and with the law.
2. The administration shall be so structured, and all civil servants shall so perform their duties, as to serve all users of public services with efficiency, courtesy, impartiality and equity. Embezzlement, corruption, extortion and misappropriation of all kinds shall be punishable in accordance with the law. Any state employee convicted of corruption shall be dismissed from the public administration following a disciplinary inquiry.
3. The administration shall be organized in ministries, and every minister in charge of a ministry shall report to the President of the Republic and to the National Assembly on the manner in which the ministry performs its functions and utilizes the funds allocated to it.
4. The administration shall be broadly representative and reflect the diversity of the components of the Burundian nation. The practices with respect to employment shall be based on objective and equitable criteria of aptitude and on the need to correct the imbalances and achieve broad representation.
5. A law shall specify the distinction between posts that are career or technical posts and those that are political posts.
6. No civil servant or member of the Judiciary may be accorded favourable or unfavourable treatment solely on grounds of her/his gender, ethnicity or political affiliation.
7. An independent Ombudsperson shall be created by the Constitution. The organization and functioning of her/his service shall be determined by law.
8. The Ombudsperson shall hear complaints and conduct inquiries relating to mismanagement and infringements of citizens' rights committed by members of the public administration and the judiciary, and shall make recommendations thereon to the appropriate authorities. She/he shall also mediate between the administration and citizens and between administrative departments, and shall act as an observer of the functioning of the public administration.
9. The Ombudsperson shall possess the powers and resources required to perform her/his duty. She/he shall report annually to the National Assembly and the Senate. Her/his report shall be published in the Official Gazette of Burundi.
10. The Ombudsperson shall be appointed by the National Assembly by a three-quarters majority. The appointment shall be subject to confirmation by the Senate.

Article 11

Defence and security forces

1. The post-transition Constitution shall contain in full the principles relating to the defence and security forces and principles of organization of those forces set forth respectively in articles 10 and 11 of Protocol III to the Agreement.
2. An organic law shall determine the organization and functioning of the defence and security forces.
3. The military head of the defence force shall be appointed by the President, subject to confirmation by the Senate.
4.
 - a. The defence and security forces shall be subordinate to the civil authority of the State, and shall uphold the Constitution and the law.
 - b. The defence and security forces shall be professional and non-partisan, and shall not promote or disadvantage any political party or ethnic group.
 - c. The defence and security forces shall be trained at all levels to respect international humanitarian law and the supremacy of the Constitution.
 - d. For a period to be determined by the Senate, not more than 50% of the national defence force shall be drawn from any one ethnic group, in view of the need to achieve ethnic balance and to prevent acts of genocide and *coups d'état*.
 - e. No civilian shall be subject to a military code of justice or tried by a military court.
5. Only the President may authorize the employment of the defence and security forces:
 - a. In defence of the State;
 - b. In the restoration of order and public safety;
 - c. In the discharge of international obligations and commitments.

If the defence and security forces are employed in any of the capacities set forth above, the President shall promptly inform the National Assembly and the Senate of the nature, extent and reasons for this employment. If the National Assembly is not in

session it shall be convened within seven days for the consideration of such matter, as specified in Protocol III to the Agreement.

Article 12 **Objectives**

1. Exceptional and special arrangements concerning the government of Burundi shall be made pending the adoption and entry into force of a Constitution that is in conformity with the constitutional principles set forth in Chapter I of the present Protocol.
2. The objectives of the transitional arrangements shall be:
 - a. To ensure the adoption of a post-transition Constitution that is in conformity with the constitutional principles;
 - b. To reconcile and unite Burundians and lay the foundations for a democratic and united Burundi, *inter alia* by promoting a broad programme of education in peace, democracy and ethnic tolerance;
 - c. To ensure the repatriation, resettlement and reintegration of Burundians living outside the national territory and the rehabilitation of the *sinistrés*;
 - d. To apply the measures and arrangements relating to the restoration of peace, the cessation of hostilities and the building of a professional army loyal to Burundi;
 - e. To ensure the adoption of agreed measures to confront the consequences of the past and avoid any recurrence of genocide, exclusion and impunity;
 - f. To implement the measures and carry out the reforms relating to the Judiciary, the administration and the defence and security forces in accordance with the Agreement;
 - g. To adopt an electoral law, establish an independent electoral commission and ensure the holding during the transition period of elections at the local and national levels as provided for in article 20 below;
 - h. To adopt laws on political parties, local administration, the press and other matters as required by the present Protocol and by the needs of the transitional institutions;

- i. To implement the Agreement in accordance with the implementation timetable in Annex V to the Agreement.

Article 13

Duration of the transition

1. The transition period shall commence from the time that the conditions necessary for installing the transitional Government in accordance with the applicable instruments have been met, which shall be as soon as possible after three months, and in any event not later than six months, from the date of signature of the Agreement. The Implementation Monitoring Committee alone shall determine this date, and may bring it forward if it decides that the necessary conditions exist. Until the transition period commences, all parties shall meet their obligations under the Agreement to establish or co-operate in establishing the agreed legal and institutional framework. The implementation Monitoring Committee, established as set forth in Protocol V, shall be the mechanism for guaranteeing compliance with the Agreement.
2. The transition period shall culminate upon the election of the new President. The presidential election shall take place after the first democratic election of the National Assembly. Both elections shall take place within 30 months of the commencement of the transition period.

Article 14

Political parties during the transition

1. The transitional National Assembly shall within twelve months of its installation adopt a law setting forth the qualifications and procedure for registration of political parties.

2. The said law shall specify a judicial authority which shall receive and adjudicate on applications by political parties for registration. Decision of the authority shall be posted in public places and published in the official Gazette of Burundi.
3. Pending the adoption of such a law, all political parties shall be entitled to function in accordance with the 1993 law on political parties.
4. The political parties shall commit themselves in writing to oppose any political ideology and any action that has at its purpose the promotion of violence, hatred or unlawful discrimination.
5. In order to promote national renewal, reconciliation and unity, no party shall be registered if it is established on the basis of ethnic or regional exclusivity. This sub-clause shall take effect nine months after the commencement of the transition period, in order to enable parties whose names or constitution do not satisfy this requirement to duly amend them so as to comply.
6. No political party may participate in the transitional arrangements, including those relating to the integration of the defence and security forces, if they do not respect the commitments embodied in the Agreement. Each such "participating party" must sign the pledge annexed hereto confirming its intention to participate in the transitional arrangements and its commitment to peace, reconciliation and democracy.
7. If political parties represented within the transitional National Assembly decide to merge, the merging parties shall retain the number of seats they had acquired initially.
8. Subject to the provisions of paragraphs 6 and 9 of this article, all Parties shall be entitled, but not obliged, to become participating parties.
9. The Government and National Assembly that are signatories to the Agreement shall not be participating parties unless specifically so provided in the Agreement.
10. A non-signatory party may become a participating party subsequent to the date of signature of the Agreement if **four-fifths** of the Parties represented in the Implementation Monitoring Committee so agree.
11. If a non-signatory party is admitted as a participating party in accordance with the present Protocol, it shall be accorded the same entitlement to participate in the transitional institutions and the Implementation Monitoring Committee as the other participating parties.

Article 15

Transitional institutions

1. There shall be a transitional Legislature made up of a National Assembly and a Senate, a transitional Executive, a Judiciary and other transitional institutions as set forth in the present Protocol.
2. The constitutional provisions governing the powers, duties and functioning of the transitional Executive, the transitional Legislature and the Judiciary, as well as the rights and duties of citizens and of political parties and associations, shall be as set forth hereunder and, where this text is silent, in the Constitution of the Republic of Burundi of 13 March 1992. When there is any conflict between that Constitution and the Agreement, the provisions of the Agreement shall prevail. To give legal effect to this provision, the terms of the Agreement shall be appropriately adopted and promulgated within Burundi within four weeks of its signature.
3. The composition of the transitional National Assembly shall be as follows:

The National Assembly

- a. The Members of the National Assembly elected in 1993 shall retain or resume their seats. Where vacancies have occurred, the parties whose members occupied the vacant seats before the vacancy occurred shall fill them or allow those who have already filled them to remain;
- b. The transitional National Assembly shall be augmented so that each of the participating parties which are not represented under (a) will be entitled to at least three seats so as to be represented within the transitional National Assembly;
- c. It shall thereafter be augmented by the 28 members representing civil society currently sitting in the National Assembly;
- d. The appointed members of the National Assembly shall retain their seats in the transitional National Assembly regardless of the return from exile of the members of the National Assembly elected in 1993.

The Senate

- e. The Senate shall be put in place by the President of the Republic and the Bureau of the National Assembly, while ensuring respect for the political, regional and ethnic balances;
 - f. It shall include *inter alia* former heads of State, three individuals from the Twa ethnic group and members of the transitional National Assembly coopted by the President of the Republic and the Bureau of the transitional National Assembly;
 - g. No provision shall be made for replacement of the members of the transitional National Assembly coopted to sit in the transitional Senate;
 - h. The transitional Senate shall perform the functions provided for *inter alia* in article 6 paragraph 16, and all such other functions and are expressly provided for in the constitutional principles embodied in the Agreement;
 - i. The Senate shall draw up its rules of procedure, which shall go into effect following verification by the Constitutional Court of their conformity with the transitional arrangements. Its first session shall be devoted to drawing up its rules of procedure and establishing its bureau. This session shall be presided over by the oldest Senator;
 - j. Its Bureau shall consist of a Speaker, and a Deputy Speaker, a Secretary-General and a Deputy Secretary-General.
4. The transitional National Assembly and the traditional Senate shall within 18 months adopt in the same terms, by a **two-thirds** majority, a post-transition Constitution in conformity with the principles set forth in Chapter I of the present Protocol.
 5. After such adoption, the text in question shall be submitted to the Constitutional Court for verification of its compliance with the principles set forth in Chapter I. If the text does not so comply, the Court shall indicate which provisions must be amended. If and whenever the Court declines to certify a text submitted to it pursuant to this provision, the transitional National Assembly and the transitional Senate shall within 30 days amend the text and resubmit it to the Court.
 6. A text referred to above shall, if certified, be submitted for popular approval by way of referendum. A text which is so approved shall be the post-transition Constitution and shall come into force upon the termination of the transition period.
 7. If no duly adopted text has been certified and approved by referendum within 23 months of the commencement of the transition, the Implementation Monitoring Committee may instruct

experts - either national or international - to prepare a text in conformity with Chapter I of the present Protocol. The experts shall have regard to any judgements of the Constitutional Court and to any constitutional texts not certified by it. The text prepared by the experts shall be submitted for direct approval by way of referendum. If approved, it shall become the post-transition Constitution. If not approved, it shall serve provisionally as the Constitution for purposes of the Legislature and Executive elected during the transition period under the provisions of article 20 of the present Protocol. Such first elected Legislature shall draft a post-transition Constitution and adopt it in conformity with the procedure for amending the post-transition Constitution set forth in Chapter I of the present Protocol.

8.
 - a. The rules of procedure of the transitional National Assembly shall be those of the National Assembly elected in 1993 until they are duly amended.
 - b. The President and the Vice-President of the transitional National Assembly shall come from two different political families.
9. During the transition period, the National Assembly shall not pass a vote of no confidence and may not be dissolved.
10. A **two-thirds** majority shall be required for the adoption of legislation.
11. Any commission required under the present Protocol to be established by the transitional National Assembly shall be established by the Bureau of the transitional National Assembly unless otherwise indicated in the present Protocol.
12. The first transitional President and Vice-President of the Republic shall come from different ethnic groups and political parties. In the event of the death or incapacity of either of them, the new transitional President or Vice-President of the Republic shall be elected by the transitional National Assembly by a resolution which receives the support of **two-thirds** of the members. Pending the election of a new President, the President of the transitional National Assembly, assisted by the Vice-President of the Republic, shall act as President. The term of the transitional President and Vice-President shall terminate upon the election of the first President under the provisions of this Protocol.
13. During the transition period, there shall be a broad-based transitional Government of national unity. The Government shall include representatives of different parties in a proportion whereby more than **half** and less than **three-fifths** of the portfolios are allocated amongst the G-7 group of parties.

14. The precise identity of the members of the transitional Executive shall be decided by the transitional President and Vice-President after consultations with the heads of the parties participating in the transitional National Assembly.
15.
 - a. There shall be between 24 and 26 members of the transitional Executive, in addition to the transitional President and Vice-President.
 - b. The transitional President and Vice-President shall determine the initial function of each Minister when allocating the ministries to parties. The transitional President and Vice-President shall ensure that the minister in charge of the defence force belongs to a different family of parties from the minister responsible for the police.
16. The transitional Executive shall take its decisions and otherwise function in accordance with the spirit embodied in the concept of a Government of national unity, and shall make or propose appointments to the public administration and to diplomatic positions in the same spirit. It shall strive to take its decisions by consensus. It shall also take into account the need to reflect ethnic, religious, political, and gender balance in its decisions and appointments.
17. Any decision to be taken, by law or in accordance with the present Protocol, by the transitional President shall be taken only after consultation with the transitional Vice-President or the transitional Executive.
18. The transitional Executive shall confirm the appointment of the heads of the police and the defence force.
19. The transitional President, after consultation with the transitional Executive, shall within 30 days prepare for submission to the transitional Senate in accordance with the present Protocol a list of appointments for a period or periods specified by her/him to the offices listed below:
 - a. Provincial governors;
 - b. Judges of the Constitutional Court;
 - c. Commune administrators.
20.
 - a. The transitional Government shall within 30 days of the commencement of the transition establish a commission under the chairmanship of a judge to investigate, as a matter of urgency, and to make recommendations on:

- i. The conditions in jails, the treatment of prisoners and the training and conditions of service of warders;
 - ii. The release of prisoners awaiting trial in respect of whom there has been an undue delay in the prosecution of their cases;
 - iii. The existence of and release of any political prisoners.
 - b. The establishment of this commission shall not preclude the transitional Government or the transitional National Assembly dealing with the above matters.
21. The transitional National Assembly and the transitional Executive may establish commissions with or without expert participation to assist in preparing texts or for any other purpose which is part of their respective missions during the transition.

Article 16

Legal and administrative continuity

1. For purposes of continuity, all laws in force prior to the commencement of the transition shall remain in force until amended or repealed.
2. The transitional National Assembly shall as a priority review all legislation in force with a view to amending or repealing legislation incompatible with the objectives of the transitional arrangements and the provisions of the present Protocol.
3. The transitional National Assembly may pass laws with retrospective effect. However, no law may impose a penalty for conduct or action for which there was no penalty at the time it was committed, or provide for retrospective increase in a penalty.

Article 17

Judicial and administrative reforms

1. Within 30 days of the commencement of the transition period, a commission of the transitional National Assembly in which all the parties are represented shall be established to monitor the reforms of the public administration and of the administration of justice and to submit recommendations

thereon to the transitional National Assembly and the transitional Executive.

2. The transitional National Assembly may for purposes of reforming the judicial sector amend by **two-thirds** majority any existing law, including the provisions of the 1992 Constitution, dealing with the structure and functioning of the Supreme Court.
3. For purposes of improving the judicial services in Burundi, the transitional Government shall implement the following reforms:
 - a. The promotion of gender and ethnic balances in the Burundian judicial sector shall be undertaken, *inter alia* through recruitment and appointment;
 - b. So as to correct the ethnic and gender imbalances in the Burundian judicial sector during and after the transition period, training colleges for employees of the judicial system shall be created, accelerated training shall be promoted, and the status and the internal promotion of magistrates shall be improved;
 - c. Existing legislation relating to the organization of the Judiciary, the codes of criminal and civil procedure and the map of judicial jurisdiction shall be reviewed;
 - d. All legislation shall be made available in Kirundi;
 - e. Respect for the law shall be promoted;
 - f. Steps shall be taken to discourage corruption, to denounce officials guilty of corruption, to enforce all legislation related to corruption, to establish effective oversight bodies, to improve working conditions in the judicial sector and to take necessary measures to require civil servants to report instances of corruption;
 - g. The necessary measures shall be taken, including those specified in Protocol I to the Agreement, to deal with the problem of impunity and take any other steps required to ensure that any travesties of justice are dealt with or re-opened;
 - h. The judicial sector shall be given the necessary resources so as to discharge its responsibilities impartially and independently.
4. Any appointment to the Judiciary required by Chapter I of the present Protocol to be made by the President shall, during the transition, be made by the transitional President and Vice-President in consultation with the Minister of Justice.
5. Any appointment to the Judiciary required by Chapter I of the present Protocol to be submitted for approval or confirmation to the National Assembly or the Senate shall, during the transition

period, be required to be approved or confirmed by the transitional National Assembly by **two-thirds** majority.

6. There shall be a Constitutional Court possessing the jurisdiction and functions set forth in the 1992 Constitution of the Republic of Burundi.
7. The Constitutional Court shall be made up of seven members, two of whom shall be permanent (the President and Vice-President). They shall be appointed by the President of the Republic, subject to confirmation by the transitional National Assembly by a majority of **two-thirds**. Three of these judges shall be appointed for a period of three years only, and shall be replaced in the manner provided for in the post-transition Constitution. The remaining four shall be appointed for six years beginning at the commencement of the transition. The appointments shall be made within one month of the commencement of the transition. Judges of the Constitutional Court shall be persons of moral integrity and shall have legal training or experience. A member of a standing court must be amongst the nominees.
8. The Constitutional Court may sit validly only if at least five of its members, including its President or Vice-President, are present.
9. Decisions of the Constitutional Court shall be taken by an absolute majority of its members, except that the President of the Court shall have a casting vote if the Court is evenly split on any matter.
10. International co-operation and legal assistance will be required by the transitional Government to assist it in improving and reforming the legal system. Foreign jurists, including former Burundian nationals living outside the country, shall be requested to assist in the reform of the judicial system. The transitional Government may appoint any such persons to judicial positions so as to promote confidence in the Judiciary.
11. Members of the public administration, including local government and the diplomatic corps, shall be so appointed by the transitional Executive as to ensure that imbalances observed in these sectors are corrected. The Government may appoint a commission with expert participation to assist it in making appointments.
12. Provincial governors and commune administrators shall be appointed by the President, subject to confirmation by the transitional National Assembly. They shall be natives of the territorial entity placed under their authority. They shall be civilians.

Article 18

Combating impunity during the transition

1. In accordance with Protocol I to the Agreement, the transitional Government shall request the establishment of an International Judicial Commission of Inquiry which will investigate acts of genocide, war crimes and other crimes against humanity and report thereon to the Security Council of the United Nations.
2. In accordance with Protocol I to the Agreement, a National Truth and Reconciliation Commission shall be established to investigate human rights abuses, promote reconciliation and deal with claims arising out of past practices relating to the conflict in Burundi.
3. The transitional Government shall scrupulously fulfil the commitments contained in Protocol IV to the Agreement concerning the repatriation and resettlement of refugees and *sinistrés* as well as the restitution of property, including land, belonging to such persons.

Article 19

Defence and security forces

1. Associations having the character of militias shall be prohibited.
2. The transitional arrangements regarding the defence and security forces, including the constitutional and legal framework governing such forces, shall be those set forth in Protocol III to the Agreement. Where that Protocol is silent, the provisions of the 1992 Constitution of the Republic of Burundi shall apply.

Article 20

Elections

1. Elections at the commune level and at the national level shall be held during the transition period in accordance with the provisions and within the time-frames set forth in the present Protocol.
2. An Independent National Electoral Commission shall be established by the transitional Government as set forth hereunder.
3. The Commission shall be made up of five independent personalities and shall solicit advice from a multiparty commission

of the transitional National Assembly. Its members shall be approved by a **three-fourths** majority of the transitional National Assembly, and may include non-Burundians who have expertise and integrity.

4. The Commission shall have as its functions:
 - a. To organize elections at the national, commune and *colline* levels;
 - b. To ensure that these elections are free, fair and transparent;
 - c. To proclaim the results of the elections within a period determined by law, which shall be as short as possible;
 - d. To promulgate the arrangements, the code of conduct, and the technical details, including the location of voting stations and times of voting;
 - e. To hear and adjudicate on complaints regarding observance of the rules of the elections. The decisions of the commission shall be final;
 - f. To ensure through appropriate rules that parties do not operate in a manner that incites ethnic violence or is otherwise not in conformity with the present Protocol;
 - g. To ensure, and hear disputes regarding, compliance with the multiethnic requirements set forth in the present Protocol.
5. The transitional National Assembly shall within 12 months and by a **two-thirds** majority adopt a law regarding electoral rules.
6. The revised electoral code may set a threshold - up to 2% - below which no political party may be allocated seats if it has not won that percentage of the votes cast at the national level.
7. There shall be elections for the National Assembly, which shall take place after the commune elections and before the election of the President. The National Assembly shall have 100 directly elected members. As an exceptional measure and for the purpose of the first election only, and only if one party has received more than **three-fifths** of the directly elected seats, an additional 18 to 21 members in total shall be co-opted in equal numbers from the lists of all the parties that have obtained more than the threshold vote, or two persons per party if more than seven parties qualify.
8. The electoral system for the National Assembly shall be the system of blocked lists with proportional representation. The revised electoral code shall prescribe that lists be multi-ethnic in character and reflect gender representation. For each three names in sequence on a list, only two may belong to the same ethnic group, and for each five names at least one shall be a woman.
9. The election of the President of the Republic shall take place after the National Assembly elections and before the end of the transition period.

10. The first post-transition President shall be elected by the National Assembly and Senate sitting together by a majority of **two-thirds** of the votes.
11. Any person who has served as President during the transition period shall be ineligible to stand for President in the first election. Candidates for the presidency must be Burundian citizens and over 35 years of age.
12. Elections at the commune level shall be held, in accordance with the procedures listed below, within eighteen months of the commencement of the transition period.
13.
 - a. The *collines* shall be administered by *colline* councils of five members elected by direct universal suffrage. The councillor with the greatest number of votes shall become the chief of the *colline*. Elections for the *colline* chiefs shall, for the first elections, not be based on party political lists and all candidates shall stand as independents.
 - b. The communes shall be administered by commune councils, which shall be elected by direct universal suffrage.
 - c. For purposes of the first election, each Commune Council shall appoint a Commune Administrator and may dismiss her/him for good cause, including incompetence, corruption, misconduct or embezzlement. For subsequent elections, the National Assembly and the Senate may, after evaluation, legislate for the administrators to be elected by direct universal suffrage.
 - d. At the national level, not more than 67% of commune administrators shall be from either of the two main ethnic components. The Senate shall ensure respect for this principle.

Article 21

Amendment of the transitional arrangements

Changes may be made to the transitional arrangements and the text of the Agreement with the consent of **nine-tenths** of the members of the transitional National Assembly.

Article 22
Interim period

1. The Parties agree to comply during the period between the signature of the Agreement and the installation of the transitional National Assembly with the obligations, arrangements and commitments set forth in Chapter II of the present Protocol.
2. By its signature the National Assembly agrees, within four weeks, to:
 - a. Adopt the present Protocol as the supreme law without any amendments to the substance of the Agreement;
 - b. Repeal the provisions of any legislation which prevent free political activity, or which would hinder the implementation of the present Protocol;
 - c. Pending the installation of a transitional Government adopt such legislation as is necessary for the granting of temporary immunity against prosecution for politically motivated crimes committed prior to the signature of the Agreement.
3. The parties wishing to participate in the transitional arrangements (the "participating parties") agree to file with the Implementation Monitoring Committee the following:
 - a. Within seven days of the signature of the Agreement, a pledge, which appears as Annex I to the Agreement, committing the participating party to observe its commitments to democracy, peace and reconciliation, to reject all forms of violence and to participate in a public programme on peace and reconciliation;
 - b. Within 60 days of signature, a document nominating the members representing the participating party in the transitional National Assembly.
4. The transitional President and Vice-President shall within 60 days of the signature of the Agreement submit to the Implementation Monitoring Committee a list identifying the members of the Cabinet.

5. Starting one month after the signature of the Agreement, the Implementation Monitoring Committee shall continuously review whether the conditions for the installation of a transitional Government have been met, and may direct the Government or any Party or participating party to undertake any steps which would enable those conditions to be met. It alone shall fix the date on which the transitional National Assembly and transitional Government shall be installed, and may postpone such date, provided the final date is not later than six months after the signature of the Agreement.
6. Between the date of signature of the Agreement and the installation of the transitional Government, the Government shall:
 - a. Provide all necessary assistance and cooperation to international agencies, the political parties and the Implementation Monitoring Committee in regard to establishing structures and facilities and issuing the necessary documentation, including travel documents for all returning exiles, refugees and members of the armed groups as provided for in this and other protocols, as required by the international agencies or as directed by the Implementation Monitoring Committee;
 - b. Compile, within 30 days of the signature of the Agreement, an inventory co-signed by the Minister of each ministry listing each of the assets owned by the State exceeding the value of US\$ 250 in the possession of such ministry, and lodge a copy of such inventory with the Implementation Monitoring Committee;
 - c. Not destroy or allow the destruction of any record, file, or information or of any building or other property held by it during this period;
 - d. Take the necessary steps, including the signing of international agreements, to facilitate the entry and deployment of observers and members of forces or security personnel as agreed in Protocol III to the Agreement.
7. The Minister and the chief career public servant in each ministry shall be jointly liable in law for any damage or destruction of any government property, including any record, file or any other document, held by it, for any misrepresentation in the asset inventory filed with the Implementation Monitoring Committee, or for any wasteful use of the ministry's financial resources.

8. The Government shall be responsible for the day-to-day government of Burundi during the interim period. If during that period the Government should, without the approval of the Implementation Monitoring Committee, take any of the actions indicated in subparagraphs (a) - (d) below, such action may subsequently be reviewed by the transitional Government and, if found not to have been in the interests of good governance, summarily cancelled or reversed:
 - a. Alter the conditions of service or levels of remuneration of public servants;
 - b. Make any appointment to or promotion within the public administration;
 - c. Sell State-owned immovable property;
 - d. Enter into any contract for the supply of goods or services or the construction of any building, or for the erection or maintenance of any Government infrastructure, which will have the effect of incurring financial obligations on the part of the transitional Government. Any such contract concluded without the approval of the Implementation Monitoring Committee may be annulled by the transitional Government.
9. During the interim period there shall be no deployment of the defence force or of any armed wing of a Party outside the framework of Protocol III.
10. No arrest of a returnee or refugee shall be permitted without notification and justification to the Implementation Monitoring Committee or a sub-committee or agency designated by it, and in any event no arrest or charging of a refugee or returnee or holder of political public office for a crime committed for a political purpose prior to the signature of the Agreement shall be permitted until the installation of the transitional Government.
11. The Implementation Monitoring Committee may request and shall receive from the transitional Government any information relating to governmental activities, any relevant data regarding governance or any information relating to or required for the monitoring, supervision or implementation of the Agreement, including information relating to any international financial assistance.
12. The Implementation Monitoring Committee shall assist in soliciting or obtaining any international or foreign aid or assistance contemplated by the Agreement. It may generally advise any donor and suggest conditionalities in regard to any aid or assistance to be granted to, or agreements to be concluded with, the Government of Burundi. For this purpose it shall be informed of the details of any international agreements to be concluded with, or foreign aid to be donated to, the Burundian Government.

13. The Implementation Monitoring Committee may, at its discretion and for purposes of supervising, monitoring or ensuring the implementation of the Agreement, issue directives to any Party or participating party. All parties shall comply with such directives within the period specified in the directive.
14. In the event that a Party or participating party fails to comply with a directive of the Implementation Monitoring Committee, the Committee may:
 - a. Place the party on terms to comply;
 - b. Failing compliance with such warning, and after offering the party an opportunity to explain its non-compliance, suspend such party from participating in the transitional arrangements;
 - c. Request the appropriate assistance of any international body or State or Party in enforcing compliance.
15. The participating parties shall do all in their power to ensure that their members observe the provisions of the Agreement, including, but not limited to, the prompt full and wide dissemination of the provisions of the Agreement relating to the ceasefire, disarmament, and reporting to quartering locations.
16. The participating Parties shall assist the Implementation Monitoring Committee and the Facilitator in an intensive public campaign to win support for the Agreement and to promote peace and reconciliation.
17. They shall take disciplinary measures, including expulsion, against any member who contrary to the spirit and letter of the Agreement and the pledge annexed hereto commits an act of violence or destroys or damages public or private property.

* * * *

PROTOCOL III

PEACE AND SECURITY FOR ALL

PREAMBLE

We, the Parties,

Recalling the commitments entered into in the Declaration of 21 June 1998 with a view to resolving the Burundi conflict through peaceful means and putting an end to all forms of violence,

Aware of the necessity to promote lasting peace and having analysed the questions relating to the principles of peace and security for all, to the defence and security forces and to the cessation of hostilities, and the arrangements with a view to achieving a permanent ceasefire,

Have agreed as follows:

CHAPTER I

PEACE AND SECURITY FOR ALL

Article 1

Principles of peace and security for all

1. All Burundian citizens have the right to live in peace and security without any discrimination whatsoever.
2. The sovereignty of the people through the Constitution and the laws that stem from it shall be respected by all.
3. The institutions have the primary duty to guarantee:
 - a. The security of all citizens;
 - b. The protection of the inalienable rights of the human person, starting with the right to life, and the rights embodied *inter alia* in the Universal Declaration of Human Rights and in the international conventions to which Burundi is a party;
 - c. The protection of all the ethnic communities of the population through specific mechanisms for the prevention of *coups d'état*, segregation and genocide;
 - d. Respect for the law and combating of impunity;
 - e. Good governance;
 - f. Sovereignty of the State and integrity of the national territory.

4. Any foreign intervention other than under international conventions shall be prohibited. All recourse to foreign forces shall be prohibited, except when authorized by the institutions empowered to do so.
5. All Burundian citizens shall be under an obligation to respect the right of their fellow citizens to peace and security, as well as to respect public order.
6. The prerequisites for the establishment and maintenance of peace and security are:
 - a. Unity within the defence and security forces;
 - b. Political neutrality of the defence and security forces;
 - c. The professional, civic and moral qualities of the defence and security forces;
 - d. Neutrality and independence of the magistracy;
 - e. Control of illegal possession and use of weapons.
7. The use of force as a means of access to and retention of power shall be rejected.
8. The defence and security forces belong to all the people of Burundi. They shall be an instrument for the protection of all the people, and all the people must identify with them.
9. The establishment of militias and terrorist and genocidal organizations, the practice of terrorism and genocide and incitement to those practices shall be prohibited.
10. Political organizations shall promote inclusion; exclusion on ethnic, sexual, regional and religious grounds shall be prohibited.
11. The ideals of peace and national unity shall be promoted and developed within the political parties, and propagation of the ideologies of exclusion, racism and genocide shall be prohibited.
12. The principle of participation of all components of society in the management of all the organs of the State, as well as equality of opportunity for citizens in all sectors of national life, shall be respected.
13. An economic and social policy that ensures the harmonious and balanced development of the people and the nation, as well as a policy of harmonious resolution of social problems, shall be pursued.
14. A culture of peace and tolerance shall be promoted through the development of a sense of patriotism among citizens and of mutual solidarity in the event of a threat, as well as through education and training of all political and technical officials.
15. Provisions for penalizing the violation of these principles shall be adopted.

Article 2

Causes of the violence and insecurity in Burundi

The causes of the violence and security in Burundi are:

The colonial period

1. The breaking apart of the pre-colonial political and administrative equilibrium among the Baganwa, the Batutsi and the Bahuru triggered off by the implementation of the administrative reforms of the 1930s which resulted in the dismissal from their administrative positions of most of the Hutu chiefs and some of the Tutsi chiefs.
2. A discriminatory system which did not offer equal educational access to all Burundian youths from all ethnic groups.
3. The erosion of some basic traditions, cultural norms and values that had hitherto been the foundations of the unity, solidarity and cohesion of the fabric of Burundian society and of Burundians.
4. The disruption of the traditional socio-political system in effect under the monarchy, which led to erosion of the bonds that provided the foundations of Burundi's political stability.

The post-colonial period

5. Political instability consequent upon the undermining of the legitimacy of the post-colonial institutions, accentuated by:
 - a. The poor conception of power; lack of good leadership, lack of respect for the law and demonization of political opponents;
 - b. The assassination of great Burundian leaders (Rwagasore, Ngendandumwe, Ndadaye);
 - c. Impunity of those committing political crimes and human rights violations and practising regionalism, patronage, cronyism and corruption;
 - d. The struggle for influence by the great powers, foreign interference in Burundi's internal affairs and the proliferation of arms in the region;
 - e. Failure to satisfy the basic needs of the citizens as a result of economic underdevelopment and lack of a sound economic policy that led to disillusionment and an erosion of support for the political system;
 - f. The distortion of Burundi's history;

- g. The ideology and practice of genocide and exclusion.
6. The aftermath of the colonial system, the inadequacy of the basic reforms of the institutional arrangements inherited from colonization for governance, administration and the maintenance of order and security for all.
7. The unbridled struggle for power which, following the principle that "the end justifies the means", resulted in recourse to violence and the deliberate manipulation of ethnic sentiments as legitimate methods of access to and retention of power.
8. Lack of respect by certain political actors for the basic normative rules and principles of good governance, particularly those concerning separation of the legislature, the executive and the judiciary, independence of the magistracy, satisfaction of basic human needs and the maintenance of order and security for all.
9. Lack of respect for the traditions, norms and cardinal principles of the democratic system, including tolerance and respect for the inalienable rights of the human person, especially the right to life.
10. Non-acceptance of peaceful co-existence, diversity and pluralism as guiding principles of life and the basis of national cohesion, unity and solidarity.
11. Lack of appropriate action by the United Nations to rule on the acts of genocide perpetrated in Burundi since independence.

Article 3

Persons responsible for and agents of the insecurity and violence

The following were identified as responsible for and agents of the insecurity and violence:

- a. Some foreign countries, foreign organizations, political or otherwise, and certain foreign lobbies;
- b. National and foreign individuals and groups, as well as organizations, institutions, parties and movements, which conceived, abetted, condoned, encouraged, incited and practised divisions, violence and violent methods of access to and retention of power;
- c. Political, administrative and religious leaders, as well as technical staff, who contributed to perpetrating the genocide;
- d. Persons responsible for the violence perpetrated during the crises of 1965-1969, 1972, 1988, 1991 and 1993 to date;
- e. The members of the judicial system who have promoted and continue to promote impunity and partiality through corruption, intimidation and manipulation;

- f. Those instruments of State power responsible for protecting the population which failed in their mission, particularly those elements of the defence and security forces guilty of excesses and violence against the innocent population;
- g. Those elements who practise genocide and their allies.

Article 4

Nature of the insecurity and violence

The violence is political, economic and social in nature and is expressed in genocidal, criminal and terrorist form.

Article 5

Manifestations of the insecurity and violence

The insecurity and violence are manifested in:

- a. Civil war; the destruction of public and private property; genocide, massacres, *coups d'état*, extra-judicial executions, premeditated murders, torture, rape, arbitrary arrests and imprisonment and other inhuman and degrading forms of treatment;
- b. Massive forcible displacements of individuals, families and groups who as a result leave their customary places of residence and become refugees outside the country or remain inside the country as displaced and regrouped persons in camps, tents, shacks and other makeshift arrangements;
- c. Destruction of national and socio-economic infrastructures, as well as of public and private property.

Article 6

Consequences of the insecurity and violence

The most serious consequences of the insecurity and violence are:

- a. Increase in crime, in the number of disabled persons, orphans, widows and widowers, impoverishment of the people, and all kinds of social deviation;
- b. Lack of respect for authority and the law giving rise to anarchy, mistrust and lack of civic spirit, which lead to civil unrest and rebellion;
- c. The spread of the culture of violence, leading to a general disdain for the sanctity of human life;
- d. Arbitrary practices, widespread abuse of power, corruption and the plundering of national resources.

Article 7

Victims of the insecurity and violence

The main victims of the insecurity and violence are:

- a. The nation, some political officials, and individuals forced to flee from their original places of residence into exile, settlements and camps;
- b. Individuals, groups, and categories of the population, both Hutu and Tutsi, targeted on account of their beliefs or political affiliation and on the basis of their ethnic origin.

Article 8

Protection of the inalienable rights of the human person

It is the duty of the State:

- a. To protect the inalienable rights of the human person, starting with the right to life and including the rights to freedom, security, work, education and freedom of expression, and all other rights embodied *inter alia* in the Universal Declaration of Human Rights and in the international conventions to which Burundi is a party;
- b. To prohibit and punish violations of the inalienable rights of the human person;

- c. To institute a proactive policy aimed at promoting human rights through education and training of the population, including all political and technical officials.

Article 9

Security-related regional and international issues

The three most pertinent security-related regional and international issues are:

- a. The close relationship of Burundi's internal security to security in Great Lakes region and to external factors such as insecurity in the neighbouring countries, hegemonist and/or genocidal ideologies in the Great Lakes region, the arms trade and the presence of mercenaries;
- b. The need to create conditions that encourage peaceful co-existence, foster a culture of peace and tolerance and cultivate a hospitable environment that encourages people to remain in their places of residence within their country rather than flee as refugees;
- c. The need to promote participation in and respect for the international conventions on refugees.

CHAPTER II

THE DEFENCE AND SECURITY FORCES

Article 10

Principles relating to the defence and security forces

1. The defence and security forces shall reflect the firm resolve of Burundians, as individuals and as a nation, to live as equals, in peace and harmony, and to be free from fear.
2. The defence and security forces shall be established in accordance with the Constitution. Apart from the defence and security forces so established, no other armed organization may be created or raised.

3. The defence and security forces shall teach and require their members to abide by the Constitution and the laws in force and by the international conventions and agreements to which Burundi is a party.
4. The maintenance of national security and of national defence shall be subject to Government authority and parliamentary oversight.
5. The defence and security forces shall be accountable for their actions and work in all transparency. Parliamentary committees shall be set up to supervise the work of the defence and security forces in accordance with the legislation in force and the parliamentary rules and regulations.
6. Neither the defence and security forces nor any of their members shall, in the performance of their duties:
 - a. Injure the interests of a political party which is legitimate under the Constitution;
 - b. Manifest their political preferences;
 - c. Favour in any manner the interests of a political party;
 - d. Be a member of a political party or an association of a political nature;
 - e. Take part in political activities or demonstrations.

Article 11

Principles of organization of the defence and security forces

1. The defence and security forces shall consist of a national defence force, a national police and an intelligence service, all established in conformity with the Constitution.
2. The defence and security forces shall be subordinate to civilian authority in respect for the Constitution, the law and the regulations.
3. The defence and security forces shall be open to all Burundian citizens without discrimination.
4. The defence and security forces shall promote within their services a non-discriminatory, non-ethnicist and non-sexist culture.
5. Organic laws shall determine the creation, organization, training, conditions of service and functioning of the defence and security forces.
6. Within the limits determined by the Constitution and the laws, only the President may authorize the use of armed military force:
 - a. In defence of the State;
 - b. In the restoration of order and public safety;

- c. In the discharge of international obligations and commitments.
7. When the national defence force is utilized in one of the cases referred to in paragraph 6 above, the President shall officially consult the authorized competent bodies and shall promptly inform the Legislature, in detail, of:
 - a. The reason or reasons for the use of the national defence force;
 - b. Any location where that force is deployed;
 - c. The period for which that force is deployed.
8. If the Legislature is not in session, the President shall convene it in special session within seven days from the use of the national defence force.
9. The defence and security forces shall respect the rights and dignity of their members in the context of the normal constraints of discipline and training.
10. The members of the defence and security forces shall have the right to be informed of the socio-political life of the country and to receive civic education.

Article 12

Missions of the defence and security forces

1. Missions of the national defence force

The missions of the national defence force shall be:

- a. To ensure the integrity of the national territory and the sovereignty of the country;
 - b. To combat any armed aggression against the institutions of the Republic;
 - c. To intervene exceptionally in the maintenance of public order at the formal request of the authorized civilian authority;
 - d. To participate in assistance activities in case of natural disasters;
 - e. To contribute to the development of the country through major works, production and training;
 - f. To defend the vital points.
2. Missions of the national police

The missions of the national police shall be:

- a. To maintain and restore public order;
 - b. To prevent offences provided for by law, investigate and prosecute their perpetrators and make arrests in accordance with the law;
 - c. To ensure respect for the laws and other regulations for whose enforcement they are directly responsible;
 - d. To ensure the physical protection of persons and their property;
 - e. To ensure the protection of infrastructures and public property;
 - f. To relieve and assist persons in danger or in distress;
 - g. To intervene in case of catastrophe or disaster;
 - h. To develop various civil defence scenarios;
 - i. To ensure road safety throughout the national territory;
 - j. To ensure protection of public gatherings at the request of those involved, on orders from the administrative authorities, or on their own initiative;
 - k. To ensure the missions of the judicial and administrative police;
 - l. To ensure protection of the courts and tribunals;
 - m. To deal with criminal cases of major importance, such as economic crimes and cases attributable to roving delinquents or groups organized at the national or international level;
 - n. To produce and make use of crime statistics;
 - o. To deal with the policing of immigration and emigration and the status of aliens;
 - p. To monitor the movements of aliens throughout the national territory;
 - q. To keep watch on the land, lake and air borders;
 - r. To issue travel documents and residence permits;
 - s. To ensure protection of the institutions.
3. Missions of the intelligence service

The missions of the intelligence service shall be:

- a. To seek out, centralize and make use of all information likely to contribute to the protection of the State, its institutions and its interests at the international level, as well as to the prosperity of its economy;

- b. To detect as early as possible activities aimed at creating insecurity and violence or at changing the institutions of the State by unlawful means;
- c. To detect as early as possible recourse to the manipulation of ethnic or regionalist feelings as means of access to or retention of power;
- d. To detect as early as possible any threat to the constitutional order, public safety, territorial integrity or national sovereignty;
- e. To detect as early as possible any threat to the country's ecological environment;
- f. To detect as early as possible terrorist intrigues, illicit drug trafficking and the formation of criminal organizations;
- g. To detect malfunctions and cases of misappropriation of funds within the State services.

Article 13

Structure of the defence and security forces

1. Structure of the national defence force

The transitional Government shall be responsible for deciding upon the structure of the national defence force.

2. Structure of the national police

- a. The national police shall be coordinated within one Ministry, i.e., the one responsible for public security.
- b. Its structure shall be:
 - i. First level: Since the Ministry is responsible for public security, the head shall be a member of the Government;
 - ii. Second level: A national police headquarters responsible for coordinating all the police forces. It shall be headed by a director-general with administrative skills and knowledge of police techniques;
 - iii. Third level: Departments: each department shall represent a specialized area of police work.

This structure is illustrated in Annex II to the Agreement.

3. Structure of the intelligence service

The structure of the intelligence service shall be such as to enable the service, given its special nature, to preserve the secrecy of its operations while allowing for control by the National Assembly, especially with regard to the budget. The intelligence service shall be placed under the responsibility of a member of government.

4. Command of the defence and security forces

Command posts shall be distributed on the basis of competence and merit while ensuring the necessary ethnic balances.

Article 14

Composition of the defence and security forces

1. Composition of the national defence force

- a. There shall be a single defence force composed of all components of the Burundian nation irrespective of ethnic, regional, gender and/or social status.
- b. The national defence force shall include members of the Burundian armed forces and combatants of the political parties and movements in existence at the time of restructuring of the army, as well as other citizens who wish to enlist.
- c. After the signature of the Agreement, the combatants of the political parties and movements, as well as the existing national defence force, shall be placed under the authority of the transitional Government.
- d. A technical committee consisting of representatives of the Burundian armed forces and combatants of the political parties and movements, as well as of an external military advisory and training group, shall be established by decision of the transitional Government to implement the procedures for the establishment of the national defence force.

- e. Members of the Burundian armed forces found guilty of acts of genocide, *coups d'état*, violation of the Constitution and human rights and war crimes shall be excluded from the national defence force. Combatants of the political parties and movements found guilty of the same offences shall also not be accepted into the national defence force.
 - f. Recruitment into the national defence force shall be conducted in a transparent manner, individually, voluntarily and on the basis of personal merit, physical fitness, moral and professional qualifications and potential.
 - g. For a period to be determined by the Senate, not more than 50% of the national defence force shall be drawn from any one ethnic group, in view of the need to achieve ethnic balance and to prevent acts of genocide and *coups d'état*.
2. Composition of the national police
- a. There shall be a single national police composed of all citizens of the Burundian nation wishing to form part of it, irrespective of ethnic, regional, gender and social status.
 - b. The national police shall include members of the current national police, combatants of the political parties and movements and other citizens who meet the requirements.
 - c. A technical committee comprising representatives of the existing police force and the political parties and movements and of external advisors and instructors on police issues shall be established by decision of the transitional Government to implement the procedures for the establishment of the national police.
 - d. All persons, including current members of the police force and combatants of the political parties and movements, found guilty of genocide, the *coup d'état* of 21 October 199??., human rights violations or war crimes shall be excluded from the national police.
 - e. Not more than 50% of the members of the national police shall be drawn from any one particular ethnic group, with a view to achieving the necessary balances and preventing acts of genocide or of *coup d'état*.
3. Composition of the intelligence service

The composition of the intelligence service shall be such as to enable the service, given its special nature, to preserve

the secrecy of its operations while allowing for control by the National Assembly.

Article 15

Size of the defence and security forces

1. Size of the national defence force
 - a. The following criteria shall be used to determine the strength of the national defence force:
 - i. Potential internal and external threats;
 - ii. The economic and financial resources of the country;
 - iii. The budget allocated to the defence and security forces;
 - iv. The defence policy of the country.
 - b. The transitional Government, in consultation with the technical committee, shall determine the size of the national defence force.
2. Size of the national police
 - a. The following criteria shall be used to determine the strength of the national police:
 - i. Surface area of the country;
 - ii. Population;
 - iii. Population density;
 - iv. Urbanization level;
 - v. Economic resources;
 - vi. Crime level;
 - vii. Budgetary allocation.
 - b. The transitional Government, in consultation with the technical committee, shall determine the size of the national police.
3. Size of the intelligence service

The size of the intelligence service shall be such as to enable the service, given its special nature, to preserve the secrecy of its operations while allowing for control by the National Assembly.

Article 16

Balances within the defence and security forces

1. The following criteria shall be used to determine the imbalances in the defence and security forces:
 - a. Political;
 - b. Ethnic;
 - c. Regional;
 - d. Gender.
2. Correction of the imbalances in the defence and security forces shall be approached progressively in the spirit of reconciliation and trust in order to reassure all Burundians.
3. Correction of the imbalances shall be achieved during the transition period through the integration into the current defence and security forces of the combatants of the political parties and movements and through the recruitment of other Burundian citizens.
4. For purposes of rapid reduction of the command-level imbalances, accelerated training of commissioned and non-commissioned officers from among the combatants of the political parties and movements shall be conducted in Burundi and abroad as soon as the transition period commences.

Article 17

Recruitment

1. Recruitment shall be conducted in accordance with the following criteria:
 - a. Transparency;
 - b. Voluntary service;
 - c. Age;
 - d. Personal record and level of training;
 - e. Medical tests of physical and intellectual aptitude.
2. Recruitment criteria based on educational level shall be determined by the transitional Government.
3. A national commission shall be assigned responsibility for selecting candidates for all levels of the national defence force and national police, taking care to ensure the necessary ethnic balance.

Article 18

Training

1. The defence and security forces shall have technical, moral and civic training. This training shall include the culture of peace, aspects of conduct relating to the democratic multi-party political system, human rights and humanitarian law.
2. Decentralization of the centres for training police constables, rank and file troops and non-commissioned officers shall be undertaken.

Article 19

Organic laws, regulatory texts and disciplinary system

For the defence and security forces, organic laws, regulatory texts and disciplinary rules in conformity with the relevant provisions of the Agreement shall be adopted.

Article 20

Names of the defence and security forces

1. The name of the defence force shall be decided upon by the transitional Government.
2. The name of the police shall be "National Police of Burundi".
3. The name of the intelligence service shall be "General Intelligence Service".

Article 21

Demobilization

1. Demobilization shall begin after the signature of the Agreement in accordance with the implementation timetable (see Annex V).
2. To move from war to peace requires demobilization within the defence and security forces as well as for the combatants of the political parties and movements.

3. Demobilization shall involve both the members of the Burundian armed forces and the combatants of the political parties and movements.
4. Lists of people to be demobilized shall be compiled.
5. Members to be demobilized shall be provided with some form of appropriate identification.
6. Demobilization criteria and a demobilization package shall be drawn up.
7. The categories of people to be demobilized shall be:
 - a. Volunteers;
 - b. Those members who are handicapped or disabled;
 - c. Those who do not meet the age criteria;
 - d. Those whose discipline is such that they cannot be retained within the new defence and security forces;
 - e. Individuals whose educational level is such that they would not be able to undergo military or police training;
 - f. Members of the Burundian armed forces and combatants of the political parties and movements who will be rationalized to yield efficient and affordable defence and security forces.
8. An organ to deal with the socio-professional reintegration of demobilized troops shall be established.
9. A technical committee to work out the programme and modalities of demobilization shall be set up.
10. The international community shall be requested to assist in the process of demobilization.
11. Following the demobilization process, a certificate shall be issued to demobilized troops.
12. Each demobilized person shall receive a demobilization allowance.

Article 22

Military or compulsory civic service

The future institutions of the country shall examine the issue in the light of the needs of the time.

Article 23

National, regional, and international environment

1. Peace in Burundi requires a favourable national, regional and international environment.

2. Burundian politicians shall undertake to respect the political neutrality of the defence and security forces.
3. After the signature of the Agreement, the armed signatories to the Agreement, politicians and political leaders, religious organizations and civil society shall be called upon to address to the Burundian population signals and messages of peace, reconciliation and national unity.
4. National observatories shall be established on genocide, ethnic hegemony and domination, oppression and exclusion, *coups d'état*, political assassinations, arms trafficking and human rights violations in the Great Lakes region. The establishment of similar observatories at the regional and international levels shall be promoted.
5. The Parties undertake to contribute to the restoration of peace in the Great Lakes region.

Article 24

Security partners

The security partners are:

1. The Government and the defence and security forces;
2. State institutions including local authorities;
3. The population, particularly through their support and cooperation in enforcing the laws;
4. The countries in the region;
5. The international community.

CHAPTER II

THE DEFENCE AND SECURITY FORCES

Article 10

Principles relating to the defence and security forces

1. The defence and security forces shall reflect the firm resolve of Burundians, as individuals and as a nation, to live as equals, in peace and harmony, and to be free from fear.

2. The defence and security forces shall be established in accordance with the Constitution. Apart from the defence and security forces so established, no other armed organization may be created or raised.
3. The defence and security forces shall teach and require their members to abide by the Constitution and the laws in force and by the international conventions and agreements to which Burundi is a party.
4. The maintenance of national security and of national defence shall be subject to Government authority and parliamentary oversight.
5. The defence and security forces shall be accountable for their actions and work in all transparency. Parliamentary committees shall be set up to supervise the work of the defence and security forces in accordance with the legislation in force and the parliamentary rules and regulations.
6. Neither the defence and security forces nor any of their members shall, in the performance of their duties:
 - a. Injure the interests of a political party which is legitimate under the Constitution;
 - b. Manifest their political preferences;
 - c. Favour in any manner the interests of a political party;
 - d. Be a member of a political party or an association of a political nature;
 - e. Take part in political activities or demonstrations.

Article 11

Principles of organization of the defence and security forces

1. The defence and security forces shall consist of a national defence force, a national police and an intelligence service, all established in conformity with the Constitution.
2. The defence and security forces shall be subordinate to civilian authority in respect for the Constitution, the law and the regulations.
3. The defence and security forces shall be open to all Burundian citizens without discrimination.
4. The defence and security forces shall promote within their services a non-discriminatory, non-ethnicist and non-sexist culture.
5. Organic laws shall determine the creation, organization, training, conditions of service and functioning of the defence and security forces.
6. Within the limits determined by the Constitution and the laws, only the President may authorize the use of armed military force:

- a. In defence of the State;
 - b. In the restoration of order and public safety;
 - c. In the discharge of international obligations and commitments.
7. When the national defence force is utilized in one of the cases referred to in paragraph 6 above, the President shall officially consult the authorized competent bodies and shall promptly inform the Legislature, in detail, of:
- a. The reason or reasons for the use of the national defence force;
 - b. Any location where that force is deployed;
 - c. The period for which that force is deployed.
8. If the Legislature is not in session, the President shall convene it in special session within seven days from the use of the national defence force.
9. The defence and security forces shall respect the rights and dignity of their members in the context of the normal constraints of discipline and training.
10. The members of the defence and security forces shall have the right to be informed of the socio-political life of the country and to receive civic education.

Article 12

Missions of the defence and security forces

1. Missions of the national defence force

The missions of the national defence force shall be:

- a. To ensure the integrity of the national territory and the sovereignty of the country;
 - b. To combat any armed aggression against the institutions of the Republic;
 - c. To intervene exceptionally in the maintenance of public order at the formal request of the authorized civilian authority;
 - d. To participate in assistance activities in case of natural disasters;
 - e. To contribute to the development of the country through major works, production and training;
 - f. To defend the vital points.
- #### 2. Missions of the national police

The missions of the national police shall be:

- a. To maintain and restore public order;
 - b. To prevent offences provided for by law, investigate and prosecute their perpetrators and make arrests in accordance with the law;
 - c. To ensure respect for the laws and other regulations for whose enforcement they are directly responsible;
 - d. To ensure the physical protection of persons and their property;
 - e. To ensure the protection of infrastructures and public property;
 - f. To relieve and assist persons in danger or in distress;
 - g. To intervene in case of catastrophe or disaster;
 - h. To develop various civil defence scenarios;
 - i. To ensure road safety throughout the national territory;
 - j. To ensure protection of public gatherings at the request of those involved, on orders from the administrative authorities, or on their own initiative;
 - k. To ensure the missions of the judicial and administrative police;
 - l. To ensure protection of the courts and tribunals;
 - m. To deal with criminal cases of major importance, such as economic crimes and cases attributable to roving delinquents or groups organized at the national or international level;
 - n. To produce and make use of crime statistics;
 - o. To deal with the policing of immigration and emigration and the status of aliens;
 - p. To monitor the movements of aliens throughout the national territory;
 - q. To keep watch on the land, lake and air borders;
 - r. To issue travel documents and residence permits;
 - s. To ensure protection of the institutions.
3. Missions of the intelligence service

The missions of the intelligence service shall be:

- a. To seek out, centralize and make use of all information likely to contribute to the protection of the State, its institutions and its interests at the

international level, as well as to the prosperity of its economy;

- b. To detect as early as possible activities aimed at creating insecurity and violence or at changing the institutions of the State by unlawful means;
- c. To detect as early as possible recourse to the manipulation of ethnic or regionalist feelings as means of access to or retention of power;
- d. To detect as early as possible any threat to the constitutional order, public safety, territorial integrity or national sovereignty;
- e. To detect as early as possible any threat to the country's ecological environment;
- f. To detect as early as possible terrorist intrigues, illicit drug trafficking and the formation of criminal organizations;
- g. To detect malfunctions and cases of misappropriation of funds within the State services.

Article 13

Structure of the defence and security forces

1. Structure of the national defence force

The transitional Government shall be responsible for deciding upon the structure of the national defence force.

2. Structure of the national police

- a. The national police shall be coordinated within one Ministry, i.e., the one responsible for public security.
- b. Its structure shall be:
 - i. First level: Since the Ministry is responsible for public security, the head shall be a member of the Government;
 - ii. Second level: A national police headquarters responsible for coordinating all the police forces. It shall be headed by a director-general with administrative skills and knowledge of police techniques;
 - iii. Third level: Departments: each department shall represent a specialized area of police work.

This structure is illustrated in Annex II to the Agreement.

3. **Structure of the intelligence service**

The structure of the intelligence service shall be such as to enable the service, given its special nature, to preserve the secrecy of its operations while allowing for control by the National Assembly, especially with regard to the budget. The intelligence service shall be placed under the responsibility of a member of government.

4. **Command of the defence and security forces**

Command posts shall be distributed on the basis of competence and merit while ensuring the necessary ethnic balances.

Article 14

Composition of the defence and security forces

1. **Composition of the national defence force**

- a. There shall be a single defence force composed of all components of the Burundian nation irrespective of ethnic, regional, gender and/or social status.
- b. The national defence force shall include members of the Burundian armed forces and combatants of the political parties and movements in existence at the time of restructuring of the army, as well as other citizens who wish to enlist.
- c. After the signature of the Agreement, the combatants of the political parties and movements, as well as the existing national defence force, shall be placed under the authority of the transitional Government.
- d. A technical committee consisting of representatives of the Burundian armed forces and combatants of the political parties and movements, as well as of an external military advisory and training group, shall be established by decision of the transitional Government to implement the

- procedures for the establishment of the national defence force.
- e. Members of the Burundian armed forces found guilty of acts of genocide, *coups d'état*, violation of the Constitution and human rights and war crimes shall be excluded from the national defence force. Combatants of the political parties and movements found guilty of the same offences shall also not be accepted into the national defence force.
 - f. Recruitment into the national defence force shall be conducted in a transparent manner, individually, voluntarily and on the basis of personal merit, physical fitness, moral and professional qualifications and potential.
 - g. For a period to be determined by the Senate, not more than 50% of the national defence force shall be drawn from any one ethnic group, in view of the need to achieve ethnic balance and to prevent acts of genocide and *coups d'état*.
2. Composition of the national police
- a. There shall be a single national police composed of all citizens of the Burundian nation wishing to form part of it, irrespective of ethnic, regional, gender and social status.
 - b. The national police shall include members of the current national police, combatants of the political parties and movements and other citizens who meet the requirements.
 - c. A technical committee comprising representatives of the existing police force and the political parties and movements and of external advisors and instructors on police issues shall be established by decision of the transitional Government to implement the procedures for the establishment of the national police.
 - d. All persons, including current members of the police force and combatants of the political parties and movements, found guilty of genocide, the *coup d'état* of 21 October 199??, human rights violations or war crimes shall be excluded from the national police.
 - e. Not more than 50% of the members of the national police shall be drawn from any one particular ethnic group, with a view to achieving the necessary balances and preventing acts of genocide or of *coup d'état*.
3. Composition of the intelligence service

The composition of the intelligence service shall be such as to enable the service, given its special nature, to preserve

the secrecy of its operations while allowing for control by the National Assembly.

Article 15

Size of the defence and security forces

1. Size of the national defence force
 - a. The following criteria shall be used to determine the strength of the national defence force:
 - i. Potential internal and external threats;
 - ii. The economic and financial resources of the country;
 - iii. The budget allocated to the defence and security forces;
 - iv. The defence policy of the country.
 - b. The transitional Government, in consultation with the technical committee, shall determine the size of the national defence force.
2. Size of the national police
 - a. The following criteria shall be used to determine the strength of the national police:
 - i. Surface area of the country;
 - ii. Population;
 - iii. Population density;
 - iv. Urbanization level;
 - v. Economic resources;
 - vi. Crime level;
 - vii. Budgetary allocation.
 - b. The transitional Government, in consultation with the technical committee, shall determine the size of the national police.
3. Size of the intelligence service

The size of the intelligence service shall be such as to enable the service, given its special nature, to preserve the secrecy of its operations while allowing for control by the National Assembly.

Article 16

Balances within the defence and security forces

1. The following criteria shall be used to determine the imbalances in the defence and security forces:
 - a. Political;
 - b. Ethnic;
 - c. Regional;
 - d. Gender.
2. Correction of the imbalances in the defence and security forces shall be approached progressively in the spirit of reconciliation and trust in order to reassure all Burundians.
3. Correction of the imbalances shall be achieved during the transition period through the integration into the current defence and security forces of the combatants of the political parties and movements and through the recruitment of other Burundian citizens.
4. For purposes of rapid reduction of the command-level imbalances, accelerated training of commissioned and non-commissioned officers from among the combatants of the political parties and movements shall be conducted in Burundi and abroad as soon as the transition period commences.

Article 17

Recruitment

1. Recruitment shall be conducted in accordance with the following criteria:
 - a. Transparency;
 - b. Voluntary service;
 - c. Age;
 - d. Personal record and level of training;
 - e. Medical tests of physical and intellectual aptitude.
2. Recruitment criteria based on educational level shall be determined by the transitional Government.
3. A national commission shall be assigned responsibility for selecting candidates for all levels of the national defence force and national police, taking care to ensure the necessary ethnic balance.

Article 18

Training

1. The defence and security forces shall have technical, moral and civic training. This training shall include the culture of peace, aspects of conduct relating to the democratic multi-party political system, human rights and humanitarian law.
2. Decentralization of the centres for training police constables, rank and file troops and non-commissioned officers shall be undertaken.

Article 19

Organic laws, regulatory texts and disciplinary system

For the defence and security forces, organic laws, regulatory texts and disciplinary rules in conformity with the relevant provisions of the Agreement shall be adopted.

Article 20

Names of the defence and security forces

1. The name of the defence force shall be decided upon by the transitional Government.
2. The name of the police shall be "National Police of Burundi".
3. The name of the intelligence service shall be "General Intelligence Service".

Article 21

Demobilization

1. Demobilization shall begin after the signature of the Agreement in accordance with the implementation timetable (see Annex V).
2. To move from war to peace requires demobilization within the defence and security forces as well as for the combatants of the political parties and movements.

3. Demobilization shall involve both the members of the Burundian armed forces and the combatants of the political parties and movements.
4. Lists of people to be demobilized shall be compiled.
5. Members to be demobilized shall be provided with some form of appropriate identification.
6. Demobilization criteria and a demobilization package shall be drawn up.
7. The categories of people to be demobilized shall be:
 - a. Volunteers;
 - b. Those members who are handicapped or disabled;
 - c. Those who do not meet the age criteria;
 - d. Those whose discipline is such that they cannot be retained within the new defence and security forces;
 - e. Individuals whose educational level is such that they would not be able to undergo military or police training;
 - f. Members of the Burundian armed forces and combatants of the political parties and movements who will be rationalized to yield efficient and affordable defence and security forces.
8. An organ to deal with the socio-professional reintegration of demobilized troops shall be established.
9. A technical committee to work out the programme and modalities of demobilization shall be set up.
10. The international community shall be requested to assist in the process of demobilization.
11. Following the demobilization process, a certificate shall be issued to demobilized troops.
12. Each demobilized person shall receive a demobilization allowance.

Article 22

Military or compulsory civic service

The future institutions of the country shall examine the issue in the light of the needs of the time.

Article 23

National, regional, and international environment

1. Peace in Burundi requires a favourable national, regional and international environment.

2. Burundian politicians shall undertake to respect the political neutrality of the defence and security forces.
3. After the signature of the Agreement, the armed signatories to the Agreement, politicians and political leaders, religious organizations and civil society shall be called upon to address to the Burundian population signals and messages of peace, reconciliation and national unity.
4. National observatories shall be established on genocide, ethnic hegemony and domination, oppression and exclusion, *coups d'état*, political assassinations, arms trafficking and human rights violations in the Great Lakes region. The establishment of similar observatories at the regional and international levels shall be promoted.
5. The Parties undertake to contribute to the restoration of peace in the Great Lakes region.

Article 24

Security partners

The security partners are:

1. The Government and the defence and security forces;
2. State institutions including local authorities;
3. The population, particularly through their support and cooperation in enforcing the laws;
4. The countries in the region;
5. The international community.

PROTOCOL IV

RECONSTRUCTION AND DEVELOPMENT

PREAMBLE

We, the Parties,

Having considered the issues relating to the overall problem of reconstruction and development, including those associated with rehabilitation and resettlement of the refugees and *sinistrés*, with

physical and political reconstruction and with economic and social development,

Having identified the principles, guidelines and activities for the transitional institutions in dealing with these issues,

Having incorporated the essentials of our work, including the analysis of the origin of the specific problems and the principles, guidelines and activities required to remedy this problem, in a report of Committee IV which serves as a reference document for the present Protocol and is reproduced as Annex IV to the Agreement,

Have agreed:

1. To support the rehabilitation and resettlement of the refugees and *sinistrés* by complying with the provisions of Chapter I of the present Protocol;
2. To work towards the country's physical and political reconstruction in conformity with the principles and measures set out in Chapter II of the present Protocol;
3. To strive towards the economic and social development of Burundi by following the guidelines defined in Chapter III of the present Protocol.

CHAPTER I

REHABILITATION AND RESETTLEMENT OF REFUGEES AND *SINISTRES*

Article 1

Definitions

1. For the definition of the term "refugee", reference is made to international conventions, including the 1951 Geneva Convention Relative to the Status of Refugees, the 1966 Protocol Relative to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.
2. The term "*sinistrés*" designates all displaced, regrouped and dispersed persons and returnees.

Article 2

Principles governing return, resettlement and reintegration

1. The Government of Burundi shall encourage the return of refugees and *sinistrés* and resettle and reintegrate them. It shall seek the support of other countries and international and non-governmental organizations in carrying out this responsibility.
2. It shall respect the following principles:
 - a. All Burundian refugees must be able to return to their country;
 - b. Refugees no longer in their first country of asylum are entitled to the same treatment as other returning Burundian refugees;
 - c. Return must be voluntary and must take place in dignity with guaranteed security, and taking into account the particular vulnerability of women and children;
 - d. The reception mechanisms must be put in place in advance of the return;
 - e. Returnees must have their rights as citizens and their property restored to them in accordance with the laws and regulations in force in Burundi after the entry into force of the Agreement;
 - f. All *sinistrés* wishing to do so must be able to return to their homes;
 - g. Specific conditions must be provided for *sinistrés* who believe that they can no longer return to their property, so as to enable them to return to normal socio-professional life;

- h. In the return of the refugees and the resettlement and reintegration of the returnees and displaced and regrouped persons, the principle of equity, including gender equity, must be strictly applied in order to avoid any measure or treatment that discriminates against or favours any one among these categories.

Article 3

Preparatory activities

The Government shall undertake the following preparatory activities:

- a. Establishing and constituting a National Commission for the Rehabilitation of *Sinistrés* (CNRS), which shall have the mandate of organizing and coordinating, together with international organizations and countries of asylum, the return of refugees and *sinistrés*, assisting in their resettlement and reintegration, and dealing with all the other issues listed in the report of Committee IV. To this end, it shall draw up a plan of priorities. The members of the CNRS shall be drawn *inter alia* from the participating parties and the Government of Burundi, and shall elect the Commission's chairperson;
- b. Establishing and constituting a Sub-Commission of the CNRS with the specific mandate of dealing with issues related to land as set out in article 8 (j) of the present Protocol;
- c. Convening, in collaboration with the countries of asylum and the Office of the United Nations High Commissioner for Refugees, the Tripartite Commissioner, involving in it representatives of the refugees and international observers;
- d. Requesting international organizations and the host countries concerned to conduct a gender and age disaggregated census of the refugees, including the old caseload refugees (1972);
- e. Conducting a multi-dimensional census of the *sinistrés*;
- f. Organizing information and awareness campaigns for refugees and *sinistrés* as well as visits to their places of origin;

- g. Undertaking information and awareness campaigns on the mechanisms for peaceful coexistence and return to *collines* of origin;
- h. Setting up reception committees where they do not yet exist. The role of these committees shall be to receive and provide support services for all the *sinistrés* returning to their homes, ensure their security and assist them in organizing their socio-economic reintegration.

Article 4

Guidelines governing resettlement and integration

The CNRS shall decide on the activities for the resettlement and integration of refugees and *sinistrés* in accordance with the priority plan taking into account the availability of resources, in order to achieve the following aims and objectives:

- a. To ensure the socio-economic and administrative reintegration of the *sinistrés*;
- b. To give all returning families, including female- and child-headed families, food aid, material support and assistance with health, education, agriculture and reconstruction until they become self-sufficient;
- c. To provide communes, villages and *collines* with assistance in the reconstruction of community infrastructures and with support for income-generating activities, paying special attention to women and enhancing their roles in building and sustaining families and communities;
- d. To settle all those who believe that they cannot yet return on sites close to home, in order to enable them to go and till their fields initially and return to their land later on;
- e. To encourage, to the extent possible, grouped housing in the reconstruction policy in order to free cultivable land;
- f. To ensure equity in the distribution of resources between the ethnic groups on the one hand and the provinces on the other, and to avoid overlap between the various parties involved;
- g. To promote the participation of the population in the resettlement activities;
- h. To help returnees to recover the property and bank accounts left in Burundi before their exile and whose existence has been duly proven;

- i. To offer intensive language courses for returnees to mitigate the language problems;
- j. To assist returnees in other areas such as medical services, psycho-social support, social security and retirement, education of children and the equivalency of diplomas awarded outside Burundi.

Article 5

Actions with regard to returnees in their country of asylum

The Government shall undertake the following actions with regard to returnees in their country of asylum:

- a. Helping returnees settle their disputes in their country of asylum relating notably to immovable property, bank accounts, social security, etc;
- b. In the context of agreements between countries or social security institutions, helping those who were employed in the country of asylum receive social security benefits to which they are entitled in respect of such employment;
- c. Studying ways of indemnifying and compensating returnees for property in the country of asylum they are unable to take with them, profit from or sell;
- d. Assisting pupils and students in their two final years of study in primary, secondary and higher education wishing to complete their studies in the country of asylum.

Article 6

Other actions

Any other action decided upon by the CNRS in accordance with the priority plan and in the light of available resources may be taken.

Article 7

Access and safety of international personnel

The Government shall allow international organizations and international and local non-governmental organizations unrestricted access to returnees and other *sinistrés* for purposes of the delivery

of humanitarian assistance. It must guarantee the safety of the staff of such organizations and must also facilitate the provision of short-term aid for repatriation, appropriately supervised and without discrimination.

Article 8

Issues relating to land and other property

To resolve all issues relating to land and other property, the following principles and mechanisms shall be applied:

- a. Property rights shall be guaranteed for all men, women and children. Compensation which is fair and equitable under the circumstances shall be payable in case of expropriation, which shall be allowed only in the public interest and in accordance with the law, which shall also set out the basis of compensation;
- b. All refugees and/or *sinistrés* must be able to recover their property, especially their land;
- c. If recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification;
- d. Refugees who do not return may receive a just and equitable indemnification if their land had been expropriated without prior indemnification and in contravention of the principle set out in sub-paragraph (a) of the present article;
- e. The policy with respect to distribution of State-owned land shall be reviewed so that priority can be given to the resettlement of *sinistrés*;
- f. An inventory of destroyed urban property shall be drawn up with a view to making it habitable in order to redistribute it or return it as a priority to the original owners;
- g. A series of measures shall be taken in order to avoid subsequent disputes over land, including the establishment of a register of rural land, the promulgation of a law on succession and, in the longer term, the conduct of a cadastral survey of rural land;
- h. The policy of distribution or allocation of new lands shall take account of the need for environmental protection and management of the country's water system through protection of forests;

- i. Burundi's Land Act must be revised in order to adjust it to the current problems with respect to land management;
- j. The Sub-Commission on Land established in accordance with article 3 (b) of the present Protocol shall have the specific mandate of:
 - i. Examining all cases of land owned by old caseload refugees and state-owned land;
 - ii. Examining disputed issues and allegations of abuse in the (re)distribution of land and ruling on each case in accordance with the above principles;
- k. The Sub-Commission on Land must, in the performance of its functions, ensure the equity, transparency and good sense of all its decisions. It must always remain aware of the fact that the objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.

Article 9

National Fund for *Sinistrés*

A National Fund for *Sinistrés* shall be established, and shall derive its funding from the national budget and from grants by bilateral and multilateral aid agencies or assistance from non-governmental organizations.

Article 10

Vulnerable groups

The Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatized children, widows, women heads of families, juvenile delinquents, the physically and mentally disabled, etc.

CHAPTER II

PHYSICAL AND POLITICAL RECONSTRUCTION

Article 11

Reconstruction programme

1. The transitional Government shall initiate and finance, with the support of the international community, a programme of physical and political reconstruction that takes a comprehensive approach incorporating rehabilitation, peace-building, promotion of the rights and freedoms of the human person, economic growth and long-term development.
2. The reconstruction programme shall be conducted and carried out in accordance with a realistic timetable that takes account of local capabilities and external inputs. The programme must be designed with a view to equity so that all categories of the population may benefit from it.

Article 12

Physical reconstruction

Physical reconstruction aims at assisting in the return of the refugees and *sinistrés*, as well as at the rebuilding of destroyed physical property. Physical reconstruction shall be conducted, transparently and equitably, in such a way as to:

- a. Take into account both those who are being resettled or reintegrated and the communities receiving them;
- b. Contribute to correcting the imbalances relating to public infrastructures, including school infrastructures;
- c. Solve the problems relating to the repayment of loans that some Burundians had borrowed from banks and financial institutions for which the object financed has been destroyed;
- d. Ensure sound management of rebuilt infrastructures;
- e. Make use of human capital as an essential element of reconstruction;
- f. Create conditions conducive to reconstruction and the reactivation of production activities;
- g. Enhance the intervention capacity of the communes;

- h. Draw on national solidarity.

Article 13

Political reconstruction

Physical reconstruction and political reconstruction must be mutually supportive. Political reconstruction is aimed at making national reconciliation and peaceful coexistence possible, and must be directed towards the establishment of the rule of law. In this context, the following programmes and measures shall be undertaken:

- a. Launching of a multi-faceted national reconciliation programme;
- b. Promotion of the rights and freedoms of the human person;
- c. Education of the population in the culture of peace;
- d. Initiation of tangible actions for the advancement of women;
- e. Reform of the judicial system;
- f. Support of democratization, including strengthening of the parliamentary system and support for the political party system;
- g. Support for the development and strengthening of civil society;
- h. Provision of support for independent media.

CHAPTER III

ECONOMIC AND SOCIAL DEVELOPMENT

Article 14

Development programme

The transitional Government shall launch a long-term economic and social development programme. With the support of international agencies, it shall begin work on remedying the economic situation, reversing the trends resulting from the crisis,

particularly the intensification of poverty, and taking up the challenges that impede economic development.

Article 15

Principal objectives

The Government shall endeavour to correct the imbalances in distribution of the country's limited resources and to embark on the path of sustainable growth with equity. It shall set itself the following principal objectives:

- a. Increasing rural and urban household income;
- b. Providing all children with primary and secondary education at least to the age of 16;
- c. Reducing the infant mortality rate by at least half;
- d. Giving the entire population access to health care;
- e. Improving the well-being of the population in all areas.

Article 16

Guidelines governing development

In pursuit of these objectives, the Government shall follow the guidelines set out hereunder on the basis of the measures specified in the report of Committee IV (see Annex IV):

- a. Working towards macro-economic and financial stabilization;
- b. Attempting to solve the problem of external and domestic public debt;
- c. Initiation of structural reforms in the social sectors;
- d. Creation of an environment conducive to the expansion of the private sector;
- e. Efforts to create new jobs and compliance with the criteria of equity and transparency in employment;
- f. Ensuring good governance in the management of public affairs;
- g. Rendering operational the Court of Audit established under the provisions of Chapter I of Protocol II to the Agreement;
- h. Transformation of the communes into focal points for development and promotion of greater public access to State services by means of a decentralization policy;

- i. Promotion of the role of women and youth in development, with the aid of specific measures to benefit them;
- j. Initiation of Burundi's integration into the region;
- k. Equitable apportionment of the benefits of development.

Article 17

Implementation

1. For the implementation of the reconstruction and development measures, an Inter-Ministerial Reconstruction and Development Unit shall be created to which the Ministries of Planning, Finance and Reintegration shall second personnel. Support for this Unit shall be sought from the World Bank, the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees, the European Commission and others. It shall have the following mandate:
 - a. Preparation, within six weeks of the signing of the peace agreement, of an emergency reconstruction plan that will set the priorities for reconstruction and provide an initial estimate of costs. In preparing this plan, the National Commission for the Rehabilitation of *Sinistrés* shall be consulted and invited to submit proposals. This emergency plan shall also serve as the basis for discussion at a donor conference;
 - b. Subsequently, preparation of a detailed reconstruction plan covering the transition period as set forth in Chapter II of Protocol II to the Agreement;
 - c. At the same time, preparation of a medium- and long-term development plan.
2. The three plans shall be submitted to the National Assembly for approval. They will be guided by the measures proposed by Committee IV (see Annex IV, chapters II and III) while adapting the priorities in response to developments in the situation and bearing in mind opportunities for financing.

3. Donors will be involved in the work of the Unit, and may request an international auditing company to monitor all financial operations and accounts that may be established.

* * * *

PROTOCOL V

GUARANTEES ON IMPLEMENTATION OF THE AGREEMENT

PREAMBLE

We, the Parties,

Aware of the importance of guarantees in any peace process, and particularly in the implementation of peace agreements,

Having learned the lessons from the failure of previous agreements in Burundi,

Desirous that peace and reconciliation should be based on an agreement that is clear, precise, specific, unequivocal, comprehensive and implementable in Burundi in accordance with the implementation timetable contained in Annex V to the Agreement,

Having expressed a solemn commitment to assume joint responsibility for the content of the Agreement,

Concerned also about the negative impact of the conflict on Burundian women and children,

Recognizing the unique potential of women to contribute to the healing, reconstruction and development of Burundian society,

Aware that the Burundian people is the focus and beneficiary of the Agreement concluded in its name,

Confident of the will and ability of Burundians to restore peace and harmony in their country, with the support of the international community,

Resolved to ensure the effective implementation of the Agreement,

Have agreed as follows:

Article 1

Acceptance and support of the Agreement by the Burundian people

All the Parties commit themselves to undertake a broad campaign to inform and sensitize the population about the content, spirit and letter of the Agreement.

Article 2

Transitional institutions

1. The transitional institutions shall be established and operate in accordance with the relevant provisions of Chapter II of Protocol II to the Agreement.
2. The men and women called upon to lead the transition must, at all times, show integrity, determination, patriotism and competence, and devote themselves to the interests of all Burundians without any discrimination. They must take a solemn oath before assuming their duties.
3. The duration of the transition period shall be as specified in article 13 of Protocol II to the Agreement.

Article 3

Implementation Monitoring Committee

A committee to follow up, monitor, supervise and coordinate the implementation of the Agreement, hereinafter referred to as the Implementation Monitoring Committee, shall be established.

1. Role of the Implementation Monitoring Committee

The functions of the Implementation Monitoring Committee shall be to:

- a. Follow up, monitor, supervise, coordinate and ensure the effective implementation of all the provisions of the Agreement;
- b. Ensure that the implementation timetable is respected;
- c. Ensure the accurate interpretation of the Agreement;
- d. Reconcile points of view;
- e. Arbitrate and rule on any dispute that may arise among the signatories;
- f. Give guidance to and coordinate the activities of all the commissions and sub-commissions set up pursuant to each protocol for the purpose of implementing the Agreement. These commissions and subcommissions shall include the following:
 - The Technical Committee to implement the procedures for the establishment of a national defence force;
 - The Technical Committee to implement the procedures for the establishment of the national police;
 - The Ceasefire Commission;
 - The Reintegration Commission;
 - The National Commission for the Rehabilitation of *Sinistrés*;
- g. Assist and support the transitional government in the diplomatic mobilization of the financial, material, technical and human resources required for the implementation of the Agreement;

Article 4
The Facilitator

The Facilitator shall continue in his role as moral guarantor, recourse authority and conciliation agent.

Article 5
Commissions

1. The Implementation Monitoring Committee, in collaboration with the Government, shall establish commissions and sub-commissions responsible for sectoral activities as provided for in paragraph 1 (g) of article 3. Their activities shall be coordinated by the Implementation Monitoring Committee, to which they shall report.
2. The Implementation Monitoring Committee shall, when setting up commissions and subcommissions, specify their composition, functions, structures, location, decision-making process and leadership, as well as the timetable for the completion of their activities.
3. **International Judicial Commission of Inquiry**
 - a. The transitional Government shall address the request referred to in article 6, paragraph 10, of Protocol I to the Agreement to the United Nations Security Council within 30 days from its installation.
 - b. **International criminal tribunal**

The Government of Burundi shall address the request referred to in article 6, paragraph 11, of Protocol I to the Agreement to the United Nations Security Council within 15 days after publication of the report of the International Judicial Commission of Inquiry.

4. **National Truth and Reconciliation Commission**

The transitional Government, in consultation with the Bureau of transitional National Assembly, shall establish the National Truth and Reconciliation Commission pursuant to article 8 of Protocol I to the Agreement not later than six months after taking office. The Commission shall begin work within 15 days after its establishment.

5. Technical Committee to implement the procedures for the establishment of a national defence force
 - a. The establishment of the national defence force, its name, its strength, its training, its conditions of service and its functioning shall be as defined in the relevant provisions of Chapter II of Protocol III to the Agreement and in organic laws, regulatory texts and disciplinary rules adopted pursuant to article 11, paragraph 5, and article 19 of that Protocol.
 - b. The organic laws, regulatory texts and disciplinary rules referred to above shall be adopted by the appropriate transitional institutions within 30 days from the adoption of the Constitution.
 - c. The Technical Committee to implement the procedures for the establishment of a national defence force referred to in article 14, paragraph 1 (d) of Protocol III to the Agreement shall be constituted within 15 to 30 days after the adoption of the texts referred to in paragraph (b) above. Its work shall begin within seven days after its constitution, and shall be concluded before the start of the electoral process.
6. Technical Committee to implement the procedures for the establishment of the national police
 - a. The creation, name, missions, composition, strength, training, conditions of service and functioning of the national police shall be as defined in the relevant provisions of article 14, paragraph 2, article 15, article 17, paragraph 3, and article 20 of Protocol III to the Agreement.
 - b. The Technical Committee to implement the procedures for the establishment of the national police set up pursuant to

the provisions of article 14, paragraph 2 (c) of that Protocol shall be constituted within 15 to 30 days from the date when the transitional Government takes office. Its work shall begin within seven days after its constitution, and shall be concluded before the start of the electoral process.

7. Ceasefire Commission

- a. The ceasefire, as defined in article 25 of Protocol III to the Agreement, shall take place on the date of signature of the Agreement.
- b. The Ceasefire Commission provided for in article 27, paragraph 1 of Protocol III to the Agreement shall be established by the Implementation Monitoring Committee on the day the Committee starts its activities. It shall begin its work upon the appointment of its chairperson.
- c. In conformity with article 27, paragraph 1 of Protocol III, the Ceasefire Commission shall consist of representatives of the Government, the combatants of the political parties and movements, the United Nations, the Organization of African Unity and the Regional Peace Initiative for Burundi.
- d. The Ceasefire Commission may establish offices in the military regions of the country, as well as in the quartering locations and at other points as its functions may require.
- e. The functions of the Ceasefire Commission shall be as defined in article 21, article 27, paragraphs 1(d), 2, 3 and 4 and article 28 of Protocol III of the Agreement.
- f. The operations consisting of the ceasefire, disengagement, quartering and demobilization of the forces shall be completed within six months from the commencement of the activities of the Ceasefire Commission.
- g. Deployment and operations of the international peacekeeping force provided for in article 27, paragraph 5 of Protocol III to the Agreement shall commence as soon as possible after the establishment of the Ceasefire Commission. They shall be conducted in coordination and cooperation with the Ceasefire Commission.
- h. In performing their duties, the members of the Ceasefire Commission as well as those of the international peacekeeping and security force shall enjoy complete freedom of movement throughout the territory of Burundi.
- i. The amnesty provided for in article 26(1) of Protocol III to the Agreement shall go into effect on the date of signature of the Agreement.

8. Reintegration Commission

- a. The organ provided for in article 21, paragraph 8 of Protocol III to the Agreement, hereinafter referred to as the Reintegration Commission shall have the role of organizing, supervising, monitoring and ensuring the effective economic and social reintegration of the troops and combatants who, as a result of the demobilization process carried out in conformity with article 21 of Protocol III to the Agreement, have become civilians.
- b. The Reintegration Commission shall consist of representatives of the Government, the United Nations and the Organization of African Unity. It shall be chaired by the Government.
- c. The Reintegration Commission shall commence its activities on the day of its establishment. These activities must be completed before the commencement of the electoral process.

9. National Commission for the Rehabilitation of *Sinistrés*

The organ provided for in article 3, paragraph (a) of Protocol IV to the Agreement, shall be constituted within 30 days after the signature of the Agreement. It shall begin its work upon the election of its chairperson and shall report to the Implementation Monitoring Committee. It shall be based in Bujumbura. It shall be in place until the end of the transition period.

Article 6

Genocide, war crimes and other crimes against humanity

The Implementation Monitoring Committee shall ensure implementation of the measures specified in Protocol I to the Agreement relating to the prevention, suppression and eradication of acts of genocide, war crimes and other crimes against humanity.

Article 7

Role of the international community

1. The involvement of the international community in the implementation of the Agreement is necessary, both as a moral and diplomatic guarantee and as a provider of technical, material and financial assistance.
2. In this respect, the Burundian Government shall immediately following the signature of the Agreement send formal requests to the countries and organizations agreed upon by the Parties inviting them to participate in and render their financial, technical and material support to the implementation of the Agreement as provided for in the relevant provisions of the present Protocol and of Protocols I, II, III and IV.

Article 8

Peacekeeping

Immediately following the signature of the Agreement, the Burundian Government shall submit to the United Nations a request for an international peacekeeping force in conformity with and for the purposes set forth in article 27, paragraph 5 of Protocol III to the Agreement. Account must be taken of United Nations practice in this respect. This force shall be responsible *inter alia* for:

- a. Ensuring respect for the ceasefire;
- b. Supervising integration;
- c. Providing technical support for demobilization aid and training;
- d. Ensuring protection of the institutions and of any public figure who so wishes;
- e. Assisting in the establishment and training of an ethnically balanced special unit for the protection of the institutions.

Article 9

Financial guarantees

Implementation of all the reforms and programmes contained in the Agreement will require financial support from donors. In this context, the Facilitator, in coordination with the Implementation Monitoring Committee and the transitional Government, shall take the necessary steps for a donors' conference to be convened to raise funds for the reconstruction of Burundi.

Article 10

Role of the region

1. The Parties urge the heads of State of the countries of the region to continue to provide their support for the peace process in Burundi.
2. The heads of State of the region shall also constitute guarantors of the Agreement.

* * * *

ANNEX I

PLEDGE BY PARTICIPATING PARTIES

By the signature of its duly authorized representative affixed hereto,

_____ [party]

hereby:

1. Affirms its willingness to participate in all institutions, structures and commissions to be established under, or for the proper implementation of, the Arusha Peace and Reconciliation Agreement for Burundi, including but not limited to the transitional National Assembly and the transitional Government;

2. Pledges itself to abide by all the obligations and duties imposed on participating parties under the Agreement;
3. Commits itself to peace and national reconciliation, and to oppose any political ideology and any action that has as its purpose the promotion of violence, hatred or unlawful discrimination;
4. Undertakes to participate in a public programme on peace and reconciliation;
5. Further pledges that it shall comply with directives given to it under article 21.13 of Protocol II to the Agreement and do all in its power to promote respect for and observance of the Agreement by its members and by the public at large.

Signature: _____

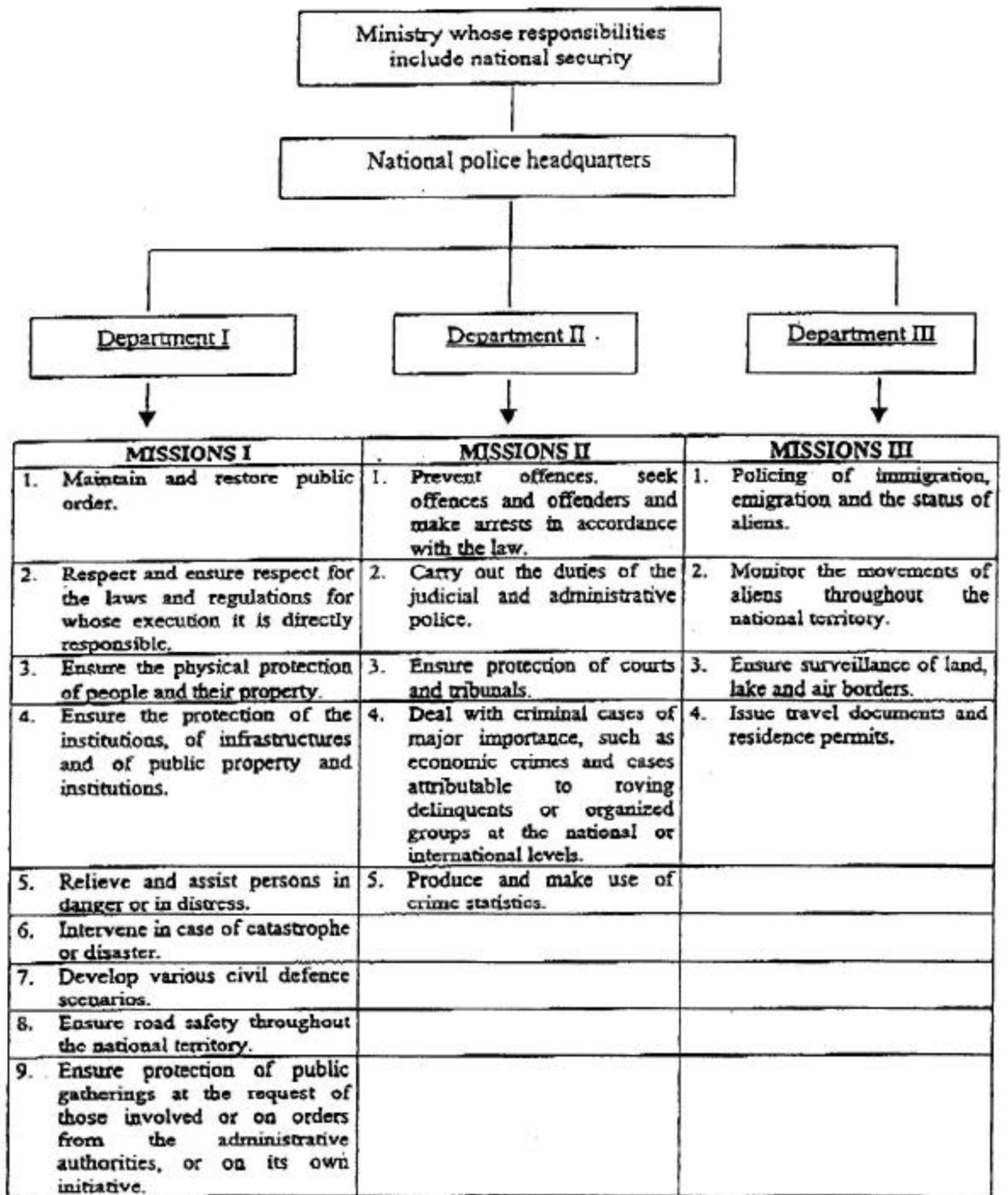
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Date: _____

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ANNEX II

STRUCTURE OF THE NATIONAL POLICE OF BURUNDI



* * * *

ANNEX III

CEASEFIRE AGREEMENT

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ANNEX IV

REPORT OF COMMITTEE IV

CHAPTER I

REHABILITATION AND RESETTLEMENT OF REFUGEES AND *SINISTRÉS*

1.1 Introduction and definitions

1.1.1 Introduction

The Burundi conflict is political and ethnic in nature. It has major consequences in humanitarian terms. The victims of the conflict are above all part of the civilian population, more than 15 per cent of which are "displaced" and continue to live away from their homes. This situation has enormous repercussions in psychological as well as social and economic terms.

1.1.2 Definitions

1.1.2.1 Refugees

The 1951 Convention relative to the Status of Refugees and the 1966 Additional Protocol define a refugee as a person "who, owing to well-founded fear of being persecuted for reasons of race,

religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."

The Organization of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa, for its part, defines as a refugee "every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it."

The same Convention adds that the term "refugee" shall also apply to "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."

Given that there are refugees who are no longer in their first country of asylum, Committee IV is in agreement that these persons should receive the same treatment as Burundian refugees who return to Burundi, and the National Commission for the Rehabilitation of *Sinistrés* (see 1.4.) will decide on a case-by-case basis.

1.1.2.2 *Sinistrés*: displaced, regrouped, and dispersed persons and returnees

According to the United Nations, "internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border."¹

In Burundi, displaced, regrouped and dispersed persons are people who have remained within the national borders and are living away from their homes in camps, sites or other places of refuge. Insecurity is one of the main reasons that led these categories of people to leave their homes.

In Burundi, the term "*sinistrés*" designates all displaced, regrouped, and dispersed persons and returnees.

1.2 Rehabilitation and resettlement of refugees

1.2.1 Statistics²

- a. Estimated number of Burundian refugees in neighbouring countries as at 30 April 2000³

	Region	Population	Survey period	Observation
The United Republic of Tanzania	Ngara	94 393	10/04/2000	New arrivals
	Kigoma-Kibondo-Kasulu	264 199	26/04/2000	Arrived between 1993-2000 from Burundi, and between 1996-1997 from DRC

	Subtotal	340 542	30/04/2000	
	NB: In addition to these 340,592 in The United Republic of Tanzania must be added about 200 000 people who left in the 1970s but have not been receiving UNHCR assistance since 198??.			
Rwanda	Gikongoro (Kigeme camp)	457	July 1999	Old and new
	Urban centres	750	July 1999	
	Subtotal	1 207		
Kenya	Kakuma camp	143	31/07/1998	New
Congo-Brazzaville	Various sites		31/07/1998	Old and new
RDC	Kivu	20 000	31/12/1998	Old and new
Zambia		1 164	31/12/1998	
Angola		150	31/07/1998	
Malawi		200	31/07/1998	
Cameroon		270	31/07/1998	
TOTAL		364 000		

- b. Returnees from October 1996 to end June 2000 by province and entry post

Entry post PROVINCE	KOBERO (Muyinga Province)	GISURU (Ruyigi Province)	GATUMBA (Bujumbura Province)	CIBITOKÉ (Cibitoke Province)	TOTAL
Bubanza	6	18	15 000	75	15 099
Bujumbura Town	20	92	23 531	77	23 720

Bujumbura Rural	8	151	11 628	39	11 826
Bururi	13	93	207	16	329
Cankuzo	105	3 245	0	0	3 350
Cibitoke	7	116	57 099	7 071	64 293
Gitega	13	195	288	9	505
Karuzi	396	124	49	4	573
Kayanza	913	293	1 959	29	3 194
Kirundo	6 129	398	2 807	11	9 345
Makamba	0	186	47	0	233
Muramvya	2	57	206	1	266
Mwaro	0	3	106	7	116
Muyinga	29 676	645	146	6	30 473
Ngozi	2 010	360	1 423	27	3 440
Rutana	1	258	7	0	266
Ruyigi	98	49 791	332	0	50 221
TOTAL	39 017	56 025	114 835	7 372	217 249

The total number of returnees between October 1996 and the end of June 2000 amounts to 217,249, but it should be noted that there have been fairly sizeable influxes and outflows. Thus this figure does not indicate the real number of returnees.

1.2.2 Principles

- a. All Burundian refugees must be able to return to their country. This is the right of return.
- b. Return must be voluntary and must take place in dignity with guaranteed security, and taking into account the particular vulnerability of women and children.
- c. The reception mechanisms must be put in place in advance of the return.
- d. Once they return, refugees must have their rights as citizens restored and recover their property in accordance with law and

with the regulations in force in Burundi following the entry into force of the Peace Agreement.

- e. In the return of the refugees and the resettlement and reintegration of the returnees and displaced and regrouped persons, the principle of equity, including gender equity, must be strictly applied in order to avoid any measure or treatment that discriminates against or favours one category as compared with another.

1.2.3 International conventions and national regulations

The reference texts relating to the situation of refugees are the following:

- a. At the international level there are three texts:
 - The Convention relative to the Status of Refugees of 1951;
 - The Protocol relative to the Status of Refugees of 18 November 1966;
 - The OAU Convention of 10 September 1969 governing Aspects Specific to Refugee Problems in Africa;

These texts have been ratified by Burundi and must be respected by all signatory countries;

- b. At the national level, the only reference text is Legislative Decree No. 1/19 of 30 June 1997 on the restoration of the rights of persons who left Burundi following the events of 1972 and 1973, which was replaced by Legislative Decree No. 1/01 of 22 January 1991.

1.2.4 International refugee support programmes

Responsibility for the protection of refugees rests with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the country of asylum. In the case of the Burundian refugees, The United Republic of Tanzania is the country most concerned, because it houses the largest number of them.

UNHCR is meeting the essential needs of the refugees with the support of other United Nations organizations and of local or international non-governmental organizations (NGOs). Most of these organizations are financed by multilateral or bilateral donors.

1.2.5 Responsibility of the Government of Burundi

The Government of Burundi undertakes to resettle and reintegrate the returnees with the support of other countries, international organizations and NGOs.

1.2.6 The old caseload refugees and the situation in the new camps in the United Republic of Tanzania

The number of Burundian refugees living in the United Republic of Tanzania since 1972 is estimated at about 200,000. They were settled in the Mishamo, Katumba or Ulyankulu camps.

Even though they are able to meet their own needs, *inter alia* by farming land made available to them by the host country, the main concern of these refugees is to be able to return home. UNHCR is no longer providing assistance to this category of refugees, but it remains responsible for their protection. The administrative responsibility for them rests with the Tanzanian Government.

Because of their long absence from Burundi, the resettlement and reintegration of these refugees will call for a great deal of political will, *inter alia* with regard to recovery of the property they left behind, particularly their land. This issue will have to be properly resolved in order to avoid it becoming a source of new conflicts.

However, since 1994, other refugees from 1972 have left their countries of asylum to seek refuge in The United Republic of

Tanzania. These refugees, as well as the refugees of the 1993 wave, have been temporarily settled in eight camps, namely Muyovozi, Mtabila, Nduta, Mukurwa, Mutenderi, Kanembwa, Lukole and Karago. They are surviving on the food ration provided by the World Food Programme (WFP). Their main concern is to return to Burundi as soon as a peace agreement has been signed.

Primary and secondary education is provided in the camps. The pupils follow courses under the Burundian curriculum.

1.3 Rehabilitation and resettlement of *sinistrés*

1.3.1 Statistics

According to data from the Office for the Coordination of Humanitarian Affairs (OCHA), the total number of displaced and regrouped persons in Burundi at all sites is 371,161, 12 per cent of them Bujumbura Rural, 14 per cent in Bubanza, 24 per cent in Bururi and 33 per cent in Makamba.⁴

Of these persons, it is estimated that 650,000 wish to return and will be able to recover their former property once security has improved and is guaranteed. The remainder, however, feel that they would be unable to recover their property for fear of finding themselves ethnically isolated or becoming victims of acts of violence. One of the solutions for them would be for the Government to settle them on new land.

The statistics on dispersed persons are not well known because of their high degree of mobility.

1.3.2 Principles

- a. All *sinistrés* wishing to do so must be able to return.
- b. For displaced and regrouped persons who are in camps or at sites, the principle of equity must be strictly applied in order to avoid any measure or treatment that discriminates or favours one category as compared with another.
- c. Specific conditions must apply to the *sinistrés* who believe that they can no longer return to their property, so as to enable them to return to normal socio-professional life.
- d. The restoration of security will permit a massive return of people to their land.

1.3.3 International and national regulations

There are no specific international or national laws that protect displaced persons. However, there are certain texts that govern their fundamental rights, namely:

- a. The Universal Declaration of Human Rights;
- b. The International Covenant on Civil and Political Rights;
- c. The International Covenant on Economic, Social and Cultural Rights;
- d. The Geneva Conventions relating to humanitarian law;
- e. National legislation, such as the Constitution, the Criminal Code, etc.

The instruments mentioned have been ratified by Burundi. More specifically, the United Nations has drawn up "Guiding Principles on Internal Displacement", but this text is not part of international law.

1.4 Actions relating to refugees and to *sinistrés*

The following actions shall be taken in relation to refugees and *sinistrés*:

A National Commission for the Rehabilitation of *Sinistrés* (CNRS) will be created. It will have administrative and financial autonomy and will replace the National Repatriation Commission established by Legislative Decree No. 1/01 of 12 January 1991. The new

commission will deal with the problems of all *sinistrés*. It will have the mandate of organizing and co-ordinating, with international organizations and asylum countries, the return of refugees and *sinistrés*. It will help them resettle and reintegrate and deal with all the other issues as set out in the following list of measures (1.4.2).

A sub-commission will be established with the specific mandate of dealing with land-related issues (see mandate, 1.4.3.3.(j)).

In the return of the refugees and the resettlement and reintegration of the returnees and displaced and regrouped persons, the principle of equity must be strictly applied in order to avoid any measure or treatment that discriminates against or favours one category as compared with another.

1.4.1 Preparatory actions for the settlement and reintegration of refugees

- a. UNHCR is requested to update the standard gender and age disaggregated census in the new camps. The Ministry of Internal Affairs of the Republic of The United Republic of Tanzania, with the support of UNHCR, is requested to organize, in the settlements of the old caseload refugees, a more specific census designed to identify the wishes and complaints of the refugees in these camps with respect to recovery of their abandoned land or alternative measures. This work will be supplemented on the one hand by visits to the settlements and on the other hand by seminars and conferences in which representatives of refugees will participate.
- b. UNHCR and the partner NGOs should provide for and organize information sessions for the refugees before and after the signing of the Agreement, so as to give them a good picture of

developments in the political situation in Burundi in general, and of the state of advancement or implementation of the results of the Arusha negotiations in particular.

- c. UNHCR and the Government of Burundi should organize and enable refugees to undertake travel to Burundi, if it is regarded as necessary, so that they can see on the spot the prevailing situation and the reception mechanisms, in order to help them decide definitively on their return.
- d. The Tripartite Commission will have to meet, and include representatives of the refugees and international observers, in order to engage in transparent deliberations and take into account the refugees' fears or complaints. (Action: UNHCR/GOB/GOT)

1.4.2 Actions for the resettlement and reintegration of refugees and *sinistrés*

The following actions to resettle and reintegrate refugees and *sinistrés* shall be taken. These actions will be decided upon by the National Commission for the Rehabilitation of *Sinistrés*, taking into account a framework of priorities and the availability of resources.

Preparatory actions specifically targeting all *sinistrés*:

- a. Multidimensional census of *sinistrés* (Action: National Commission for the Rehabilitation of *Sinistrés* / OCHA);
- b. Information and awareness campaigns on the mechanisms for peaceful coexistence and on return to their *collines* of origin (Action: all organizations involved in the return);
- c. Organization of visits to places of origin with a view to psychological preparation for the return of all *sinistrés*, and in order to encourage mutual acceptance;
- d. Settlement, on sites close to home, of all those who for various reasons believe that they can not yet return home, in order to enable them initially to work their fields and then reoccupy their land later on;
- e. Specific measures, particularly through a good reintegration policy, to encourage people who abandoned their property because of the crisis and the war to return to their regions of origin, so that in the short, medium or long term there will no longer be anyone living in camps.

Reconstruction principles:

- f. To the extent possible, encourage "grouped" housing in the reconstruction policy in order to free up cultivable land. Rural regions must be urbanized by creating multi-ethnic small towns or villages which will become development and attraction poles and will ease the pressure on land;
- g. Ensure equity in the distribution of resources between the ethnic groups on the one hand and the provinces on the other, and avoid overlap between the various partners or participants by co-ordinating resettlement and reconstruction activities at the government level with the support of UNDP;
- h. Promote participation of the population in the resettlement activities;
- i. Help the returnees and other *sinistrés* to return to their properties.

Material and infrastructure support:

- j. Give all returning families, including female- and child-headed families, food assistance, material support and support for health, education, agriculture and reconstruction until they become self-sufficient (Responsibility of the Government, UNHCR and other international organizations);
- k. Provide communes, villages and *collines* with assistance in the reconstruction of community infrastructures (schools, health centres, water supply networks or developed springs, etc) and income-generating activities (Action: National Commission for the Rehabilitation of *Sinistrés*), paying special attention to women and enhancing their roles in building and sustaining families and communities;

Administrative support:

- l. Ensure the socio-economic and administrative reintegration of the *sinistrés* through the conception of consequent and appropriate programmes and actions;
- m. Assist the returnees in other important issues such as health care, psycho-social support, social security and retirement, education of children, and equivalency of diplomas awarded outside Burundi;

Specifically:

- n. Help returnees recover their property and bank accounts left in Burundi before their exile whose existence has been duly proven;

- o. To help with language problems, intensive language courses will be offered;
- p. Help persons entitled to the social security survivors' pension receive payment;
- q. Returnees who paid social security in Burundi may claim their entitlements;

Administrative issues relating to returnees in their country of asylum:

The Government of Burundi or the CNRS will:

- r. Help returnees settle their disputes in their country of asylum relating notably to immovable property, bank accounts, social security, etc;
- s. In the context of agreements between countries or social security institutions, help those who were employed in the country of asylum receive social security benefits to which they are entitled in respect of such employment;
- t. Assist pupils and students attending the two final years of primary, secondary and higher education and wishing to complete their studies in the host country;
- u. Study ways of indemnifying and compensating returnees for property in the country of asylum they are unable to take with them, profit from or sell;
- v. Analyse the case of refugees deciding to remain in their countries of asylum;
- w. Depending on resource availability, any other measure falling within the framework of the plan of action could be undertaken.

In order to obtain assistance in conducting these actions, the Government must allow international organizations and international and local NGOs unrestricted access to returnees and other *sinistrés* for purposes of the delivery of humanitarian assistance. It must guarantee the safety of the staff of such organizations and must also facilitate the provision of short-term aid for repatriation, appropriately supervised and without discrimination.

1.4.3 Measures relating to the land issue

1.4.3.1 The context

With an area of 27,834km², Burundi has a relatively small territory in relation to its population of more than 6 million. The population density is over 200 inhabitants per km². The annual population growth rate is about 3 per cent, one of the highest in Africa, resulting in a doubling of the Burundian population every 20 years.

The population is strongly attached to its land, despite strong population pressure on rural land. The progressive dividing up of property, with an average agricultural holding size of 0.8 hectares per household, remains one of the most disturbing phenomena. In some regions of the country, the land is no longer sufficient to feed families, and accordingly an escalating struggle for land is taking place.

The population explosion and the absence of a cadastral survey system for rural land, together with the various disturbances (ethnic or other) that Burundi has experienced at different times in its history, exacerbate the problem of land disputes.

1.4.3.2 The problems

It is in this context that the problem of the 1972 refugees' land must be viewed. Following the tragedy in 1972, thousands of Burundians were compelled to leave their land and go into exile. Many of these properties have subsequently changed ownership. This redistribution of land was undertaken by the State out of concern for good utilization of a scarce resource. This was undertaken on the basis of laws that some have contested and qualified as unjust because they violate fundamental rights. The question thus arises of deciding between restoration of their property to returnees and

protecting the rights acquired - subjectively often in good faith - by current owners. This will be one of the tasks of the Sub-Commission referred to in paragraph 1.4.3.3.(i) and (k).

There is also the case of the Regional Development Corporation in Rumonge, which in the name of the State took the property of private citizens and developed it in order to plant a new variety of palm tree. In this operation, the Corporation redistributed properties, giving each recipient in some cases one hectare and in some other cases four hectares. Those who previously had a larger area saw this as an injustice.

Some delegations assert that there are former landowners who have not been given land, whereas people who had no land have been given properties. Other delegations, on the other hand, believe that these are as yet unverified allegations.

In addition, the fair and prior indemnification promised to all persons whose land was expropriated has allegedly not been paid. Thus the refugees did not take part in this redistribution because they were still in exile, but that does not deprive them of the right to claim their land or their compensation at a later stage.

Lastly, and more recently, there is the problem of State-owned land, in relation to which irregularities and speculation have been observed. The allocation of State-owned land will henceforth have to take account of new needs relating to resettlement of *sinistrés*, to which priority must be assigned.

1.4.3.3 Principles and actions

To resolve this complex issue, the following principles and mechanisms have been decided upon:

- a. Property rights shall be guaranteed for all men, women and children. Compensation, fair and equitable under the circumstances, shall be payable in case of expropriation, which shall be allowed only in the public interest and in accordance with the law which shall also set out the basis of compensation;
- b. All refugees and/or *sinistrés* must be able to recover their property, including their land;
- c. If recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification ⁵;
- d. Refugees who do not return may receive a just and equitable indemnification if their land had been expropriated without prior indemnification and in contravention of the principle mentioned in 1.4.3.3.(a);
- e. The policy with respect to distribution of State-owned land should be reviewed so that priority can be given to the resettlement of *sinistrés*;
- f. An inventory of destroyed urban property shall be drawn up with a view to making it habitable in order to return it as a priority to the original owners or to redistribute it;
- g. A series of measures shall be taken in order to avoid subsequent disputes over land, including the establishment of a register of rural land, the promulgation of a law on succession and, on a longer term, the conduct of a cadastral survey of rural land;
- h. The policy of distribution or allocation of new lands should take account of the need for environmental protection and management of the country's water system through protection of forests;
- i. Burundi's Land Act must be revised in order to adjust it to the current problems with respect to land management;
- j. A Sub-Commission on Land will be established within the framework of the National Commission of Rehabilitation of *sinistrés* and will have the specific mandate of:
 - i. Examining all cases of land owned by old caseload refugees and State-owned land;
 - ii. Examining disputed issues and allegations of abuse in the (re)distribution of land and ruling on each case in accordance with the above principles;

- k. The Sub-Commission on Land must, in the performance of its functions, ensure the equity, transparency and good sense of all its decisions. It must always remain aware of the fact that the objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.

1.4.4 Managerial and administrative measures

1.4.4.1 Establishment of a national fund for *sinistrés*

This fund, whose establishment is obviously desirable, will derive its funding from the national budget and from grants by bilateral and multilateral aid agencies or assistance from NGOs.

1.4.4.2 Establishment of reception committees

These will be created where they do not yet exist, and will generally have to be better organized. They will necessarily include the local authorities, including commune administrators or their duly authorized representatives, security agents and other persons whose skills might be necessary.

The role of these committees shall be to receive and supervise all *sinistrés* returning to their homes, ensure their security and help them organize their socio-economic reintegration.

1.4.5 Other measures: protection, rehabilitation and advancement of vulnerable groups

The groups in question include among others children heads of family, orphans, street children, widows, women heads of family, unaccompanied minors, juvenile delinquents, the physically and mentally disabled as well as traumatized children.

The competent ministry needs to conduct a census of these groups and draw up special assistance programmes.

¹ OCHA, Guiding Principles on Internal Displacement. United Nations, New York, 1999, p.1.

² Data supplied by UNHCR, Burundi.

³ There are Burundian refugees in other countries, such as countries in Europe, North America and elsewhere in Africa, who are not counted in this table.

⁴ Statistics for August 2000 provided by OCHA-Burundi.

⁵ Four examples by way of illustration:

- A resident of Burundi owns more than one piece of land. A returnee claims one of these pieces of land. In this case, it would be more reasonable to request the former to vacate the land in question against possible compensation;
- A resident of Burundi with a large family farms a small piece of land which he acquired in good faith. A returnee claims this land. In this case, it would be more reasonable to ask the returnee to accept another piece of land in compensation;
- In the case of infrastructure construction undertaken in the public interest, the returnee cannot claim this land;
- In the case of the exploitation of land by the returnee's family, a "friendly" solution will be sought, keeping in mind, nevertheless, the necessity to ensure the subsistence of all those concerned.

ANNEX V

IMPLEMENTATION TIMETABLE

ANNEX V

**TIMETABLE FOR THE IMPLEMENTATION OF THE
AGREEMENT: PROTOCOLS I, II, III AND IV**

SERIAL SEQUENCES	ACTIVITIES	TIMING	EXECUTION	ARTICLES AND PARAGRAPHS
Signing + 30 days	1. First meeting of Implementation Monitoring Committee to decide on Executive Council	Immediately after signature	Facilitator, Parties	
	2. Informal donors meeting on a technical level	15 Sept. 2000 Brussels	European Commission / Facilitation, donors, international community	
	3. Pledge by participating parties	Immediate Within 7 days	Participating parties	Annex I
	4. Establishment of mechanism to investigate the status and release of prisoners	Immediate	Government / National Assembly	

<p>5.</p> <ul style="list-style-type: none"> • Current National Assembly to adopt Peace Agreement • Law permitting free political activity • Repeal of repressive legislation 	<p>Immediate</p>	<p>National Assembly</p>	<p>Protocol II, art. 22 para. 2(a), (b), (c)</p>
<p>6. Implementation Monitoring Committee set up in Bujumbura</p>	<p>Immediate</p>	<p>Implementation Monitoring Committee / UN / OAU / Facilitator / region</p>	
<p>7. Peace forces to be solicited from UN / OAU / region</p>	<p>Immediate</p>	<p>Current Government / Facilitator / Signatories Implementation Monitoring Committee</p>	
<p>8. Monitoring of current Government activity + IMC to monitor and set up mechanisms to resolve disputes among Parties</p>	<p>Immediate Within 7 days</p>	<p>Implementation Monitoring Committee</p>	

9. Campaign to popularize the Agreement	Immediate	Facilitator, participating parties, Implementation Monitoring Committee	Protocol II, art. 22, para. 16
10. Ceasefire dissemination	Immediate	BDF / Armed groups or interim force	
11. Establishment of reception mechanisms for refugees and <i>sinistrés</i>	Immediate - 30 days	UNHCR, Govt. of Burundi + international organizations	Protocol IV, art. 2, para. 2(d)
12. Creation of National Commission for the Rehabilitation of <i>Sinistrés</i> (CNRS) and National Fund for <i>Sinistrés</i>	Immediate - 30 days	Government / UNHCR / Implementation Monitoring Committee	Protocol IV, art. 3(a) and 9
13. Other preparatory actions for the settlement and reintegration of refugees and <i>sinistrés</i>	Immediate ongoing	Govt. of Burundi, UNHCR and other international organizations	Protocol IV art. 3 (d) - (h)
14. Temporary immunity for political offences pending installation of transitional National Assembly	1 - 30 days	Current National Assembly	Protocol II, art. 22, para. 2(c)

30 days to 180 days	15. Convening of Tripartite Commissions	30 days	Governments of Tanzania, Democratic Congo, Rwanda, / Burundian Government / UNHCR	Protocol IV, Art. 3(c).
	16. Government assets register	Within 30 days	Current Government	Protocol II, art. 22, para. 6(b)
	17. Creation of Reconstruction and Development Unit	30-45 days after signing	Technical ministries / donors / IMC, international organizations.	Protocol IV, art. 17, para.1
	18. Arrangements for start of transition in place including reception centres, assembly points security for assembly points.	30 days Continuous	Executive Council of Implementation Monitoring Committee	
	19. Members of the transitional National Assembly to be named	Within 60 days	Participating Parties / Implementation Monitoring Committee	Protocol II, art. 22, para. 3(b)
	20. Transitional President to name members of the Cabinet	Within 60 days	Transitional President / Implementation Monitoring Committee	Protocol II, art. 22, para. 4

<p>21. Implementation Monitoring Committee to check if conditions for Transitional National Assembly in place (what additional steps to be taken by Parties / Government / UN)</p>	<p>60 days after signature</p>	<p>Implementation Monitoring Committee</p>	<p>Protocol II, art. 22, para. 5</p>
<p>22. Members of transitional National Assembly and transitional Executive to return to Burundi</p>	<p>60 days</p>	<p>Parties / Implementation Monitoring Committee / Government</p>	
<p>23. Logistics for returning members of the transitional National Assembly and transitional Executive including travel documents</p>	<p>1- 60 days</p>	<p>Implementation Monitoring Committee + Government</p>	<p>Protocol II, art. 22, para. 6(a)</p>
<p>24. Security arrangements for members of the transitional National Assembly / Executive and members of political parties in exile to be sought and installed</p>	<p>Within 60 days</p>	<p>Ceasefire Commission</p>	<p>Protocol III, art. 27, para. 4(a)</p>

	25. Preparation of an emergency reconstruction plan	45-60 days after signature	National Assembly / Reconstruction & Development Unit	Protocol IV, art. 17, para. 1(a)
	26. High-level international donors' conference	45-120 days after signature	Facilitator, donors, international organizations, IMC, CNRS, RDU	
	27. Prepare D-Day commitments for disarmament / demobilization / reintegration (personnel register)		BDF / Armed groups / interim force / Ceasefire Commission	
	28. Disarm, assemble and train armed groups	Interim period	Ceasefire Commission	
(Transition) D-Day	29. Confirmation of camps closed or transformed into voluntary villages	D-Day	Transitional Government	
	30. National Assembly disbanded Transitional National Assembly installed	D-Day	Transitional National Assembly / IMC	
	31. Transitional Executive installed - move into premises	D-Day	Transitional Executive / IMC	

32. Transitional National Assembly meets to elect Bureau	D-Day + 3 days	Transitional National Assembly	
33. Review the propriety of all contracts, recruitment, during preceding period	Ongoing D-Day	Transitional National Assembly / transitional Government	
34. Establish Commission on Judicial Reform	D-Day + 30 days	Transitional National Assembly	Protocol II, art. 17, para. 1
35. Establish Administrative Reform Commission	D-Day + 30 days	Transitional National Assembly	Protocol II, art. 17, para. 1
36. Establish Constitutional Commission	D-Day + 30 days	Transitional National Assembly	Protocol II, art. 15, para. 4
37. Appoint heads of Police, Defence and National Intelligence		Transitional Government	Protocol II, art. 15. para. 18
38. Appoint Provincial Governors	D-Day + 30 days	Transitional Government	Protocol II, art. 15, para. 19(a)
39. Appoint Commune Administrators	D-Day + 30 days	Transitional Government / transitional National Assembly	Protocol II, art. 15, para. 19(c)
40. Appoint Constitutional Court judges	D-Day + 30 days	Transitional President	Protocol II, Art. 15, para. 19(b)

41. Establish Land Sub-Commission (subordinated to CNRS) which will take action on land issues	D-Day + 30 days	CNRS / participating parties / transitional Government	Protocol IV, art. 3(b)
42. Special assistance programmes for vulnerable groups	D-Day + 30 days	Transitional Government + international assistance + CNRS	Protocol IV, Art. 10
43. Prepare detailed plan for physical and political reconstruction for the transition period	D-Day + 30 days	Transitional Nat. Assembly + Reconstruction & Devpt. Unit + transitional Government	Protocol IV, art. 17, para. 1(b)
44. Request UNSC to set up International Judicial Commission of Inquiry	D-Day + 30 days	Transitional Government/UN	Protocol I, Art. 6, para. 10
45. Establish conditions of service and adopt organic laws of New Defence Force	D-Day + 30 days	Transitional National Assembly / transitional Government	Protocol III, Art. 19
46. Establish Commission on prisons, political prisoners, prisoners on death row and working conditions for prison guards	D-Day + 30 days	Transitional Government	Protocol II, Art. 15, para. 20

47. Adopt laws on judicial reform	Ongoing from D-Day	Transitional National Assembly	
48. Review of all judges and solicit international assistance. Appointment of new ones judged	Ongoing from D-Day	Transitional Government	Protocol II, Art. 17, para. 10
49. Review of all existing legislation (amendment or repeal)	Ongoing from D-Day	Transitional National Assembly + transitional Government	
50. Mass campaign on reconciliation	Ongoing from D-Day	Transitional National Assembly / transitional Government / political parties	Protocol I, Art. 6, para. 3 and Protocol IV, art. 13(c)
51. Implement judicial and administrative reforms	Ongoing from D-Day	Transitional Government / transitional National Assembly	Protocol II, art. 17, paras. 1 & 2
52. Adapt Local Government Law	Ongoing from D-Day	Transitional National Assembly	
53. Preparation of a medium and long-term development plan	D-Day + 90 days	Government / Donors / international organizations / transitional Government / international assistance / National Assembly	Protocol IV, art.17, para. (c)

54. Establish the Electoral Commission nominating authority	D-Day + 90 days	Transitional National Assembly / transitional Government	Protocol II, art. 20, para. 3
55. Implement Committee IV proposals on economic development and reconstruction	D-Day + 90 days ongoing	Transitional Government / transitional National Assembly	Protocol IV, arts. 11 - 16
56. Establish Truth & Reconciliation Commission	D-Day + 6 months	Transitional Government / transitional Nat. Assembly	Protocol I, art. 8 Protocol II, art. 5, para. 4
57. Adopt Electoral Law	D-Day + 12 months	Transitional National Assembly	Protocol II Art. 20, para. 5
58. Electoral Commission demarcates <i>collines</i> and zones. Prepare for <i>colline</i> elections	Within 18 months of D-Day	Electoral Commission	
59. Hold local government elections (<i>Colline</i> level)	Within 18 months of D-Day	Electoral Commission	Protocol II, Art. 20, para. 12
60. Hold local government elections (Commune level)	Within 18 months of D-Day	Electoral Commission	
61. Adapt new Commune Administrators	After commune level election	Commune Councils	Protocol II, Art. 20, para. 13(a)
62. Pass Constitutional text	D-Day + 18 months	Transitional National Assembly	

	63. Hold referendum on Constitution	Within 24 months of D-Day	Electoral Commission / transitional Government / transitional National Assembly	Protocol II, art. 15, para. 7
	64. Certify Constitutional text (or amend and resubmit)	Within 23 months of D-Day	Constitutional Court	Protocol II, art. 20, para. 4(a)-(g)
	65. Prepare for election: regulations, establish multi-party committee	Within 30 months of D-Day	Transitional Government / National Assembly / Electoral Commission	
	66. Hold elections for the National Assembly	Within 30 months of D-Day	Electoral Commission	Protocol II art. 6, para. 17 & 15
	67. Commune Councils to elect Senators. Co-opt Twa to Senate	Within 30 months of D-Day	Electoral Commission and Senate	
	68. Merge Burundi Defence Force and armed groups	Transition period	Transitional Government	
	69. Demobilize to new strength levels		Ceasefire Commission / transitional Govt.	
	70. Confirm new defence force complies with 50/50 rule	After election	Transitional Government	

71. National Assembly (new) and Senate meet to elect new President

* * * *

APPENDIX I

EXPLANATORY COMMENTARY ON PROTOCOL II

I. SUMMARY OF CONSTITUTIONAL AND TRANSITIONAL PROPOSALS FOR BURUNDI

A. GENERAL REMARKS

1. Background

The proposals contained in Protocol II represent a more complex and interrelated set of propositions than they may appear when considered individually.

With this in mind, the Bureau of the Committee felt that there was a need to provide an outline of this "package" of proposals, if only to illustrate the overall balance the Bureau sought to achieve. It would also serve to illustrate that these proposals emanate from and have been canvassed in over a thousand hours of debate, negotiations and consultations with the parties since April 1999. Furthermore, the proposals themselves are directed at the actual concerns raised by all the parties. It is these concerns rather than the precise proposal formulations that parties have adopted that the Bureau's proposals have been fashioned to address. No party should have

expected to have all its proposals incorporated, and certainly not in the identical form in which they were proposed.

The mandate given to Committee II, back in October 1998, was to establish an institutional setting for a future government of Burundi considered as "acceptable to all".

The Committee based its initial agenda on those aspects of the popularly endorsed 1992 Constitution that appeared to be uncontentious, and attempted to set out those that were subject to dispute. Once the parties' responses were obtained on the issues in dispute, the Bureau established a nine-point working agenda for the Committee and duly conducted in the Committee debate lasting over 720 hours. The sessions ended on 15 April 1999.

Thereafter the Bureau established a first draft of a protocol for discussion. The initial draft, like the present protocol, was divided into two chapters. The first chapter dealt with the institutional setting and fundamental values that would have to figure in a definitive constitution to be drafted by the future transitional National Assembly. The second chapter covered the issues of the transition. Between April 1999 and April 2000 the protocol was updated seven times, in accordance with the debates, which took place either amongst or with clusters, individual parties or regrouped clusters, highlighting the points of disagreement and the options proposed by the groups to resolve them. It was the seventh draft which served as a basis for the final proposal. On the 10% of the text that remained in sharp dispute, the parties concluded that they would not find agreement no matter how much time was allocated for further negotiations. They requested the Bureau to make compromise proposals in regard to these outstanding items.

The protocol thus represents both the uncontested text and also those proposals which were themselves fashioned from the options suggested by the parties.

There has been occasional confusion regarding the exact mandate of Committee II. Some have thought that the Committee's task was to write a new constitution for the Republic of Burundi. In fact, our mandate was to establish only such principles as the Burundi believed were necessary for the re-establishment of a democratic system within their country. It is the task of the Burundi to draft their own constitution in due course, to put the flesh on the constitutional skeleton.

B. SUMMARY OF PROPOSALS

1. Electoral system

The "electoral system" does not merely concern the system of voting, but must be understood in the context of the full variety of the institutional and other mechanisms providing for inclusive and multi-ethnic participation in the structures of government and the Senate.

2. Ethnic over-representation

The electoral system set out in the Agreement is premised on the principle of universal suffrage (supported by every one of the parties) with a common voter's roll (supported by at least 12 and possibly more of the parties). The electoral system envisages that voting will be in respect of party lists in a proportional representation system in which the lists are required to reflect a high degree of representation of minorities. A system of multi-ethnic

lists was supported principally by the centrist parties, including the Government, and opposed only by a minority of parties which had proposed segregated political structures. Some parties have called for as many as 50% of the members of the National Assembly to come from the approximately 15% of the population made up of minorities. The electoral system as proposed here will yield a National Assembly in which, before co-optation as described below, approximately 38% of the members are from the minorities.

3. Additional co-optation to the National Assembly

The proposals allow for the possibility of additional minority representation in the first elections by a co-optation mechanism which grants enhanced representation for opposition parties by allocating an equal proportion of a further 20 seats to all qualifying parties regardless of their popular support. In effect this would mean that members of minority groups (some 15% of the population including the Batwa) should fill some 40% or more of the seats in the National Assembly. It would also mean enhanced opposition representation in the Assembly, and would partially allay fears of a dominant single party.

4. Ethnically balanced Senate

In addition the proposals envisage a second chamber in which two representatives, one Hutu and one Tutsi, will be indirectly elected from each province. This chamber, the Senate, thus has parity in respect of the ethnic membership of its provincial representatives. The Senate is given important powers to confirm or approve strategic appointments and laws of an important nature. It should be stated that the proposals regarding the establishment, powers and composition of the Senate were strongly supported by many of

the parties purporting to represent minority concerns - and strongly opposed by the G-7 group of parties. The electoral college for the Senate is comprised of local-level councils constituted on a non-party basis. It need hardly be repeated that this proposal involves parity of membership between members of ethnic groups that constitute 85% and 13% of the population respectively. They will, however, be popularly elected.

5. Co-optation at the local level

In addition, the proposals provide for indirectly elected commune councils and appointed commune administrators, with a safety mechanism to ensure that minorities are adequately represented on the councils. These elections may not be conducted on a party political basis. Again, these proposals flow directly from concerns raised by groups purporting to represent minority concerns.

6. Multi-ethnic presidency

In addition, the proposals envisage that there will be two vice-presidents, each coming from a different political and ethnic group. These proposals also emanate from parties representing minority concerns.

7. Government of national unity

In terms of the proposals, opposition parties with more than 5% of the popular vote will be entitled to choose to serve in the cabinet. This proposal ensures an inclusive government and blunts the winner-take-all nature of party politics in Burundi.

8. Indirectly elected President

Although the President will in the longer term be directly elected, to accommodate minority concerns in the short term it is proposed that the President be indirectly elected with a high degree of support in the National Assembly. This proposal is also a response to proposals along such lines by parties purporting to represent minority concerns.

9. High decision-making majorities

In regard to decision-making majorities that are required for important matters and certain appointments, high, and some very high, majorities of support are required in the National Assembly. Again, these proposals emanate from the concerns of parties representing minorities. In particular, many important executive appointments are made subject to Senate and National Assembly approval.

10. Security forces guarantee

So as to provide an overall constitutional and security environment in which anxieties raised by the parties can be accommodated, the proposals include as an element of the constitutional framework a security guarantee on the composition of the armed forces. This guarantee requires that at least 50% of the security forces shall be members of minority ethnic groups.

11. Strong Constitutional Court

In addition, against the opposition of the G-7 group of parties the Constitutional Court has been given full judicial power to enforce the Constitution and to act as its guardian even against the

Executive and the Legislature. The ethnically-balanced Senate is to confirm appointments to this and other important courts.

12. Extensive Bill of Rights

In this regard the Constitution also sets out a Bill of Rights and a blueprint for society which were supported by all parties. These provisions provide a broad framework for enforceable individual rights and freedoms and group security. The Bill of Rights itself is a progressive and generous charter of all the most important rights and freedoms.

13. Numerous prohibitions against discrimination, exclusion and ethnic hostility

The proposals include various provisions to prevent the fomenting of ethnic violence, hatred or any form of ethnic discrimination or exclusion. The provisions are strict and are to be found in all parts of the Protocol dealing with political life and public administration. Special provisions exist to ensure the participation of the Twa in the Senate.

14. Promoting interest-based, not group-based, political parties

The proposals thus attempt to marry the need for an overall framework of democratic accountability with a system that caters for the fears of minorities by allowing for their considerable over-representation in the institutions of government. It is a system which would, it is envisaged, minimize the potentially disastrous consequences of the correlation between ethnic boundaries and political party by requiring the parties to present a multi-ethnic façade, and yet ensure that the ethnic minorities are represented

not only in the Legislature, but in the Presidency and in the Cabinet. In the longer term all parties have agreed that Burundi is required to develop a political party system founded on the aggregation of political rather than group interests.

15. Physical security and political rights

The proposals have been criticized for not ensuring that the members of the National Assembly coming from minority ethnic groups represent those minority groups only. In other words, as it was explained, under these proposals the "wrong sort of Batutsi" will be elected. Tendencies within minority groups will be represented in accordance with their numerical electoral support only. The proposals do not ensure that those ethnic minority groups whose members are over-represented in the National Assembly and in the Senate will achieve such over-representation through ethnically exclusive mechanisms. This criticism has an element of truth in it. The groups of parties which had argued in favour of segregated representation also demanded that the results of such a segregated system must yield parity of power and representation between the representatives of the Bahutu and Batutsi, including alternating Presidents. This was necessary so as to ensure the physical safety of minority groups. The Bureau would have been quite happy to have made provision for such explicitly ethnically segregated mechanisms of representation had the Burundi as a whole agreed to such a proposal.

Parties in the centre of the spectrum and the parties arguing for an ethnicity blind democracy argued that such a system would be undemocratic, would entrench the legacy or existing pattern of inequality and privilege, would provide for two classes of citizenship

and, more centrally, would constitute a permanent source of resentment and tension between the ethnic groups while frustrating the development of a national identity. Most parties agreed that demands to provide mechanisms, constitutional or otherwise, to reassure minorities and to guarantee physical security were legitimate and warranted. But, they argued, mechanisms guaranteeing a special and privileged hold over political and economic power by the political elite of a relatively small minority could not be the basis for stability. It was, they claimed, itself "unbalanced" and proposed by parties with no record of popular support, at least according to the last election. The same comments were directed to the proposal that sought, on a common voter's roll, to accord a Tutsi vote six times the value of a Hutu vote. In effect, the two proposals constituted different approaches to achieving the same result.

16. Balance

The question has arisen whether the proposals are "balanced". The proposals certainly tilt the democratic framework in favor of Tutsi participation and security. There are indeed cases elsewhere in the world where minorities are accorded special status or additional representation in national political structures, though none to the extent or manner proposed here. It was for this reason that most of the elements of the "package" cited above were opposed by adversary parties, yet ironically it has been the other parties in whose favour the proposals work which have objected to the lack of balance. When questioned informally some of these parties, claimed that such balance could only be achieved by a system that accorded the Tutsi minority (-/+ 13%) parity of power in all institutions with the Hutu majority (-/+ 85%). Whether this proposal

would provide "balance" was not for the Bureau to decide. The real question for the Bureau was not whether such a proposal was undemocratic, or even whether there was any precedent elsewhere for such an arrangement. It was whether the Barundi, given the circumstances and history of Burundi, would support it. Despite close interrogation and extensive negotiations, the other parties indicated that they could not.

C. TRANSITIONAL ARRANGEMENTS

The transitional arrangements and the basis for the compromise proposals in regard thereto are fully explained in section II below. It is necessary, however, to draw attention to the matters set out in 22 dealing with the implementation of the Agreement.

These matters were not tabled for discussion in this form, but were included when experts drew attention to the necessity to deal with the period between the signature of the Agreement and the actual installation of the transitional Government. These provisions are not exceptional. Most parties have agreed in private consultations that measures are necessary to protect the public assets of Burundi during this fluid and volatile period. While some have characterized these provisions as a limitation of Burundi's sovereignty, they are not. They merely limit the freedom of one of the parties, the Government, in respect of its actions which could affect the transition. The concrete measures described are analogous to the restraints on an outgoing administration in an electoral democracy.

What remains unspecified is the exact way in which the Barundi are to agree on determining the identities and political apportionment of the leaders and members of cabinet in the transitional period. This, however, was left as a matter for the Barundi themselves to decide.

There was also an expectation by a few parties that the Bureau would draft a complete transitional Constitution. Its brief, however, was to set out the special arrangements that would apply during the transitional period, and to leave those 1992 constitutional details that are unaffected by these proposals intact. In regard to these arrangements, the Bureau has sought to establish a balance based on three principles: inclusion of all parties; no one group to have a decision-making majority; and restoration, as far as possible, of the members and parties dislocated by the assassination of the elected President and the National Assembly members in 1993. The parties on both sides which have challenged this balance have argued for one or other of these balancing principles to be removed.

D. AMENDMENT OF THE PROPOSALS

Finally, it needs to be emphasized that neither the principles nor the transitional arrangements are rigid or cast in stone. Indeed, the Agreement specifically allows for its amendment after signature if 90% of the transitional National Assembly so agree. This is a more flexible provision than that applied at the Burundi Peace Negotiations.

APPENDIX I

EXPLANATORY COMMENTARY ON PROTOCOL II

II. COMMENTS ON INDIVIDUAL POINTS IN THE PROPOSALS

Preamble, paragraph 3

The obligations with regard to the transitional institutions are covered both in the present Protocol and in Protocols III dealing

with "Peace and Security" and V on the "Guarantees on implementation".

Article 1

The fundamental values are intended to set out that blueprint for society ("*projet de société*") on which all parties are agreed.

Article 2, paragraph 1

After exhaustive debate, no agreement could be reached on whether the Baganwa are a separate community or a dynastic clan. Nor could agreement be reached as to whether the various groups should be classified as "a community", an "ethnic group", a "people", or a "tribe". While some drew attention to the absence of distinguishing characteristics between these groups or communities (there are no religious, linguistic, colour or reliable physical distinctions), others pointed out that the distinction is nonetheless prominent in the people's consciousness. In the end result, all but one party insisted on "ethnic group" or "community", and the Bureau's proposal leaves a notion of ethnic identity to be recorded without preferring any particular classification. All parties agreed that Burundi is one Nation.

Article 2, paragraph 4

Many parties did not support this provision, but as it is only permissive in nature the Bureau can see no harm in its retention. If anything it underlines that the matter is to be determined by the National Assembly.

Article 2, paragraph 5

The latest submissions have raised for the first time whether French should be a national language. There are reasons to believe that such a proposal may be practical (major juridical instruments, public administration drafts, projects, etc. are often drafted in French). But as this issue was raised only in the final submissions, the Bureau felt that it would be unjustifiable to include this proposal in the provision without a previous discussion on the matter. In any case this provision would not apply during the transition period, and the current provision for the use of language in courts and official documents has been dealt with in Chapter II, under the provisional arrangements.

Article 3

The rights listed here do not constitute an exhaustive list. These rights in approximately the same formulation as here have been included in numerous previous drafts and have never been disputed, save that this text, for completeness, also includes the rights to education and development. The 1992 Constitution already contains an elaboration of these rights, and we have proposed only general formulations; their precise formulation will be the task of those drafting the definitive constitution.

Article 3, paragraph 4, first sentence

Contemporary practice recognizes the need to underline specifically, by reference to the equality of both women and men, that women are covered by the commitment to treat citizens as being equal in worth and dignity. The French translation of "everyone" does not solve the problem.

Article 3, paragraph 6

One of the parties had asked that the Bureau include in this provision a proposal on the abolition of the death penalty. Taking into account the current world-wide trend, the Bureau would be tempted to include such a provision, except that:

1. The Constitution of 1992 does expressly contain it;
2. It may well be included in the right to life, and if there is doubt on this question it should be for parliament or for the courts to decide;
3. It can be dealt with by the transitional National Assembly when it drafts the definitive text of the Constitution;
4. This is a provision that covers the post-transition period and would not have any influence on the transition period.

Article 3, paragraph 20

The last sentence neither adds to nor detracts from the right to strike, because reasonable limitations are possible in accordance with article 3, paragraph 29.

Article 3, paragraph 27

Children in armed conflict were not specifically covered in the discussion in the Committee, but in the light of recent international conventions and the rising concern regarding the plight of children, the Bureau included this provision, in the belief that it would receive the support of all parties.

Article 3, paragraph 29

This formulation accords with current comparative "jurisprudential" approaches to the need to provide for and yet restrain the extent of limitations of and derogations from human rights norms.

Article 4

All provisions of this article have been treated in accordance with the agreement reached between the majority of the parties. The essential provisions in this article are based on the need for all political parties to co-operate in ensuring that the right to vote can be exercised.

Article 4, paragraph 3

The definition of political parties is not the Bureau's. The latter has respected this phrasing, as it is the product of an agreement reached within the working group made up of the G-7, the G-3, ABASA and INKINZO.

Article 4, paragraph 4

Initially, one party expressed a reservation concerning the requirement that all parties be national in nature, but this reservation was withdrawn during the April 2000 session of Committee II.

Article 5, paragraph 4

The substantive proposals can be found in Chapter II of Protocol II, which provides that some aspects of the electoral process are to govern only the first election, and to lapse thereafter.

Article 5, paragraph 5

One group made a detailed proposal on co-opting mechanisms. To the extent that they are dealt with in this text, certain provisions and particular issues have been taken up in Chapter II of Protocol II.

Article 6, paragraph 2, first sentence

The figure of 100 is possibly large for a country of Burundi's resources, but is warranted on account of the need to provide for greater participation of its citizens in an inclusive political process (see Chapter II of Protocol II, art. 15, para.3).

Article 6, paragraph 3

A party had proposed that laws be actually adopted by way of referendum. The better approach is providing for the Legislature to be bound to pass a law as approved by referendum.

Article 6, paragraph 5

The original proposal was amended to bring the majority required in the National Assembly into line with that required in the 1992 Constitution. It does not seem appropriate to require the same very high majority in both the Senate and the National Assembly.

Article 6, paragraph 8

The current general trend is for the immunity of members of the Legislature to apply to their political activities, but not necessarily to general criminal affairs or failure to meet civic obligations.

Article 6, paragraph 10

The magnitude and exact modalities of enlarging the transitional National Assembly are specified in Chapter II of Protocol II. Within Committee II various options were discussed for a possible enlarging of the definitive National Assembly, but no agreement was obtained.

Article 6, paragraph 14, first sentence

The Bureau is mindful that some parties on one end of the spectrum reject the notion of a senate, holding that Burundi has no need for a costly second house, that the senate will frustrate the law-making process, and that as an ethnically balanced house it will emphasize ethnic divisions. At the other end of the spectrum a senate is rejected because it is not an effective substitute for intra-community or segregated political representation; "unrepresentative Batutsi" would be elected rather than Batutsi in whom only Batutsi have confidence. In the absence of any common ground between these extremes, the Bureau has opted for a system that relies on:

1. Democratic government;
2. Guaranteed multiethnic representation in the Assembly;
3. A second house with an ethnic balance to provide a confidence-building mechanism;
4. An approach that promotes nation-building rather than ethnic competition. The senate is a mechanism used widely in such circumstances, and can hardly be considered abnormal.

Article 6, end of paragraph 14

The most difficult issue regarding the senate is the method by which the senators are to be elected. As its explicit purpose is to provide a forum for regional concerns within an ethnically balanced framework - and yet the system has no geographically distinct ethnic communities or explicitly segregated ethnic elections, nor any means of ethnic identification or registration - indirect elections appeared to the Bureau the only method possible. Yet the text proposed may still give rise to objections that the ethnic representatives are really regional representatives, not persons representing an ethnic constituency. However, in the long term this in itself may contribute to overcoming the past divisions. The Electoral College, furthermore, is made up of persons whose concerns will be grass-roots developmental issues.

Article 6, paragraph 16

The powers and functions of the senate have been focused on the questions of particular concern to regions and ethnic communities.

Article 6, paragraph 16(c)

Unlike the President of the Republic, the ombudsperson has a non-party political profile, but a major responsibility for ensuring a proper and clean administration. Accordingly, to perform a watchdog role a very high non-partisan degree of support is indicated.

Article 6, paragraph 17

This cooptation mechanism ensures there is no ethnic exclusion at the level of local government. However, if there is a mono-ethnic character to the community, or where there is an appropriate multiethnic character to the council, this mechanism would not come into play.

Article 7, paragraph 1

No agreement was obtained on the mode of election of the President. The system of politically alternating presidents was considered unworkable, democratically unsustainable or even a source of instability. The proposals made were mutually exclusive:

1. One was that the President of the Republic should be elected by the National Assembly and the Senate;
2. The other was that the President of the Republic should be elected by direct universal suffrage.

Because of the political context within Burundi, the Bureau proposes a compromise by creating an initial exception that would reflect the importance of demonstrably wider support for the first President, and would help to stabilize the political institutions by not holding additional presidential elections at the end of the transition. The proposal of indirect elections for the very first election is premised on the need for more universal support for the first President. It is no less democratic and yields an accountable Executive. There is no evidence to support the argument that directly elected presidents are less vulnerable to a *coup d'état* than indirectly elected ones provided both are constitutionally sound and based on free and fair elections, The Bureau would propose that this be a unique case, with subsequent presidents being elected by direct universal suffrage.

Article 7, paragraph 4

Various proposals had been made on the Vice-Presidents. The proposal made by the Bureau is to be seen as a compromise suggestion between what the G-3, G-7 and G-8 had initially proposed. The Bureau believes that this option will function as an additional nation-building mechanism by enlarging the presidency so as to cover a wider political range, and therefore will also be seen as a mechanism that should reassure all citizens of Burundi. This is a mechanism that has been utilized elsewhere in deeply divided societies.

Article 7, paragraph 6, first sentence

There has been no objection to this initial Bureau proposal. This provision promotes the concept of a choice by the parties as to whether they participate in a Government of national unity or not. In

deeply divided societies this mechanism is achieving ever wider application (see recently Nigeria, Indonesia, South Africa), as it promotes national acceptance of the Government, and hence stability.

Article 7, paragraph 8

This provision is not to be seen as a form of "vote of no confidence". The question of allowing a vote of no confidence will have to be studied by the Constitutional Commission that will be established by the National Assembly during the transition. The exact nature of the relationship of accountability between the President and the National Assembly will depend on the degree of separation of powers decided upon.

Article 7, paragraph 9

This proposal was made in conformity with the 1992 Constitution, which establishes that "The judicial inquiry may only be directed by a team of at least three magistrates from the general office of the Prosecutor of the Republic" (art. 81. 4).

Article 8, paragraph 1

The governors of the provinces fulfil administrative functions. In such a small country as Burundi, with limited resources, the Bureau felt that to submit the governors' posts to elections - or any other form of choice - would only complicate the electoral system and create certain forms of tension between the central power and the districts. In Protocol II, decentralized power within the districts has been provided for.

Article 9

The reforms of the Judiciary have been extensively discussed within the working group of Committee II on the subject. The Bureau has tried within this article to reflect the very different decisions that were taken or discussed. Many of the proposals made during the debates on the Judiciary were subject to general agreement. With reference to paragraph 6, the term "Supreme Council of the Magistracy" has been replaced, here and elsewhere, by "Judicial Service Commission", which is the translation of "*Conseil Supérieur de la Magistrature*" recognized by the Council of Europe. This is therefore not a substantive change.

Article 9, paragraph 5

Various new suggestions were made in the final submissions given in by the parties. Nevertheless, the Bureau felt it necessary to reflect the decisions taken by the working group on the Judiciary, and even if important suggestions were offered in the final submissions on such issues as the court system, the composition of the Chambers and the funding of the Courts, the Bureau felt that some of the suggestions departed from what had been discussed and agreed.

Article 9, paragraph 8

The aim of introducing the *Ubushingantahe* is to afford the national legislature a chance to provide for traditional justice as an institution at local level on matters affecting local communities. This proposal was backed by all parties, even though some parties stressed that the change in the nature of the *Ubushingantahe* justified their worries as to how this traditional institution would be used.

Article 9, paragraph 9

There was a mistake in the Bureau's initial proposal concerning the nomination of the magistracy. It has been modified to include the task of nominating magistrates in the functions of the Judicial Service Commission.

Article 9, paragraph 12

Widespread practice usually insists that there should be a link between public office bearers and judges; the linkage takes place in the Judicial Service Commission, and permits the other stakeholders to participate in the decision-making. Few, if any systems, allow the Judiciary to be completely insulated from accountability or influence from the people through their elected representatives.

Article 9, paragraph 17

The Bureau considered proposals which downgraded the Constitutional Court to a Council, which may serve to diminish its legal status and reduce accessibility to it by ordinary citizens. However, it was felt that this compact requires the firmest guarantees and, in line with the separation of powers doctrine, an institution of calibre and independence to enforce it. Such an institution would also strengthen the rule of law and a culture of legality.

Article 10

The proposals put forward in this article were subject to only limited debate. In the submissions made by the parties in April, most of the contrary proposals put forward related to the wording or fine details of the provisions in question. The Bureau has therefore taken into

account those proposals on the structure or wording of the sentences which did not alter the sense of the provisions. Most of the provisions include the main precepts of good governance.

Article 10, paragraph 10

The principle of an Ombudsperson was agreed upon during the April 2000 session of committee II. During the same session various suggestions such as the creation of an Ombudsperson within the army were discussed, but no decision was taken. Nevertheless, the three-fourths approval of the nomination by the National Assembly and the requirement of the approval of the Senate are proposals put forward by the Bureau. It was felt that the Ombudsperson should possess extraordinary credibility - or legitimacy - to fulfil her/his function, especially if she/he is expected to play a conciliatory role.

Article 11, paragraph 3

The military matters dealt with here have been taken from the reports of the Bureau of Committee III, but here may be subject to arrangements that have emerged from the guarantees consequent upon adopting the electoral system set out herein. The issues referred to in Protocol II, though they deal with military matters agreed in Committee III, remain fundamental constitutional issues. Also, only Committee II can identify the final form of the political institutions which supervise certain military appointments and deployments.

Article 11, paragraph 4(e)

One of the groups proposed that this provision be extended to give jurisdiction to civilian courts over military personnel who have committed offences under the "general" or civilian law. There is some merit in this proposal. However, the Bureau feels that it should include such a provision only in consultation with Committee III.

Article 12, paragraph 2(c)

See the definition given in Protocol IV, article 1.2.

Article 13, paragraph 1, first sentence

There is a need to establish the shortest period possible between the signature of the Agreement and its implementation. At an institutional and political level, the Bureau believes that within a month most of the administrative prerequisites to start the transition period can be met. It is conscious that other factors and imperatives coming from the other committees, especially Committee III, must be taken into account, and the time-frame might be modified, especially if an international military and observer presence is a precondition. If that force is a United Nations force, 6 months is a realistic outer limit.

Article 13, paragraph 1, second sentence

The necessary conditions may include: some of the statutory measures to be adopted; establishing reception arrangements for returnees, refugees and displaced people; providing security for the returning political leaders; establishing reception areas for armed groups; insertion of monitors and peacekeepers; confinement to barracks where appropriate; meeting benchmarks for cessation of

hostilities if agreed; establishing the mechanisms to receive arms if agreed upon; providing security for armed groups; establishment of international or national bodies; closure of regroupment camps; release of political prisoners.

Article 14, paragraph 5

This provision is subject to a sunrise provision so that parties which do not yet comply with this requirement can subscribe to the Agreement and participate in its structures, and formally adjust their constitutions and structures later. The political parties must be given the opportunity to fulfil the necessary requirements established in the Protocols to the Agreement. The present situation makes it impracticable for some of the political parties to consult their constituencies and their militants before major decisions can be taken. The Bureau therefore proposes a suspended period of nine months so as to be able to allow such parties to adapt to the new requirements.

Article 15, paragraph 2, first sentence

The purpose of this provision is to ensure that any matter that has not been foreseen or considered will still be regulated by the law pending the adoption of the relevant laws by the transitional legislature. It does not affect or delay the entry into force of the Agreement, but merely serves to place an obligation on one of the Parties, the effect of which is to incorporate the obligations under the Agreement, which are effective upon its signature, into domestic law. This is a separate issue from the entry into force of the Agreement.

Article 15, paragraph 3

The transitional National Assembly is to be expanded to include the political parties not included therein, while ensuring that there are balances and that it has a popular character. The Bureau proposes that the starting point be the National Assembly which was disrupted by the assassinations of 1993, the ensuing violence and the coup which later followed it in 1996. To start on another basis would not be consistent with the last indicator of popular sentiment, even though the term of this legislature has now expired. On the other hand, the demands of the transition require, temporarily, an expanded and inclusive legislature. However, the mathematics preclude a simple extension if the resultant Assembly is not to provide for a simple rubber-stamping of a draft text prepared by one of the three clusters. This proposal thus marries three arguments:

1. It must in part reflect the last election (and thus be legitimate);
2. It must include all the parties to the Burundi Peace Negotiations (and thus be inclusive) and
3. It must facilitate true give-and-take in discussions (and thus not allow any one grouping more than two-thirds dominance).

The parties themselves could not agree on these principles, choosing to insist on either the first or only the second, and the Bureau received no assistance in this regard from them.

Article 15, paragraph 3(a)

In the 1993 elections FRODEBU won 65 seats, UPRONA 16, for a total of 81 members. The surviving original members will be offered their seats back even if they now belong to new political parties. If they decline or are nominated to the Executive, or are no longer alive, the political party they belong to, or belonged to at the time of

their death, will elect to fill the seat or allow the current replacement to continue in office.

Article 15, paragraph 3(b)

There are 19 parties to the Burundi Peace Negotiations. Two of them are not political parties (Government/National Assembly). The Bureau assumed that two parties will join the Negotiations as additional members (if not, the figures will change slightly). This leaves 19 political parties in total. Of those 19 political parties, two will not be attributed additional seats (FRODEBU and UPRONA). One party (CNDD) is probably represented by its original members. This leaves 16 political parties to which seats must be attributed: $16 \times 3 = 48$ new seats. The total adds up to 129 members of the National Assembly ($81 + 48 = 129$). At the G-7 level, the figures are as follows: $(65 \text{ FRODEBU}) + 7 \times 3 = 86$ or $+ 8 \times 3 = 89$. This gives G-7 **two-thirds** or more. The third principle requires that additional representation be provided for, which demands that we add some 15 members who do not belong to the G-7 parties. The unknown element of this equation remains the two political parties who could join the Burundi Peace Negotiations. It is impossible to know if there are members of the 1993 National Assembly amongst their militants, so the Bureau has calculated as if there were not, though this could be modified at the required moment.

Article 15, paragraph 3(c)

The Bureau considered increasing the number of seats per party to give effect to the principle that no group has more than **two-thirds**. However, it would need 5 or 6 seats per party and a legislature of +/-180 to do this, as parties on both sides would obtain additional representation. By taking the balancing group from sitting civil

society members, this provision also reduces the opposition to the transition from the civil society sector within the current National Assembly. This brings the total potential number to 157 and demonstrably balances the political composition of the transitional National Assembly, especially in regard to the decision-making majority required.

Article 15, paragraph 5, third sentence

This provision is necessary to underwrite the principles in Chapter I of Protocol II. Making the draft Constitution subject to judicial scrutiny does not affect the sovereignty of the "people". The Transitional National Assembly is an unelected body. The constitution to be approved by the people will not be adjudicated upon once approved by referendum.

Article 15, paragraph 6

A referendum is necessary because the constitution-making body is not an elected one.

Article 15, paragraph 7

This provision is intended to function as a last-resort measure, to break deadlocks and ensure that the time-frames are complied with.

Article 15, paragraph 13

The exact composition of the transitional Government is to be negotiated between the clusters of political parties at Arusha once the broad framework is agreed on. The G-7 at the Burundi Peace Negotiations consisted CNDD, FRODEBU, FROLINA,

PALIPEHUTU, PL, PP and RPB. However, the group is taken here to include, if they eventually participate, the armed groups not at Arusha but which originate from or claim to represent parties in the G-7. In the interests of appropriate appointments on the basis of suitability and competence, the Bureau believes that candidates should come from clusters, not pro rata from 19 parties.

Article 15, paragraph 20

These matters were raised in earlier discussions but did not find expression in the earlier draft protocols. The Bureau believes that all parties welcome such a measure.

Article 16

To prevent disruption, any unforeseen breakdown in law and order, or judicial mismanagement, the Bureau considers it necessary to include the provisions listed in this article. These provisions do not preclude legislative and executive action to remedy the defects of the past or to conduct judicial and administrative reforms, but are rather directed at permitting an ordered reform process without disruption caused by legal challenges, legal vacuums or administrative chaos.

Article 17, paragraph 2(b)

In relation to the judicial sector, reference was made to the need for training colleges for "employees". The Bureau has extended the original formulation to cover all sectors of the judiciary, whether administrative employees, judiciary and prison personnel, lawyers, or prosecutors, as well as judges.

Article 17, paragraph 7

The Bureau felt that there was a need to establish a form of rotation within the Constitutional Court so as to ensure representation of diversity amongst the appointees. This form of rotation enables the composition of the Constitutional Court to change periodically but to retain the necessary continuity by designating half of its membership who will remain members of the Court for six years.

Article 17, paragraph 10

One initial proposal stated "foreign judicial personnel shall be appointed on an exceptional basis to form part of the courts and prosecutors' offices in order to create a climate of confidence between the judicial services and litigants". This provision as formulated here will allow for such appointments, but will not prescribe them unless the availability of persons for appointment has been established and the appointment mechanism agrees thereto.

Article 20, paragraph 3

One of the options proposed was that the Independent National Electoral Commission should be made up of representatives of the political parties, civil society and the State, including the Ministry of the Interior. In accordance with international trends, particularly in conflict-ridden societies, we have opted for a truly independent commission.

Article 20, paragraph 7

The exceptional co-optation mechanism:

1. Ensures additional representation of all parties equally, thus providing for greater balance in debates when one party is

overwhelmingly dominant. It does so by distributing the seats equally, by avoiding an arbitrary co-optation process or mechanism, and by confining co-optees to those who appeared on the electoral lists;

2. Is not intended to apply after the first election or if there is a balanced spread of parties;
3. Is warranted, despite its limited distortion of the electoral result, which would not drastically alter the outcome, because of the exceptional degree of conflict and insecurity in Burundi.

Article 20, paragraph 8

The Bureau is mindful that some parties oppose the system of blocked lists with proportional representation. The Bureau seriously considered the many options put before it, as well as some that were not advanced (such as alternative preference voting; simple and multi-member constituencies; open list, preferential voting). For some, weighting "Tutsi" votes to achieve parity would provide the best system. However, where this type of weighting has worked, e.g. in the United Republic of Tanzania, it has been on the basis of geographical division, and never to the extreme extent proposed here. There was a belief amongst others of the need to conduct elections within the ethnic communities, on the basis of parity of representation between the two main ethnic groups, or using an alternative formula yielding the same result. This system would have been implemented directly or by indirect suffrage from the local level to the summit. However:

1. Such a proposal could find no common ground;
2. The risk exists that such an electoral system would exacerbate ethnic tensions and make the divisions within the ethnic communities rigid;
3. It might thus promote more extreme ethnic problems; and
4. It would be extremely complicated to organize owing to the fact that the communities within Burundi are not geographically separated.

The Bureau has therefore made its current proposal in the belief that an electoral system based on proportional representation with blocked lists together with a series of other mechanisms can guarantee the representation of both major ethnic groups. Nevertheless, a limited co-optation method has been included as a necessary balancing mechanism for the first elections.

Article 20, paragraph 13

Various parties supported the idea of electing the commune administrator. The proposal did not obtain the necessary support of the others, and the Bureau has opted to exclude this possibility, owing to the problems of accountability and control that such a proposal could create:

1. The commune administrator must be attached to a legislative body, to whom he is accountable;
2. In case of corruption or other problems, the legislative body (in this case the commune council) should have the power to suspend him and nominate a replacement.

It is no less democratic for the administrator to be indirectly elected, and furthermore at an initial stage the Bureau is not sure there is a need to overload the electoral system by electing the *colline* councils, indirectly electing the commune council, and directly electing the commune administrator (to be followed by a referendum, and later national elections). Nevertheless, measures will have to be taken within the organic law on commune administration to protect the administrator's obligations and rights.