BURUNDI'S AGENDA FOR ACTION

November 2008

This publication was produced for review by the United States Agency for International Development by Booz Allen Hamilton under the Business Climate Legal and Institutional Reform (BizCLIR) project.

BURUNDI'S AGENDA FOR ACTION

NOVEMBER 2008

Cover photo: Rowan Seymour

CONTENTS

INTRODUCTION

This report addresses the challenges to Burundi's business environment along with the root causes for the country's low *Doing Business* scores. In the most recent *Doing Business* report, issued in September 2008, Burundi ranked 177th—a poor showing that the government has already vowed to improve. While some of this report's recommendations relate directly to improving *Doing Business* scores, others address challenges to the business environment more broadly in order to remedy deeper issues plaguing the business community.

BURUNDI'S RANKINGS IN THE WORLD BANK *DOING BUSINESS* CATEGORIES

	2009	2008	Change
Doing Business Overall (181 economies surveyed)	177	174	+3
Starting a Business	138	124	+8
Dealing with Construction Permits	173	171	+2
Employing Workers	70	99	-29
Registering Property	125	122	+3
Getting Credit	163	170	-7
Protecting Investors	150	147	+3
Paying Taxes	114	109	+5
Trading Across Borders	170	167	+3
Enforcing Contracts	170	148	+22
Closing a Business	181	178	+3

The passage of the Arusha Agreement on peace and reconciliation in 2000 ushered in a renewed sense of hope for political and economic reform in Burundi. The Interim Economic Growth and Poverty Reduction Strategy Paper (Interim PRSP), which resulted from the Arusha Agreement, calls for a stabilized macroeconomic framework, poverty reduction, and improvements in human capital.[1] Burundi's government, private sector, and work force—along with a large donor community—are now striving to overcome a legacy of poverty, one that is uniquely complicated by the country's recent long history of war and conflict. Improving the business environment in order to open the door to greater investment, both by locals and foreigners, in a variety of sectors will be key to giving the Burundian population the tools and opportunities necessary to move beyond this legacy towards stable economic growth.

This report is designed to inform assistance decisions by USAID and other donors in the area of commercial legal and institutional reform. Specific recommendations are included at the end of each chapter and compiled in full in an appendix to this report. A list of priority recommendations is also included in this Introduction.

The in-country portion of this diagnostic took place from August 25 to September 5, 2008, when a consulting team traveled to Burundi to study the country's business environment. At USAID's request, the diagnostic team focused on five areas of Burundi's business environment: Starting a Business, Protecting Investors, Getting Credit, Enforcing Contracts, and Trading Across Borders. With respect to these five topics, the team conducted interviews across the business environment, including state and local officials, large and small entrepreneurs, industrial and agricultural enterprises, traders, legal professionals, business associations, the banking and lending sector, NGOs, donors, and many others. For each topic, the team addressed four perspectives—Legal Framework, Implementing Institutions, Supporting Institutions, and Social Dynamics—to attain a complete picture of Burundi's enabling environment for business and trade. Questions elicited a variety of perspectives and viewpoints, and sought explanations for how different areas and business issues affect various stakeholders in all pertinent communities, whether urban, suburban, or rural.

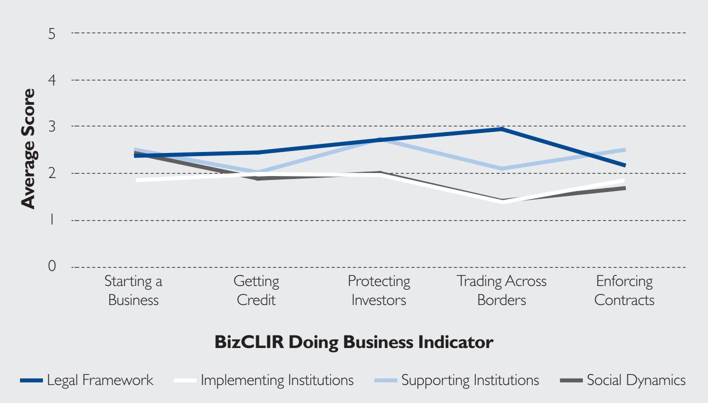
The diagnostic culminated in a roundtable presentation and discussion on September 5, 2008, which was attended by government officials, private sector representatives, and several donors. At the roundtable, team members introduced their preliminary observations, which were then subjected to small group discussion and feedback from about 60 participants. This input helped shape the final conclusions of the team, which are now found in this report.

1 Trade Policy Review, http://www.wto.org/english/tratop_e/tpr_e/tp212_e.htm (WTO 2003).

SUMMARY OF OVERALL FINDINGS

In Burundi, the team found significant weaknesses across each of the five areas assessed and need for greater commitment to reform across each of the four perspectives—Legal Framework, Implementing Institutions, Supporting Institutions, and Social Dynamics. The indicator graphs below, however, help demonstrate where the greatest relative need lies today.

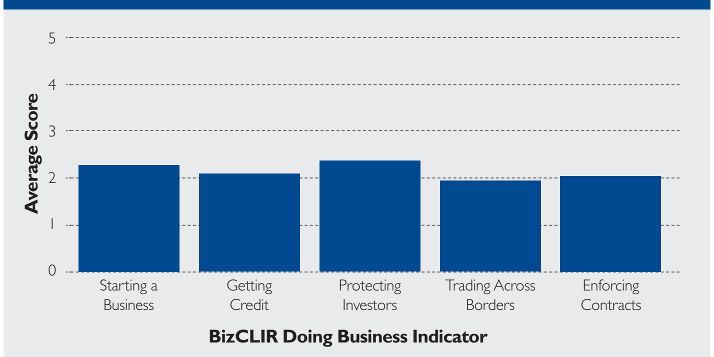
INDICATOR COMPARISONS



The Legal Framework scores are relatively high across the board, but these scores too are weak overall. Burundi's commercial laws do not yet meet international standards, but many key commercial laws are in the process of being updated or revised. Accordingly, the team considered the legislative process and content of the proposed draft laws. While these laws suggest improvements in the near future, passage and implementation of the new laws will be the challenge.

The Implementing Institutions and Social Dynamics were the weakest frameworks overall. Implementing Institutions in particular are a significant point of weakness and should be a priority in future reform efforts relating to the business environment.

INDICATOR SCORE COMPARISONS



The state of Supporting Institutions varied from area to area. In certain instances, weaknesses in one or more Supporting Institutions have been identified as critical areas for reform, but in others, they are already contributing to building a better business environment.

SUMMARY OF SUBJECT-SPECIFIC FINDINGS

The findings of the *Doing Business* subject-matter areas examined in this diagnostic are summarized below. As the Indicator Score Comparison graph demonstrates, Getting Credit, Trading Across Borders, and Enforcing Contracts are particularly weak areas in Burundi, although each of the areas assessed have significant need for reform.

STARTING A BUSINESS.

Starting a business remains difficult in Burundi. Registration is relatively fast by regional standards, but it remains difficult to gain all necessary information and forms before filing for those entrepreneurs who are just starting out or are not well connected. Beyond registration, many roadblocks in the business environment make it a challenge for new businesses to effectively compete. Privatization of state-owned enterprises is proceeding very slowly. There is no clear legal framework for competition. Very few resources are available to assist potential entrepreneurs, both large and small, in pursuing new business in the country.

The focus now must be on implementing the laws effectively, publicizing processes and resources for entrepreneurs, and ensuring that the responsible institutions have sufficient staff and resources to meet their mandates. In the long run, the growth of entrepreneurial spirit should be encouraged; for the most part, it does not yet exist in Burundi.

GETTING CREDIT.

Burundi's banks and other financial institutions are surprisingly liquid and healthy. The banks and larger MFIs are seeing rapid growth (albeit from a small base) and the sector is attracting foreign investment. However, interest rates are high, and bank lending is almost entirely focused on the commercial sector. Agriculture, manufacturing, and services are relatively deprived of credit. Lending is constrained by costs and risks arising from asymmetrical information, political influence on lending, crowding out by government bonds, and inadequate skills for assessing and managing risk.

Few steps are currently underway to address these issues; a single donor project exists to help the MFIs, and

BizCLIR DIAGNOSTIC TEAM

Elizabeth Shackelford, *Booz Allen Hamilton, Team Lead; Starting a Business; Protecting Investors*

Anna Capetanakis, *Booz Allen Hamilton, Deputy Team Lead; Trading Across Borders—Policy*

Douglas Muir, *Independent Consultant, Getting Credit*

Joanna Cornelison, *Independent Consultant, Trading Across Borders—Facilitation*

Judge Eileen Hollowell, *U.S. Bankruptcy Court, District of Arizona, Enforcing Contracts*

DESK STUDY

Sameera Pochiraju, *Booz Allen Hamilton, Trading Across Borders—Policy*

the IMF and World Bank are helping the central banks, but no assistance whatsoever is being given to the banks or insurance companies. While this is not good, it also means this is an open field for donor assistance.

PROTECTING INVESTORS.

The World Bank ranks Burundi nearly at the bottom compared to other countries for Protecting Investors. This ranking accurately reflects Burundi's lack of an effective corporate governance regime or a culture of investor protection. The existing law covers corporate governance to some extent, but it does not create a comprehensive corporate governance framework in line with international best practices, and it provides no effective means of enforcing the provisions it does include. Continuing legal and institutional reforms, if successfully implemented, should place the country in a position to significantly improve its corporate governance regime and, as a result, its environment for protecting investors in the near future.

Beyond corporate governance, much must be done to improve Burundi's investor appeal. Passing and implementing the draft Investment Code, including creation of an Investment Promotion Agency, that has been slowly making its way through the legislative process for years is an imperative next step.

TRADING ACROSS BORDERS.

Multiple issues affect Burundi's viability in the international trade arena. Notably, 90% of the population is working in agriculture (mainly subsistence farming). Burundi's economy clearly needs to diversify in order to reduce the exposure to commodity prices and weather uncertainty, as well as to fight the current account deficit caused by continuously growing demands for imports. In addition to poor export diversification, Burundi's trade is negatively affected by production and processing constraints, unfair trade practices, nontariff barriers to trade, and insufficient foreign direct investment (FDI). Though the country benefits from various duty-free and quota-free initiatives available to least developed countries (LDCs), its vulnerability to international commodity prices and supply-side constraints sharply limits such benefits. Further, government officials lack the necessary capacity to deal with complex trade issues. This impinges on successful participation in international trade negotiations and adequate implementation and observance of WTO and regional trade commitments. Burundi will need continuous support to improve compliance with its multilateral commitments.

Future assistance should focus on reducing corruption and improving efficiency in the Customs Service, encouraging the diversification of agricultural exports, reviewing the viability of the Port of Bujumbura, and facilitating EAC integration.

ENFORCING CONTRACTS.

The enforcement of contracts in Burundi is difficult. First, the framework laws dealing with contracts are archaic and ill suited to a modern commercial economy. Second, the court system is slow and widely viewed as corrupt, and it lacks the capacity for efficient and competent resolution of even moderately challenging commercial disputes. The courts are poorly funded and salaries are very low. Recent efforts to improve ethnic diversity in the courts are admirable, and probably necessary, but are not improving the system's competency or efficiency.

The court system needs a great deal of donor support, including but not limited to basic training, technical support, education in the laws, and basic equipment.

CROSS-CUTTING THEMES

The instant diagnostic is organized so that various components of a healthy and prosperous economy are considered discretely and in relation to each other where appropriate. Certain issues and dynamics are so prevalent across this analytical framework, however, that they warrant special mention. These can be thought of as cross-cutting themes or topical "layers" spreading across all areas of review. In this diagnostic, the themes include the following:

1. AGRICULTURE AS THE CORNERSTONE OF BURUNDI'S ECONOMY

The importance of agriculture in Burundi's economy cannot be overstated. Agriculture is by far the dominant sector not only for basic livelihood, but also for entrepreneurial growth. Throughout this report, the significance of the agricultural economy—and agriculture-oriented solutions—is a common theme. At different junctures, the following points arise:

- For the foreseeable future, most of Burundi's work force will depend on opportunities in the country's agricultural sector, including the growth of the specialty coffee sector, value-added processing of agricultural products, and the advent of new products such as sericulture. Business education and science education at the university level are critical aspects of seizing such economic opportunities.
- Burundi's agricultural extension service was destroyed in the war and has not been rebuilt. In the absence of such a service, there is a need for demonstration centers to help farmers better understand what is necessary to succeed in business. Short-term training on basic farming issues such as seed selection, planting, production, cultivation, process transformation, and distribution would also be beneficial. For example, the development of an agency that supports cooperatives could ensure that agricultural issues, particularly those of small-scale farmers, are properly represented and championed.
- Access to credit in the agricultural sector implicates a number of issues that call for agriculture-specific solutions, including land reform, insurance, microfinance, and technical assistance directly targeted to specific agricultural products. Development partners can supply technical assistance to create new credit and insurance products, identify additional constraints in the agriculture arena, and assist in formulation of policy solutions.
- Burundi's main agricultural exports (tea and coffee) are of adequate quality, but their competitiveness is undermined by transport constraints and the distance to ports. Trade solutions will need to consider the special issues associated with agriculture—such as spoilage and special infrastructure needs—as they go forward.
- The economic focus should not be 100% on agriculture, however. Diversifying the economy to account for the special limitations and challenges that face agribusiness and to provide an economic safety net for the country when poor weather or commodity price fluctuations strike is imperative.

In short, the Burundian government and donors alike must promote opportunities in agriculture that go beyond subsistence farming and allow for growth from increased productivity, entrepreneurship, and trade. At the same time, non-agricultural sectors must be developed and promoted as well.

2. ADDRESSING THE SKILLS DEFICIT: AN IMPERATIVE FOR LONG-TERM GROWTH

To a debilitating extent, Burundi's work force lacks skills. This point was stressed throughout the diagnostic, particularly by businesspeople concerned with completing projects and attracting new business.

Strengthening higher education and vocational training is part of the Interim PRSP. Nonetheless, constraints on accessing education at all levels remain a problem for many. The percentage of students that finish primary school remains low—current estimates hover at about 40%. The percentage of children ages 13 to18 proceeding to secondary school is even lower. Although rates are increasing, only between 15% and 20% reportedly make this transition. And less than 2% of Burundians attend university. Critical skills are therefore lacking throughout the economy, with tangible consequences including the following examples:

- Entrepreneurs often do not adhere to good bookkeeping and business management, and intermingling of business and personal funds is common. This fact undermines access to credit as well as the ability of SMEs to build sustainable businesses and attract outside investment.
- Business and finance graduates often do not have the necessary skills in business, accounting, and finance that Burundi's degree programs should bestow. Sophisticated or creative financial products are less likely to take root in this environment than if the graduates had more relevant skills.
- Employers in Burundi must often rely on skilled

professionals from neighboring countries to fill the professional and technical skills gap. This drives up the cost of doing business in Burundi.

- Corporate governance is an unfamiliar topic to the majority of business people in the country, and this strongly limits investor protections. For example, for the foreseeable future, the possibility of shareholder derivative suits will not provide any benefits or contribute to investor protection if they are not used or understood.

These issues, and many more noted in this report, relate to Burundi's skills deficit. In Burundi, "more training" is the unequivocal answer to the question of how donors can help. This request is usually accompanied by requests for books, materials, and other equipment that are necessary components of effective educational and training programs.

While basic literacy and quantitative skills are critical, higher education cannot be neglected. As noted in a recent report that underscores the vital relationship between higher education and economic development, university education supplies "the human capital that in turn builds the very institutions that are regarded as an indispensable factor of development—the accountants, doctors, engineers, lawyers, teachers—that comprise the middle class."[2]

3. THE PERVASIVE ISSUE OF CORRUPTION

Corruption in Burundi is widespread, though not uniform across the government. Generally, the areas of public procurement, customs, and direct taxation are considered to be the most corrupt. This is often attributed to the staff's low salaries; however, some agencies seem to have a particularly strong "culture of corruption." The problem is exacerbated by Burundi's unstable political situation; when ministers and agency heads change frequently, there is little oversight and a strong incentive for incumbents to grab what they can while they can.

Businesspeople in Burundi view corruption in Burundi as "pervasive, acute, and less than predictable." Based on anecdotal evidence, it is believed that the bribe tax is between 25% and 60%, and it is rare for citizens to obtain licenses or permits without paying bribes.[3] Corruption affects the financial sector as well; the very high rates of bad loans (which help keep interest rates high and stunt credit) are in part because of political and self loans.

To embrace the promise it holds, Burundi must revisit issues of real and perceived conflict of interest, competition law and policy, financial disclosure of the income and assets of government officials, government procurement, and freedom of the press. It also needs to improve the extent to which it provides information, including through accessible services beyond the capital city, clear information posted in government buildings, and better access to law, regulations, and other key information through the Internet. Only when locals and outsiders feel that they have a genuinely fair chance at business success—one that is not compromised by the ambiguity of insider involvement or the challenge of limited access to information—will the country represent a genuinely attractive investment opportunity.

4. THE GROWING SIGNIFICANCE OF REGIONALISM

Burundi joined the East African Community (EAC) in 2007, signifying its commitment to regional integration of economic policy, regulatory frameworks, and trade in goods and services, among other facets. The five member states of the EAC cover an area of 1.8 million square kilometers and have a combined population of about 100 million people. The EAC currently operates a customs union and is planning a common system of tariffs, as well as a standard tourist visa and possibly a common passport. Given the interdependence of the EAC states, especially with respect to port access, the potential of streamlined administrative systems within the EAC to contribute to economic growth throughout the region is significant.

Burundi belongs to other regional organizations, such as the Common Market for Eastern and Southern Africa (COMESA), which also influences certain legal framework and policy initiatives.

Burundi's place within the EAC presents enormous opportunities, particularly with respect to trade in services, including professional services, tourism, franchised businesses, and trade facilitation services. Burundi's access to skilled labor, along with professional opportunities for its own workers, may also improve if EAC members continue to streamline practices allowing skilled workers to move freely among their borders. Furthermore, there are important regional opportunities with respect to accessing credit. If lenders regard Burundi as part of an overall regional strategy, the supply of credit may grow.

Currently, Burundi is widely considered to be the weakest link in the EAC, not surprising based on its very recent instability and the unique challenges it faces in

2 Devesh Capur and Megan Crowley, *Beyond the ABCs: Higher Education and Developing Countries*, Center for Global Development Working Paper 139 at 4–5 (February 2008).

3 Fighting Corruption and Restoring Credibility in Burundi, http://www.nathaninc.com/nathan2/files/ccLibraryFiles/FILENAME/000000000090/USAID%20Fighting%20Corruption%20and%20Restoring%20Accountability%20in%20Burundi.pdf (USAID 2006).

that regard. From the perspective of the private sector, regional integration has meant little to nothing so far, although fear regarding open competition with its neighbors looms large. Public sector representatives assure that change is on the way. During this transitional phase, the public sector must keep the private sector informed of relevant reforms and the benefits that Burundi will see. It is important that the public sector embrace regional integration and move forward on it with commitment, and that the private sector is not left without an understanding of what integration means and how it will affect them, in both positive and challenging ways.

THE BIZCLIR RECOMMENDATIONS: TOP PRIORITIES

This report contains nearly 100 recommendations that suggest—in terms ranging from the very broad to the highly specific—a variety of approaches to improving Burundi's business environment. Although each of the report's recommendations contributes to an overall vision for how Burundi can continue its emergence into the world economy, the following can be considered the top priorities:

ALL SUBJECT-MATTER AREAS

1. Make all laws available to the public in a more thorough, user-friendly format than that currently provided by the Official Gazette.
2. Implement regular and meaningful dialogue opportunities between the public and private sectors to create a forum for building understanding in the government of the private sector's needs and within the private sector of economic reforms, underway, particularly those related to regional integration.

STARTING A BUSINESS

1. Promote education and training efforts on entrepreneurship and basic good business practices, and widely disseminate information on legal and regulatory matters affecting business.
2. Push forward the privatization process, and promote transparency in its implementation. Educate the public and private sectors through a campaign about the benefits of privatization and the strong need for moving it forward in order to create a healthier business environment.

GETTING CREDIT

1. Capacity building for financial institutions—banks, MFIs, and the insurance sector—including training and technical support.
2. Fill gaps in the existing legal regime, including:
   - Improving and expanding access to credit information
   - Reviewing and upgrading regulations for financial institutions
   - Helping local actors (lawyers, banks, courts) draft and promulgate standardized financial forms and contracts.
3. Work with financial sector to develop agricultural lending products.
4. Improve the Land Registry.

PROTECTING INVESTORS

1. Complete work of drafting, promulgating, and publishing relevant laws.
2. Implement a program of basic training in corporate governance concepts for lawyers, government officials, and businesspeople.

TRADING ACROSS BORDERS

1. Develop a strategy for customs modernization, including both relevant ministries and private stakeholders in the process.
2. Prioritize and implement the following needs:
   - Set up a Customs Service website
   - Streamline the OCIBU process for coffee exports
   - Simplify the Special Exemption Process.

ENFORCING CONTRACTS

1. Provide in-depth training on the new laws to the Burundian legal, banking, business, academic, and judicial communities.
2. Plan and implement educational activities in conjunction with passage and implementation of the new commercial laws to include Burundi's legal, banking, business, academic, and judicial communities.
3. Provide support for magistrates and judges by providing regular training, not only on substantive law, but also on case management, opinion writing, and ethics.

4 Detailed information about BizCLIR can be found at www.bizclir.com.

5 See generally World Bank, *Doing Business 2008* (2007), and accompanying literature at www.DoingBusiness.org. The BizCLIR indicators also cover infrastructure and agriculture.

THE BIZCLIR DIAGNOSTIC AND INDICATORS

This report is grounded in a comprehensive methodology, established through USAID's Economic Growth Office, and has been used in over 30 countries since 1998. In 2007, incorporating lessons learned from its first-generation legal, institutional, and trade diagnostic tool, USAID developed an updated and redesigned set of indicators through the Business Climate Legal and Institutional Reform (BizCLIR) project.[4] The indicators now substantially align with the structure of the World Bank's enormously influential *Doing Business* framework.[5]

Since 2002, *Doing Business* has assisted countries in targeting where their regulatory environments may favor or interfere with economic growth. For each of the topics it examines, the World Bank considers a few key factors that indicate whether and how the environment for doing business is "working," measured by such means as the number of procedures involved in achieving a goal, the number of days it takes, and the costs of the procedures in relation to per-capita income. The World Bank now gathers data from 181 economies and ranks each, thereby demonstrating how their respective regulatory environments compare throughout the world.

USAID's BizCLIR indicators take each subject covered by *Doing Business* and delve deeper into their respective legal frameworks, implementing and supporting institutions, and social dynamics to better understand why a country is where it is and how it can be improved. In short, BizCLIR regards the *Doing Business* findings as "the tip of the iceberg" and aims to assist countries in improving their *Doing Business* rankings and business environment as a whole by addressing the *entire* iceberg. The BizCLIR indicators consider each subject from a variety of perspectives, illuminating, for example, how certain business processes apply to rural communities, microenterprises, and small and medium-sized enterprises (SMEs). The BizCLIR indicators further examine aspects of a subject-matter area that do not necessarily impact a country's ranking, but have considerable bearing on the business environment. The BizCLIR approach was chosen in light of recent demand for better understanding of the issues highlighted in the *Doing Business* initiative and the need to help donors and countries understand, with greater particularity, "how to reform."

Each chapter of this report is structured the same way. Following a brief introduction, each has four substantive sections, and concludes with recommendations.

LEGAL FRAMEWORK.

The chapters first examine a country's laws and regulations that serve as the structural basis for its ability to achieve and sustain market-based development. They discuss the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less-sophisticated actors, rural constituencies, and foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework?

IMPLEMENTING INSTITUTIONS.

Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, and registries, and, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the commercial arena. Again, the indicators seek to uncover how these implementing institutions function not only within the capital city, but also in rural communities and among less-empowered constituencies.

SUPPORTING INSTITUTIONS.

The chapters then look closely at those organizations, individuals, or activities without which the legal framework or policy agenda in Burundi cannot be fully developed, implemented, or enforced. Examples include lawyers, accountants, business support organizations and private services, professional associations, universities, and the media. Questions and analyses examine relative awareness of law and practice on the part of each institution, and the specific ways in which these institutions increase public and professional awareness, work to improve the business environment, and otherwise serve their constituencies.

SOCIAL DYNAMICS.

Finally, the chapters discuss key social issues, particularly issues of awareness, social capacity, and will to reform. Roadblocks to reform, in particular, are considered, including those entities that may be undermining change. These indicators also seek to identify significant opportunities for bolstering the business environment—such as champions of reform or regional initiatives—as well as matters of access to opportunity and formal institutions. Social dynamics also concern such matters as gender and human capacity, which may have a significant bearing on

THE INTERNATIONAL FINANCIAL CRISIS AND BURUNDI

As of late November 2008, both North America and Europe appear to be entering a recession, and the state of several large economies' financial sectors remains unclear. Although it still too early to know what effect this will have on Burundi in particular, it is already clear that it will impact the region. On October 30, for instance, Uganda announced that it was cutting its estimated 2008/09 economic growth rate from 8% to 5 or 6%.

In general, developing countries can expect less foreign investment and possibly increased borrowing costs over the next 12–18 months. Eastern Europe, for example, seems to be "catching Europe's cold;" economies such as Romania and Poland, which have been growing at 5%–8% over the last several years, are already expecting downturns in growth and investment and are in contact with the IMF for possible assistance. Kenya, Tanzania, and Uganda are not having this level of difficulty yet, but it is possible that a sufficiently sharp international recession could depress export prices, destabilize their currencies, and slow or reverse investment flows into the region.

Burundi is less likely to suffer these sorts of problems. Paradoxically, the very poor state of Burundi's economy may help to buffer it against certain types of shock. Burundi was not attracting much foreign investment to begin with. Most Burundians are subsistence farmers and are not well connected to greater regional or global economies. In some countries, capital flight and liquidation of foreign-owned assets will be a problem; this is unlikely to be an issue in Burundi.

Also, unlike many developing countries, Burundi's financial sector has little exposure to foreign currency denominated loans. Therefore, exchange rate fluctuations, though troublesome, are unlikely to result in a local banking crisis.

There are particular areas of concern for Burundi, though. These include:

FALLING COFFEE PRICES.

Coffee is Burundi's largest export, and coffee prices may fall as the world's economy slows. Coffee has low elasticity of demand compared to other agricultural commodities, so the effect may not be severe. Nevertheless, coffee prices worldwide dropped by about 10% in the month of October alone.* If prices continue to fall, Burundi's export earnings will shrink and the amount of cash available to small coffee farmers will decrease. The coffee sector is still starved for investment; if prices fall and stay low, attracting investment will be difficult. In the worst-case scenario, weakening exports could cause the Burundi franc to further lose value, raising the price of imports as well.

DONOR ASSISTANCE.

In the event of a world-wide recession, foreign donors can be expected to cut aid budgets. This could hit Burundi particularly hard since aid is a major factor in Burundi's economy, amounting to roughly half the government's budget. The impact this has on Burundi will depend on the reactions of particular donors, but a significant decrease in donor assistance to Burundi would have a very noticeable effect on the country's economy and short-term prospects.

REMITTANCE FLOWS.

Large numbers of Burundians work abroad and send money home. This flow will probably slow as workforces are cut worldwide, consequently exacerbating Burundi's trade imbalance and putting further downward pressure on the franc.

REGIONAL INTEGRATION.

It is not yet clear how the other EAC countries will respond to the crisis. However, if growth slows in the other EAC states, regional integration is likely to drop in priority. Infrastructure investment—vitally important to landlocked Burundi—may also be cancelled or delayed. Burundi relies heavily on the road to Dar Es Salaam, the port in Dar Es Salaam, and the rail line to Kigoma; all of these require significant investment, which could be a casualty of a regional recession.

*According to the International Coffee Organization's website, the composite index has dropped from 120.15 to 103.73 cents per pound: http://www.ico.org/prices/pr.htm. Coffee prices are often volatile, but this sharp drop looks like a response to the crisis.

how the business environment truly functions on the ground. Indeed, a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

RECOMMENDATIONS.

Following this four-part analysis, each chapter sets forth recommendations. These recommendations are drawn from the key findings in each chapter and reflect current reform capacities, opportunities, and an evident will to reform. Some of the suggestions within the respective sets of recommendations may overlap—that is, some may be consolidated into a single reform initiative—and all turn on the priorities and preferences enunciated by the country's government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work.

THE INDICATORS.

In addition to the qualitative outcome of the report, the diagnostic process also results in a quantitative outcome of scored indicators. With respect to each area of inquiry, this diagnostic uses a process of reviewing and scoring *key indicators* to develop a thorough analysis. Once as much relevant information as possible is gathered—from written sources, meetings and interviews, and consultation among colleagues—each of the key indicators is scored, based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between 5 and 20 *supporting questions* accompany each key indicator. These questions themselves are not scored, but are intended to guide the assessor toward a consistent, fact-based judgment from which the key indicator score is then derived.

THE SCORE AWARDED *KEY INDICATORS* ALIGNS WITH THE FOLLOWING CONCLUSIONS:

1 = strong negative
2 = moderate negative
3 = neutral (or having some negative and some positive qualities)
4 = moderate positive
5 = strong positive

The scores are not intended to serve as a stand-alone, number-based pronouncement of the state of affairs in the country. Rather, they should be read in conjunction with this report as a means of understanding the relative status of certain key indicators of a healthy legal and institutional environment for business and trade, and identifying priorities for reform. These indicators allow donors, the government, and other stakeholders to understand where priorities should be placed, not only among subject matter areas, but also among the four frameworks assessed under this diagnostic.

STARTING A BUSINESS

The World Bank's *Doing Business* ranking for Starting a Business focuses on the time and cost of business registration. However, there is much more to starting a successful business than getting it registered. If an entrepreneur can register a business successfully but cannot effectively compete or sustain that business, registration will be meaningless. Strong influence and control of the government within the business community or uncompetitive practices by dominant private companies can both pose insurmountable obstacles to entrepreneurs trying to make a living. Because of the important challenges these issues can create, both privatization and competition are also discussed in this chapter.

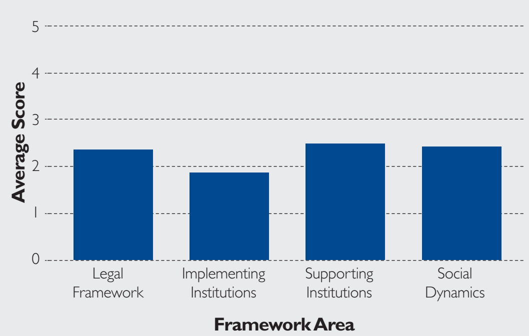
Burundi's Starting a Business ranking is very low and appears to be worsening. However, among the business community, business registration was not a significant concern. Most private sector representatives indicated that it is actually quite quick, and the several required steps listed in the *Doing Business* report were not raised by anyone interviewed within the public or private sectors.

The primary challenge with business registration is not the required steps, but rather *figuring out what the required steps are.* If one knows what to do, there may be some delay in receiving certain materials, but the steps themselves are simple. If one does not know what to do, and does not fortuitously stumble upon the business registration section at the Commercial Tribunal, finding answers can be a serious challenge. The laws and procedures are not readily available, and several private sector representatives shared tales of frustration of traveling from ministry to ministry, and office to office, simply seeking some direction of where and how to apply. As reflected in the indicator graph below, the biggest fix is needed in the activities of the implementing institutions and their ability to facilitate this process for all stakeholders—not just a select few who are in the know.

The most serious challenges to starting a successful business come both before and after business registration. The initial constraint is that private sector Burundians are not historically drawn to business. The entrepreneurial spirit is weak. Steady jobs, particularly with the government, are considered the best working opportunities. As a result, few Burundians pursue innovative business ideas, and most entrepreneurs do not expand beyond a subsistence business level.

STARTING A BUSINESS	
Doing Business Ranking 2009	138
Doing Business Ranking 2008	127
Procedures (number)	11
Time (days)	43
Cost (% of income per capita)	215.0
Minimum Capital (% of income per capita)	0.0

STARTING A BUSINESS



Constraints to sustaining business that fall after registration include the very slow pace of privatization, which effectively restricts the business sectors that are open to the private sector, and the role of corruption and informal fees in complicating the ability of entrepreneurs to predictably assess and evaluate business costs. Through connections or corruption, some businesses are able to avoid the formal costs of doing business and can, thus, undercut the prices of those playing by the rules. Both of these aspects result in an unequal playing field for entrepreneurs and business people in Burundi, reducing the appeal and profitability of entry into business.

By pushing forward reform efforts, such as privatization and the new draft commercial laws being developed, and by implementing laws and processes to ensure standardization of processes for the business community, this field can be leveled, giving everyone a fair chance for business success.

LEGAL FRAMEWORK

The first step in developing a modern business environment conducive to successfully starting and running a business is to ensure that an effective, modern, and business-friendly commercial legal framework is in place. While Burundi's current commercial laws are outdated and incomplete, significant efforts are underway to revamp the laws and establish a legal framework consistent with international best practices and harmonized with the East African Community.

KEY LAWS
Current
• Public and Private Company Law, 1996
• Commercial Code, 1993
• Privatization Law, 1991
• Decree on Public and Private Sector Consultation Framework, 2008
• Investment Code, 1987
Draft
• Draft Public and Private Company Law
• Draft Commercial Code
• Draft Public Procurement Law
• Draft Investment Code
• Draft Competition Law

UPDATING THE COMMERCIAL LEGAL FRAMEWORK.

The World Bank's Project D'Appui a la Gestion Economique (PAGE) has been leading the commercial law initiative in Burundi. This effort has included creation of modern drafts of the Public and Private Companies Law, Competition Law, and Commercial Code. Additionally, the Public and Private Sector Consultation Framework, also part of this initiative, was implemented as Presidential Decree No 100/106 on June 17, 2008. International consultants have been used to draft these laws and texts, with input from private sector stakeholders through consultations and workshops, and the draft laws have then been handed over to the appropriate ministries. As of September 2008, most of the draft laws remain with the Ministry of Commerce, although the Draft Investment Code, discussed further below, appears to have advanced to the Senate for consideration.

Despite these notable advances, three significant challenges remain before the benefits of these modern commercial legal texts can be realized. First, these draft laws must be passed. While this is an obvious requirement, it is not necessarily a given. Over the past year, a rift within the ruling party, CNDD–FDD, has eliminated the president's majority in the National Assembly, stalling most legislative progress. Meanwhile, the ruling party appears to be responding by passing presidential decrees in lieu of laws. Unfortunately, these decrees are easy to change: a decree can be amended or repealed by a subsequent decree, which can be promulgated at any time. Thus, they simply do not provide the same predictability as legislation. The ruling party should be cautious about the role that these decrees play in the business environment.

Political instability and the looming elections in 2010 are a significant challenge to progress in this area. According to representatives in both the public and private sectors, all political players are currently preoccupied with politics and reelection, while possibly contentious development efforts are being put on the back burner.

While some public sector representatives and donors are optimistic that the new legal framework will be in place by the beginning of 2009, the reality is not so encouraging. For example, a common grievance within the private sector is that they have been hearing about the Draft Investment Code for years and are yet to see it in place. If passage of these draft laws has not moved forward by January 2009 as planned, the private sector and donor community will need to work with the government to reinvigorate and prioritize this effort.

DISSEMINATING THE LAWS.

The second significant challenge with regard to the legal framework is dissemination within the private sector. Although some members of the private sector were consulted during the drafting of these laws, most private sector representatives that the assessment team interviewed were unaware of which draft laws were being developed. Almost no one had been given a chance to review or comment on the texts. Indeed, some of these representatives had requested copies of the draft laws and had been refused. While it is not possible to incorporate feedback from everyone, some public opportunity for comment is vital to ensure that the laws respond to the needs of the private sector and that the private sector is aware of and able to adapt to coming changes in the legal framework.

The assessor was unable to determine the criteria for which private sector representatives were included in the process of developing these laws. The tentative conclusion is that there was none; individuals and institutions got access, or not, on an ad hoc basis, with exclusion being the norm.

The creation of the new Federated Chamber of Commerce and the framework for public and private sector consultation may make this process more transparent and inclusive. This is discussed further in the Supporting Institutions section of this chapter.

Dissemination and access is a problem not only with draft laws, but with current laws as well. The laws are available from the ministry responsible for each law or from the official gazette, but this restricts access to those who are aware that the law exists and either know which ministry it resides in or the date it was passed in order to look it up in the Gazette. No published volumes of laws or legal commentary are available in Burundi. This access is extremely limiting. Having a central, accessible location where all laws relating to the business environment can be obtained would be a very positive development.

IMPLEMENTATION.

The third challenge with regard to the legal framework is implementation. Even if passed, these laws will offer no benefits if they are not effectively implemented, executed, and administered. This will require public sector training on provisions of the new laws, including for judges, as well as private sector training. While PAGE has plans to undertake some training after passage of the laws, this is a large, challenging, and vital undertaking. It will require efforts of other donors, the government, and the private sector itself. People will need to be aware of the laws and what they require, and the laws must be enforced.

Implementation and adequate enforcement of the original commercial legal framework have not been sufficient, as is evidenced by the fact that so many provisions within the Company Law and Commercial Code are not followed. With regard to the new legal framework, there is some concern that laws are already being passed, only to be shelved. For example, the new Bankruptcy Code—passed in 2006—has had, so far, no impact whatsoever. Not one case has been filed pursuant to it. No implementing institution exists for it. Judges seem to be only vaguely aware of it. Indeed, many within the public and private sectors—including lawyers, accountants, and bankers—are unaware of its existence.

It is important that the public and private sectors and the donor community work together to ensure that the new legal framework under development is effectively put in place and acted upon. Specific aspects of the legal framework applicable to entrepreneurs are detailed further below.

BUSINESS REGISTRATION.

The business registration process is currently outlined in the Commercial Code and the Public and Private Company Law. All business registration for the entire country occurs at the Commercial Tribunal in Bujumbura. In a rural country such as Burundi, it is important to make registration available at locations outside the capital city, and the new law is meant to address this.

According to the Commercial Tribunal, to register a business as a private person, one must fill out a simple registration application and provide to the Tribunal an ID card. To register a company with a separate legal identity requires the registration application, deposit of the notarized company statute, proof of registered capital from the bank (but no minimum required), and a receipt from publishing the company statute in the official newsletter of Burundi. Registration fees are low and not a disincentive to registering.

In principle, the process is simple. However, there are problems. First, the process is not clear from the text of the laws. It seems to have been developed internally by the Tribunal. This is not necessarily bad, but the registration process should be clearly outlined in a single section of the new Commercial Code or new Company Law. If one does not know where to go to register the business, determining how to do it can be a real challenge, as discussed further below in the Implementing Institutions section. Several private sector representatives also indicated that gathering the necessary documents for registration was very time-consuming and could require visits to different ministries with significant delays. Some suggested that it could take months to accomplish. This indicates that the documents required for registration are not always uniform or clear, and unnecessary delays are occurring at the implementation level. No pattern emerged with regard to who found registration difficult and who did not, but it was clear that the process is not predictable and transparent for all applicants.

PRIVATIZATION.

The heavy involvement of the government in business is a significant challenge to developing new business in certain sectors dominated by public or semi-public companies. The state controls all major cash crops, including coffee, tea, and cotton, and a variety of other sectors. The process of privatization began with the first Privatization Law in 1991, but the conflict stalled most privatization efforts, and they have only slowly begun to pick up again. Only ten companies were privatized between 1992 and 1996, and privatization since then has been even slower.

One relative bright spot is the telecoms sector, which began liberalization in 1997. Private operators have entered the mobile telephone market, which now has three operators, the most important being Telecel.[6] However, the impact of privatization is muted by Burundi's extreme poverty: only 2 percent of the population has telephones.[7]

Privatization is governed by a law and implementing regulations that outline a time-consuming process that is intended to be open and fair. This process involves recommendations to the Interministerial Committee on Privatization by SCEP (Service Chargé des Enterprises Publiques), the technical unit, regarding which companies should be privatized. If the Committee approves, SCEP pursues the privatization by public request for proposals, both financial and technical, and then recommends a buyer to the Committee. Unless it is a strategic sector considered sensitive, SCEP will make a recommendation based on the financial proposal, and the Committee will generally accept the recommendation. However, the Committee has the authority to reject the proposal or to send it back to SCEP for another recommendation.

Although the process appears to promote transparency and predictability, it has been exceedingly slow. Furthermore, there is some indication that the manner in which the process is implemented is not in fact open. At a minimum, it appears to enable delays by public sector players who are not enthusiastic about pushing privatization forward.

COMPETITION.

Although a minimum number of competition provisions are included within the current Commercial Code, the Draft Competition Law will be Burundi's first comprehensive framework on competition. With a very small number of businesses of any size in Burundi, and most industries largely destroyed during the conflict, competition in Burundi is not particularly fierce. In some sectors dominated by public or semi-public companies that have long held favorable positions in the market, private sector players assert that it would be very challenging to successfully compete. Competing with companies that have close ties with the government or ruling party is also considered ineffective as one is likely to face unexpected delays and challenges, such as with licensing or customs. These challenges are likely to be addressed more readily by reinvigorating the privatization effort and reducing opportunities for discretion in licensing and other administrative procedures than by enacting a competition law.

The greatest concern with regard to competition, however, is exposure to competition from firms from throughout the East African Community. Burundians are aware that development of their industry and businesses halted (and in some cases regressed) during the conflict while neighboring countries continued to advance. Integration with the EAC is accepted as inevitable and ultimately positive, but the fear of being swallowed by foreign businesses is palpable in Burundi.

An effective competition law should provide protection from uncompetitive and unfair practices by more sophisticated businesses entering the country, but some members of the private sector misunderstand the level of protection that it would offer, expecting protectionism for local firms rather than protection of the level playing field. Before the Draft Competition Law is promulgated, the private sector and public sector alike need to be educated on the benefits and importance of competition policy and what they can expect from the law.

As the private sector grows, and larger competing firms from outside Burundi enter the market, the need increases for an institution to ensure that competition is open and fair and that certain companies, public or private, do not unfairly dominate the business environment. The Draft Competition Law ostensibly calls for the creation of a competition agency to monitor and combat anti-competitive behavior in the marketplace. Care must be taken with implementation of the Draft Competition Law and creation of the competition agency to ensure that these tools are used to promote rather than to stifle competition. In environments where

6 Trade Policy Review (WTO 2003).
7 Burundi Trade Brief (World Bank 2007).

competition policy is largely a new concept, in the absence of effective training on the meaning and purpose of such provisions, they have been used in some countries as unequal protective measures instead.

IMPLEMENTING INSTITUTIONS

Burundi's implementing institutions for business start-up and support are very limited in scope. Promoting a healthy environment for starting a business requires more than effective implementation of the registration process. It requires public sector players dedicated to minimizing the unnecessary constraints that entrepreneurs face when starting and running a business. Effective implementation requires activity beyond mere legal implementation in order to provide entrepreneurs with the tools, information, and assistance they need to succeed. This is particularly true in a country like Burundi where a very high percentage of the business community is unsophisticated and uneducated in basic business practices.

KEY IMPLEMENTING INSTITUTIONS

Current

- Ministry of Commerce
- Commercial Tribunal
- Interministerial Committee on Privatization
- Service Chargé des Enterprises Publiques (SCEP)

Forthcoming

- Investment Promotion Agency
- Competition Agency

BUSINESS REGISTRATION. The primary implementing institution for business registration is the Commercial Tribunal, which is also responsible for hearing commercial disputes. The business registry is located at the Tribunal. It is purported to be public, but several private sector representatives indicated that it is in fact difficult to access information in the registry. Certainly some of the employees seem unaware that it is meant to be accessible by the general public.

Although the processes at the Commercial Tribunal appear to be reasonably straightforward and executed quickly, the Tribunal is understaffed and underresourced. This is discussed in more detail in this report's chapter on Enforcing Contracts. One positive development is that the Tribunal is in the process of creating an electronic database for the registry, which is expected to be functional in December. Enforcement of registration, at least in Bujumbura, is also fairly effective. Public and private sector representatives alike indicated that unregistered taxis or stores that did not display their trade registration number are fined by the police. Informal business, discussed further in this chapter's Social Dynamics section, remains significant but is more a factor of tax avoidance than lack of registration.

The role of the Ministry of Commerce in business start-up and development is less concrete. The steps required to register a business do not appear to involve any interaction with the Ministry of Commerce, but several private sector representatives indicated that they engaged with the Ministry, unsuccessfully, during the registration process. Some individuals' questions were rebuffed or left unanswered by the Ministry, while others were advised incorrectly on the procedures or directed to other ministries for their queries. This is indicative of a lack of clear information on the registration process not only within the private sector, but also within the public sector. It also suggests a broader problem that the public sector is not perceived to be business friendly. To be an effective implementer of the commercial legal framework, the Ministry should have well-trained staff capable of answering typical commercial law question or directing someone to where such answers might be found. Creating an institution specifically geared towards providing this type of support to the private sector would take this burden off of the Ministry of Commerce and would result in greater access to this type of information and guidance for new entrepreneurs and the private sector as a whole.

BUSINESS DEVELOPMENT RESOURCES. Because business has been largely the domain of the public sector throughout Burundi's history, business know-how and entrepreneurial skills have not been well developed in the private sector. Accordingly, guidance on where to go, what to do, and how to do it with regard to starting and sustaining a business is sorely needed.

Business registration is only a first step. A variety of additional questions regarding procedures and requirements emerge as one sets up and grows a business, for instance, questions on licensing, employment, investment, and taxation. Currently, no institution is available in Burundi to answer these questions reliably and effectively. Indeed, answers appear to differ significantly depending on whom is asked. If the Ministry of

Commerce does not have the capacity to respond to such queries, some available and accessible resource that does must be set up.

The Investment Promotion Agency, proposed under the Draft Investment Code, could house these resources and information. Alternatively, the public sector and private sector could work together to make this information available through private sector channels such as the Federated Chamber of Commerce, discussed further below.

In any event, access to information is a significant challenge for anyone attempting to start and sustain a business in Burundi, whether local or foreign. People tend to count on personal connections for information because little information is publicly available and easily accessible. This puts individuals who are not well connected with the government at a disadvantage.

The limitations on publicly available information on the business environment are evident across the board, from inaccessible laws to government offices that lack signs or directions. Such unnecessary challenges entrench the perception that business is not open to everyone, whether local or foreign, and discourages potential entrepreneurs and investors. A resource where all necessary information on Burundi's business environment is easily accessible not only would assist in encouraging and enabling Burundians to invest in business, but would also increase the appeal for foreign investors, as discussed further in the chapter on Protecting Investors.

PRIVATIZATION.

As discussed above, privatization is an important step in opening the business environment up to new private sector players. Although the process for privatization requires fair and open competition, many representatives in the private sector, and some within the public sector, are not convinced that it is executed fairly. The primary challenge is the pace, which is excessively slow, and many in both the public and private sectors indicate that delay is intentional because there is no real political will to move forward with privatization. SCEP conducts studies, analyzes bids, and makes recommendations to the Interministerial Committee on Privatization, but significant discretion exists once these recommendations make it to the Committee.

The lack of political will to privatize is understandable but seriously problematic. Although it is strongly promoted by the international community, privatization is unpopular with the public for fear of job loss and due to lack of information about its benefits. With the election of 2010 approaching, no political party appears willing to push something so unpopular with the public. Hostility towards such takeovers also makes it less appealing for potential investors to obtain these companies. Furthermore, jobs in public and semi-public companies have historically been offered to political allies to reward support. This has the dual effect of making it unappealing to political parties to lose that advantage and creating poor management and ineffective work forces at these companies because appointments are made politically rather than on merit and business skills.

The government must also accept the reality that, once privatized, these businesses will likely shed employees, and may also take a dip in productivity before recovering and improving. The government is very hesitant to accept this natural pattern that accompanies privatization. However, the longer it takes for Burundi to privatize its many public and semi-public companies, the less valuable they will be under continued poor management, and the less likely the government will be to make some gains or value on the sales. A campaign explaining the benefits and importance of privatization is important in order to gain public support, or at least reduce public opposition.

SUPPORTING INSTITUTIONS

An effective environment for starting a business is influenced by several supporting institutions. These play an important role even though they are not directly responsible for implementing business start-up processes. Indeed, some such institutions can have a greater impact on an aspiring entrepreneur's ability to pursue a new business than the implementing institutions themselves. In Burundi, most of these supporting institutions have not yet achieved their potential for contributing to the country's business development.

KEY SUPPORTING INSTITUTIONS

- Banking sector
- Tax authorities
- Federated Chamber of Commerce and other trade associations
- USAID's Business Incubator Project
- Legal profession
- Accounting profession

BANKING SECTOR.

When asked what was the biggest challenge to starting a business in Burundi, private sector representatives almost uniformly cited access to financing. With high interest rates, limited access to collateral, minimal capital available in the general public, and a significantly risk-averse culture, this comes as no surprise. Aversion to risk is in part a result of the war, which continues to affect the decisions and actions of people every day. Many Burundians would hesitate to go into debt for a business opportunity even if they would be able to obtain a loan. Additionally, many of those who do apply for a loan are not well informed on how to compose a sound loan application. This is one aspect of the lack of basic business skills that poses a significant constraint to entrepreneurial success. Weak loan applications that do not include sound business plans only increase the banks' perception of risk.

Access to finance is discussed further in this report's chapter on Getting Credit.

TAX AUTHORITIES.

Taxes in Burundi are another significant challenge for developing a sustainable business. Income taxes and duties for Burundi are higher than those in neighboring countries, putting Burundian businesses at a relative disadvantage.

The tax benefits that are expected to come with the new Investment Code should act to lessen this disadvantage. However, the complicated nature of the tax system in Burundi remains a challenge, particularly for smaller, less sophisticated entrepreneurs. The tax system should be simplified considerably, and information and training on how to comply with tax requirements should be made available. Indeed, the high cost and complication of taxes is the primary reason for the substantial amount of informal business that is conducted in Burundi. Under the current system, a very small number of companies contribute the vast majority of taxes in the country. (Indeed, one company—Brarudi, the brewery—contributes over 20% of noncustoms tax revenues.) Lowering the costs and simplifying the procedures could result in more revenue from taxes rather than less because it would increase the contributing tax base beyond this small number of companies.

Another important step towards modernizing and improving the tax system is the creation of a centralized revenue authority. This is a requirement under the East African Community. Such institutions have had success in other EAC countries, including Rwanda recently, in improving enforcement and increasing the tax base. As Burundi develops a revenue authority, however, it is important to pair more effective enforcement with education on tax requirements so that businesses are willing to work with the public sector towards compliance rather than to make greater efforts to avoid it.

The French Development Agency is working on fiscal reforms in Burundi, including assistance in developing a new tax code and efforts to improve the relationship between taxpayers and the tax administration. These reforms are very important to improving the environment for sustainable businesses and should be supported.

PRIVATE SECTOR.

A healthy and engaged private sector, including active and effective business associations, is essential to a dynamic business environment. It is also necessary to have an established framework for regular dialogue between the public and private sector, and business associations are often the most effective interlocutor to shape and manage that relationship. At the same time, to be effective advocates for the business community, business associations should be independent from government interference or influence.

The structure of private sector representation in Burundi has suffered in recent years. The Chamber of Commerce was dynamic before the war but has since lost its influence and its ability to offer services to its constituency. It has also been perceived by many as being overly political.

As the Chamber has lost significance, nearly 20 other professional associations have risen, several of which are active and engaged, including the Burundi Enterprise Network and the Association of Women Entrepreneurs of Burundi. In response to this decentralization of private sector representation, the Chamber of Commerce has worked with the government to develop a framework for restructuring the Chamber into an umbrella organization for all private sector associations. This is part of the effort to institutionalize public-private sector dialogue, and under this framework, the Chamber will be the primary point of contact with the government. The new Federated Chamber of Commerce will consist of nine sectoral chambers, one chamber of provincial organizations, and the chamber of women entrepreneurs. Each existing association will remain independent but will also fall within one of these chambers that make up the federation, and each chamber will have 10 delegates on the Chamber of Commerce's general assembly.

This structure is meant to enable each association to remain independent but to give each a voice in the private sector as a whole, particularly with regard to dialogue with the government. The creation of a structured and inclusive dialogue between the government and the private sector is no doubt a positive development, but it remains to be seen how this new structure will work out in practice. Given the Chamber's low impact and activity in recent years, it is not necessarily an intuitive choice to head up this initiative. If the implementation of this new framework does facilitate dialogue in which the other associations are able to actively engage, this could be a very effective start to a much-needed increase in meaningful public-private dialogue that could benefit experienced and new entrepreneurs alike.

BUSINESS INCUBATOR PROJECT.

USAID, with Dutch financial backing, is preparing to launch a Business Incubator Project to address the serious deficiencies in entrepreneurial knowledge and basic business skills within Burundi. This project will be a resource for training and advising targeted businesses in a variety of areas, from business registration and drafting business plans to paying taxes and obtaining loans. It could also be used more broadly as a resource for the broader community of fledgling entrepreneurs. Educational materials developed for entrepreneurs within the incubator project can then be made available to a wide variety of other businesses as well. The incubator project should also take advantage of available resources within Burundi's business environment, including successful local entrepreneurs and foreign companies in Burundi, to implement low cost activities, such as mentoring programs that bring skills to a wider range of local entrepreneurs and bring the business community together. While this might begin focusing on the target businesses within the incubator, it could ultimately be expanded more broadly if successful, and partnering with the Federated Chamber of Commerce or other private sector organizations could be considered. Other low cost but potentially high impact activities that the Business Incubator Project could implement might include seminars using local business-people as well as the banking, accounting, and legal professions to lecture on the various challenges faced by entrepreneurs. Partnering with business schools in more advanced economies, including the U.S and Holland., to provide new entrepreneurs with student resources to assist with business plans and other needs may also be useful and low cost.

LEGAL AND ACCOUNTING PROFESSIONS.

As more and bigger businesses enter the market in Burundi, the legal and accounting professions become increasingly important. Most businesses in Burundi are small, family-owned establishments. Lawyers and accountants are considered too expensive for most businesses. While annual audits are required of all businesses, this is not enforced and is practiced by few. However, as businesses grow and larger businesses enter the market, capable lawyers and accountants familiar with the country's commercial legal framework will be in higher demand.

At this time, the few international firms that have entered the market are not particularly busy. Nonetheless, the development of lawyers trained in business law and professional accountants remains important. While most private sector representatives were satisfied with the number and capacity of the legal community in this regard, the accounting profession appears to be more problematic. Burundi has very few professional accountants, and even those generally do not meet international standards. To become a licensed professional accountant requires an academic background in accounting and five years of experience at an accounting firm. Because the education for accounting is inadequate and the training received while working at most accounting firms is also insufficient, this does not result in a qualified accounting profession. As legal requirements for auditing are increasingly enforced, and accountants are relied on more, the importance of improving the skills in this profession will become greater. The accounting profession recognizes these issues and is attempting to respond to them, and significant change has been underway in the accounting profession as a result. Burundi's accountants have recently organized themselves into an Ordre des Contables, which is setting standards and attempting to raise the general level of competence and service.

Accounting and accountants are discussed further in this report's chapters on Getting Credit and Protecting Investors. The legal profession is discussed further in the chapters on Getting Credit and Enforcing Contracts.

PUBLIC TENDER.

With limited capital within the private sector, much of the work available to businesses comes in the form of tenders from the government. It is important not only for the quality of work but also for the development of sound local businesses that public tender is conducted openly and fairly. This is not currently the case. Public tender procedures require an open and fair process, but a common concern and complaint within the private sector is that they are not implemented fairly. The widespread perception that public works are routinely given to companies that lack the experience and capacity to deliver in accordance with the tender requirements has led many companies to give up on public procurement opportunities altogether. Companies connected with the government are believed to be highly favored in public tenders regardless of their capabilities. Although companies that submit proposals are legally entitled to an explanation of the results upon request, several companies consulted had tried to obtain such explanations to no avail.

Because government contracts are such a vital part of the current business in Burundi, it is particularly important for the development of the business environment that public tenders occur in a predictable and transparent manner. If businesses are unable to access such a significant portion of the available business, the risks involved in beginning and sustaining a business become significantly increased. This can have a chilling effect not only on local investment, but also on the appeal to investors from abroad.

SOCIAL DYNAMICS

ENTREPRENEURSHIP.

One of the primary challenges to enhancing the local business community in Burundi is the lack of a strong culture of entrepreneurship. As is often the case in economies where the government has historically been the primary business player, employment with the government is still viewed as the best opportunity for success. Burundians have only recently begun to view business as opportunity and, even now, expectations are usually low. Most entrepreneurs typically conduct enough business to feed their families and do not consider expansion beyond that level. These perceptions will take time to change, and the example displayed by some of the vibrant local business leaders will gradually catch on. However, this adjustment would be encouraged by improvements in education on business. The education system in Burundi does not teach skills necessary for business at any level and does not encourage business pursuits. Offering better options for higher education in business skills and managing and incorporating business in very basic ways, even if just by reference, would be significant with regard to socializing this idea more.

Inhibition about working together provides another challenge. Burundi does not need more people to engage in business. Rather, it needs more businesses that are successful and able to expand in order to benefit from economies of scale, engage in trade, and create jobs. However, opportunities for business expansion remain limited because people do not want to expand their business circle beyond their own family. This is particularly difficult in a place where capital of individuals and credit opportunities are very limited. The tendency to keep business within the family is part of a larger issue of distrust that permeates society in Burundi. Following a very long period of conflict in the country, it will take time to rebuild trust in the community, but steps can be taken to reduce the risks of doing business, and this could ease the transition into broader business relationships that are necessary to build larger businesses. The Draft Public and Private Company Law, discussed in this report's Protecting Investors chapter, will address some of these issues if it is passed, socialized, and implemented, but a more immediate and simpler step would be to promote the use of written contracts. As discussed in the chapter on Enforcing Contracts, written contracts are the exception rather than the rule in most local business. Bringing contracts into business relationships might provide reassurance and security necessary to overcome fear and distrust in conducting business outside the family circle.

BASIC BUSINESS SKILLS.

The majority of the Burundian business community also suffers from a serious deficiency in basic business skills. This is in part due to the effect that years of conflict had on human capacity in all sectors since education and development were largely stalled. It is also a result of the limited entrepreneurial nature caused by the government's long-time dominance of the business sector. Without basic business skills, such as sound financial and business management, businesses will not be efficient and effective enough to contribute to a growing private sector.

Building business skills is a vital first step in developing the private sector. This challenge needs to be addressed by educational institutions and the public sector, but it also must be addressed by the private sector internally. Stronger skills and awareness must be developed in areas such as business management, bookkeeping, business plan development, paying taxes, developing products, and marketing. Private sector organizations should use the resources they have—successful and advanced business people—to share their knowledge and experiences with the rest of the business community. Training in business skills is an activity that many private sector organizations take on to serve their constituents and contribute to private sector development. USAID is in the process of launching a business incubator project, discussed above, to work with the private sector community and individual businesses to provide business skills training and resources. These types of activities will be key to promoting better business practices in order to establish the groundwork for a more effective business culture.

RELATIONSHIP BETWEEN THE PUBLIC AND PRIVATE SECTORS.

The issue of distrust also comes into play in the relationship between the government and the business community. Because of historical realities, most major players in the private sector are from a different ethnic group and background than those in the public sector. Although this is gradually changing as the business community becomes more integrated, it currently contributes to the lack of trust within society.

Although public sector representatives indicate that the relationship with the private sector is strong, most private sector representatives strongly disagree. Their impression is that the government views business people as "crooks" and does not take enough action to promote and support the business environment. As the government reduces its control of the commercial sector while privatization moves forward, distrust is only likely to increase unless a better relationship between the two sectors is developed.

There is cautious optimism on both sides about the new public-private dialogue framework, and its development and implementation will be key. The donor community, the Comité National de Coordination des Aides (CNCA), and key private sector representatives need to support, encourage, and facilitate this effort to ensure that it truly enables effective dialogue and allows the private sector to have meaningful input on the governance of the business environment.

UNPREDICTABLE BUSINESS ENVIRONMENT.

The unpredictable business environment contributes to the business community's unfavorable impression of the government. Laws are difficult to find, and frequently do not comport with action on the ground. Presidential decrees can change procedures without warning and are often used in lieu of laws because of the difficulties of working with Parliament. Government representatives are often not able to answer questions about business processes or even to direct one to where answers can be found.

The most potent constraints to predictability in the business environment, however, are political instability and corruption. Political instability remains a major hurdle as ministers and others in the government are frequently changed, and changes in leadership usually lead to changes in processes and inefficiencies as new jobs are learned again and again. Because of the many difficulties that accompany doing business in Burundi, personal relationships are often the only way to make advances, and these personal relationships must be developed again with each change in personnel. This is a significant constraint to anyone in business, but it is especially difficult for those trying to start up anew.

Corruption, a major cost as well, is said to be prevalent throughout the government but is particularly pervasive in customs. It appears in the form of small "facilitation" costs to speed up processes at each step and is largely accepted by the business community as a cost of doing business. The good news is that it is apparently possible to conduct business without paying bribes, as eventually things will get done. As one interviewee stated, "You just have to show that you are not in a hurry." However, the cost in time and the uncertainty of both how long processes will take and how much they will cost when informal fees are a regular part of the business process are significant. This becomes very discouraging for local people trying to enter the business sector, and it is a serious disincentive to foreigners looking to invest, particularly when they could take their business elsewhere in the region and not have to face these additional challenges. When costs in time and money are impossible to accurately assess, which is the case when corruption is involved, investors cannot reasonably judge risk and will look for a better bet.

Some recent measures have been taken by the government to address corruption, such as the anti-corruption court discussed in the chapter on Enforcing Contracts, but they have not yet taken on corruption at a high level. Effectively combating corruption and setting an example of intolerance of corruption at every level must be a priority of government if the business environment in Burundi is to improve and expand.

WOMEN IN BUSINESS.

Although women are beginning to play a bigger role in the economy in Burundi, cultural and legal constraints continue to impede their full integration into the commercial sector. It is possible for successful, educated women to be treated mostly as equals, but getting there is a challenge. Married women do not usually have any property in their name and, accordingly, have no way to obtain credit. They cannot mortgage property without the consent of their husband (although the reverse is not true), and widows are almost entirely at the mercy of their husband's family. The Inheritance Law provides wives with no protections, and it is reportedly impossible under the current legal framework for a daughter to inherit land from her father.

Culture can impose additional constraints on women. If a woman is seen alone in public with a man who is not her husband, assumptions might be made and talked about. Some husbands are suspicious of such activity, making simple business meetings and networking a monumental challenge. Sexual harassment for women in business is also common.

Change in this area will take time and effort. Cultural perceptions do not change overnight, but they will also not change without effort. Accordingly, more legal protections for women are needed, with regard to property specifically but also more broadly, and social education efforts on women's rights and sexual harassment are necessary. It is also important to share the message that this is not an issue only for women, but is vital to the development of society as a whole because women, as roughly half the population, are a major resource that should be fully utilized in business and beyond. As long as it is viewed as an issue for women alone, it will not be prioritized as it should.

RECOMMENDATIONS

- Support and encourage a broader dialogue with the private sector on the draft commercial laws, and promote prompt passage of this new legal framework. Support implementation of these laws once passed, training of the judiciary and other public sector representatives responsible for enforcing these laws, and education of the private sector on the implications thereof.
- Make all commercial laws readily available in both French and English.
- USAID's business incubator project can be used as a resource for training and advising new entrepreneurs in basic business practices, including registering a business, drafting business plans, obtaining credit, keeping sound books, paying taxes, and marketing new projects. See the section on the Business Incubator in the Supporting Institutions section above for more information.
- Create, either within the Commercial Tribunal or in a separate agency, a dedicated office for business registration. Build the capacity of this office so that it is a location where all questions regarding business registration and the registry can be answered accurately and promptly, and publicize this office so that entrepreneurs are aware of where their questions on registration can be answered.
- Either within the above office, the business incubator, and/or or a separate location (public or private), create specific locations where all forms of business questions can be fielded—including questions on licensing, employment, investment, and taxation. This could be housed in the new Investment Promotion Agency or could be a joint public-private effort led by the Federated Chamber of Commerce.
- Build user-friendly business registration locations and/or Business Development Services centers outside Bujumbura to give access to these resources to the rest of the country.
- Create simple and easily understood guidelines for business registration and make these guidelines readily available. USAID's planned business incubator project could be a resource for creating and distributing such guidelines.
- Assist with creation of and capacity building for the new Competition Agency once the Draft Competition Law is passed to ensure that competition policy is implemented within Burundi in accordance with international best practices.
- Provide education, particularly to the private sector, about both competition policy and regional integration. Misunderstanding of and sensitivity to both concepts is currently widespread.
- Create a centralized revenue authority and assist this new body in significantly simplifying the tax system and in promoting education on tax compliance in conjunction with improved enforcement efforts.
- Push forward the privatization process, and promote transparency in its implementation. Educate the public and private sectors through a campaign about the benefits of privatization and the strong need for moving it forward in order to create a healthier business environment.
- Increase transparency in the public tender process by requiring accountability for tender decisions. This could encompass random auditing of tender decisions for compliance with open and transparent processes and technical requirements for bids.

GETTING CREDIT

Despite Burundi's extreme poverty and recent political instability, its banking and microfinance institution (MFI) sectors are surprisingly robust. There are eight commercial banks, two government-owned financing institutions, and more than 25 MFIs. Although a number of banks have gone bankrupt in Burundi—the most recent just two years ago—the surviving commercial banks all appear to be stable and liquid. Loans and deposits are both growing rapidly, and the banking sector appears to be quite profitable. And it is attracting foreign investors: outside banks have purchased two Burundian banks outright and have taken a large minority share in a third.

The sector, however, has problems. The bad loan rate is very high: between 10% and 20% for individual banks, with an average of 15% to 16% for the banking sector as a whole. Interest rates, unsurprisingly, are high as well: 16% to 20% for bank loans to large commercial clients. Corruption is a serious concern, with political loans and related loans very common.

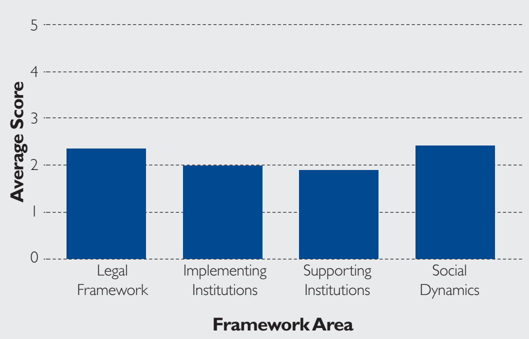
More important, the banking sector is largely disconnected from the rest of the economy. Almost all loans are extended to a fairly small group of commercial borrowers. Import and export businesses are disproportionately favored; agriculture, manufacturing, and services are neglected and starved for credit. The majority of bank loans are short term; over 60% are for one year or less, and only about 5% are for more than five years. Loans for capital investment are almost unheard of.

Lending is concentrated geographically in Bujumbura. The great majority of Burundi's population has no contact with banks or MFIs whatsoever, either as borrowers or as depositors.

A fluctuating but large portion of the banks' loan portfolio is in treasury bonds. These pay a good rate of interest (8% to 9%, tax free, on short-term bonds) and are quite safe—Burundi has never defaulted on its loans. This is well enough for the banks, but it is a serious problem for the rest of the country, which is desperately starved for credit.[8]

GETTING CREDIT	
Doing Business Ranking 2009	163
Doing Business Ranking 2008	161
Strength of Legal Rights Index (0–10)	2
Depth of Credit Information Index (0–6)	1
Private Registry Coverage (% of adults)	0.3
Private Bureau Coverage (% of adults)	0.0

GETTING CREDIT



LEGAL FRAMEWORK

The banks are governed by the Loi Bancaire, passed in 1993 and last modified in 2006.[9] The Loi appears to be a basic but adequate legal framework. It includes provisions for bankruptcy, liquidation, and merger of banks and allows the purchase of banks by foreign investors. Banks are regulated by the Central Bank.

Loans are governed by applicable contract law, in this case the Civil Code; there are no specialized laws for mortgages, secured transactions, finance leases, or factoring. In theory, insolvency is governed by the new Bankruptcy Law, but few actors seem to be aware of this law, and it does not appear ever to have been used. MFIs were completely unregulated until June 2006, when the government published a decree that brought them under the authority of the Central Bank.[10]

8 See http://www.brb.bi/pdf/ii12.pdf.
9 A French version of the banking law can be found online at http://www.brb.bi/pdf/loi_banc.pdf.
10 The MFI decree can be found online at http://www.brb.bi/pdf/decret_micro_fin.pdf.

KEY LAWS
Current
• Loi Bancaire, 2006
• Microfinance Decree, 2006
• Code Foncier, 1986
• Civil Code
• Bankruptcy Law

CREDIT INFORMATION.

There is no credit information bureau in Burundi, nor any formal system of aggregating credit information. However, there is an informal system: a "black list" of bad borrowers, kept and administered by the Central Bank. The black list is simply a database of several thousand names with minimal notation: lending bank, date of loan, size of arrears.[11] There is nothing resembling a credit rating system. Banks contact the Central Bank to place names on the list or to inquire whether a loan applicant is already there.

Given the small size of Burundi's credit market, this is actually not a bad system. Certainly the banks make regular use of it and are glad that the Central Bank is providing this service. Only one MFI appears to use it; it is not clear whether this is because the other MFIs do not want to bother providing names, or whether it is because their clients are unlikely to have had contact with the credit system before.

There is no trading or sharing of credit information with entities outside Burundi.

REAL PROPERTY AND MORTGAGES.

Real property is by far the dominant form of security in Burundi. The majority of commercial bank loans, and a large minority of MFI loans, are secured by real property mortgages. These loans tend to be oversecured (see below), partly because banks have a limited ability to assess land value and partly because of difficulties in foreclosing. Because most landowners in Burundi do not have clear title, only a small minority of Burundi's land is available for mortgaging.[12]

Mortgages are supposed to be registered with the Land Registry but this is expensive: the Registrar charges 3% of the loan value or 3% of the assessed value of the land, whichever is less. As a result, several lenders—including the FPHU and some MFIs—take possession of the land's original title documents instead, releasing them only when the loan is repaid. This does not give full security, since it merely prevents the creditor from selling the land, but if payments are not made the lender can still register the mortgage and move to foreclosure. For FPHU in particular, this system works even without registering the mortgage because most of its borrowers are civil servants, so failure to repay a loan can lead to dismissal or wages can be garnished.

Real property is governed by the Code Foncier, which does not appear to have been updated since its passage in 1986.

SECURED TRANSACTIONS.

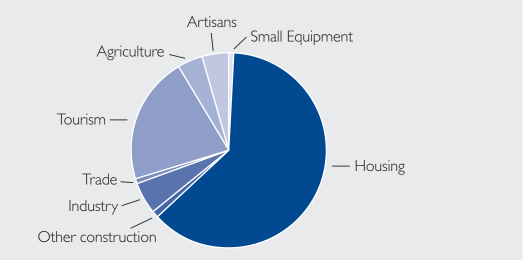
Secured transactions of movable property are rare in Burundi. There is no specialized law for secured transactions, though they are permitted under the Civil Code. Banks dislike taking movable assets except as part of a larger package dominated by real property, i.e., a warehouse, its contents, and the land it sits on. Vehicle loans exist but are often secured by land as well as the vehicle. Commercants, similar to general stores, are willing to lend against a future harvest, but only at very high interest rates. A few MFIs will take security interests in vehicles or even inventory, but these represent a small portion of even the MFI loans.

ACCOUNTS RECEIVABLE FINANCING.

Accounts receivable financing exists in Burundi but is not common. The only form that is frequently used is reverse factoring, in which a bank customer offers to sell the bank the invoice of a large, respected client at a discount. The invoices of the Amstel brewery appear to be the most common subject for this, as they are considered very safe and are only slightly discounted.

Given the long payment times on many commercial debts, especially to government vendors, accounts receivable financing would seem a natural development in Burundi. However, banks show little interest in this. One problem is that government accounts receivable cannot be transferred without the consent of the government.[13] Such consent is difficult to obtain, and—given the constantly changing governments—of questionable

BREAKDOWN OF LOAN PORTFOLIOS (JAN–JUN 2008)



11 The list is kept without much concern as to privacy issues, outdated information, false positives or other types of errors. There is no formal procedure for protesting inclusion or requesting removal. Presumably, one would ask the bank to do so.

12 According to a governance project financed by USAID that covers land title and registration activities, 80% of Burundi's landowners outside of large towns do not have clear title.

13 It is unclear whether this is an issue of law or of government policy. Review of the law does not show a particular prohibition on the transfer of government debts, but a proclamation or regulation may address it specifically. The confused state of Burundian legal publication makes it difficult to say with certainty.

reliability; a transfer agreeable to one minister might be rejected by his successor. Holders of government paper are thus left without any recourse but to wait.

FINANCE LEASING.

One bank has begun to cautiously introduce finance leasing. As of September 2008, it had approximately 20 accounts, all on vehicles. The bank management is pleased with the results so far: none of the accounts have been troublesome and the profit margin is high. The bank plans to expand this service and is considering offering it on some nonvehicle (i.e., equipment) leases as well. The experience of other developing countries suggests that finance leasing, once introduced, should spread.

AGRICULTURAL LENDING.

Agricultural lending in Burundi is almost entirely limited to the coffee and tea sectors. Even in these sectors it is limited to the processors and exporters rather than the growers, and banks spend a great deal of time and energy fighting for partial or complete loan guarantees from the government and relevant parastatals.

There are many reasons for this. The sector is fraught with risks, including weather, the rural nature of the insurgency, rapidly changing international prices, and exchange rate risks. Most farmers in Burundi lack clear title to their land and so cannot pledge it as security. Many farmers are illiterate and most are unsophisticated about credit. Agricultural productivity is very low, which means farmers have a very limited capacity to repay loans. Burundi's agricultural extension service was destroyed in the conflict and has not yet been rebuilt; this means that credit alone would be of limited use, as farmers and their cooperatives do not have easy access to seeds, fertilizers, and machinery. Outside the export crop sectors, there is not a strong tradition of giving credit against harvests. The banking sector also has a very limited presence in the countryside; three of the eight banks have no offices outside Bujumbura at all.

MFIs do a modest amount of agricultural lending, perhaps 20% of their total portfolio. This works out to approximately $5 million, or about US$0.60 US per small farmer. The government operates a small Rural Microcredit Fund which exists to guarantee loans outside the cities and towns. The fund operates almost entirely with MFIs. However, its resources are limited and it does not seem to have attracted much support from either donors or the government.

In the past, some agricultural cooperatives extended credit to their members, but this does not appear to be happening now.

Overall, agricultural lending can be described as severely depressed. The sector is starved for investment and is in desperate need of good credit.

ENFORCEMENT.

Enforcement of loan agreements is a major problem in Burundi. The court system is slow, overcrowded, and corrupt, and judges have only a limited understanding of contracts and commercial law. (For a more detailed discussion of this issue, see the chapter on Enforcing Contracts.)

Banks respond to this by overcollateralizing. Almost all large commercial loans are secured by at least 125% of their value, and 150% or even 200% is not unheard of. In almost all cases, the primary collateral is real property; if other forms of property are given as security, it is as a supplement to land.

A certain amount of enforcement appears to be informal or semiformal. Rather than go through a lengthy court proceeding, a bank may choose to negotiate with the borrower, taking title and immediate possession of the property in return for closing out the loan. When there is a written contract, an increasingly common arrangement is to include a clause that allows prejudgment seizure of the secured assets. (See the section on Enforcement of Judgments for details.)

IMPLEMENTING INSTITUTIONS

THE CENTRAL BANK.

Burundi's Central Bank was established in 1964. On paper it is a typical small-country Central Bank, with responsibility for issuing currency, setting monetary policy, overseeing foreign exchange, selling treasury bonds, and regulating the banking sector. It is supposed to be financially and administratively independent of the government and politically neutral. However, interviewees in the financial sector do not consider the Bank to be an independent actor. On one

KEY IMPLEMENTING INSTITUTIONS

- Central Bank
- Banks
- Parastatals (FPHU and BND)
- Microfinance institutions
- ROSCAs and commercants
- Registrar of Deeds

hand, it is very much subject to political and other forms of influence by the government; [14] on the other, the banks themselves regularly lobby the Central Bank, and seem to have a very high level of influence on its decisions.

The banking community is generally satisfied with the Central Bank's regulatory regime. The MFIs are less so; they are pleased to be regulated, but feel that the Bank's regulations were passed hastily, without enough discussion with the sector, and are too rigid. (To give one example, the regulations do not distinguish between deposit and nondeposit-accepting MFIs.)

The Central Bank sells treasury bonds, almost all of which are purchased by the banking sector. There are a variety of these bonds, but banks greatly prefer the 13- and 26-week versions, which currently pay interest rates of 8% to 9%. This is high enough to attract large amounts of money from the banks, which means that the treasury bonds are to some extent crowding out commercial lending. The proportion of bank deposits invested in bonds has fluctuated widely; as of June 2008, it was about 30%.

In theory, the Central Bank could exercise some control over interest rates, either directly through bond rates or indirectly via monetary and reserve policies. In practice, it chooses not to do so. Banks set rates they are comfortable with, and the Central Bank does not interfere or even offer advice.

The Central Bank receives substantial technical assistance and institutional support from the World Bank and the IMF. It appears that the Bank is technically competent to carry out its basic functions. More advanced functions—anti-money laundering operations, for instance, or analyzing and regulating sophisticated new financial instrument—would probably require further donor support.

BANKS, PARASTATALS, AND MFIS.

At this time, there are eight banks in Burundi, and two parastatal agencies that accept deposits and provide loans. Three are partially state owned while five are completely private. Two are foreign owned, both by African investors (Ecobank by Togo-based Ecobank Group and Finbank by Access Bank of Nigeria). The Bank of Africa has also purchased a large minority share in BCB. All of these banks are quite small by international standards, with deposits and portfolios ranging from a couple of million dollars to about $40 million for the largest.

Both BNDE and FPHU are owned by a mixture of the Burundian state, other parastatals, and private investors. However, the state can set policy for these entities if it chooses, so it is reasonable to consider them "state owned."

BNDE is supposed to support development projects, but in fact it acts much like the other commercial banks. It makes some loans to development projects, but most of its loans are short term, which means a disproportionate number of them are to import-export businesses. BNDE does not seem to be aggressively expanding its portfolio and suffers from the usual commercial bank problems with bad loans.

BANKS IN BURUNDI

- Access Bank
- BANCOBU*
- BCB (Banque de Credit de Bujumbura)*
- BBCI (Banque Burundaise pour le Commerce et l'Investissement)
- BGF (Banque de Gestion et de Financement)*
- Ecobank**
- FinBank**
- Interbank

*Partially state owned
**Foreign owned

PARASTATALS

BND (National Development Bank)
FPHU (Housing Fund)

FPHU provides housing loans, mostly to civil servants. Out of all the entities giving credit in Burundi, it is the only one whose portfolio is dominated by medium and long-term loans. It is also unusual in that it has a very low bad loan rate—under 5%.[15] This is in large part because it can garnish the salaries of civil servants to recover unpaid loans.

There are currently 27 MFIs registered with the Central Bank. (There are also several that are unregistered and operating illegally.) The MFI sector is fairly small—as of mid-2008, it held an estimated $25 million in loans. But it is growing rapidly: MFI loans have more than doubled in the last three years.

The MFI sector shows tremendous diversity. Some MFIs accept deposits, while others are strictly lenders. Some are

14 The last director of the Central Bank was arrested suddenly last year on allegations of corruption. He has not yet been brought to trial. As one interviewee noted, "If he's guilty, that's bad, and if he's innocent, that's worse."

15 Because some banks follow a policy of not writing off their bad debts, but rather retaining them on the books for extended periods of time, reported bad loan rates are not always accurate.

affiliated with NGOs, some with religious organizations; some have a charitable purpose but most are strictly for profit. Their interest rates vary wildly, from 14% —lower than banks—to 3% per month, or about 40% per year. And while the majority are small, at least six have assets in excess of $1,000,000. The largest of Burundi's MFIs is larger than the smallest of Burundi's banks.

The Central Bank regulates the MFIs, which has been cause for some concern. Overall the MFIs welcome the regulation. There were two well-publicized MFI bankruptcies in 2005 and 2006, shortly before the Central Bank stepped in, and the surviving MFIs are still suffering from this. However, the regulating decree was drafted quickly and with minimal input from the sector, and the MFIs feel that it is something of a "one-size-fits-all" document that does not property account for the diversity of the sector.

ROSCAS AND COMMERCANTS.

Burundi has an indeterminate number of ROSCAs (rotating savings and credit associations). These are informal arrangements whereby individuals pool their savings, each contributing over a period of time and taking turns borrowing against the pooled capital. By far the most common form of ROSCA in Burundi is a *tontine*. Tontines are found throughout the country and are particularly popular with women. Although no law governs tontines, there are strong traditions and social norms enforcing loan terms and payment. While the amounts involved are usually small, membership in a tontine is the closest that most Burundians will get to formal credit.

Finally, many small farmers obtain credit from local *commercants*—broadly speaking, the general store in the village. Commercants are often willing to extend credit against the harvest, allowing the farmers to purchase clothing, tools, and dry goods. However, interest rates are very high—3% per month is common—and it is not unusual for a commercant to end up claiming a farmer's entire harvest. Relations between farmers and local commercants vary widely, but it appears that they are often exploitative, and they can demand high interest rates and enforce payment because they are local monopolies. Cooperatives can sometimes negotiate better terms for their members.

DEPOSITS AND DEPOSIT INSURANCE.

Most deposits in Burundi's banks are demand deposits. The banks offer several different forms of deposits, including passbook savings accounts and some short-term (up to one year) certificates of deposit. Most deposits are interest-bearing, with rates ranging from 4% up to 8% depending on term, conditions, and the particular bank. Some MFIs also accept deposits, as does FPHU; these also pay interest, with the MFIs typically paying a point or two more than the banks. This appears to be a risk premium, reflecting the fact that people do not trust MFIs as much as banks. New MFIs may pay even more in order to accumulate capital; at least one regulated MFI paid 12% on one-year term deposits, a figure that is probably unsustainable in the long run.

Both banks and MFIs are able to attract significant amounts of deposits, despite both sectors having seen well-publicized bankruptcies in the last few years. One reason for this is that civil servants are paid through the banking system, so that all government employees must have bank accounts. Another is fear of inflation: the public has learned that savings kept in cash may erode with painful speed. A third is that the banking system holds deposits for the export sectors—including tea plantations, coffee-washing stations, and coffee and tea exporters.[16]

There is no deposit insurance as such in Burundi. When a bank goes bankrupt, the government steps in and appoints a committee to put it into liquidation. The workings of these committees tend to be slow and quite opaque, and it is not clear whether they are consistent with applicable laws. At the end of the process, depositors may recover some portion of their deposits, but this appears to be a political decision rather than one mandated by the relevant laws.

CAPITAL MARKETS.

There are no capital markets in Burundi, and since Rwanda opened a stock exchange in June 2008, Burundi is now the only EAC member without one. Burundi has no secondary mortgage market and no venture capital. Access to foreign capital markets is very limited. Burundian banks do not borrow abroad because of exchange rate concerns, and foreign investors are not hurrying to invest in Burundi.

COMPETITION AUTHORITY.

There is no competition authority in Burundi. This is significant because Burundi's banking sector is, at best, semi-competitive. On one hand, banks compete for deposits and for loan customers. Banks watch each others' interest rates carefully and are solicitous of large clients. On the other hand, the sector's limited market penetration and high profitability means that no strong incentives exist to improve efficiency or service. Because

16 These large deposits are distributed unevenly among the banks, with most going to Access Bank and the partially state-owned banks. Also, in the case of the coffee harvest, a significant lag exists between the time the export revenue is deposited and its eventual payment to other actors, especially farmers. The banks, the state, and OCIBU all appear to be sharing in profits from the "float" on this money.

very few competent bank managers are available, banks tend to draw all their trained personnel from the same small pool, with managers often moving from one bank to another. Many of the banks have interlocking members on their boards. The larger banks regularly cooperate with each other, especially in funding the annual coffee campaign. And the banks and parastatals, especially OCIBU (Office of Coffee of Burundi) and SOCABU (Society of Assurances of Burundi), are linked in a complex web of minority ownership, loans and deposits, interlocking directorates, and mutual back-scratching.

The recent entry of foreign investors into the sector threatens to upset this cozy network of shared interests, but so far it has not yet done so. The two banks purchased by foreigners were both fairly small; one was distressed and is still undergoing reconstruction, and neither investor has yet moved aggressively to introduce new products or expand market share.

THE REGISTRAR OF DEEDS.

Mortgages in Burundi are recorded at the Registrar of Deeds, which reports to the Ministry of Justice. Mortgages and titles can be recorded at three locations: Bujumbura, Gitega, and Ngozi. The Registry has 101 employees and includes an appraisal division that sets values at time of recording for tax purposes. Another division determines if properties can be subdivided—a common issue when property is inherited by multiple family members. The Registrar does not retain surveyors for the purpose of surveying properties and writing/verifying legal descriptions; legal descriptions are provided by the Ministry of Public Works. Nothing at the Registry is computerized, though computerization is "under consideration." (The Registry has a few computers, donated by the French Embassy, but they do not seem to be networked or used for data storage.) No written internal procedures, nor do any manuals or other written internal rules, and no ongoing training is available for the staff.

The World Bank's 2008 *Doing Business* report estimates that it takes 94 days to register real property in Burundi. The Registrar, on the other hand, states that the time to register title varied between 30 to 60 days in the busy (dry) season and two weeks in slow (rainy) season. (Some of the steps included in the Bank's report are not handled by the Registry.)

The Registrar maintains a separate registry of mortgages. The fee for recording a mortgage is set at 3% of loan or purchase price and is paid by the borrower/owner. Almost all mortgages are registered in the Bujumbura office.

It is not possible at this time to do title searches at the Registry. The mortgage registry is not supposed to be searchable by outsiders, but it appears that some banks have access to this information.

The agency is seldom involved in disputes about its work. According to the Registrar, this is because all documents are notarized, so there can be little argument by the signers about what they meant to do. It is unclear what happens if there is a mistake in a legal description. In the unlikely event that someone sues the Registry, the case would be heard in the first-level general jurisdiction court, not the commercial court.

SUPPORTING INSTITUTIONS

RIM AND FORCE.

Burundi's MFIs have two unique supporting institutions: RIM (Reseau de Institutions de Microcredit) and FORCE, a donor project created and funded by the Dutch government.

RIM collects information and statistics on the sector, provides advice and recommendations as to best practices, drafts and disseminates standard forms, publishes a newsletter, and does a certain amount of informal policing of bad practices and unregistered MFIs. The general quality of RIM's work appears to be high. It is supposed to be supported by payments from MFIs, but at this time it still requires donor assistance.

KEY SUPPORTING INSTITUTIONS

- Reseau de Institutions de Microcredit (RIM)
- The Dutch microcredit project, FORCE
- Accounting profession
- Insurance companies
- Legal profession
- Media
- Educational Institutions

FORCE is a Dutch project created to provide assistance and technical support to the MFI sector. It has been in operation for two years and will close in April 2009. FORCE was responsible for the creation of RIM, though it is expected that RIM will be self-sustaining. FORCE has also provided training, software, and equipment to many local MFIs. The training has been in a variety of skills with an emphasis on basic bookkeeping, financial administration, and credit analysis. The funding has involved purchases of equipment ranging from office software to motorcycles for collection agents; some has been by grant, but co-financing arrangements are more typical. FORCE's activities have been spread throughout the country, with approximately one-third of its assistance going to MFI staff and offices outside Bujumbura.

FORCE appears to have had a significant impact on the sector. All MFI interviewees were aware of it and viewed it very favorably. Remarkably, so did many within the banking sector; several interviewees expressed opinions along the lines of "why just the little MFIs?" and "we need a FORCE, too."

THE INSURANCE SECTOR.

Burundi's insurance sector consists of five insurance companies. Four are private firms and one—SOCABU—is a parastatal. All five companies offer the same mix of products and services—mostly life, fire, property, and vehicle insurance. Credit insurance for banks does not exist in Burundi, but several companies offer policies that will repay loans if the borrower dies. Banks usually require that property used as security be insured.

Despite the absence of credit insurance, bankers are generally satisfied with the cost and quality of insurance products. They consider the range of products—life, health, and accident—sufficient for their current risk management needs.

The insurance sector has traditionally been closely linked to the banking sector. SOCABU and the state-owned banks worked closely together when all were state entities, and they still own minority shares in each other, exchange officers and managers, and work with the same small group of large business clients. Much of the insurance sector's investment portfolio is in the form of bank deposits, which is not consistent with international best practices. However, Burundi does not present many opportunities for more traditional investments. What is not in deposits consists largely of shares in parastatal entities and ownership of land and buildings, mostly in Bujumbura. Individual insurance companies are often closely joined to particular banks, with the bank recommending the insurance company to its clients and the insurance company placing most of its deposits with the bank.

The two sectors also share similar opportunities and challenges. The insurance sector is prosperous, but serves only a limited part of the market with a short list of services and products. It has been growing rapidly, but faces a shortage of trained personnel, especially accountants and IT technicians. Like the banks, the insurance companies are concerned about integration into the EAC and COMESA. They recognize that their market penetration is shallow and are worried about East African insurance companies opening in Burundi.

One other similarity is that both banking and insurance largely ignore the agricultural sector beyond the two large export crops—coffee and tea. Few agricultural risks can be insured in Burundi. Crop insurance does not exist. Even coffee and tea are generally not insured until the beginning of the export process—"once it's loaded on the truck." The inability to obtain insurance is probably not the largest reason for the lack of agricultural finance in Burundi, but it is definitely a contributing factor.

ACCOUNTANTS.

Burundi currently has very few professional accountants whose skills meet international standards, but the profession has undergone rapid change in the last few years. Until recently, the accounting profession was not regulated. There was no formal definition of "accountant." This changed in 2005 with the creation of the Ordre des Contables (Order of Accountants), a professional association with authority to regulate, define, and police the practice of accounting in Burundi. The Order has moved aggressively to clarify who is and is not an accountant; qualification now requires an undergraduate degree, at least two years of apprenticeship, and passage of an examination. The Order's representatives say that their requirements are more stringent than those for entering the legal profession—the apprenticeship is more rigorous, the examination difficult. Whether this is true or not, the Order was forced to "grandfather" a number of underqualified accountants at its creation, as otherwise its membership would have been quite small.

The Order is also moving to improve the training and competence of local accountants. Most notably, the association recently applied for and received a grant of $200,000 from the African Development Bank for training accountants in Burundi. Some of this money will go to study tours, but the bulk will be applied to local training seminars. The Order's leadership has said that it wants to implement a continuing education requirement, but it remains to be seen if this will happen.

Most accountants are sole practitioners or associated with large firms. One large foreign accounting firm, Deloitte Touche Tohmatsu, has an office in Bujumbura; several others, including Ernst & Young and at least one Kenyan firm, have local representatives.

International Accounting Standards (IAS) are spreading slowly across Burundi. The government has stated that it wants to adopt them for all state accounts and reports by 2010. This is unlikely, but there is slow, continuing movement in this direction. The Order is encouraging its members to learn IAS and will be applying part of the training grant to this purpose.

The government has taken no formal position on International Financial Reporting Standards (IFRS); some donors are encouraging their adoption, but most Burundian companies do not explicitly adhere to IFRS, and only a few accountants are trained in them. [17]

Banks say that they are generally content with access to accounting services. Many banks say that they "train their own" accountants. In fact, they are training bookkeepers—which suggests that bank management is either confused or, more likely, simply unconcerned about the need for qualified accountants. Banks do not feel a strong need for highly trained accountants, first, because most of their financial transactions are relatively simple and, second, because their major concerns are not accounting issues, but political and macroeconomic ones. Some banks are using IAS, but unevenly; none have adopted IFRS.

Most large firms in Burundi keep at least two sets of books—one for tax purposes, and one "real" set that is strictly for internal use. Unsurprisingly, banks are generally suspicious of books and financial statements presented to them for credit purposes.

LAWYERS.

Lawyers are common in Bujumbura, and no counterpart expressed concern about access or cost: "One can always find a jurist." There are roughly 1,000 lawyers in Burundi, and the majority of these are concentrated in the capitol. A bar association also exists, discussed at greater length in the chapter on Enforcing Contracts, but most lawyers do not belong to it. Most banks have in-house counsel, but use outside lawyers as well when needed, especially for litigation.

Lawyers are common because it is easy to become a lawyer—an undergraduate degree and only a two-year apprenticeship are required to become licensed. There is no bar examination. Many lawyers are inexperienced and have a very limited skill set. Burundi has no requirement for continuing legal education, so lawyers are often unfamiliar with recent changes to the law. The bar association provides occasional training events, but this does not appear to have effectively raised the level of practice yet.

The great majority of Burundian lawyers are solo practitioners with very limited resources. Few have access to legal research materials beyond a few books and perhaps a collection of the Official Gazette. Many lack basic computer equipment and Internet access. Local law firms are small; none have more than ten lawyers, and most are partnerships of two or three. At this time, only one foreign law firm (Mkono & Co.) has a branch in Burundi.

The general quality of legal assistance in the credit sector is not high. Most local lawyers lack experience in drafting loan and credit documentation. Almost none have experience with complex financial transactions or in analyzing new financial products. No standardized forms or contracts are available, so each bank and financial institution must reinvent them. Banks see this as a nuisance but not a major problem; quality legal advice and drafting are not high priorities at this time.

NOTARIES.

Contracts for the sale of real estate must be notarized. However, there are fewer than 10 notaries in the entire country. Most notaries are located in Bujumbura. Most are also lawyers. There is no formal association of notaries.

Notarized documents also have significant evidentiary weight under the Code of Civil Procedure. As a result, many parties to commercial transactions have documents notarized even when there is no formal requirement to do so. Unsurprisingly, the few notaries seem to be kept quite busy.

At this time, access to notaries does not seem to be a major restriction on credit transactions. However, if the volume of transactions continues to grow, this will soon become a problem—especially if more credit is to be offered outside Bujumbura.

MEDIA.

Burundi is a country with very high illiteracy rates and very low levels of public access to broadcast media and other information sources. Under the circumstances, it should not be expected that the general public would be well informed about specialized business issues.

No business or financial media as such exists in Burundi. The closest thing to a business periodical is the *East Africa Business Weekly* (EABW), a Nairobi-based newspaper that has wide circulation among Burundian bankers and businessmen. The EABW has occasional articles about Burundi and is a venue for posting articles about tenders and the like.

17 IFRS are encouraged around the world to provide transparency and comparability in financial reports. Almost all developed countries use them. However, some developing countries object to IFRS as too burdensome, and a few have specifically forbidden them. Burundi has not yet taken a position either way. A list of the countries that have either adopted or prohibited IFRS can be found at http://www.iasplus.com/country/useias.htm.

While no dedicated financial media is available, local newspapers and broadcast media do sometimes report on banking and credit-related issues. Although they lack expertise in finance and business, journalists show some interest in foreign investment and other large-scale changes in the private sector. The coffee sector attracts by far the most interest, but the last year has seen several print articles dealing with the banking sector as well.

EDUCATIONAL INSTITUTIONS.

Burundi has one public university and several private colleges. These should produce more than enough graduates to provide for the needs of the country's small financial sector. In terms of numbers, they do; every position that is advertised by a bank attracts dozens of degree-holding applicants.

However, very few of these graduates have taken courses that are directly relevant to work in a bank, MFI, or insurance company, and even fewer have relevant experience. All the banks report that university graduates lack basic skills. Both the banks and the insurance companies do a great deal of internal training (subject to available resources). The MFIs report that they have been relying heavily on FORCE. In particular, all actors in the financial sector reported shortages of IT specialists, risk analysts, competent English speakers, and general managerial skills.

Poor business skills are also an issue for loan efficiency. Most banks agreed that a significant percentage of their borrowers misuse loan funds, most often by using them for noncommercial purposes. Intermingling of personal and business funds is believed to be widespread. This is in part a cultural issue (see Social Dynamics, below) but is also in part due to a weak system of business education.

SOCIAL DYNAMICS

SUPPLY AND DEMAND.

Most Burundian businesses say that access to credit is a serious constraint.[18] However, while the demand for credit is real and pervasive, there are constraints on it. Most small businesses (especially individual entrepreneurs) finance their initial operations primarily with their own funds and capital. Many of these entrepreneurs are suspicious of formal credit and would rather rely solely on their own resources and those of family and friends. Small Burundian businesses often have a foot in the informal economy and are usually trying to minimize their exposure to scrutiny from the state.

Meanwhile, Burundi's savings rate is quite low. Several factors contribute to this. Most of the country's population consists of poor farmers living outside Bujumbura. They have only limited access to trustworthy depositary institutions where they can accumulate funds risk-free. Banks and MFIs do not adequately penetrate the hinterlands. This could perhaps be addressed through the introduction of mobile banking, which should be investigated as a reform for Burundi. However, banks are not enthusiastic about expanding outside Bujumbura. With one large rebel group still in arms, security is a legitimate concern. Furthermore, banks believe—correctly or not—that Burundi's countryside is so poor that it would not be profitable to open branches there.

Small farmers also have reasonable concerns. There have been several failures of banks and MFIs in recent years, making depositors understandably nervous. Burundi's banks are focused on collecting deposits from civil servants and other elites; customers who are illiterate and unsophisticated do not find them to be user-friendly. And banks will not accept harvest vouchers for deposit.[19]

POLITICAL AND RELATED LOANS.

Corruption affects access to credit in a variety of ways. One of the most obvious is in politically motivated loans. Most banks privately admit to carrying some of these, and it is acknowledged to be particularly problematic with the partially state-owned banks. In this context, these banks have a much higher bad loan rate—typically around 20% —than privately owned banks.

Political loans are often repaid, not in cash, but through political means—for example, the borrower exercising influence on behalf of the bankers who made the loan possible. The peculiarly interlinked nature of Burundi's banking sector makes this easy. A bank official may be a former deputy minister, or a future agency head, and may currently have an interest in a business that sells to the government and/or needs government licenses. In such cases, there is little expectation of repayment unless the recipient fails to deliver the expected payment. The loan will be classified as a non-performing loan (NPL) and eventually written off.

Related loans—made to officers, directors, and shareholders of the bank—are also an issue in Burundi. Here again, the complex web of mutual ownership and investment between the banks, insurance companies, and parastatals makes these loans easy. Indeed, in Burundi no clear line exists between a related loan and a loan to a long-time customer or business partner.

Political and related loans tend to raise banks' bad loan ratios. Perhaps as important, they also make it more difficult

18 This is especially true for businesses outside of the import/export sectors. A World Bank report in June 2008 noted that 64% of businesses in trade reported that credit was a significant constraint on their business. For manufacturing and agriculture, the corresponding figures were 86% and 88%.

19 When a Burundian coffee farmer brings his harvest to the washing station, he is not paid on the spot. Instead, he gets a voucher stating the weight of his harvest and its value at the fixed price. (This is a minimum value; to simplify, the government puts a floor under coffee purchase prices. If prices go up the farmer may eventually be paid a premium, but if prices go down he is protected.) The farmer holds the voucher for several months until the coffee has been washed, dried, and exported and payment has been made. Payment from the coffee buyers then rolls back through the system, with exporters, OCIBU, washers, banks, and the government taking their share, until the farmer is paid last of all. In effect, the farmer gives everyone else credit, holding his voucher for months until he can finally collect. This means, in turn, that coffee vouchers in rural Burundi are often used as a form of currency or as an informal security for debts.

for borrowers without connections to get access to credit and reduce the amounts available to real investors.

GOVERNMENT VENDORS.

Most large businesses are also vendors to the government. Burundi's government takes up almost 40% of GDP and is by far the largest purchaser of goods and services. The government, unfortunately, does not always pay its bills on time. Vendors often have to wait for weeks or months to collect on their invoices. This is a major contributing factor to the very high rate of bad loans.

COMESA AND EAC.

Burundi's financial sector is intrigued but nervous about EAC integration. While there is recognition that it could open new opportunities for Burundi's businesses and help stabilize the country's difficult political situation, many within the financial sector fear a large East African bank or insurance company moving into Burundi and providing a sudden jolt of new competition. Banks are not thinking in terms of business opportunities for themselves: no Burundian bank is contemplating a move into Rwanda or Tanzania. Indeed, most of Burundi's banks still hesitate to move outside Bujumbura. Thus, the perception of the EAC and COMESA within the financial sector is almost entirely defensive.

WOMEN AND CREDIT.

Women have very limited access to credit. While Burundi has many female small entrepreneurs, women are underrepresented in the civil service and other forms of "steady" employment. Married women do not usually have property in their name and so cannot provide collateral, and they cannot mortgage property without the consent of their husband (although the reverse is not true). While a few MFIs make a deliberate attempt to reach women customers, most do not.

RECOMMENDATIONS

- Provide capacity building assistance to the banking sector that addresses the lack of skills, especially in credit analysis, risk analysis, financial management, and IT. Address the limited ability to conduct internal training and introduce and market new products and services.
- Provide capacity building for the insurance sector focused on similar shortcomings to those addressed above. Assistance to both sectors could easily be combined into a single financial sector deepening project.
- Continue assistance to the MFI sector provided by the FORCE project, as that project is due to close in April 2009, presumably due to limited resources.
- Provide basic business skills training including training on the finance and credit systems. This training should include a focus on drafting a sound business plan, analyzing loan terms, and negotiating a written contract. USAID's planned business incubator project could address these challenges.
- Provide standardized forms and contracts. This would be a fairly cheap and simple reform that could pay large dividends in terms of convenience and efficiency.
- Support development of mobile banking. Burundi seems like a very plausible location for such a project as the banking sector has very limited penetration into the countryside, but 90% of the country is covered by mobile telephony. A legal and regulatory framework may have to be developed first.
- Promote development of regional information sharing systems, particularly for banks, the Central Bank, and MFIs to connect with counterparts in the region.
- Support English language training for Central Bank personnel in particular and other financial sector professionals dealing with regional issues.
- Assist banks in developing agricultural lending products, including technical assistance (to multiple banks and possibly MFIs) to train bankers in how to evaluate, draft, and finalize these products. USAID has already taken a first step in this direction with the recent Development Credit Authority (DCA) Agreement, which gives certain agricultural loan guarantees to Interbank Burundi, but much work remains to be done.
- Assist with training, equipment, and other capacity building efforts for the Land Registry. Also advise and assist on process review and potentially reorganization of the office. A reduction in fees should also be considered, as the current 3% fees are high enough to drive some potential registrees away.
- Develop new curricula for the law and business schools, along with programs of continuing education for legal professionals, tax authorities, and accountants. Integrate the developing new legal framework into this curricula. At a minimum, basic educational materials should be created for commercial laws.
- Engage the public sector (with private sector input) in a thorough review of the banking, MFI, and insurance regulations.

PROTECTING INVESTORS

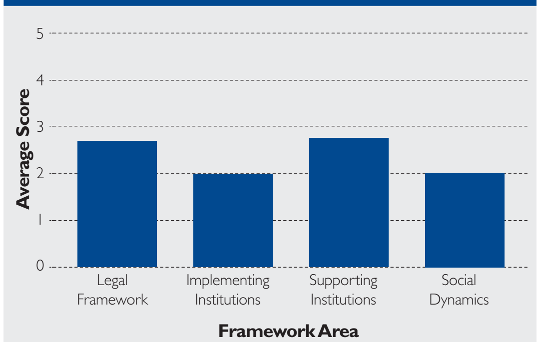
With a *Doing Business* ranking of 150 out of 181 economies for Protecting Investors, Burundi clearly has a long way to go before a sound corporate governance structure is in place. This ranking accurately reflects the lack of an effective corporate governance regime and culture of investor protections in Burundi. Indeed, the corporate governance factors that the *Doing Business* rankings assess are an advanced level of investor protections beyond what Burundi should be prioritizing in this area today, as more basic investor protections should be tackled first. The level of corporate governance that most Burundian businesses need to address at this time is basic good business practices—bookkeeping and management—rather than disclosure duties and shareholder protections.

Given the typical size and nature of most businesses in Burundi, improving basic business practices is more pressing than developing and instituting a complex corporate governance framework. However, corporate governance is a necessary part of a modern commercial legal framework and will increase in importance as Burundi's economy grows and more sophisticated businesses develop. Ensuring that an adequate structure is in place and utilized as the need for stronger corporate governance develops will be important. In the meantime, Burundi should support and encourage a culture of good business management, which will benefit the broader business community and lay the foundation for more advanced corporate governance practices to come.

Sound corporate governance is an important part of the legal and institutional framework necessary to attract and retain investors, but other factors within the commercial environment are important to investor protections as well. Equal treatment of foreign and local investors is a strong consideration for many investors, and a transparent and predictable commercial environment is imperative if investors are to feel secure. In Burundi today, political instability, an outdated and unenforced commercial legal framework, and unpredictable fees and procedures all contribute to perceptions of risk in the Burundian business environment and lessen its appeal. As the indicator graph below suggests, significant work is needed in all the framework areas for investor protection, but implementing institutions and social dynamics are in the greatest need of reform.

PROTECTING INVESTORS	
Doing Business Ranking 2009	150
Doing Business Ranking 2008	148
Extent of Disclosure Index (0–10)	
Extent of Director Liability Index (0–10)	1
Ease of Shareholder Suits Index (0–10)	5
Strength of Investor Protection Index (0–10)	3.3

PROTECTING INVESTORS



LEGAL FRAMEWORK

The legal framework relating to investor protections in Burundi is undergoing drastic change as part of the effort to conform to the East African Community requirements. The laws in place are outdated and inadequate, but if the planned reforms are completed, Burundi will have sound and modern legal protections and incentives in place for investors. This is by no means a certainty, however. Although some within the public sector spoke optimistically about these laws being passed by the end of this year, the obstacles are not insignificant. Recent political challenges have nearly frozen progress in Parliament, and many within the private sector do not believe that the government is interested in prioritizing private sector development anyway. It is a good sign that the Draft Investment Code was just passed by the lower house in Parliament, but the business community has been waiting for this law, by some accounts, for two years, and it still has some distance to travel before it arrives.

Securing a legal framework in line with international best practices is an important first step towards creating a secure and appealing environment for investors, both local and foreign. Accordingly, the government should make passage and implementation of these laws, and others relevant to the commercial sector, a top priority.

CORPORATE GOVERNANCE.

The Public and Private Company Law currently in effect has very limited corporate governance provisions, and the few it has are not enforced. Indeed, it is unclear from the law which institution would even hold the responsibility for enforcing corporate governance requirements. As discussed further below, corporate governance is an unfamiliar concept in Burundi, and few businesses are of a size to require or implement advanced corporate governance procedures. However, if Burundi is interested in attracting foreign investors and supporting the growth of larger local businesses, it needs to have a strong corporate governance framework in place to facilitate that development.

KEY LAWS
Current
• Public and Private Company Law, 1996
• Investment Code, 1987
Draft
• Draft Public and Private Company Law
• Draft Investment Code

The Public and Private Company Law addresses the different categories of existing companies, board and shareholder meetings, accounting, mergers, dissolution, and registration to some extent. Most of these issues are only addressed in terms of what may or may not be done. Actual requirements appear to be left largely to the realm of regulations, which can be easily changed and, thus, provide little assurance of predictability. There is a reporting requirement for accounting for any companies with a separate legal identity (not applicable to partnerships or private business people), but it is unclear whether any entity has authority to enforce this. On a positive note, a wide range of company types is available, providing significant flexibility for those wanting to start a business. Another section of the Law discusses auditing, but it is unclear whether it is actually required. According to some private sector representatives, an auditing regulatory requirement exists that would apply to a large number of companies, but the only companies that comply with these obligations are foreign companies and international organizations, which do so because of their own business practices, and banks, which are regulated separately and much more closely.

The law does not address important aspects of corporate governance in any meaningful way. Rights of shareholders, particularly minority shareholders, are almost entirely ignored, as are duties and liabilities of management and board members, conflict-of -interest transactions, and derivative actions. These issues are fundamental to good corporate governance and, as the business environment in Burundi develops, will become increasingly important.

The Draft Public and Private Company Law, drafted by the PAGE project in connection with the World Bank and undergoing review at the Ministry of Commerce, covers a much wider range of corporate governance issues and is said to be in line with international best practices. It also continues to address the types of companies that are available, and what the reporting and governance requirements are for each. It is important in this regard that the draft law takes into account the reality that most companies in Burundi are small and closely held, so the requirements for these companies should be realistic and not burdensome. Promoting corporate governance is essential, but unrealistic requirements will inevitably go unheeded. For such companies, the focus should be on instilling very basic good business practices, such as good recordkeeping and sound financial practices.

Although the drafting process for this law and others spearheaded by PAGE did involve consultations with private sector representatives, very few private sector representatives interviewed were familiar with the process or knew anyone who had the opportunity to review and comment on the law. Copies of the various commercial draft laws are not easy to obtain, and several private sector representatives indicated that their requests to see the draft laws were disregarded.

Greater private sector input in the process is a necessity, not only for the Draft Public and Private Company Law, but

20 Due to the difficulty of obtaining copies of the draft laws, the writer was unable to obtain a copy of the Draft Public and Private Company Law in time to analyze it for this report.

for all draft commercial laws coming through the pipeline. Not only does the private sector better understand their own needs and challenges, but the private sector must buy in to these new laws if they are to be effective. If the private sector is more engaged in the process, they have a better understanding of the laws and a sense of ownership that can significantly ease the transition to a new legal framework. While it is of course not possible to incorporate comments from everyone in the business community, circulating the text widely and allowing a period of public comment or an open hearing that is broadly publicized would be very beneficial. The new Federated Chamber of Commerce may be a good vehicle for this activity and could work with the government to set up a standard process. The new Public-Private Sector Dialogue Framework could offer an opportunity for this idea to be fleshed out and implemented.

Even upon passage of the draft law, two issues will be vital to the development of a strong corporate governance culture in Burundi: socialization and enforcement. Because corporate governance is such an unfamiliar concept in the local business community, education on its importance and its requirements will be necessary. It is not necessarily intuitive in the business community despite its importance. Given the current state of the economy in Burundi and the small number of companies to which complicated corporate governance procedures would apply, this is not a top priority today, but training and awareness programs and simple education materials for judges, attorneys, and businesspeople will ultimately be required. Along these same lines, enforcement of these provisions will be key. The few corporate governance provisions that exist today in Burundi are not enforced and are, thus, effectively meaningless. If the draft law is to have any effect, its provisions must be applied.

INVESTMENT INCENTIVES.

Most foreign companies, and even some sophisticated local companies, will generally abide by their own sound corporate governance procedures because it is good business practice. As they enter the business community and demonstrate the benefits of these practices, it helps to socialize corporate governance concepts and contribute to a more advanced economy.

However, serious investors, both local and foreign, must see promise and opportunity in a country in order to invest. Given the security situation and Burundi's reputation as a risky place for investment, other uncertainties should be minimized as much as possible to make Burundi as appealing as it can be for investors. Under the current legal framework, investment can be made under four separate regimes, and solutions for investors have historically been dealt with on a case-by-case basis, leading to significant uncertainty.[21] While various investment incentives and tax breaks are appreciated, it is more important that a sound legal framework is in place and applied so that potential investors can make informed decisions and accurately assess risks and benefits.

The Draft Investment Code that was under consideration by the Senate at the time of writing reflects a better understanding of the importance of transparency and increased legal certainty to investors. Important aspects of the current Investment Code are retained, such as equal treatment, liberty of establishment and investment, and free transfer of foreign capital, but the Draft Code incorporates several important new concepts. It calls for the establishment of an Investment Promotion Agency, a single regime responsible for promoting investment, although any details regarding the Agency are left to the realm of decree. If the Agency provides a single location where any questions and procedures regarding investment can be taken, this would be a major development in the promotion of a sound investment environment. The draft law also makes tax advantages for investors automatic rather than applicable only with prior authorization, and it makes these advantages applicable not only to new businesses or extensions of existing businesses, but also to reorientation and rehabilitation of existing businesses. This will make efforts to revamp existing but failing Burundian businesses easier and more appealing. It also explicitly includes protection against nationalization or expropriation of investments within Burundi, allowing such actions only in exceptional and specific circumstances. This provision is particularly important because expropriation is one of the greatest risks for investors in countries with limited political stability and security challenges. The draft law includes the option of litigation or arbitration for disputes between investors and the state, although investments in strictly local capital are not open to international arbitration.[22]

Significant optimism exists within the public and private sector about the promise of the Draft Investment Code. However, its legal framework for investment may be too simplified. Very little is spelled out in this simple code, which is only a few pages in length. When so much in the way of details is left to decree and regulations, which can easily and rapidly be changed, it minimizes the predictability that the text is meant to offer. It is unclear from the text what the

21 Stephen De Backer and Olivier Binyingo, Mkono & Co. Burundi SPRL, "A New Investment Code for a New Burundi."
22 Id.

Investment Promotion Agency is meant to do or how it will be set up, and the tax benefits are not detailed at all but are rather left to the new Tax Code. Accordingly, the contents of the new Tax Code will have a significant impact on the success of the Investment Code. Until a new Tax Code is passed, no tax benefits will apply.

While the Draft Investment Code is a clear step in the right direction and should send the message that Burundi is open for business, its ultimate effectiveness will depend entirely on how the very general provisions are implemented through decree or regulations. In its current state, the Draft Investment Code itself says very little.

IMPLEMENTING INSTITUTIONS

It is unclear which institutions are responsible for implementing provisions relating to investor protections. The current Public and Private Company Law does not explicitly give this authority to any governmental body, although the most engaged institution would appear to be the Commercial Tribunal.

KEY IMPLEMENTING INSTITUTIONS

- Commercial Tribunal
- Courts
- Investment Promotion Agency (planned)

COMMERCIAL TRIBUNAL.

The Commercial Tribunal is the location for registering businesses and filing any additional required documents relating to businesses. However, there is no indication that the Commercial Tribunal is tasked with monitoring or enforcing the few corporate governance requirements under the current law. In any event, as discussed in the chapter on Enforcing Contracts, the Commercial Tribunal is sorely underresourced and lacks the capacity to govern in this area.

Without a clear mandate regarding the responsible institution, and without an appointed institution that has sufficient training and capacity, good corporate governance practices will never take a foothold in the Burundian business community even if a sound legal framework is put in place. The Draft Public and Private Company Law should address this challenge by explicitly placing responsibility for implementation with a specific institution within the Ministry of Commerce that is capable of pursuing this task. This responsibility could be retained within the registry at the Commercial Tribunal, but this would require a more direct mandate of such authority and significant capacity building and training to make implementation possible. Without such action, the penal provisions included within the law will remain meaningless.

The body that is ultimately given responsibility for corporate governance implementation should also be tasked with promoting corporate governance awareness and education and should work with the private sector to socialize the concept.

COURTS.

Although the Commercial Tribunal in its capacity as the registration location is not an ideal location to house corporate governance tracking responsibilities, the Tribunal and other courts in the country can and should play an important role in protecting and enforcing good corporate governance in their judicial capacity. Provisions in the Draft Public and Private Company Law should clearly enable shareholders and others within a company to seek out enforcement of corporate governance through legal action in the courts. For this role, the courts must understand the corporate governance requirements and their own responsibilities in that regard. In order to be effective proponents of good corporate governance in Burundi, judges and court staff, particularly within the Commercial Tribunal, will need training in corporate governance issues because they involve new and unfamiliar technical legal challenges.

Beyond corporate governance, investors are generally very interested in the ease of dispute resolution. This remains a challenge in the commercial sector and a disincentive to investing in Burundi because of the lack of expertise and capacity within the Commercial Tribunal. As a new commercial legal framework is adopted, training in the laws becomes even more imperative. Additionally, the need to enhance opportunities for alternative dispute resolution is significant. The challenges of resolving commercial disputes are discussed at length in this report's chapter on Enforcing Contracts.

INVESTMENT PROMOTION AGENCY.

The proposed Investment Promotion Agency referenced in the Draft Investment Code has the potential to be a major factor in improving the climate for investment in Burundi. It is unclear from the Draft Investment Code what specific role it is meant to play, but the intent appears to be to create a single location where all information relevant to investment is available. This type of "one-stop shop" has become popular in the region and, when implemented with adequate capacity and authority, can be a serious advantage in attracting and facilitating investment, both local and foreign.

The creation of the Investment Promotion Agency should be pushed ahead as quickly as possible, and it should be given the authority (and capacity) to streamline all administrative processes involved in investing in a single location. It should also be a resource for information. Copies of relevant commercial laws and other informative materials, including booklets or pamphlets explaining applicable legal processes and investment advantages, should be available at the Investment Promotion Agency's offices and ultimately online. The Agency should also be responsible for making available information on different industries in Burundi and a wide range of updated information on the commercial sector. Having laws and other materials available in English would also be beneficial for allowing broader access by potential investors, and is particularly important given the integration into the EAC. Staff at the Agency must be well informed on the legal framework and, more broadly, the commercial environment and be able to answer pertinent and important questions about investing in Burundi. Access to reliable and updated information is an important part of reassuring potential investors, and facilitating the process of investing reflects a broader interest in promoting and supporting the private sector. If established effectively, the Investment Promotion Agency could serve both roles and significantly change the landscape of investment in the country.

SUPPORTING INSTITUTIONS

Because corporate governance is such an unfamiliar topic in the Burundian business community, supporting institutions will be very important to integrating it as a regular and accepted practice by local businesses. This is true of the most basic levels of corporate governance—sound financial business practices—as well as advanced provisions, such as shareholder rights and conflicts of interest. The private sector itself has a significant role to play in socializing corporate governance concepts within the commercial environment, but this role is not yet being maximized by any of the institutions listed below.

The initial priority should be on building basic business skills as these are the issues applicable to the vast majority of Burundian businesses. Promotion of more advanced corporate governance processes is not an immediate necessity but will need to accompany any enforcement efforts implemented after promulgation of the Draft Public and Private Company Law.

KEY SUPPORTING INSTITUTIONS

- Federated Chamber of Commerce
- Accounting profession
- Legal profession
- Foreign investors
- Media

FEDERATED CHAMBER OF COMMERCE.

Under its new structure and the Public-Private Sector Dialogue Framework, the Federated Chamber of Chamber will become the primary institution for business community advocacy in Burundi. As the primary private sector advocate, the Chamber's role in promoting investor protections should be central. This role, and its role as the umbrella organization for the various private sector organizations it will encompass, will be important for enabling public-private sector engagement in the commercial reform process generally if this relationship is well managed. Particularly in the early days of the Chamber's reestablishment, business organizations included in this framework that are already dynamic and well respected in the private sector should closely monitor implementation of the new framework to ensure that it offers all private sector representatives a voice in the private sector community and in dialogue with the government. As the emerging interlocutor of the private sector, the Chamber should play a lead role in the promotion and socialization of corporate governance.

In addition to its advocacy role, the Chamber and its member organizations should engage in capacity building and training activities for the private sector. In general, the private sector in Burundi needs to take greater responsibility for its own development, and business organizations such as the Chamber are usually the focal point for such efforts. Ultimately, business organizations in many countries are businesses themselves, and the most effective ones are self-sustaining and able to use member dues to fund service offerings such as trainings, reference materials, and conferences for education and networking opportunities. The Chamber and other private sector organizations need to plan sustainable ways to be able to fill this role, particularly with regard to being a resource for information for the private sector. As new commercial laws are promulgated and business in Burundi develops and advances, businesses will need a resource for support and capacity building. Basic business skills and, later, more advanced corporate governance practices are good candidates for training programs that the Chamber could offer.

While donor and government support may well be necessary in the early days, planning for ultimate self-sustainability and working towards that goal are key. The Chamber and its member organizations may consider different levels of membership and a membership cost structure that reflects the ability to pay in order to ensure broad private sector representation, including representation of those with the most need. For example, membership dues could be based on business size and sector to reflect what members can actually afford while at the same time making fundraising possible, and young entrepreneurs may be offered discounted or free membership.

It is also vital for the Chamber to promote improvements in the relationship and dialogue with the public sector. Bridging the gap between the public and private sectors is one of the primary goals of the new private sector representation structure, and its success will greatly impact the development of the private sector itself and the governance related to it.

ACCOUNTING AND LEGAL PROFESSIONS.

As business processes become more complex, having capable professional communities well-informed and trained in modern business practices also grows in importance. With regard to corporate governance requirements, accountants are a particularly important community. Audit and financial reporting requirements are central to transparency and openness in corporations, and reliable and well-trained accountants and tax professionals are imperative to this process. With more advanced corporate governance provisions under the Draft Public and Private Company Law, compliance becomes more complicated. If these requirements are implemented and actually enforced, demand for qualified auditors and accounts familiar with these requirements will increase. The role of capable commercial lawyers to advise on the more advanced provisions will also grow.

Qualified and high-quality accountants in Burundi are few and far between. Two international accounting companies are present in Bujumbura, and they cater mostly to the very small number of long-term international clients, such as airlines serving Burundi and mining companies, and short-term international clients, such as NGOs and development groups. Beyond these types of businesses and the banking sector, accounting practices are very limited and the quality of accounting poor. This may change, however, as the accountants have recently organized themselves into a professional association—the Ordre des Contables—with standards, membership requirements, and an ethics code. Further discussion of the Ordre and the accounting profession in general can be found in the section on Getting Credit.

The legal community is considered by the private sector to be adequate for commercial needs. There was no suggestion of a shortage of qualified commercial lawyers. While at least one foreign law firm has entered the market, catering to larger foreign clients, the market does not yet seem big enough to support a larger number of attorneys at that level. When interviewees expressed concern about lawyers, it was never about price or availability, but about quality. It is quite easy to become a lawyer (an undergraduate degree plus two years of experience) and most lawyers are solo practitioners living hand to mouth. There is no continuing legal education and most lawyers have limited access to research materials.

It appears that most large investors are serviced by a relatively small group of experienced lawyers. These lawyers typically do commercial work and also act as advisors and facilitators for foreign clients setting up a business in Burundi. They also assist foreign clients with the necessary registrations and licensing to help them do business in Burundi. Banks, parastatals and the few large enterprises often have in-house counsel; there seems to be a certain amount of on-the-job training for these.

If Burundi's economy grows significantly, the demand for trained and qualified lawyers may quickly outstrip the supply.

FOREIGN INVESTORS.

Foreign investors present in Burundi can play an important role in familiarizing the business community with good corporate governance practices. Although few sizable international companies are present in Bujumbura, many of those that are bring with them sound corporate governance practices in line with international best practices. As the engagement of international companies in Burundi increases, and as trade between local companies and foreign companies grows, so will local exposure to the international practices they bring with them. Currently, a few NGOs, international aid organizations, and banks are the primary players with sound corporate governance standards, but improved processes for investment should invite a wider variety of foreign companies into the mix.

The Federated Chamber of Commerce should consider engaging successful international companies in Burundi, as well as any local companies that follow international best practices in corporate governance, to bring their knowledge and expertise to the broader business community. This will enable them to contribute to building a culture of strong corporate governance and good business management in the country.

MEDIA.

Another resource that could be used to increase awareness of corporate governance and good business practices is the media. Although several public and private sector representatives indicated that the media has significant freedom to report liberally on commercial topics of interest, some members of the media suggested that there are often obstacles to reporting on real news, such as being prevented from approaching the news scene to ask questions or being denied access to public sector representatives.

Despite significant freedom to report on business news, many private sector and media representatives indicated that it is not a common topic. This is in part due to a lack of interest in business coverage, and in part because the media themselves have a limited capacity to analyze, develop and report on business-related stories. In-depth coverage of business and the economy should be promoted by the private sector because it is an important tool to increase the information available to the local community as well as potential investors abroad. Furthermore, the media can be a key player in ensuring accountability of companies to their investors and of the government to the business community.

SOCIAL DYNAMICS

Most businesses in Burundi are small, family owned and operated, and focused on making enough profit to meet the family's immediate needs. Sizable investments are rare, whether foreign or local, and creating an environment that can foster growth in both is vital. Because of the government's historical role as the primary business player and the current nature of the business community, a strong corporate governance culture has not yet developed. However, actions can be taken today to reduce risk for investors in Burundi.

CORPORATE GOVERNANCE AWARENESS.

Sound corporate governance practice, particularly at more advanced levels, is not a priority. As discussed in the chapter on Starting a Business, the most pressing corporate governance issue in the country is simply promoting good basic business practices, such as bookkeeping and financial management. Training in basic business skill is, accordingly, a great need.

In terms of more advanced corporate governance practices, although it may not yet be time for many businesses in Burundi to draft complicated statutes on shareholder rights and director duties, it is time to start socializing these concepts. Corporate governance is not taken seriously by most within the business community because it has not been historically implemented, and its importance is not understood. Building awareness of the need for sound business practices at an appropriate level for the individual business is vital, and it will be necessary to incorporate this concept into the business culture so that the protections promised by corporate governance are actually provided. Corporate governance is an unfamiliar topic within the business community and is challenging from a technical perspective. Building capacity and awareness not only within the private sector but also within the public sector, particularly the courts, will be key to ultimately building these practices into the commercial sector in Burundi.

PREDICTABLE INVESTMENT ENVIRONMENT.

Even without a strong corporate governance culture in the business community, a company can institute its own corporate governance guidelines within its company statute in order to provide some protections for itself. Individual companies do not have this level of control in other aspects of the investment environment, however. For those issues affecting investment that remain entirely outside a company's control, predictability is vital to enable investors and potential investors to assess risks.

In Burundi, the environment for investment is very unpredictable. The legal framework is unclear, unenforced, and out of date, awaiting new laws in several important commercial areas. Additionally, because presidential decrees are frequently used in lieu of laws, the legal framework can be changed quickly and without notice. While improvements in the laws are good and necessary, it is also important that they are stable and reliable once instituted rather than subject to easy and unnoticed revision.

Other challenges to predictability in the business environment are political will, political stability, and corruption. Business opportunities are unclear because privatization remains incredibly slow and the private sector perceives public procurement to be corrupt. Ministers and other public sector officials are frequently changed, resulting in inefficiency with the new official's learning curve and a need for new relationships and knowledge to be developed. Furthermore, bipartisan efforts within the Government of National Unity appear to be minimal, reducing the government's effectiveness in pursuing commercial reforms. Costs of doing business, particularly with regard to trade, are also difficult to judge because of unofficial fees and the significant delays to those who refuse to pay. Although many reforms are in the works, including legal reforms and anti-corruption efforts, the private sector remains largely unconvinced that the government is committed to prioritizing this private sector development.

Stability, open and effective dialogue between the public and private sector, and serious implementation efforts will be necessary to foster investor confidence in Burundi.

RECOMMENDATIONS

- Push for the prompt passage of the Draft Public and Private Company Law and the Draft Investment Code. In the meantime, increase awareness in the private sector of the draft laws and provide representatives with an opportunity to comment on their provisions.
- Support implementation of these laws once passed, training of the judiciary and other public sector representatives responsible for enforcing these laws, and education of the private sector on the implications thereof, particularly with regard to corporate governance. Ensure that implementation and enforcement is predictable and standard in order to foster investor confidence.
- Make all commercial laws readily available in English.
- Assist with the creation of a dynamic Investment Promotion Agency that can be an effective and accessible source of information on all issues of importance to those looking to invest in Burundi. This should include information on the current business environment, such as information on various business sectors, as well as on applicable regulatory issues, such as business and investment registration, licensing, taxation, property, and investment incentives.
- Build the capacity of either the Commercial Tribunal or another body to implement and enforce existing (and future) corporate governance provisions. The body responsible for this activity should engage in building public awareness of the applicable requirements.
- Assist the new Federated Chamber of Commerce in developing a plan for ultimate sustainability through membership and training fees that enables the Chamber to function effectively and to offer a variety of services to its members and the business community at large.
- Educate the private sector on basic sound business practices and more advanced corporate governance and the benefits of each.

TRADING ACROSS BORDERS

Trade facilitation is the process of simplifying and harmonizing a country's international trade procedures, in line with current best practices and globally accepted standards, to reduce transaction costs. Traders want clear, transparent, and predictable controls by border agencies. Investors place heavy weight on such controls when selecting countries or regions where they invest. Therefore, adequate trade processes, particularly those of Customs, relate directly to the competitiveness of a country's economy by increasing exports and attracting foreign direct investment (FDI). In Burundi, because of its post-conflict environment, FDI must now be a significant driver of economic expansion. Simplification, transparency, and predictability of the import/export process are required for the country to seize the opportunities offered by the global trading market and the economic benefits of full participation.

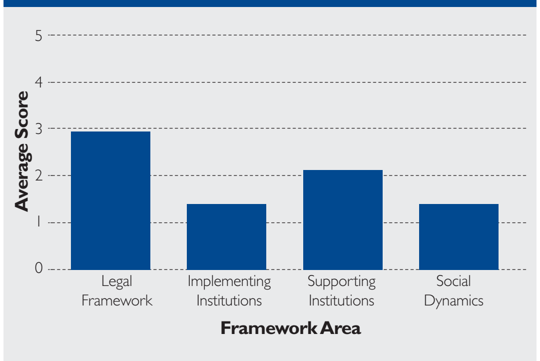
Unique problems confront improved trade facilitation efforts in post-conflict countries with an overwhelming number of initiatives required to achieve effective and efficient border management. If priorities are properly established, delays and costs can be significantly lowered in a short period of time. The approach must balance facilitation and control to ensure that unscrupulous parties do not benefit from streamlined procedures. Use of international trading practices usually reduces the instances of corrupt behavior by creating a transparent and predictable import/export process, resulting in increased collections. However, sustained high-level support for a more open and streamlined trade process is required for success.

The international trade community in Burundi is small with a limited number of importers and exporters. No more than 120 to 150 companies export, and few major companies import, although there are a fairly large number of small individuals and companies that go abroad to buy consumer goods for resale in the local markets. Improved trade facilitation is important to them and to attracting new business, both foreign and local, for economic growth.

Trade facilitation should be a national strategy that incorporates all aspects of the trade chain but has Customs modernization as a key pillar. This is not currently the case in Burundi. A comprehensive plan to address improved border processes is not yet in place. Many of the trade-related ministries and departments lack the continuity of leadership to plan and implement long- and short-range reform strategies or the mandate from high government levels to initiate them.

TRADING ACROSS BORDERS	
Doing Business Ranking 2009	170
Doing Business Ranking 2008	172
Documents for export (number)	9
Time for export (days)	47
Cost to export ($ per container)	2,147
Documents for import (number)	10
Time for import (days)	71
Cost to import ($ per container)	3,705

TRADING ACROSS BORDERS



Surprisingly, Burundi's Office of Customs has both the legal framework and the automated management system to allow for needed improvements. The Customs Code of 2007 provides the basic legal framework for a modern customs service. The introduction of a modern IT system in 2005 has resulted in an improved import/export procedure. However, the processes are still nontransparent, require excessive controls and approvals of multiple agencies that are not coordinated, and lack predictability and standardization.

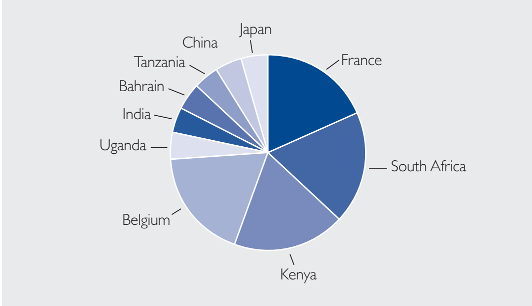
Transportation costs are excessive due to the collection of both formal and informal fees and extensive border inefficiencies. Congestion and poor management at neighboring ports adds substantial costs and delays to shipments. Suspicion and distrust permeates the relationship between Customs and the trade community preventing constructive dialogue or partnership in the modernization process. Customs has also not yet realigned its organization or staff to fully realize the benefits of the modern IT system that has recently been put in place. Furthermore, the emphasis on collections as the primary mission of Customs often overshadows modernization efforts.

Corruption is prevalent within the trade process and adds substantially to transaction costs. This occurs principally with imports, with exports generally not being subject to collection of informal fees. Importers not subject to special exemptions pay substantial duties and taxes in relation to the value of the goods, and the entire process is permeated with payment of unofficial fees to move the shipment to clearance, as well as fraudulent practices.

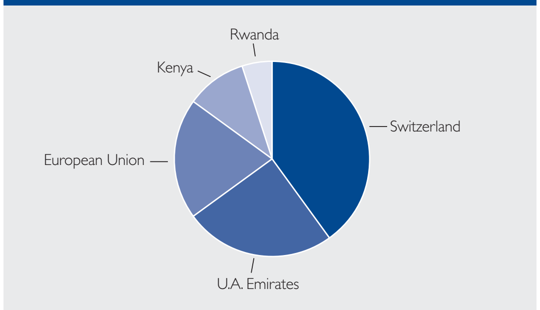
As a landlocked country surrounded by Rwanda, the Democratic Republic of Congo, and Tanzania, Burundi is dependent on its neighbors to access markets. Burundi relies mainly on the ports of Dar es Salaam and Mombasa. These overland links suffer from poor infrastructure and high transportation costs, which have damaged Burundi's ability to trade both regionally and internationally.

Burundi has signed numerous regional trade agreements, including the Economic Community of Central African States (ECCAS), the East African Community (EAC), the Economic Community of the Great Lakes Countries (CEPGL), and the Common Market for Eastern and Southern Africa (COMESA). On the international stage, Burundi has been a member of the World Trade Organization (WTO) since its founding in 1995.

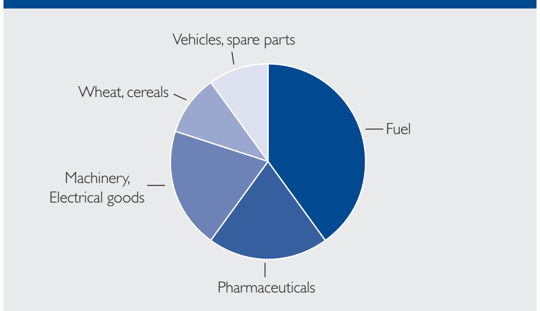
IMPORT COUNTRIES—2ND QUARTER 2008



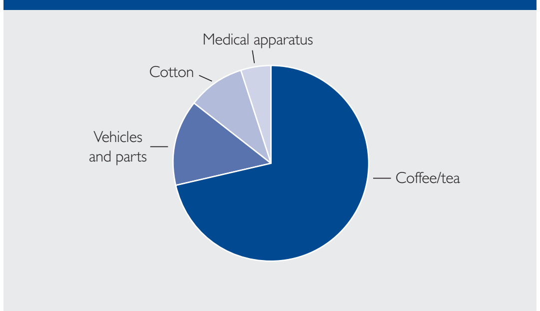
PRINCIPAL EXPORT COUNTRIES—2006



PRINCIPAL IMPORTS—2006



PRINCIPAL EXPORTS—2006



Of these, the EAC is most important for Burundi's short and medium term trade development. Regional integration with the EAC is ongoing and will be a major driver of improved trade facilitation. Such efforts promote harmonization and simplification of the trade process. However, preferential trade regimes inherent in integration add complexity to the task of Customs officers. Without proper training and controls, such efforts can increase the potential for abuse. Burundi signed accession to the EAC in July 2007 and is set for full entrance into the Custom Union in July 2009. Meeting this goal will require major legislative and procedural restructuring and resource commitment. A common external tariff (CET) will be applied, duties will be eliminated on intraregional trade, and full harmonization and integration of Customs processes will be required. Tariffs within the EAC have already been reduced by 80% with the exception of trade with Tanzania, which will occur when bilateral trade negotiations have been completed.

World Bank estimates are that Burundi will lose 1.7% of its revenue with integration, but implementation of a national value added tax and improved efficiencies should offset most losses. The action plan for full realization of the EAC Custom Union is pending cabinet-level approval. Anticipated initial improvements will include 24/7 staffing of the borders, co-location of Customs and Immigration at the border points so that formalities can be completed at one stop, and location of Burundi Customs officers at major ports of entry such as Dar Es Salaam to expedite clearances.

LEGAL FRAMEWORK

In view of the current competitiveness of the international market place, traders want to see that a sound legal framework regarding the trade process is in place and is both easily accessible and applied uniformly before investing in a country. This is a major problem in Burundi. Transparency of requirements related to importing and exporting and unpredictability in their interpretation is a major impediment to trade facilitation. Neither the trade-related ministries nor Customs has a central depository of information, although plans are underway for establishment of a Customs website. However, lack of transparency and clarity of legal requirements is an issue. Traders must rely on personal contacts with the appropriate ministries to get the information they need, which is not always consistent. No prior notice is given for new or revised procedures.

KEY ILAWS

- Customs Code, 2007

CUSTOMS CODE.

The Customs Code of 2007 generally incorporates the required legal framework for a modern customs operation as outlined in the World Customs Organization's (WCO) Revised Kyoto Convention. This blueprint for trade facilitation promotes simple, efficient procedures; harmonization of documentation; employment of risk management principles; and optimal use of IT.

The Code was drafted by Customs with major donor assistance from the World Bank, the IMF, and French Customs, which provided funding and technical assistance. The purpose of the new law was to provide a legal foundation for use of the Kyoto principles within the Burundi environment. Its provisions provide for risk management principles in customs processes, electronic transmissions in lieu of paper, a three-level appeal process, and penalties in proportion to loss of revenue.

Despite this positive legal development, Customs faces tremendous challenges for implementation. It does not appear to have an implementation strategy or an office responsible for this effort, including a legal department to draft the corresponding regulations. As a result, decisions regarding which principles to apply and how to implement them are not being undertaken. Lack of understanding of the changes that will be required to modernize Customs to conform to the operational principles outlined in the new Code is prevalent, as is the human capacity to undertake this effort. This must be addressed if the opportunities presented by the new code to improve both the efficiency and effectiveness of Customs are to be realized.

CUSTOMS VALUATION.

Burundi is an original member of WTO, beginning in 1995, but it is not yet in full compliance with the WTO-advocated trading system. The method of customs valuation is one of the principal variances. Although the Customs Code provides for the use of the required WTO Agreement on Customs Valuation (ACV) as the basis of valuation of imported goods, it is not being applied uniformly. The International Convention on the Harmonized Commodity Description and Coding System is employed to classify imports, using four tariff bands.

ACV calls for the greatest possible use of transaction value—the price paid or payable—for imported goods. Many developing countries have not succeeded in adopting ACV fully because of the low reliability of trade data. In the majority of cases regarding major imports in Burundi, the customs valuation is determined by market values established by the pre-inspection services contracted by Customs with the price paid being only one factor in the determination. On smaller shipments, since the rate of false invoicing is high, Customs determines the value based on past shipments prices or price lists. No database is available to the Customs officer to access relevant price information.

When in place both legally and practically, ACV creates stability, predictability, and transparency in duty liability for the trade sector since it is this value against which duty is assessed. Failure to follow international agreements often adds cost and time delays to traders.

INTERNATIONAL TRADE AGREEMENTS.

Although Burundi joined the WTO in 1995 and maintained a minimum grants MFN status to all its trading partners, Burundi did not sign the various plurilateral agreements negotiated within the WTO and has not participated in the WTO dispute settlement system, which it considers too costly and difficult to access.[23] Burundi has not been able to take full advantage of new trade opportunities due to failure to implement many WTO agreements.[24]

Since the end of the conflict in 2005, Burundi has pursued preferential trade schemes with several developed countries. In November 2007, Burundi initiated the interim Economic Partnership Agreement (EPA) with the European Commission, under which it receives nonreciprocal trade preferences from EU countries. This agreement replaces the trade chapter of the Cotonou Agreement, which expired at the end of 2007.[25] Burundi receives additional preferences under the EU's Everything But Arms initiative, which grants duty-free and quota-free access to all products imported from LDCs, excluding arms.[26] As of 2005, Burundi receives preferential access to U.S. markets as well under the Africa Growth and Opportunity Act. Other developed countries such as Australia, Canada, Japan, New Zealand, Norway, and Switzerland have also granted Burundi limited duty-free and quota-free market access.[27]

GATT.

The General Agreement on Tariffs and Trade (GATT) was drafted in 1947 to establish free trade between countries by limiting or eliminating tariffs and quotas. Most significantly, the GATT calls for reducing trade-distorting measures (such as agricultural subsidies and quotas), reducing and binding tariffs, and practicing nondiscrimination between member countries (MFN treatment). Burundi's compliance with the GATT is mixed, as it grants MFN status to its trading partners and has reduced nontariff barriers and import tariffs. However, a small percentage of tariffs for nonagricultural products are bound and the government utilizes trade-distorting measures and excessive controls.

For Burundi to be fully GATT compliant, several issues must be further addressed, including Burundi's many unbound tariff lines, excessive controls on imports and exports creating severe delays, sanitary and phytosanitary measures, the lack of a national set of standards for quality control, and the lack of anti-dumping, countervailing, or safeguards legislation.

GATS.

Under the General Agreement on Trade in Services (GATS), Burundi has bound business services, construction and related engineering services, distribution services, health-related services, and social services. All the measures concerning their cross-border supply, consumption abroad, and commercial presence are bound. By binding these services, the government guarantees a specified level of market access and agrees not to undertake measures that would restrict entry into the market or the operation of the service. However, the measures affecting the provision of services of foreigners residing in Burundi have not been bound with the exception of medical specialists, managers, and specialized senior management.[28] There is also concern that the expected customs union will have caveats permitting only skilled workers to move. Overall, Burundi's GATS commitment index is higher than the rest of Sub-Saharan Africa and other low-income countries.[29]

REGIONAL TRADE AGREEMENTS.

Conflict in Burundi has severely undermined regional integration. Between 1996 and 1999, Burundi's neighbors imposed sanctions on the war-torn country, greatly impairing trade. Since the end of the conflict, Burundi has signed numerous regional trade agreements to ease trade flow with its neighbors, as discussed above.

COMESA aims to create a free trade area, guaranteeing free movement of goods and services and removal of all tariffs and nontariff barriers. Although creation of a customs union in Burundi has been highly anticipated, plans to launch have been delayed until mid-2009. Burundi is still in the process of implementing a common

23 Trade Policy Review, http://www.wto.org/english/tratop_e/tpr_e/tp212_e.htm (WTO 2003).
24 Burundi Diagnostic Trade Integration Study, http://www.integratedframework.org/files/english/Burundi_dtis_5nov03.pdf (2003).
25 Burundi: Trade Brief (World Bank 2007).
26 Expanding Trade (USAID 2006).
27 Id.
28 Trade Policy Review (WTO 2003).
29 Burundi Trade Brief (World Bank 2007).

external tariff. Since the 1990s, many nontariff barriers have been progressively eliminated. In September 2005, under the COMESA Free Trade Area, Burundi instituted the following tariff reductions for all imports:

- Zero rate applied to items such as wheat flour, wheat and rye, seed, and certain military supplies
- 5% tariff rate generally applied to equipment and construction material and inputs
- Tariff rate of 15% applied to intermediate imported inputs and mass transportation vehicles of people and merchandise
- Tariff rate of 30% applied to consumption imports[30]

Tanzania's withdrawal from COMESA has negatively impacted Burundi. As one of the main transport corridors, Tanzania's rail lines and port are critical to Burundi. Their departure remains a significant concern to Burundian traders.

Unlike COMESA, the EAC is a political federation, incorporating political, social, and fiscal mergers with other members. This suggests that once customs and common markets are harmonized, a monetary union and free migration across borders would be attempted. Unfortunately, the creation of the customs union has been postponed to July 2009, and will probably have to be postponed again; the full implementation of the federation will not be seen for many years.

The country has been implementing various reforms in order to fully integrate into the EAC community. A transition of the common external tariff from four bands to three bands is necessary. Below is the expected alteration in tariff rates:

	Pre-EAC Tariffs	Post-EAC Tariffs
Raw Materials	5%	0%
Intermediate	15%	N/A
Semi-Produced Products	25%	20%
Finished Products	35%	35%

A study financed by the World Bank determined that total income of all collections will decrease by approximately 1.7% due to the lower tariffs. The revenue authority, discussed later in this chapter, is being implemented to offset the losses incurred from the tariff reductions.

Full integration entails duty reductions. Duties have already been suppressed with Kenya, Burundi's largest competitor, and there has been an 80% reduction with Rwanda and Uganda. No reduction has been made of duties with Tanzania, but legislation is pending to characterize it as a "favored nation." The Draft Investment Code, discussed in detail in the Protecting Investors chapter, is said to comply with and integrate EAC regulations, thus ensuring that Burundi's legal framework facilitates EAC harmonization.

Burundi continues to face many hurdles to achieve full EAC integration. The EAC is an English-based organization and Burundi's representation is mainly French, increasing the complexity of collaboration. Burundi's budget is also very limited. Customs officials and others remain untrained and unfamiliar with the new laws and policies. The private sector is anxious and uncertain of the impact EAC integration will have on them, thus creating apprehension and a risky business environment.

AGRICULTURAL TRADE.

Agriculture plays a critical role in Burundi's economy, as it provides over 94% of employment and accounts for about 33.7% of GDP.[31] It is the most protected sector, with an average customs duty of 32.8%. The most protected products are meat, fish, coffee, tea, and cacao.

This strong protection for traditional agricultural products is politically attractive, and so is unlikely to change. However, it discourages producers from investing in other products and undermines export diversification.

All tariffs on agricultural products are bound at a ceiling rate of 100%, except 6% of lines which have already been bound. When a country "binds" its tariffs, it makes a commitment to other member countries that it will not raise the tariff above an agreed amount. If a country decides to raise a tariff above the bound rate, it must compensate the affected countries.[32]

Within the agricultural sector, coffee and tea generate the majority of official export earnings but contribute less than 5% to GDP. Plans to privatize the coffee and tea sectors have still not taken effect in Burundi.[33] Dependence on coffee for export earnings is risky, as coffee is highly susceptible to external shocks, such as falling coffee prices and down cycles in crop yields. One such incident, the 1988 coffee crash, was a rude awakening. It spurred a study on the diversification into other agricultural exports, which identified skins, minerals, fruits and vegetables, and handicrafts as the most opportune products. An EU-funded project, STABEX, was launched in order to promote reforms in the agricultural sectors.

30 Id.
31 EIU Country Profile, 2008.
32 Trade Policy Review (WTO 2003).
33 Burundi Diagnostic Trade Integration Study (2003).

Members of the public sector have indicated their desire to diversify, particularly in essential oils and fruits and vegetables. Unfortunately, at least in the case of fruits and vegetables, capacity has been an issue. Due to the lack of training, equipment, and expertise in relevant international standards, the fruit and vegetable industry has not been able to develop. Ideally, the Ministry of Commerce and Industry would collaborate with the Ministry of Agriculture to certify and improve the quality of produce exports. This has not happened yet and does not appear likely to occur soon.

IMPLEMENTING INSTITUTIONS

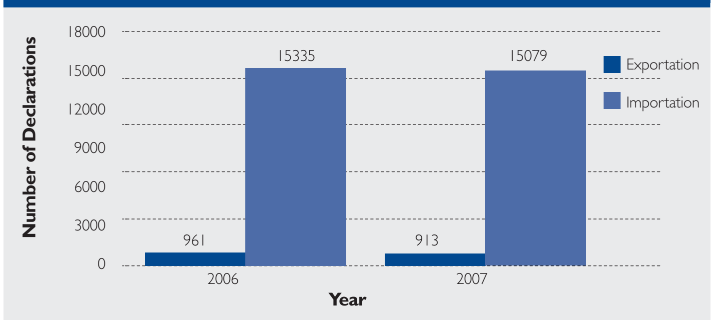
Various public agencies are involved in the development and implementation of regulations governing the trading process. These organizations include the Ministries of Finance, Agriculture, Immigration, and Commerce. The most important player, however, is the Customs department, which has the primary responsibility for the control and administration of the import and export processes.

KEY IMPLEMENTING INSTITUTIONS

- Customs
- Ministry of Finance
- Police of Air, Frontier, and Foreigners (PAFE)
- Department of Plant Inspection
- Office of Burundian Coffee (OCIBU) & Office of Burundian Tea (OTB)
- National Tourism Board (NTB)

Customs modernization efforts are critical to improved trade facilitation. These must include simplification of processes and formalities in line with international standards which are supported by a legal framework incorporating the principles of the Revised Kyoto Convention and a quality human resource management

NUMBER OF CUSTOMS IMPORT/EXPORT DECLARATIONS



program. Optimal use should be made of automated information technology. The success of these efforts will create a stable, predictable, and transparent environment that encourages investment and economic growth and, therefore, poverty reduction.

CUSTOMS REVENUE.

The Office of Customs, under the Ministry of Finance, is the major contributor to the national budget. In 2007, the agency collected $133.4M representing 27.5% of government revenue. Revenue collection is the first priority of the agency, with monthly quotas established by the Ministry of Finance. Failure to reach the goal must be explained while exceeding it goes unrewarded. Customs does not have it own operational budget and therefore has no available funds for discretionary spending.

HUMAN RESOURCES AND STAFF CAPACITY.

The total staff of 379 officers is divided into five major departments. The Bujumbura Customs office processes about 80% of the total volume and collects 90% of the taxes. Human capacity is limited, and reports of widespread routine corruption (small payments for speedy service) and some fraudulent behavior were prevalent. The current structure is not conducive to increasing trade facilitation and control using modern international practices. No office of planning is available to develop either short- or long-term strategies, nor is there a dedicated training office to determine current or future needs of staff involved in an ever-changing international trade environment. Lack of continuity in the Director of Customs position (seven appointments in the last eight years) coupled with the absence of a deputy position impedes continuity and sustainability of efforts to improve practices.

Decision-making authority is vested in managerial officers only. Final clearances of exports and imports are made by managers, not the staff. The Ministry of Finance must approve all requests for examination at the importer's premises. As such, managers have little time to devote to oversight and procedural innovations to improve operations

Functions related to human resource management for the Office of Customs are provided by the Ministry of Finance. The Director of Customs has limited disciplinary authority and no hiring selection authority. Terminations must be approved by the Ministry as well. Rules concerning hiring, performance appraisals, and termination are promulgated by the Ministry of Public Service. Hiring is based on merit, using education and examination results as criteria, and a formal performance appraisal system is in place. Current staffing levels are high and, although additional positions are not being hired, vacancies are being filled.

Promotions appear to be an informal procedure. Little if any written announcements of vacancies are posted. Selections are at the full discretion of the Ministry of Finance and the Director of Customs with the employee responsible for expressing an interest in the position.

Working conditions are poor and wages are very low. Starting monthly salaries for the four levels of Customs officers range from a high of $55 to a low of $8. The highest level mandates completion of a four-year university degree in customs-related matters. Since 2005, no formal training has been offered for new recruits due to a lack of both funds and a training office to plan such programs.

A major training initiative within the department of IT to address the lack of human capacity within Customs is underway. The course development is completed and includes all aspects of Customs operation. The content is currently being reviewed by outside technical experts who will certify not only the content but the competency of trainers, who will be local. Attracting qualified instructors willing to leave their current assignment is difficult since no additional compensation is offered.

CUSTOMS AUTOMATION.

Customs has in place an advanced automated information system capable of performing all the required functions of a modern customs operation. Implementation of the UNCTAD system, ASYCUDA++, occurred in July 2005 with donor support. The Customs IT staff is sufficient, well trained, and employed as contract workers so the department can attract qualified personnel.

ASYCUDA++ is now operational in almost all locations, capturing about 95% of all import/export transactions with international transit scheduled to be on line in the near future. Since ASYCUDA is also the IT operational system used by all EAC countries but Kenya, the required linkage of customs operations with the advent of the EAC Customs Union will be greatly facilitated. Development is already underway in Burundi to provide this wider communication network using the services of a full-time French technical expert.

In Burundi, as is the case in many developing countries, automation was not preceded by streamlining and standardizing of procedures. Customs has not realigned either its organization or its staff to fully realize the benefits of both trade facilitation and control that such modern IT processes can provide. Paperwork remains intensive, and management reports to facilitate oversight and internal controls are not routinely produced. Releases are given via paper authorizations although the system can transmit these directly to the Customs agent. Lacking these developments, Customs cannot migrate from an environment of pre-release verification of each transaction to selective post-entry controls based on intelligence and threat assessments.

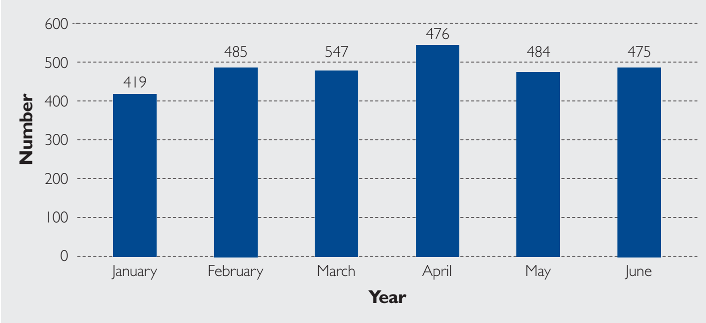
RISK MANAGEMENT.

Risk management (RM) is recognized as the best approach for Customs to balance its responsibilities to facilitate cargo with its need to control international trade. This principle is a cornerstone of a modern customs administration and one of the fundamental requirements of the Revised Kyoto Convention. Although all shipments are screened, only those with risk factors are inspected. Preferably, risk data is collected prior to arrival through intelligence gathering and analysis, cooperation, and sharing of information between Customs authorities.

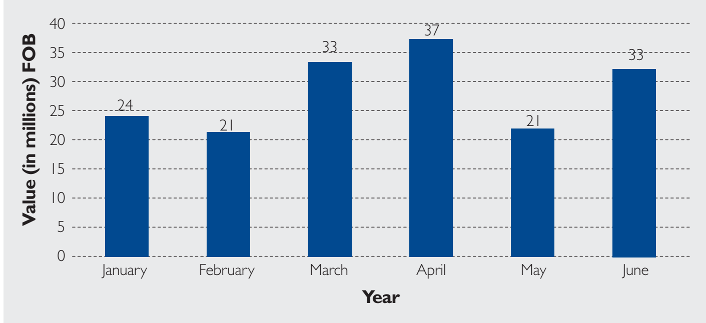
Although ASYCUDA ++ includes a RM module, it is not being used, nor has the organization been adapted to employ this approach. For a short period in 2006, the module was activated, but opposition from both the trade community and Customs resulted in its termination. There is no support for redeployment of the module or for the use of risk management as an effective way to manage Customs' workload. Without this systematized approach, officer discretion becomes the determining factor in treatment of goods, there is no focus on identifying or targeting of high-risk goods, and opportunities for fraud are substantially increased.

Another critical element of a risk management system is a post-audit review of the accounting books of the trader to insure all proper payments have been made after release and in lieu of verification of data and duty payment at point of entry or exit. This program allows for the use of facilitative, simplified procedures such as periodic entry and release without verification once a business has successfully completed the process. As such, it is a major trade facilitation measure. The concept is not currently employed, nor is there the required expertise within Customs should the commitment to implement it be made.

NUMBER OF PRE-SHIPMENT INSPECTIONS JANUARY–JUNE 2008



VALUE OF PRE-SHIPMENT INSPECTIONS JANUARY–JUNE 2008



DATA INPUT.

Although the user can input data directly into the system at the place of business, the vast majority of filers input Customs data at terminals provided by Customs at its local offices. This is due to the lack of reliable communications links.

The standardized COMESA Customs Declaration is used for all import, export, and transit transactions. New procedures are usually disseminated manually to the Customs clearance agents and arrive after implementation. Development of a Customs website is underway and should improve availability of information, which is a major problem currently. Importers and exporters are required to use the services of a Customs clearance agent to prepare the Customs declarations, a provision contrary to WTO requirements and international best practices.

IMPORT PROCESSING.

Recent improvements have been made by Customs to facilitate import processing. Problem resolution, although informal, is generally effective; however, it can take several days to complete. Clearance of imports is still difficult, nontransparent, and unpredictable. Little or no information is available to the importer on requirements, and informal payments made to expedite the clearance process are standard.

Goods are not cleared at the border but proceed inland to one of the four or five truck stations where the Customs clearance documentation is filed and processed. Control of the transit is done via a PAC (permit for passage), which is not sufficient to ensure that all goods crossing the border are ultimately cleared. Activation of the international transit module within ASYCUDA in late 2008 at both the Tanzania and Rwanda borders should provide increased controls.

On inland arrival, the Customs clearance agent prepares the Customs documentation, usually a two-to-three-day process. The average time from time of filing of documents with Customs to release is two to four days and involves a three-step process. The declaration cannot be filed in advance. Although ASYCUDA designates the verifying officer and the level of review required through the use of a red, yellow, green system, the profiles have not been updated since the elimination of the risk management unit several years ago.

Officer knowledge of the importer/commodity is the primary factor that decides the level of verification, including whether an inspection of the goods is required. A detailed written report of inspection is completed, but these reports are not being compiled and analyzed to identify high-risk commodities and traders so that resources can be directed accordingly. Final releases must be approved and signed by the chief of the Custom Port Office. Payments are made by certified check presented to Customs. No immediate plans are underway for a direct data link to the bank to facilitate this process.

Post-entry review currently is performed by the Office of Control. Approximately 10% of all import transactions are verified through this program, with each officer's personal knowledge and discretion used to select. Effectiveness of the reviews cannot be ascertained as no reports of findings are collected. The concept of post-audits of firms is in its infancy. Review of importers' transactions on site is only done when an informant provides information on irregularities. Only one visit was completed in 2007, and no more than two are done each year.

Burundi used the services of SGS, Society de General Service, for pre-inspection services. The company inspects cargo at point of export and reports to the importer and Customs its findings on value and tariff classification. The aim of the program is to increase collections by minimizing under-invoicing and misclassification of goods. Such services are often used by developing countries as a temporary measure until its own staff is competent to value and classify imports, and it can reduce corruption and inefficiency.

Pre-inspections are required on imports valued over $5,000 with a $3,000 limit on food, chemicals, and pharmaceuticals. For the first six months of 2008, the number of inspections averaged 480 with an FOB (free on board) value of $28.3 million.

Although not required, Customs generally uses SGS's reports for duty assessment. During the second quarter of 2008, 475 undervaluation and 120 classification errors in a total of 1470 inspections for $966,000 in increased revenue were uncovered by SGS. However, with current fees ranging between 1% and 1.5% of the FOB value of the goods, the program adds significant costs to importing.

Tentative plans are to terminate pre-inspection services in 2009. By contract, SGS is responsible for assisting Customs in the establishment of a valuation database and must make its data available to Customs for a two-year period following expiration. The current Customs Valuation Department, with a staff of five employees, is struggling with how to establish systems to enable it to handle this function of import analysis.

CUSTOMS DUTIES.

Import duties and taxes are high. The government views the predominant import sectors as its major revenue source and, as a result, imposes substantial fees.

Tariff rates range from 5% for raw materials to 35% for finished goods. Additionally, a transaction tax of 17% and a 0.5% service fee are levied. Major importers must also pay between 1% and 1.5% of the FOB value for the required pre-inspection service. Even articles declared as duty exempt are assessed a 5% fee.

As an example, fuel is the major import commodity, and 6 of the 99 officially registered companies are currently doing regular importations. Import taxes range from 30% to 35% of the CIF (cost, insurance, and freight) value and represent 40% to 50% of all Customs collections.

The drawback system, which allows refund of duty on imported products that are used in production of exports, is allowed by law. However, it is rarely used due to the complexity of the process and significant delay in refunds. Most traders use the temporary importation bond process for such imports. However, this process is not facilitative, and large deposits are required.

Numerous special exemptions for tariff-free treatment exist, accounting for about 20% of total value of imported products. The number of exempt products and lack of availability of information increase the potential for abuse. Government controls over the system are extensive. Approvals to use the special exemption process involve a lengthy process, often taking years to complete. Several ministries are involved, and final approval must be issued at the cabinet level.

In addition, the Ministry of Commerce must certify the duty-exempt status of each shipment. Despite all these measures, abuses of the system do occur. Use of information technology to control qualifying shipments and simplification of procedures would increase compliance by providing fewer incentives to manipulate the system.

EXPORT PROCESSING.

No fees are paid for exportation and the process is fairly free of corrupt behavior. However, documentation requirements are extensive, involve multiple agency authorizations, and take three to four days to complete. These procedures constitute a nontariff trade barrier and must be reduced.

There is no central place where an exporter can secure all these approvals/forms, and none of the processes are automated. Multiple personal visits to various ministries are required. An export license issued by a commercial bank is required for all shipments. Most shipments require a Certificate of Origin issued by the Ministry of Commerce to qualify for reduced duty programs at importation such as the Generalized System of Preferences in the United States. No automation to control or issue these certificates is available, and the staff merely accepts the proof of origin provided by the exporter since it has no means to verify or question the submission.

Customs processing for exports is fairly efficient and timely. However, examinations are required on each exportation. These are performed at the point of loading and generally do not delay the process. Customs seals all containerized cargo. As of mid-2008, all exports of sensitive goods must be escorted to the border by Customs, thereby increasing costs. Excessive controls on the roads also cause delays.

PRINCIPAL EXPORTS.

The principal export commodities are coffee, tea, and cotton, with coffee holding the dominant share, representing about 50% of all foreign currency coming into the country. The sector is composed of 700,000 to 800,000 families that have small plots growing between 100 to 2000 plants and collectively represent about 50% of all crop production. About 10 private companies control the export of coffee. The year 2008 appears to be an excellent crop for Burundi with 30,000 tons anticipated for export.

OCIBU, the Office of Coffee of Burundi within the Ministry of Agriculture and Livestock, oversees the export process for coffee. Its responsibilities include review of contracts, organization of the auctions, quality control, and issuance of the international Certificates of Origin and export licenses. The staff is viewed as fairly competent and free of corrupt practices as are the services of the organization's laboratory, which must analyze a sample from each shipment to ensure proper grading. Quality controls are effective. OCIBU's management is undertaking initiatives to expedite services to the sector. Although ongoing privatization efforts have reduced the authority of OCIBU, some of the trade still considers its intervention in the market to be an impediment to an expedited export process.

The second most significant export sector is tea, which is controlled and managed by the by the Office of Burundian Tea (OTB). This government agency is involved in the growing and is the sole processor and exporter. It is expected that in 2008, of the 7 million tons produced, 95% will be exported. Direct sales to buyers represent only 30% of the transactions with most of the product exported to Kenya for sale at auctions. This latter process secures the highest price for the product in a market that is in continual fluctuation. Sales during 2008 should be in the range of $10 million.

SMUGGLING.

Smuggling is a major problem in Burundi. One of the most prevalent schemes is false invoicing on the numerous smaller shipments of general merchandise purchased by people who will resell in local markets or informal outlets. Foreign sellers involved in the trade will often give purchasers a blank invoice to complete for importation. A more significant activity is alleged to be collusion between importers and Customs officials to circumvent regularized procedures upon payment of bribes.

The Department of Research is the Customs anti-smuggling unit. The Department has the largest allocation of resources accounting for more than 50% of all personnel. Most officers are assigned to performing road stops to verify international transit. The remainder patrol the border areas. Additional revenue (this covers both duties and penalties) collected by the largest office, located in Bujumbura, ranges from $10,000 to $25,000 per month, although in July 2008 that jumped to $55,000.

The effectiveness of the Department is limited. A well-developed Customs program to detect and reduce fraudulent activities, which is particularly important to Burundi to offset the revenue reductions anticipated with the EAC Customs Union in 2009, is not yet in place. There is no national strategic plan to identify and combat threats. Little use is made of risk management tools and no information technology is in place to identify and strategize actions.

The Department is hampered by the lack of automated systems to collect and compile data for proper analysis. It does not have the necessary tools to detect and interdict smuggling activity, such as vessels to patrol Lake Tanganyika which forms the national borders with several countries. Violations are handled on a case-by-case basis with no collateral investigation undertaken to review the history or import activity of the violator. The staff has no training in investigative or interviewing techniques.

Intelligence is collected on an as-needed basis after the fact rather than as a pro-active activity to gather data on which to formulate actions. Informants are given 10% of all additional collections. Some information is shared among the governmental agencies. Regional integration efforts should improve intelligence capabilities, allow exchange of confidential information with other Customs authorities, and increase cross-country cooperation to address smuggling schemes.

CORRUPTION.

In 2007 Transparency International's survey listed Burundi as 131 out of 179 countries in terms of corrupt behavior within its business and trade practices, meaning that corruption is pervasive. Customs is viewed as one of the most corrupt public agencies with actions ranging from solicitation of small informal fees for service to collusion of its officers in major smuggling operations.

The level of integrity within the Customs service directly impacts trade facilitation. When corrupt practices exist, the importer/exporter is confronted with an unpredictable environment, one in which higher costs are incurred which directly impact his or her willingness to do business in that country. These actions also result in porous borders that can endanger national security, health, and revenue.

Shaking up Customs and reforming its practices and personnel have proven difficult, particularly in an environment where such practices are endemic and culturally acceptable. However, international guidelines are available to serve as a basis for a comprehensive anti-corruption program that includes predictable and timely enforcement actions targeting significant violators. These include targeting both givers and receivers, selection and support of quality leadership in key management positions, and assignment of investigation to an independent commission that has the highest level of governmental support.

The agency lacks a strategy to address the issue or a commitment to correcting the behavior. Use of adequate external and internal controls is lacking. The capabilities of the IT system to identify transactions and officers that fall outside established norms are underutilized. Unofficial fees will remain a standard operating procedure unless officers are paid a living wage. The need to collect these unofficial fees remains a major impediment to streamlining customs procedures that eliminate the face-to-face contact with trade.

CUSTOMS AND THE REVENUE AUTHORITY.

Plans are underway for creation of a Burundi Revenue Authority which would include Customs. The other East African countries have adopted this type of comprehensive agency that incorporates all departments dealing with revenue collection, which has resulted in increased collections and reduced corruption. Current staff will have to reapply and only those qualified will be retained. Higher and measurable performance standards will be employed, but incentives for quality work should help to alleviate the poor wages now paid to Customs officials. Although plans are to fast-track this process and have the reorganization completed during the first part of 2009, experience has shown that establishing the required legal and structural framework usually takes several years.

COOPERATION AND COMMUNICATION.

There is a need for increased cooperation between trade-related agencies, not only those located at the border but also those ministries regulating the import/export trade. Such efforts would not only facilitate trade but would lead to increased border control to combat smuggling, drug trafficking, and terrorism threats. Turf protection is a major problem. Concepts such as "single window" where representatives of all relevant agencies are co-located and border management is integrated need to be employed. The latter is one of the accepted principles of the EAC Customs Union.

Communication and partnership between the private sector and Customs to improve trade facilitation is weak. Although a formal structure for dialogue appears to exist, it is not currently used. Distrust and suspicion are mutual among the parties. Customs lacks confidence in the professionalism and integrity of the business community in general and is, therefore, hesitant to solicit its input in improving processes. The trade community believes Customs to be generally uninterested in their concerns and unwilling to undertake improvements in the import/ export process that might undermine the opportunity for solicitation of unofficial fees. In response to donor requests, some businesses have participated on committees responsible for developing strategies for both short- and long-term planning. However, there has been little practical improvement.

Most contact between Customs and the trader is conducted informally either for problem resolution or to secure information. Although this approach might be viable while the trade volumes are low, it is not conducive to market expansion. Ways must be devised to move from an environment of suspicion of one another to a relationship of mutual trust, respect, and common goals. The trade must be brought on board as soon as possible in developing and instituting changes since their cooperation is essential to successful implementation. Workshops and seminar committees, including a formal trade-Customs committee, for regular dialogue should be established.

AGRICULTURE.

The Department of Plant Protection within the Ministry of Agriculture and Livestock is responsible for the control of imported and exported agricultural products and operates under legislation passed in 1999. The agency is underfunded, has little if any automated systems to control its workload, and has no facilities for laboratory analysis or for fumigation or quarantine at the border.

An SPS (Sanitary and Phytosanitary Standards) certificate is issued by the Department for each export shipment of plants, vegetables, and fruits. These number 30 to 40 per month except during the peak coffee export months when volume climbs to over 100. The small service fee of $5 is collected per certificate and is used to reproduce the forms. To secure certification, the exporter must have in hand approval of an independent laboratory that the goods are pest free.

Agricultural imports are inspected at the major border posts through a limited staff of nine inspectors assigned to the Department. Since no tools are available for either fumigation or analysis, examiners depend solely on a visual review. The majority of inspectors lack the educational credentials for the assessment. Although shipments not meeting the requirements can be refused entry or destroyed, interviewees did not know of any instance when this was done.

A major issue facing agricultural-related export expansion is the lack of quality controls. Knowledge of international food safety standards is limited, and growers are unaware of production requirements that must be met for export. The government is unable to certify with any credibility that its exports meet those standards because of limited oversight. A National Bureau of Standards was established to address this issue, but it lacks the tools, staff, and human capacity to accomplish the task.

IMMIGRATION.

Immigration services are performed by the Police of Air, Frontier and Foreigners (PAFE), organized within the Department of National Police (PNB) of the Ministry of Security. Visa requirements for visitors to Burundi are onerous and do not facilitate the flow of persons wanting to conduct business and invest in the country. All foreigners staying over 72 hours must obtain a visa from the Burundi embassy in their country or from the Immigration Headquarters in Bujumbura. The only advantage given to neighboring countries is elimination of the normal fee. If a foreigner arrives without this, a transit visa valid for 72 hours can be given at the border, and within that time frame the visitor must present himself at the central immigration office in Bujumbura to apply for an extension. This process takes about three days under normal circumstances and can only be performed in the capital.

Staffing in the central office is adequate but employees need interviewing, administrative, language, and personnel interaction skills to increase their competency. There is a very low level of automation within the agency. Systems neither link the border posts to headquarters nor are available for even the most basic functions such as record storage and risk analysis. Transparency of the process is limited. The agency has no website that the foreign businessman can query to determine entry requirements, nor are other methods for dissemination of information effective.

Officials seem to lack awareness that the entrance process needs to be revised to facilitate the influx of businesspeople even though they are aware that ultimately regional integration will result in the free flow of people within the area. As a result, no plans are in place to simplify the current requirements.

TOURISM.

Due to its political instability, poor communications infrastructure, and limited air links with the main tourism markets, Burundi does not have a strong tourism sector. A national plan for developing the tourism sector was not developed until 2007.

The National Tourism Board (ONT) is charged with promoting tourism in Burundi.

When the Board was founded in 1972, taxes on the private sector involved in tourism funded the agency's efforts. However, in 1984 these were terminated and since then funding has been minimal, covering little but basic staff salaries. Pending legislation will reinstitute the tourist tax to a total of 22% for hotels and restaurants in Bujumbura (5% tourist tax plus 17% transaction tax). Communes outside the capital will be able to create their own tourist tax in conjunction with ONT. Although the private sector supports the levy, it is concerned with whether collections will really be used for tourism promotion and infrastructure.

The Board has had minimal impact and does not have the capacity to expand. Its main activity is the distribution of brochures, which are almost exclusively in French. One plan that is near fruition is the creation of a tourism kiosk in the airport to inform recent arrivals on Burundi's attractions. The first "tourism week," backed by the President, was conducted during mid-2008. This was considered a success, so there is hope that it will become an annual event. Other plans, such as the creation of a committee that will develop a Burundi "tag line" and boost international marketing, do not look promising for the near future.

The Board faces many challenges. It remains ineffective due to minimal funds; the budget for 2008 was the highest in years but it amounted to just 100,000,000 FBU, or approximately $85,000. The view of Burundi as a post-conflict state is a significant deterrent. Tourist-related skills and adequate facilities that meet international standards are lacking. Technical expertise is needed in tourism promotion, and the national parks must expand tourist facilities. On the positive side, private interests within the industry have shown themselves more than willing to partner with the government in promotion efforts.

SUPPORTING INSTITUTIONS

In addition to the public agencies that regulate trade practices, other services must be in place for the import/export process to be successfully concluded. Goods must be transported to and from the point of loading or unloading. Documents must be prepared for customs clearance. Trade associations and the media can also be useful in disseminating critical information and promoting improved efficiencies.

CUSTOMS CLEARANCE AGENTS.

Traders are required by law to use the services of a Customs clearance agent for all international transactions. There are currently 75 entities registered to perform these functions, with four major companies handling more than 60% of the volume. The degree of professionalism in the sector is generally good, and importers/exporters can easily locate competent agents to assist them. However, there are no restrictions on family members of Customs officers working in the sector, which can present a conflict of interest or an appearance of preferential treatment.

KEY SUPPORTING INSTITUTIONS

- Customs clearance agents
- Trade Associations
- Free Zones
- Manufacturing sector
- Media

The role of the Customs clearance agent is somewhat limited in Burundi. The importer/exporter secures the required authorizations such as licenses, certificates of origin, and pre-inspection certifications from the issuing authorities. Only when the required documents are in hand is the file given to an agent for production of the Customs declaration and Customs processing.

Lack of organization and standards for the sector previously contributed to lack of professionalism and the inability of the sector to challenge Customs officers who made inappropriate demands. This encouraged fraudulent practices.

USAID undertook a regional project as part of its EAC anti-corruption program to address this issue that was prevalent throughout the area. One result was establishment of the Burundi Association of Customs Clearance Agents and Freight Forwarders (ABADT) in April 2006. It now has 39 members and actively promotes professionalism and ethical behavior in the industry. However, it must still be considered to be in its infancy.

Another accomplishment of this donor effort was the development of standard requirements for the industry throughout the EAC. Prior to this, Burundi only required clearance agents to have a place of business, post a performance bond of $10,000, and have a two-year degree in Customs-related matters. Penalties for misconduct such as suspension or revocation of the right to operate in the sector are provided by law but seldom if ever used.

A comprehensive training course has been designed and is ongoing in all the EAC countries except Burundi where a disagreement on attendees is pending. All clearance agents must attend and pass the final examination to be certified to continue to work in the sector within the EAC. Since the final examination will be held simultaneously throughout the EAC, Burundi must resolve this issue as soon as possible.

TRANSPORT.

The major international ports used by Burundi traders are Mombasa, Kenya, and Dar es Salaam (DSL), Tanzania, with the latter accounting for more than 95% of all shipments due to lower costs and fewer delays. Heavy congestion, poor management, and excessive documentation plague both facilities.

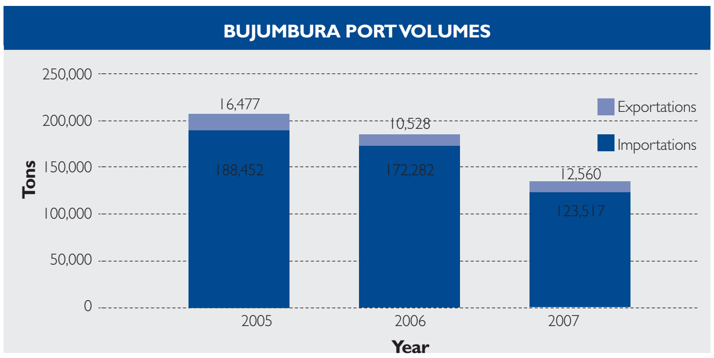
The amount of cargo to be shipped from the various countries DSL serves exceeds the space available. Current capacity at its container terminal is 6,000 units at any time while the current demand requires two to three times this amount. Both ports are reported to give preferential treatment to national goods with a load often held in excess of a week before release. This adds significant costs and delays to the trader. Although efforts are being made within regional integration to rectify this, a level playing field for Burundi traders at neighboring ports does not exist.

Fees for overland transport to these destinations are high, due to higher fuel costs, official and unofficial fees collected during transport, and continual delays at the border. Road transporters increased fees for service to DSL by 30% in May 2008. Transport costs for a "light" 20-foot container from Bujumbura to DSL are about $3,400, while a heavy container will be assessed from $5,800 to $6,200. This is at least double the cost of international shipping rates to Europe or the Far East. Coffee transport costs are currently around $135 per ton, which is also high and impedes the competitiveness of the product that is sold internationally at a price, FOB DSL.

Official fees of $200 are paid on each truck as it enters a country. As a result, inland transport costs to and from Kenya are higher than Tanzania since three borders rather than one must be crossed. Significant informal fees also contribute to the high inland transport costs. These are paid at random road stops and at each weigh station. On a fuel transport from Kenya, unofficial payments are reported to average $800. Reports also indicate unofficial payments of about $100 are collected at each of the 12 weigh stations on the route from Bujumbura to Mombasa, Kenya. Such fees are also assessed in Tanzania.

Trucks are designated by weight as either light or heavy, with 14 tons being the cutoff amount even though such a container can hold between 22 and 24 tons. This is due to the generally poor condition of the infrastructure. Loads weighted as heavy incur a doubling of the unofficial payments. As countries become more vigilant about weight requirements on their roads, unofficial payments no longer will be effective in moving overweight cargo. More trucks will be needed to haul a shipment, driving costs up further.

Delays at the border crossings are long, from four to six hours. Posts are usually open from 8 a.m. to 6 p.m., so any truck arriving after 2 p.m. will probably not be allowed to cross until morning. Rwanda is the most facilitative country to transit as it has no weight bridges and is more organized at the border posts. Delays are also encountered at the truck station in Bujumbura, where up to a week can easily be spent waiting for merchandise clearance.



The inadequate supply of empty containers in which to ship export products is a major impediment to trade in Burundi. Although imports exceed exports, imports are dominated by products such as fuel and cement which are not transported via containers. The shortage becomes acute during the high coffee season, which runs from August to April. Although the preferred way to transport coffee is via container for both security and quality control, most coffee beans leave the exporter's premises in bags on covered truck wagons.

Supply of international transport trucks exceeds demand except in the peak coffee export period. Three or four private companies operate in the sector in an openly competitive market. Although the fleet is generally old, one company recently purchased 15 new trucks. Drivers and vehicles regularized in one country can travel freely and without additional requirement throughout the COMESA region. This is a significant facilitative measure.

The only maritime port in Burundi is Port Bujumbura, which operates on Lake Tanganyika connecting to rail links in either Tanzania to DSL at Kigoma or in Zambia through Mpulungu. It is operated by EPB, the Bujumbura Port Company, as a private/public concession. The government's share is 42% with one private investor owning 40%. EPB's contract extends through 2012 and requires it to pay 10% of total revenue to the government. Increased security has reduced losses. Users of the port indicate little if any corrupt practices among port employees such as collection of unofficial fees for service.

Although generally transport via water and rail is significantly cheaper than overland, the port is underutilized and volumes continue to decrease. Capacity is 500,000 tons per year. In 2007 only 136,000 tons crossed its piers. The trade indicates that its reluctance to use the port is due mainly to the unreliability and infrequency of service on the rail links. Low trade volumes give the port little leverage to pressure the railroads to make improvements. In addition, privatization of the Tanzania Railways Limited (TRL) several years ago, although resulting in improved service, has driven up costs by 35% so that normal savings inherent in marine and rail transport have been reduced.

The coffee sector has decided to ship about 40% of its exports through the port this year due to cheaper costs and increased reliability of rail service. It is hoped that the limited improvements that have occurred with privatization will also increase security of rail transport, which was a problem in the past. The success of this venture could cause a reversal in the downturn of the port and allow it to reestablish itself as a significant player in international transport.

Two principal shipping companies provide services at Port Bujumbura on vessels that can handle all types of loads, including containers, bulk, and break bulk. Due to low volumes, there is currently an overcapacity of shipping space. Transit times are 8 and 36 hours respectively for Kigoma and Mpulungu, with approximate fees of $650 for a 20-foot container to Kigoma and $1084 to Mpulungu. Shipment via the lake and rail to and from DSL takes approximately double the six-to-eight-day overland route time.

Bujumbura port fees are low mostly due to the reluctance of the Ministries of Commerce and Transport, Post and Telecommunications which must approve increases, to raise them with the current poor economic conditions. Port infrastructure is poor and sufficient funds are not available for reinvestment. The four cranes date back to 1959, and the port's two-container capacity fork lifts were purchased in the 1980s. Without replacement of equipment, the port will soon be incapable of handling this mode of transport.

The Lake Port Authority maintains a good degree of collaboration with its users, holding quarterly meeting to resolve issues as well as for short-term planning. Use of automation within the port is limited and has no connection to either the users or Customs.

Limited air cargo capacity as well as lack of daily service to major markets impedes the growth of export products that demand speedy delivery. Although Kenya Air offers the most reasonable rates, fees for transport are about 20% higher than those incurred by Kenyan exporters due to direct shipment possibilities. Also, intermediate stops in Kenya can impair the quality of the goods being shipped as any delay is a potential hazard.

There are only three or four exporters of perishable commodities. Transport is made by a producer's trucks capable of refrigeration and timed to arrive at the airport only when the cargo can be loaded immediately. Cold storage facilities at the Bujumbura airport are limited to two 20-foot containers which are always full. Expansion of perishable agricultural products cannot succeed without development of cold storage facilities in or near crop production, in overland transport, and at final loading sites.

FREE ZONES.

In August 1992, the entire country was declared a duty-free zone for companies promoting exports. The administration of the zones was delegated to the Ministry of Commerce and generous incentives were provided. The potential of the free zones to attract investment has not been realized, however, due mainly to the lack of security and lengthy administrative procedures. Before the conflict, about 70 companies were using this process but that has dropped to around 10.

Although the legislation mandates a 35-day turnaround in approvals, the experience of the trade community indicates it to be a much more lengthy process that can take years to successfully complete. No promotion is undertaken to encourage zone expansion. Although imports are duty free, the users get no expedited process for goods clearance. Little if any security requirements are in place to prevent intermingling of merchandise or leakage. Control is exercised through accounting reports filed by the user. If the potential benefits to export expansion provided by the free-zone legislation are to be realized, promotion must be undertaken but only after the approval and import/export processing steps are streamlined.

TRADE ASSOCIATIONS.

Effective trade associations are rare in Burundi. Plans are underway to reorganize the existing associations to improve services to the business community through consolidation of efforts and funding. Current economic insecurity promotes the existing lack of trust that the information shared would not ultimately lead to a competitive disadvantage.

A few trade associations are influential and provide good service to members. One of the strongest is the Burundi Coffee Exporters Association (ABEC). This segment of the coffee sector was fully privatized in 1995 and currently includes 10 national companies and two Rwandan firms. All but the latter two are members of the association. One of the valuable services rendered by ABEC is quality control through the services of its own laboratory. It is an effective advocate for the industry, which is particularly important as sector privatization efforts continue. Because government efforts for coffee promotion are limited, ABEC assumes this role, although a promotional program developed and implemented through public-private collaboration should be designed.

The Confederation of Associations of Burundi Coffee Growers (CNAC) was recently established and now represents 111,000 growers, or about 14% of the total. It is well organized and is the only body representing the multitude of small farmers. Such representation is critical as the process of privatization moves forward. CNAC claims credit for substantially raising prices to growers.

MANUFACTURING SECTOR.

The manufacturing sector in Burundi is small and this is significantly limiting the impact it could have on increasing Burundi's trade. This was not always the case; pre-crisis governments adopted pro-manufacturing policies, and oversaw the growth of a modest industrial base.[34] However, the crisis was particularly devastating for Burundi's manufacturing sector; it shrank dramatically, and by 2006 accounted for only 6.7% of exports. Nearly half of production comes from food industries, including alcoholic beverages, carbonated beverages, cigarettes, sugarcane, and groundnut oil. These products are mostly sold to neighboring countries. The state intervenes in the manufacturing sector through fixing the price of certain products, including beverages and sugar. Aside from a few industries subject to tax concessions, the current tariff structure does not encourage investment in the manufacturing industry.[35]

The government had hoped to boost the textile industry, which contributed less than 10% to the manufacturing sector, by introducing several selective protection measures (a surcharge on certain textile and clothing imports) and banning imports of cotton duck. Unfortunately, the government-owned COTEBU, essentially the only textile manufacturer in the country, recently went bankrupt due to out-of-date technology, high fuel consumption, and poor management. The industry remains in an indeterminate state, seeking possible investors or buyers for COTEBU, and thus waiting for the industry's main actor to re-stabilize.

MEDIA.

In the last several years, particularly with the expansion of private radio stations, more openness has existed in the press to address reform and corruption issues. Currently there are 15 radio stations, only two of which are government operated; one daily newspaper operated by the government; two private weeklies; and two television stations, one of which is private.

One of the most effective radio stations in investigative reporting is the privately owned African Public Radio (APR). Many of the others lack the resources to uncover irregularities such as embezzlement and fraud. Continued expansion of private sector involvement should strengthen the media's ability to push for good governance and act as an effective watchdog against corrupt behavior.

SOCIAL DYNAMICS

Government obligations to fully integrate into the EAC and join its Customs Union in July 2009 are the primary forces pushing Burundi toward improved trade facilitation. This will require streamlining and coordination of border procedures, integrated border management, and harmonization and standardization of import, export, and transit procedures throughout the region. Commitment to achieving the timetables and goals of the integration is apparent, although Burundi will need much assistance to succeed. The planning process appears to be late in developing and lacks sufficient resources and public-private involvement to outline and implement the significant changes to both the legal framework and the practices that will be required to meet the deadlines.

Another significant driver of improved trade process, and one that should promote professionalism and integrity within Customs, is the planned adoption of a Burundi Revenue Authority. Although this has strong support among rank-and-file officials involved in revenue-related functions since it would increase remuneration, high-level commitment to this radical change will be determined by whether the time frames are met or are continually extended. Plans are underway for its adoption by mid-2009, which will be difficult to meet in view of the multiyear experience of the neighboring countries.

Demand for improved trade facilitation is not coming from within the trade-related agencies, nor has there been identified a champion at either the legislative or executive level supporting this effort. Most initiatives undertaken have been the result of donor pressure. This lack of focus appears to be due to two principal factors. First, such efforts reduce opportunities for improper behavior and therefore encounter opposition. Second, Customs fears that moves to facilitate trade might impede its primary mission of revenue generation.

Professionalism among the public sector dealing with trade is low. The responsibility of public service is not well ingrained, and innovation is not encouraged or rewarded. Lack of continuity at the highest management levels of agencies like Customs has detrimental consequences for both short- and long-term planning.

34 WTO Statistics Database.
35 Trade Policy Review (WTO 2003).

In an effort to address the corruption issue, the government established the Anti-Corruption Court which opened in November 2007. Its goal is to restore public confidence in public servants and sensitize people in public service to avoid corruption. To date it has heard 138 cases of embezzlement, bribery, and double dipping on paychecks. However, no trade-related public officials such as those with Customs or immigration have been prosecuted.

RECOMMENDATIONS

- Modernize the Customs organization and train high-level staff in strategic planning and managerial skills. Create a professional deputy position for continuity of effort, develop a unit for planning and training, adapt the current enforcement structure to provide for a quality intelligence/investigative unit that can sufficiently control borders and prevent fraud, and train managers in supervisory, oversight, and planning skills. Reward innovations that improve facilitation and controls using measurable criteria.
- Establish a one-stop shop for both importers and exporters where all required authorizations can be obtained. Co-locate representatives of the various agencies administering the import/export requirements. Give them the decision making ability to issue final authorizations. Explore the potential to include current Customs processing. Lack of direct links with the bank for deposits and employment of a full risk management system will delay complete integration of import processing. Due to low trade volumes, this could be staffed on a part-time basis as long as the hours are well established and reliable.
- Prioritize the development of a Customs website that is user friendly and has capabilities for monitoring, updating information, and responding to queries. Although some initial planning has, many more resources should be devoted to accomplishing it as a viable solution to the ongoing problem of lack of transparency in the import-export process.
- Accelerate regional integration initiatives that reduce border delays and transport costs. Border controls can be simplified with integrated border management procedures whereby transporters can conclude all exit and entry procedures at one stop. Large commercial crossings should be manned 24/7, and each country should examine the use of weigh stations (Rwanda has none while there are multiple in Kenya) and unofficial road stops to try to reduce their numbers.
- Develop a strategy for Customs modernization relying on the principles outlined in the 2007 Customs Code. The plan should fit the national environment, contain a set of sequential steps to be taken, and provide for measurable, realistic targets. This design must incorporate the changes that will be required with regional integration. Create an office with sufficient staff to plan and oversee the development, monitor progress, and provide continuity and momentum for the process. Involve the business community in developing the implementing regulations and procedures.
- Employ risk management as a fundamental principle of Customs operations. Establish a risk management department within Customs and staff it with professional officers. Train them to conduct risk assessments and establish criteria to target high-risk shipments. Once completed, activate the RM module in ASYCUDA and rely on the data to generally determine Customs action on transactions. Establish expedited procedures for low-risk traders.
- Upgrade the skills, tools, and oversight capabilities of the Customs valuation/rules of origin office. Assist the current staff in establishing a computerized national valuation database to enable Customs to detect the high number of cases involving false invoicing. Develop a valuation policy that ensures training and monitoring of the actions of clearance officers, establishes a system of issuance of valuation rulings to the trade, and has knowledge of both regional and international rules of origin.
- Support the training program coordinated by the Customs IT department. Accelerate this initiative through dedication of appropriate staff and a higher level of management commitment. Ensure the curriculum provides information on regional integration efforts and its impact on processes. Offer incentives to attract knowledgeable officers to undertake the training.
- Streamline the OCIBU process regarding coffee exports. Complete an assessment of the current process, including a brief time-release study and determine where improvements can be made. Gauge results through concrete goals that can be

measured. Involve the trade as a participant in the process which will lay the foundation for more productive partnership in the future.

- Increase partnership/communication between the trade-related ministries and the trade community. Establish public-private forum with the trade ministries to exchange information and ideas. Regular meeting should also be conducted between Customs and the Customs Clearance Agents Association to discuss general issues and devise solutions. Workshops on the upcoming Customs Union implications should be held. Procedures should be mutually developed to require reporting of suspected fraudulent activities by clearance agents with results shared with the informant as a way to gain confidence in the ability of Customs to properly deal with the information.
- Create a trade and investment promotion organization led by or in partnership with the private sector to implement strategy to facilitate exports and investments. The planned Investment Promotion Agency could take on this role if it works closely with the private sector in doing so.
- Upgrade the capabilities of the Ministry of Agriculture, Department of Plant Protection. This department lacks the staff and tools to effectively administer controls of imports and exports of agricultural products. Fumigation and quarantine facilities must be put in place at the borders, technical capabilities of the inspectional staff must be upgraded, and tools must be provided to assist in the detection of problems with imported material. The staff must be trained in the international requirements for expansion of exports of agricultural products and allocated sufficient resources to guarantee proper quality controls over the growing process.
- Assess the viability of the Port of Bujumbura to determine if the port will offer any advantage to international transport in light of the improvements to overland transport regional integration should provide. If the result is positive, infrastructure improvement will be required to modernize the port.
- Develop an integrity plan or anti-corruption strategy as part of Customs reforms, including as a first step a comprehensive assessment of the current processes to identify shortcomings that present opportunities for corruption and implement approaches to address them. Outcomes must be realistic and measurable. All levels of Customs officers must be involved throughout all phases in the process. Partnership with other public institutions as well as the private sector to address this problem is essential for success.
- Simplify the special exemption process. Initiate a diagnosis of the current program, and design procedures to streamline the process while instituting more effective controls. Provide a consolidated list of all articles subject to exemption and establish effective means of distribution. Partner this redesign with input from the private sector.
- Diversify the export sector beyond coffee. Redirect marginal producers to other economic activities such as tropical fruit, vegetables, flowers, essential plants, mineral products, and services such as tourism.

ENFORCING CONTRACTS

Efficient contract enforcement is critical to private sector economic growth. Unfortunately, in Burundi, contract enforcement is a difficult and time-consuming process. The World Bank *Doing Business* index for 2009 ranks Burundi 170 out of 181 economies on efficient contract enforcement. This is a drop in ranking of 22 places from 2008 when Burundi was ranked 148. The number of estimated days needed to enforce a contract increased from 558 in the World Bank's 2008 index to 832 in 2009.

Because of the difficulties involved in enforcement and because Burundian culture does not favor written agreements, many small and medium-sized enterprises doing business within Burundi simply do not use written contracts. Instead, such businesses restrict their clients to people they know, or otherwise structure their business transactions to avoid disputes. As a result, it may be difficult for such businesses to expand their client base and grow.

Larger enterprises, especially those conducting business across borders, do use written contracts, often based on a "master agreement," such as the European Delivery Contract for Coffee. Such agreements usually call for arbitration at an international forum. Even when larger enterprises do not have arbitration clauses in their agreements, businesses have long used an informal system of arbitration to resolve disputes rather than take disputes to court.

Burundi does have a Commercial Court, but because local businesses do not generally use written contracts and international businesses use international arbitration, the Commercial Court is primarily used by banks to enforce credit agreements and foreclose mortgages.

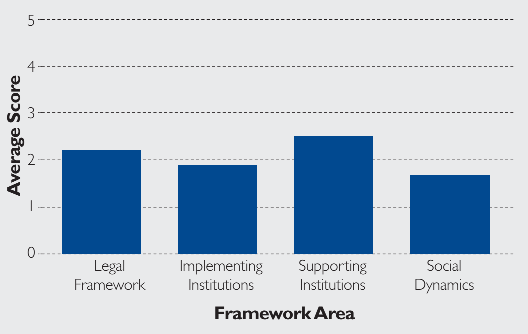
While a strong system is not in place in Burundi for enforcing contracts, some positive signs suggest that such a system may develop as Burundi continues to emerge from a prolonged period of conflict and becomes more actively engaged in regional and international trade. Burundi's commercial laws are being extensively rewritten and modernized. However, comprehensive judicial reform, which would assure an efficient system of enforcement of the new laws, will take time.[36] As the chart above reflects, implementing institutions and social dynamics are the areas in most need of immediate attention. In the meantime, through the use of formal, as well as informal, arbitration systems, Burundi should be able to improve its performance in the area of contract enforcement.

36 See USAID: Guide to Economic Growth in Post-Conflict Countries at 46 (Oct. 2007).

ENFORCING CONTRACTS

Doing Business Ranking 2009			170
Doing Business Ranking 2008			148
	Burundi	Region	OECD
Procedures (number)	44	39.4	20.8
Time (days)	832	659.7	462.7
Cost (% of claim)	38.6	48.9	18.9

ENFORCING CONTRACTS



Burundi's active participation in the East African regional economy should also lead to the development of a more efficient and workable system for contract and commercial law enforcement.

LEGAL FRAMEWORK

CUSTOMARY LAW.

There is a traditional system for dispute resolution in Burundi—the Bashingantahe. This system uses elders and a sense of social harmony to arrive at consensual outcomes. The Bashingantahe has traditionally been most involved in family matters and real property disputes. The effect of the customary law system on contract enforcement, other than its culture of trying to harmonize differences, appears to be minimal.

KEY LAWS
• Customary Law • Contract Law, 1994 • Code of Civil Procedure, 2004 • Procurement Law, 2008

CONTRACT LAW.

Burundi has a civil law system based on French/Belgian law. Its law on contracts dates from 1994. Burundian law defines a contract as "an agreement according to which one or more persons promises to one or more other persons to give, to do or not to do something."[37] Like French and Belgian contract law, Burundian law does not encompass the concept of consideration as an essential part of a contract, but consent remains a fundamental element of most contracts.

The basic elements of contract law are set out in Article I of Book III of the Civil Code Articles 1–245. Articles 263–612 lay out the rules for specific types of contracts. A separate law applies to leasing and also dates from the 1990s, and the law on real property dates from 1986.[38] Burundian contract law contains provisions governing sales (Article 294), but it is not as extensive as most modern sales statutes, such as Article 2 of the Uniform Commercial Code. Burundian contract law also covers deposits, escrows, bailments, and guarantees, and covers both "conventional" and "nonconventional" obligations.

Burundian contract law permits parties to enter into loan agreements secured by an interest in personal property by the use of a pledge from the borrower or a third party (Article 600), but such contracts are rarely used.[39] Some parts of Burundian contract law are archaic. For example, the provisions governing loan contracts provides for loans for "use" (Article 447) in which the lender remains the owner of the property and the borrower must look after the property as a "good father" (Article 453). Loan contracts are usually contracts for consumption (Article 465) in which the borrower becomes the owner of the property acquired with loan proceeds.

CODE OF CIVIL PROCEDURE.

The Burundian Code of Civil Procedure was revised in 2004. It contains rules of pleading, including rules that require finality before an appeal can be taken and detailed rules regarding execution and enforcement of judgments.

The 2004 Code of Civil Procedure also includes provisions authorizing parties to choose arbitration, rather than the courts, as a way of resolving disputes. The private business community actively supported enactment of the Arbitration Law. Under the 2004 Code of Civil Procedure, arbitration is binding and acts as an affirmative bar to use of the courts. The Code also recognizes the validity of ad hoc and institutional arbitrations, as well as contract clauses that call for arbitration in a foreign forum or the application of foreign law to an arbitration conducted in Burundi. Arbitrations conducted in Burundi are to be concluded in six months. The Court of Appeals has jurisdiction to execute arbitration awards.

FRAMEWORK LAWS IN TRANSITION.

Burundi's membership in regional organizations, such as COMESA and the EAC, has driven a process to modernize and harmonize its commercial laws and procedures to be in compliance with those international agreements.[40] New investment, commercial, company, and tax codes are in the works, as well as a new competition law, a mining law, and a public/private partnership law. The Project in Support of Economic Growth (PAGE), with grants from the World Bank, has spearheaded much of the drafting effort, using international and local consultants to write reports and draft laws, which are then sent to the appropriate government ministry and on to the legislature for review and passage. The most recent result of PAGE's efforts was the enactment of a Procurement Code, which went into effect on October 4, 2008. The Burundian Parliament also has a process for drafting laws. A special legislative drafting committee, which includes lawyers, judges, and stakeholders, prepare the draft law for submission to Parliament.

PAGE hopes to conclude its work on modernizing "core" commercial laws by the end of 2009. There are currently no plans to modernize the 1994 Contract Law, although PAGE indicated that it was likely that both contract and real property law would be extensively revised after the initial harmonization of other commercial laws.

IMPLEMENTING INSTITUTIONS

COURTS.

The Commercial Court is a first instance court with jurisdiction over all commercial cases, including all types of contract enforcement, foreclosure and eviction, and real property disputes not involving the government.[41] The Court is based in Bujumbura, which is the center of commercial activity in Burundi.[42] The 2004 Code of Civil

37 Article I of Book III of the Burundian Civil Code.

38 This assessment does not include a section on real property. A revision of the Real Property Code is apparently in process. See May 2008 Final Report Documentary and Diagnostic Analysis of the Burundian Judicial and Legal System (2008 Judicial Diagnostic) prepared for the Project in Support of Economic Growth (PAGE).

39 There is currently no searchable registry where security interests in personal property can be recorded.

40 Burundi's Trade Treaties & Regional Memberships include:
- Interim Economic Partnership Agreement with the European Commission (November 2007)
- East African Community (EAC) (July 2007)
- U.S. Africa Growth and Opportunity Act (2005)
- COMESA Agreement on the Establishment of a Free Trade Area (2004)
- EU's Everything But Arms Initiative (2001)
- World Trade Organization (WTO) (1995)
- Economic Community of Central African States (1985)
- Common Market for Eastern and Southern Africa (1981)
- Economic Community of the Great Lakes Countries (CEGPL) (1978)

41 In Burundi, judges of first instance courts are referred to as magistrates; judges of higher courts, including the Administrative Court, the Court of Appeals, and the Supreme Court, are referred to as judges. Disputes involving the government, including disputes about real property, are usually heard by the Administrative Court, which sits in Bujumbura.

42 The first instance provincial courts sit as commercial courts when they hear commercial cases.

Procedure governs procedural practice in the Commercial Court, including the setting of fees. All decisions must be in writing and delivered in open court (Chapter 3, Title IV of the Code of Civil Procedure). Decisions are supposed to be issued within 60 days of the matter being submitted (i.e., all evidence has been submitted and arguments have concluded). There is no system for compiling and reporting the decisions of the Commercial Court. [43]

KEY IMPLEMENTING INSTITUTIONS

- Courts
- Arbitration Center

The Commercial Court has 21 magistrates with about 18 magistrates actively hearing cases. The Chief Judge assigns the cases by blind draw. The magistrates sit in three-person panels. One magistrate heads the panel; the two other members of the panel are volunteer assessors who have expertise in the subject area involved in the case. Assessors act as technical advisors to the magistrate. The Commercial Court is supported by 14 clerks who are responsible for court minutes, service of pleadings, and the opening and maintenance of court files. There is one bailiff, a former court clerk, who is responsible for the execution of judgments. The clerk's office has recently started to computerize the Commercial Court's records with a grant from the World Bank through PAGE.

As of the end of August 2008, over 5,000 cases were pending in the Commercial Court. The majority of cases heard by the Commercial Court are collection matters filed by banks, foreclosure actions (primarily prosecuted by banks), and eviction cases. The Commercial Court sends regular reports about its caseload to the Court of Appeals with a copy to a division of the Ministry of Justice in charge of court administration. Commercial Court magistrates must report on all cases that have been under advisement longer than 60 days. Magistrates must also close a certain number of files each month. Access to the court files is limited to the litigants.

Delay is a major problem in the disposition of the Commercial Court's cases. There are multiple reasons for the delay. The Court lacks space and equipment, and shares one courtroom with three other courts. As a result, the Commercial Court only holds court on Tuesdays and Fridays. Most magistrates have a maximum of seven to nine hearing days a month. Office space is very limited with up to eight magistrates assigned to an office. When a case is taken under advisement by a panel, all the other magistrates in the office must leave so the panel can deliberate in private. There is no other space available for the displaced magistrates to work.

Continuances are common and can be prolonged. The rules of civil procedure only permit three continuances "of right;" however, the parties can stipulate to more continuances, and the magistrate can continue matters if he or she feels more time is needed to review evidence or because of the complexity of a case. Cases involving foreign litigants usually involve many continuances because of their perceived complexity. Decisions are supposed to be issued within two months of submission, but other than receiving a reminder letter from the Chief Judge, no consequence is imposed on a magistrate for missing the deadline. The lack of any jurisdictional limit to bring a case in the Commercial Court and an automatic right of appeal to the Court of Appeals, with an automatic stay of execution for that appeal, further contribute to delay in bringing Commercial Court cases to conclusion. [44]

JUDGMENT EXECUTION.

Once a judgment is final, the judgment creditor must return to court to get an execution order. A series of notices must be given to the judgment debtor who then has 15 days to appeal any seizure of assets. While the scope of a seizure appeal is limited to arguments about ownership of the property seized or the adequacy of notice, there is usually substantial delay when a seizure is appealed. As a result, it can take years or even decades to execute a judgment.

Self-help for execution is not available by statute but can be ordered by the court in a particular case. One device used by creditors to accelerate executions is the use of a contract clause in which the borrower consents to a pre-judgment seizure. Upon default, the creditor presents evidence of the borrower's agreement to the seizure (a notarized contract) and evidence of payment default. The Chief Judge of the Commercial Court then issues a seizure order and the collateral is seized and placed in storage awaiting a sale by the bailiff after final judgment is entered, which can take between six months to a year.

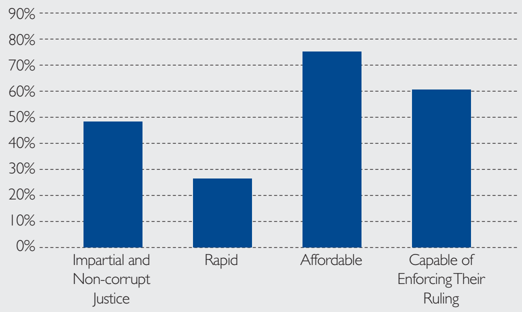
JUDICIAL CAPACITY.

Another factor that contributes to delay and perceived ineffectiveness of the Commercial Court is a lack of expertise among the Court's magistrates. Law is an undergraduate degree in Burundi. Law school

43 Under Article 14, the Regulatory of the Supreme Court Law passed in 2005. The Supreme Court of Burundi is to regularly meet and determine which of its decisions it wants published.

44 Rulings from the Court of Appeals can be appealed, as a matter of right, to the Supreme Court, but there is no automatic stay of execution on a second level of appeal.

CONFIDENCE IN THE JUDICIAL SYSTEM



* From an evaluation of the Burundian Investment Climate produced by the Canadian Counsel for Economics Studies—June 2008.

curriculums provide a foundation in legal principles but no specialized classes in commercial law are taught. The rules and statutes governing the judiciary require a certain number of years of experience before a magistrate can be promoted to a higher court or become a permanent magistrate of a first instance court. However, after the Arusha Accords were signed in the late 1990s, ending a prolonged period of internal warfare in Burundi, the government, as part of a program to implement a constitutional provision that requires ethnic balance in the judiciary, appointed less experienced magistrates to all levels of the courts. Efforts to ethnically balance the judiciary appear to have been a success; however, they have had the side effect of producing a relatively young and inexperienced judiciary.

Whatever the level of experience of a magistrate or judge, continuing education is critical to efficient and effective court performance. However, magistrates and judges in Burundi receive little or no ongoing training. Burundian commercial laws are being extensively rewritten, but the only training provided to the Commercial Court magistrates is provided by PAGE, which puts on workshops as laws are passed. Sometimes the workshops occur months before a law goes into effect (ex. Procurement Law) or years afterwards (ex. Bankruptcy Law).

JUDICIAL INDEPENDENCE AND TRANSPARENCY.

Lawyers and their commercial clients avoid filing cases in the Commercial Court because of the long delays, the perceived lack of expertise of the magistrates, and the corruption in the court system which is viewed as a chronic and worsening problem. As demonstrated in the accompanying graph, only 50% of enterprises surveyed in a recent study viewed the courts as just and noncorrupt.

The judiciary is also not perceived as being independent. Title 8, Section 209 of the Burundian Constitution provides that the judiciary is a co-equal branch of government with the executive and the legislature. The law governing magistrates also provides that judges are separate from the other two branches of government and are to decide cases based solely on the law. (Article 21 of the Law of Magistrates of 2000). The system for naming judges and for overseeing judicial disciplinary matters is not, however, perceived as being independent from the executive branch of government. The Constitution (Article 220) created a Superior Council on the Judiciary. The Council has jurisdiction over judicial nominations and oversight on discipline of judges and magistrates, but most of the Council's members are appointed by the executive. In fact, the president of the Council is the President of Burundi. Furthermore, the Council has largely delegated nomination of lower court magistrates to the Ministry of Justice. The judiciary's budget (other than that of the Supreme Court) is prepared and administered by a department within the Ministry of Justice.

As a result, the judiciary is not viewed as being independent from the executive branch.[45] Most respondents agreed that judges who deliver decisions that are controversial or inconvenient to the government place themselves at risk of harassment or punishment. (See the discussion of the Judges Association/Syndicate of Magistrates, below.)

That said, adverse judgments against the government are not unknown. A number of cases have come up in the Administrative Court where the government was a named defendant and did not prevail. There is, therefore, some evidence that the Burundian judiciary can act independently from the executive branch.

ARBITRATION CENTER.

After the enactment of the 2004 Code of Civil Procedure, an Arbitration Center was opened in Bujumbura with a grant from the World Bank (PAGE). The Center is governed by a board of directors made up of the parties who worked on passage of the new law, including the Chamber of Commerce, the Burundi Bar Association, and the Employers' Association. The Center offers a variety of dispute resolution services for commercial disputes, including mediation, as well as special "expert" services. Since its opening, the Center has developed a set of procedural rules, trained 28 arbiters, and is actively working on a public education program to inform the private sector of its services.

45 The issue of judiciary independence was a major point of discussion in a December 2006 workshop on justice reform organized by the Ministry of Justice, but there is little evidence that any of the proposed reforms have been undertaken. See 2008 Judicial Diagnostic at 89.

The Center has encouraged businesses to include mandatory arbitration clauses in contracts with arbitration to be conducted at the Center. The Center's services are fee based. The fees are supposed to pay for the service of the arbiters as well as for the administrative costs of maintaining the Center.

To date, however, no case has been referred to the Center. A number of businesses expressed an interest in using the Center, but Burundi lawyers have a history of conducting ad hoc arbitrations, and it is not clear that they will use the Center as an alternative to that practice. Another issue that may be problematic for the Center is the use of the Court of Appeals to execute arbitration awards. As noted earlier, executions are a multistep procedure, which includes a right of appeal. Therefore, if the arbitration award is resisted by the losing party, potential for long delays exists.

There are, however, encouraging signs that arbitration will become the preferred method to resolve international commercial contract disputes. Contracts used in the coffee sector routinely provide for arbitration in a foreign forum. The new Procurement Law provides for binding arbitration of all disputes, including bidding disputes. Under the Procurement Law, if the party contracting with the government has any percentage of foreign ownership, international arbitration is required. If the contracting party is a Burundian entity, arbitration is to be done by the Arbitration Center.

SUPPORTING INSTITUTIONS

BAR ASSOCIATION.

The Burundi Bar Association was formed in 1955. Between 1955 and the early 1990s, the Association had fewer than 20 active members. The bar's membership expanded in the early 1990s, in part because of ethnic violence between the majority Hutus and minority ruling Tutsis. As more criminal cases were filed, more lawyers were needed to represent defendants. Historically, most lawyers and judges in Burundi were Tutsi. Many of the Hutus who were facing charges refused to be represented by a Tutsi lawyer. As a result, many lawyers came from other parts of Africa and Europe to represent Hutu clients. In recent years, there has also been a rise in the number of Hutu members. The bar currently has 71 active members, most of whom are Burundians. Tutsis remain a majority of the bar, but at least 15 Hutu members are included in the roster as well.

KEY SUPPORTING INSTITUTIONS

- Courts
- Bar Association
- Judges' Association
- Notaries
- Donor/nonstate actors

The Bar Association is not an inclusive organization. Most Burundian lawyers are not members. Various reasons were advanced for this, but the simplest is most likely true: most local lawyers cannot afford the cost of membership. The restricted membership makes the Bar Association less inclusive and responsive, but also gives it more prestige and influence.

No bar examination exists in Burundi. Lawyers who wish to enter into private practice must do a two-year apprenticeship with a law office. The apprenticeship in private practice is regarded as more rigorous than the two-year probationary status served by magistrates and public prosecutors. In general, judges and magistrates are not highly regarded by the private bar. A Burundian lawyer may begin his or her legal career as a magistrate and later move into private practice. There is generally no movement from private practice into the judiciary.

Most members of the bar are generalists because there are not enough businesses to support a specialized commercial practice. Lawyers who do commercial work also often act as advisors and facilitators for foreign clients setting up a business in Burundi. Lawyers assist foreign clients in determining whether the client's existing commercial documents and contracts will be enforceable under Burundian law. Lawyers also assist foreign clients with the necessary registrations and licensing to help them do business in Burundi.

The Bar Association meets annually and conducts limited continuing education for its members. No formalized bench-bar functions are available and there seems to be little out-of-court contact between the members of the bar and the judiciary. The Bar Association is an active member of Burundi's civil society. A number of its members have been involved in drafting and commenting on new, proposed commercial laws and supported the creation of the Arbitration Center. The bar has also spoken out on issues of legal reform and politics in Burundi.[46]

46 On September 4, 2008, the Bar Association was one of the signors of a memorandum of the Associations of Civil Society in Burundi, a document directed to the government about the political and social situation in Burundi.

JUDGES' ASSOCIATION.
The Burundian law on magistrates and judges permits formation of a "Syndicate des Magistrates." The law governing the judiciary also permits, in limited circumstances, a right to strike. This has never yet been used.

At the time of this assessment, both the president and the vice-president of the syndicate had been transferred from Bujumbura to posts in the countryside and were unavailable for interviews. The transfers were apparently the result of the magistrates taking positions disfavored by the government. While the magistrates were not demoted, a posting outside Bujumbura can still have significant financial impact on a magistrate whose family remains in the city because the magistrate is required to maintain two households. Furthermore, courts outside Bujumbura have even fewer resources than courts in the city, so working conditions will presumably be worse for the transferred magistrates.

NOTARIES.
No formal society of notaries exists because there are fewer than 10 notaries in the entire country. Most notaries are located in Bujumbura. Wills, marriage contracts, company formation documents, rental contracts, guarantees, and contracts for the sale of real estate must be notarized. Notary fees are set out in the 1996 law governing notaries, but can also be amended by presidential decree. While notaries are not required to be lawyers, almost all of them are lawyers, and some of them have been magistrates and judges as well. Notaries' clients are typically banks and purchasers of real property. Notarized documents also have significant evidentiary weight under the Code of Civil Procedure. As a result, many parties to commercial transactions have documents notarized even when there is no formal requirement to do so.

DONOR/NONSTATE ACTORS.
Burundi has a very large donor community. In 2005, an aid coordination unit was formed (CNCA) to ensure efficient coordination of aid. USAID is the leader of a subcommittee that focuses on the promotion of the private sector. USAID has also been active in supporting the Commission on Land and Other Properties (CNTB), which was created in 2006 to assist in resolving land disputes. [47]

Two associations have been particularly active in legal reforms. PAGE, primarily funded by the World Bank, focuses on many aspects of economic reform, including the development of the private sector. PAGE has been the sponsor of a number of studies, including a comprehensive diagnostic study of the Burundian judicial and legal system. PAGE has provided the technical expertise to develop and draft the new commercial laws that are needed for Burundi to participate fully in the regional economy as a member in good standing of organizations like the COMESA and the EAC. PAGE also provides technical assistance, including computers to the Commercial Court, and assisted the Arbitration Center in developing its rules, procedures, and training programs.

The Technical Assistance Corps of the Belgian government (CTB) has been the primary sponsor of a project to collect and update Burundian law into a three-volume treatise. CTB also provides support for the publication of the Official Bulletin of Burundi, the official publisher for all new and amended Burundian laws. The bulletin has not always been regularly published, and it is not free.

Some other donor groups also provide material and technical assistance to courts and ministries. For example, the French Embassy has provided some computers to the Registrar of Deeds. There is, however, a general lack of adequate resources available to Burundian courts. Outside of Bujumbura, some courts even lack enough paper to issue their rulings.

LAW SCHOOL.
The University of Burundi's law school is the primary law school in Burundi.[48] It offers a four-year undergraduate program in law but has no specialized programs in commercial law. Between 50 to 60 students per year graduate from the University of Burundi program. The law school hopes to implement, by the 2009–2010 academic year, a two-year masters program that will provide for training in specialized fields, including commercial law. The university law faculty would also like to become a resource for ongoing training of judges and magistrates, but currently lacks the resources to provide such training.

SOCIAL DYNAMICS

An ongoing and dynamic effort is in place to enact a package of new commercial laws in support of Burundi's efforts to effectively participate in the East African region. Among the laws that are in the process of enactment are the Investment Code, Commercial Code, Tax and Import Code, Mining Code, Public Finance Law, Public/Private Commerce Law, and the Competition Law. Trying to determine the status of a particular law, however, is challenging due to the lack of a centralized

47 The CNTB was created to help the courts, which had been overwhelmed by land disputes. The Commission, however, can only mediate disputes. USAID has estimated that it will take over $70 million to resolve disputes. As of June 2008, 657 cases out of the over 10,000 cases registered with the Commission had been resolved.

48 At least two private universities offer undergraduate degrees in law. The status of these degrees is not clear—private universities in Burundi are usually small, often corrupt, not always accredited, and viewed with some disdain—but at least a few graduates have gone on to become practicing lawyers.

system for collecting and reporting Burundian law. For example, during the assessment, we were informed that the new Investment Code had: recently become law; passed both houses of Parliament, but still needed the signature of the President; passed the National Assembly, but had not yet passed in the Senate; and/or stopped in one of the ministries and was waiting to be introduced to Parliament. Hopefully, the project to collect and update Burundian law will alleviate the confusion that currently surrounds the status of new laws. Furthermore, the challenge of actually passing all of these draft laws remains and could take some time yet.

While great effort has been expended to draft and enact modern commercial laws, implementation of the new laws remains a serious major challenge. For example, new bankruptcy and reorganization laws were enacted in 2006, but many potential users of the law, including the Commercial Court, were largely unaware of their existence. Despite a workshop organized by PAGE about the new laws on bankruptcy, they have yet to be used. While PAGE intends to provide workshops for all the new commercial laws once they go into effect, those workshops will apparently be one-time events. Without an ongoing system in place for training users of the new laws, the new laws cannot be effectively implemented. Furthermore, even if small and medium-sized Burundian businesses start to use written contracts, the courts need more resources to efficiently enforce those contracts. Without adequate resources, including adequate courtroom space, readily available copies of new statutes, modernized case administration, and centralized and efficient real and personal property registries, the effect of the new commercial laws will be modest at best.

As noted earlier, corruption and inefficiency in the court system are also major problems for contract enforcement. Enactment of new commercial laws will not address the core of those problems. In Burundi, like many other countries, especially countries emerging from conflict situations, there is a lack of trust and fear of corruption in government institutions. Burundi has begun to address concerns about corruption by passing an anti-corruption law and establishing an anti-corruption court and prosecution unit. However, the scope of the anti-corruption court's jurisdiction is limited to lower actors in the system. Furthermore, the post of ombudsman, which is one of the constitutional safeguards against misconduct by government officials and employees, has still not been filled.

Burundi's public servants, including magistrates and judges, are confronted with very difficult working conditions. While any position with the government is generally viewed as a good outcome for college-educated Burundians, the pay for judges and magistrates is low. Expecting ethical conduct from public servants who perceive themselves as underpaid and working without sufficient resources may be unrealistic, especially where there are cultural expectations that a government post should result in a higher standard of living. Restoration of a sense of accountability and adherence to ethical codes by magistrates and judges who are working in difficult conditions are major challenges to commercial law reform and will probably take years to achieve.[49]

RECOMMENDATIONS

- Support passage of new commercial law reforms by the end of 2009. Provide in-depth training on the new laws to the Burundian legal, banking, business, academic, and judicial communities.
- Produce a guide to doing business in Burundi in both English and French, which summarizes key points of the new laws and provides practical "how to" information about starting and maintaining a business, including how to prepare a business plan, form contracts to use with clients, how and where to register a business, and how to get various licenses and permits.
- Provide support for magistrates and judges by providing regular training, not only on substantive law, but also on case management, opinion writing, and ethics.
- Promote specialized training for magistrates from the Commercial Court by supporting interaction of the Commercial Court magistrates with judges and magistrates of other members of the EAC and COMESA, including participation in any regional training programs.
- Promote dialogue between the bench and bar, and between the Commercial Court and the Arbitration Center.

49 USAID: A Guide to Economic Growth in Post Conflict Countries at 46 (2007).

APPENDIX:

COMPILATION OF RECOMMENDATIONS

STARTING A BUSINESS	
No.	Recommendation
1.	Support and encourage a broader dialogue with the private sector on the draft commercial laws, and promote prompt passage of this new legal framework. Support implementation of these laws once passed, training of the judiciary and other public sector representatives responsible for enforcing these laws, and education of the private sector on the implications thereof.
2.	Make all commercial laws readily available in both French and English.
3.	Use USAID's business incubator project can be used as a resource for training and advising new entrepreneurs in basic business practices, including registering a business, drafting business plans, obtaining credit, keeping sound books, paying taxes, and marketing new projects. See the section on the Business Incubator in the Supporting Institutions section above for more information.
4.	Create, either within the Commercial Tribunal or in a separate agency, a dedicated office for business registration. Build the capacity of this office so that it is a location where all questions regarding business registration and the registry can be answered accurately and promptly, and publicize this office so that entrepreneurs are aware of where their questions on registration can be answered.
5.	Either within the above office, the business incubator, and/or or a separate location (public or private), create specific locations where all forms of business questions can be fielded – including questions on licensing, employment, investment, and taxation. This could be housed in the new Investment Promotion Agency or could be a joint public-private effort led by the Federated Chamber of Commerce.
6.	Build user-friendly business registration locations and/or Business Development Services centers outside Bujumbura to give access to these resources to the rest of the country.
7.	Create simple and easily understood guidelines for business registration and make these guidelines readily available. USAID's planned business incubator project could be a resource for creating and distributing such guidelines.
8.	Assist with creation of and capacity building for the new Competition Agency once the Draft Competition Law is passed to ensure that competition policy is implemented within Burundi in accordance with international best practices.
9.	Provide education, particularly to the private sector, about both competition policy and regional integration. Misunderstanding of and sensitivity to both concepts is currently widespread.
10.	Create a centralized revenue authority and assist this new body in significantly simplifying the tax system and in promoting education on tax compliance in conjunction with improved enforcement efforts.
11.	Push forward the privatization process, and promote transparency in its implementation. Educate the public and private sectors through a campaign about the benefits of privatization and the strong need for moving it forward in order to create a healthier business environment.
12.	Increase transparency in the public tender process by requiring accountability for tender decisions. This could encompass random auditing of tender decisions for compliance with open and transparent processes and technical requirements for bids.

GETTING CREDIT	
No.	Recommendation
1.	Provide capacity building assistance to the banking sector that addresses the lack of skills, especially in credit analysis, risk analysis, financial management, and IT. Address the limited ability to conduct internal training and introduce and market new products and services.
2.	Provide capacity building for the insurance sector focused on similar shortcomings to those addressed above. Assistance to both sectors could easily be combined into a single financial sector deepening project.
3.	Continue assistance to the MFI sector provided by the FORCE project, as that project is due to close in April 2009, presumably due to limited resources.
4.	Provide basic business skills training including training on the finance and credit systems. This training should include a focus on drafting a sound business plan, analyzing loan terms, and negotiating a written contract. USAID's planned business incubator project could address these challenges.
5.	Provide standardized forms and contracts. This would be a fairly cheap and simple reform that could pay large dividends in terms of convenience and efficiency.
6.	Support development of mobile banking. Burundi seems like a very plausible location for such a project as the banking sector has very limited penetration into the countryside, but 90% of the country is covered by mobile telephony. A legal and regulatory framework may have to be developed first.
7.	Promote development of regional information sharing systems, particularly for banks, the Central Bank, and MFIs to connect with counterparts in the region.
8.	Support English language training for Central Bank personnel in particular and other financial sector professionals dealing with regional issues.
9.	Assist banks in developing agricultural lending products, including technical assistance (to multiple banks and possibly MFIs) to train bankers in how to evaluate, draft, and finalize these products. USAID has already taken a first step in this direction with the recent Development Credit Authority (DCA) Agreement, which gives certain agricultural loan guarantees to Interbank Burundi, but much work remains to be done.
10.	Assist with training, equipment, and other capacity building efforts for the Land Registry. Also advise and assist on process review and potentially reorganization of the office. A reduction in fees should also be considered, as the current 3% fees are high enough to drive some potential registrees away.
11.	Develop new curricula for the law and business schools, along with programs of continuing education for legal professionals, tax authorities, and accountants. Integrate the developing new legal framework into this curricula. At a minimum, basic educational materials should be created for commercial laws.
12.	Engage the public sector (with private sector input) in a thorough review of the banking, MFI, and insurance regulations.

PROTECTING INVESTORS	
No.	Recommendation
1.	Push for the prompt passage of the Draft Public and Private Company Law and the Draft Investment Code. In the meantime, increase awareness in the private sector of the draft laws and provide representatives with an opportunity to comment on their provisions.
2.	Support implementation of these laws once passed, training of the judiciary and other public sector representatives responsible for enforcing these laws, and education of the private sector on the implications thereof, particularly with regard to corporate governance. Ensure that implementation and enforcement is predictable and standard in order to foster investor confidence.
3.	Make all commercial laws readily available in English.
4.	Assist with the creation of a dynamic Investment Promotion Agency that can be an effective and accessible source of information on all issues of importance to those looking to invest in Burundi. This should include information on the current business environment, such as information on various business sectors, as well as on applicable regulatory issues, such as business and investment registration, licensing, taxation, property, and investment incentives.
5.	Build the capacity of either the Commercial Tribunal or another body to implement and enforce existing (and future) corporate governance provisions. The body responsible for this activity should engage in building public awareness of the applicable requirements.
6.	Assist the new Federated Chamber of Commerce in developing a plan for ultimate sustainability through membership and training fees that enables the Chamber to function effectively and to offer a variety of services to its members and the business community at large.
7.	Educate the private sector on basic sound business practices and more advanced corporate governance and the benefits of each.

TRADING ACROSS BORDERS	
No.	Recommendation
1.	Modernize the Customs organization and train high-level staff in strategic planning and managerial skills. Create a professional deputy position for continuity of effort, develop a unit for planning and training, adapt the current enforcement structure to provide for a quality intelligence/investigative unit that can sufficiently control borders and prevent fraud, and train managers in supervisory, oversight, and planning skills. Reward innovations that improve facilitation and controls using measurable criteria.
2.	Establish a one-stop shop for both importers and exporters where all required authorizations can be obtained. Co-locate representatives of the various agencies administering the import/export requirements. Give them the decision making ability to issue final authorizations. Explore the potential to include current Customs processing. Lack of direct links with the bank for deposits and employment of a full risk management system will delay complete integration of import processing. Due to low trade volumes, this could be staffed on a part-time basis as long as the hours are well established and reliable.
3.	Prioritize the development of a Customs website that is user friendly and has capabilities for monitoring, updating information, and responding to queries. Although some initial planning has, many more resources should be devoted to accomplishing it as a viable solution to the ongoing problem of lack of transparency in the import-export process.
4.	Accelerate regional integration initiatives that reduce border delays and transport costs. Border controls can be simplified with integrated border management procedures whereby transporters can conclude all exit and entry procedures at one stop. Large commercial crossings should be manned 24/7, and each country should examine the use of weigh stations (Rwanda has none while there are multiple in Kenya) and unofficial road stops to try to reduce their numbers.
5.	Develop a strategy for Customs modernization relying on the principles outlined in the 2007 Customs Code. The plan should fit the national environment, contain a set of sequential steps to be taken, and provide for measurable, realistic targets. This design must incorporate the changes that will be required with regional integration. Create an office with sufficient staff to plan and oversee the development, monitor progress, and provide continuity and momentum for the process. Involve the business community in developing the implementing regulations and procedures.
6.	Employ risk management as a fundamental principle of Customs operations. Establish a risk management department within Customs and staff it with professional officers. Train them to conduct risk assessments and establish criteria to target high-risk shipments. Once completed, activate the RM module in ASYCUDA and rely on the data to generally determine Customs action on transactions. Establish expedited procedures for low-risk traders.
7.	Upgrade the skills, tools, and oversight capabilities of the Customs valuation/rules of origin office. Assist the current staff in establishing a computerized national valuation database to enable Customs to detect the high number of cases involving false invoicing. Develop a valuation policy that ensures training and monitoring of the actions of clearance officers, establishes a system of issuance of valuation rulings to the trade, and has knowledge of both regional and international rules of origin.
8.	Support the training program coordinated by the Customs IT department. Accelerate this initiative through dedication of appropriate staff and a higher level of management commitment. Ensure the curriculum provides information on regional integration efforts and its impact on processes. Offer incentives to attract knowledgeable officers to undertake the training.
9.	Streamline the OCIBU process regarding coffee exports. Complete an assessment of the current process, including a brief time-release study and determine where improvements can be made. Gauge results through concrete goals that can be measured. Involve the trade as a participant in the process which will lay the foundation for more productive partnership in the future.

TRADING ACROSS BORDERS (CONTINUED)	
No.	Recommendation
10.	Increase partnership/communication between the trade-related ministries and the trade community. Establish public-private forum with the trade ministries to exchange information and ideas. Regular meeting should also be conducted between Customs and the Customs Clearance Agents Association to discuss general issues and devise solutions. Workshops on the upcoming Customs Union implications should be held. Procedures should be mutually developed to require reporting of suspected fraudulent activities by clearance agents with results shared with the informant as a way to gain confidence in the ability of Customs to properly deal with the information.
11.	Create a trade and investment promotion organization led by or in partnership with the private sector to implement strategy to facilitate exports and investments. The planned Investment Promotion Agency could take on this role if it works closely with the private sector in doing so.
12.	Upgrade the capabilities of the Ministry of Agriculture, Department of Plant Protection. This department lacks the staff and tools to effectively administer controls of imports and exports of agricultural products. Fumigation and quarantine facilities must be put in place at the borders, technical capabilities of the inspectional staff must be upgraded, and tools must be provided to assist in the detection of problems with imported material. The staff must be trained in the international requirements for expansion of exports of agricultural products and allocated sufficient resources to guarantee proper quality controls over the growing process.
13.	Assess the viability of the Port of Bujumbura to determine if the port will offer any advantage to international transport in light of the improvements to overland transport regional integration should provide. If the result is positive, infrastructure improvement will be required to modernize the port.
14.	Develop an integrity plan or anti-corruption strategy as part of Customs reforms, including as a first step a comprehensive assessment of the current processes to identify shortcomings that present opportunities for corruption and implement approaches to address them. Outcomes must be realistic and measurable. All levels of Customs officers must be involved throughout all phases in the process. Partnership with other public institutions as well as the private sector to address this problem is essential for success.
15.	Simplify the special exemption process. Initiate a diagnosis of the current program, and design procedures to streamline the process while instituting more effective controls. Provide a consolidated list of all articles subject to exemption and establish effective means of distribution. Partner this redesign with input from the private sector.
16.	Diversify the export sector beyond coffee. Redirect marginal producers to other economic activities such as tropical fruit, vegetables, flowers, essential plants, mineral products, and services such as tourism.

ENFORCING CONTRACTS	
No.	Recommendation
1.	Support passage of new commercial law reforms by the end of 2009. Provide in-depth training on the new laws to the Burundian legal, banking, business, academic, and judicial communities.
2.	Produce a guide to doing business in Burundi in both English and French, which summarizes key points of the new laws and provides practical "how to" information about starting and maintaining a business, including how to prepare a business plan, form contracts to use with clients, how and where to register a business, and how to get various licenses and permits.
3.	Provide support for magistrates and judges by providing regular training, not only on substantive law, but also on case management, opinion writing, and ethics.
4.	Promote specialized training for magistrates from the Commercial Court by supporting interaction of the Commercial Court magistrates with judges and magistrates of other members of the EAC and COMESA, including participation in any regional training programs.
5.	Promote dialogue between the bench and bar, and between the Commercial Court and the Arbitration Center.

Nicholas Klissas
USAID/EGAT
202.712.0115
nklissas@usaid.gov

Wade Channell
USAID/EGAT
202.712.1909
wchannell@usaid.gov

Elizabeth Shackelford
Booz Allen Hamilton
703.902.4931
shackelford_elizabeth@bah.com

BURUNDI'S AGENDA FOR ACTION