



EAST AFRICAN COMMUNITY

MEETING OF THE ATTORNEYS
GENERAL/MINISTERS OF JUSTICE AND
CONSTITUTIONAL AFFAIRS

Arusha, Tanzania

15th MAY, 2015

REPORT OF THE MEETING

(Ref EAC/AG/05/2015)

UG COPY

C Secretariat

USHA

1.0 INTRODUCTION

1.1. Convening of the Meeting

The Meeting of the Attorneys General/ Ministers of Justice and Constitutional Affairs (“the Meeting”) was held on 15th May 2015 in Arusha, following the directive issued by the EAC Heads of the State at their 13th Extra-Ordinary Summit held on 13th May 2015, in Dar es-Salaam, Tanzania that directed the Secretariat to convene a

**Meeting of the Attorneys General
/ Ministers of Justice and
Constitutional Affairs to consider
and advise on the issue
pertaining to term limits within
the laws of the Republic of
Burundi on Friday 15th May 2015.**

1.1.2 Purpose of the Meeting

**The purpose of the Meeting was
to consider the issue whether or
not in terms of the Constitution
of the Republic of Burundi and**

1 1 6

the Arusha Peace and Reconciliation Agreement; H. E. President Pierre Nkurunziza is eligible for re-election after being in power for 10 years.

1.2 Participation

The Meeting was attended by the Hon. Johnston Busingye, the Attorney General/ Minister of Justice, Republic of Rwanda, Hon. Mwesigwa Rukutana, MP, Deputy Attorney General and Minister of State for Justice and

**Constitutional Affairs Republic of
Uganda.**

**The meeting was also attended
by Ms. Isabelle Kalihangabo,
Permanent Secretary/ Solicitor
General, Ministry of Justice,
Republic of Rwanda, and Ms.
Njeri Wachira, Office of the
Attorney General and
Department of Justice, Republic
of Kenya and Staff of the EAC
Secretariat.**

**The meeting noted that it was
convened as a meeting of**

UG COPY

**Attorneys General and Ministers
of Justice and not as the
Sectoral Council on Legal and
Judicial Affairs.**

1.3 Adoption of the Agenda

**The Meeting adopted the Agenda
attached hereto as *Annex I*.**

2.0 Issue of Term Limits in the Republic of Burundi

UG COPY

The meeting considered the issue of whether or not in terms of the Constitution of the Republic of Burundi 2005 and the Arusha Peace and Reconciliation Agreement 2000 (the Arusha Agreement), President Pierre Nkurunziza is eligible for re-election after being in power for 10 years.

3.0 Observations

The meeting reviewed the relevant legal instruments on the

matter including the Arusha Peace and Reconciliation Agreement for Burundi and the Constitution of the Republic of Burundi, 2005.

The Meeting observed that;

- i. Article 7(1)(a) of Protocol II of the Agreement provides that the Constitution shall provide that, save for the very first election of a President, the President of the Republic shall be elected by direct universal**

suffrage in which each elector may vote for only one candidate. The President of the Republic shall be elected by an absolute majority of the votes cast and if the majority is not obtained in the first round a second round shall follow within 15 days.

ii. Article 7(1)(a) of the Arusha Agreement is essentially providing for the procedure and modalities of handling

both the first and subsequent elections of the President. The Article clearly stipulates that except for the very first election, the President shall be elected by direct universal suffrage.

ii. Article 7(3) is to the effect that the President shall be elected for a term of five years renewable only once. It further provides that no one may serve more than two presidential terms. Article

20(10) of Protocol II of the Agreement is to the effect that the first post transition President shall be elected by the National Assembly and Senate sitting together by a majority of two-thirds of the votes.

v. It is worthwhile to note that the Arusha Peace and Reconciliation Agreement was a transition document that envisaged that a constitution for the Republic of Burundi

UG

would be promulgated to give the force of law to the principles pronounced in the Agreement.

v. Accordingly, the Constitution of Burundi was promulgated in 2005 and it embodied the principles set out in the Arusha Peace and Reconciliation Agreement for Burundi.

UG copy

i. In the constitution 2005, there are two key Articles on the matter;

(a) Article 96 provides that *“the President of the Republic is elected by universal direct suffrage for a mandate of five years renewable one time”*.

(b) Article 302 provides that *“Exceptionally, the first President of the Republic of the post-transition period is*

elected by the elected National Assembly and the elected Senate meeting in congress, with a majority of two-thirds of the members”.

Reading Article 302 together with Article 96 of the Constitution, bearing in mind Article 20(10) of Protocol II of the Arusha Agreement, the clear intention of both the framers of the Constitution and the Protocol was that the first post

UIC

transitional election of the President be held by the National Assembly and the Senate. The word "Exceptionally" in Article 302 is in reference to the mode of election.

It is clear, therefore, that President Nkurunziza's election by the National Assembly and Senate in 2005 was under Article 302 of the Constitution. The election was constitutional, notwithstanding that it was not by universal suffrage.

Uf RDU

That means, therefore, that from 2005 to 2010 President Nkurunziza served his first term under the constitution. From 2010 - 2015 he served his second term also under the Constitution.

Since both the above elections were provided for in the Constitution, in absence of a clause excluding the term running from 2005 to 2010, it is

clear that Article 96 of the Constitution precludes him from eligibility for another term, notwithstanding that his first term was not by universal suffrage.

The Attorneys General/Ministers of Justice and Constitutional Affairs, therefore, advise that in terms of the constitution of the Republic of Burundi and the Arusha Peace and

U.C. C.A.

Reconciliation Agreement, the President of the Republic of Burundi, H. E Pierre Nkurunziza is not eligible to seek re-election for another term.

Signed on this 15th day of May, 2015 at Arusha, Tanzania.

For the Republic of Uganda

For the Republic of Rwanda

For the Republic of Kenya

.....
Hon. Mwesigwa Rukutana MP
Deputy Attorney General &
Minister of State for Justice &
Constitutional Affairs

.....
Hon. Justice Johnston Busingye
Attorney General/Minister of
Justice

.....
Hon. Prof. Githu Muigai, EGH, SC
Attorney General