

FREEDOM OF ASSEMBLY IN BURUNDI

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The Constitution of the Republic of Burundi Article 32 provides for the freedom of assembly as follows: *Freedom of assembly and association shall be guaranteed, as shall freedom to form non-profit-making associations or organizations in conformity with the law.*

Article 19 of the Constitution that is the legacy of the Arusha Peace and Reconciliation Agreement in Burundi emphasizes that *the rights and duties proclaimed and guaranteed inter alia by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights shall not be limited or derogated from, except in circumstances justifiable by the general interest or the protection of a fundamental right.* This special provision allows the direct applicability of the international human rights instruments in the domestic law in Burundi.

Despite these clear statements of the Constitution in protecting the freedom of assembly, the fundamental right to freedom of peaceful assembly is framed by a very restrictive law enacted on December 5, 2013: Law on assemblies and public demonstrations. This law came into force in a context of the shrinking of the civic space in Burundi and is implemented in a way that makes peaceful assemblies quite impossible.

Article 1

“Assemblies and public demonstrations are free in Burundi.”

DEFINITION: The law does not give a clear definition of an assembly. It provides for definitions of some forms of assemblies such as demonstrations, public meeting and counterdemonstration. From these definitions, it can be drawn that an assembly is a gathering, meeting or procession of a group of people, with the purpose of making public a claim or a complaint.

According to the UN special Rapporteur on the right to freedom of peaceful assembly and of association, an “assembly” is an intentional and temporary gathering in a private or public space for a specific purpose. It includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in¹.

NOTIFICATION: Articles 4 and 7 state that public demonstrations and assemblies must be subject to prior declaration. The declaration must be submitted in writing to the competent

¹The Right to freedom of Peaceful Assembly, Best Practices Fact Sheet, <http://freeassembly.net/rapporteurpressnews/freedom-of-assembly-factsheet/>

administrative authority (Mayor, Governor of the province) four working days prior to the intended assembly. The declaration must include the identification of the members of the organizing office, the time and date of the demonstration, its purpose, its foreseeable involvement, as well as the intended itinerary of the procession or parade.

The administrative authority has 48 hours to formulate his observations and recommendations in writing. They can differ or ban the assembly if the public order could be seriously threatened. If within the 48 hours the administrative authority does not notify organizers of their negative response, the assembly is considered allowed.

An analysis of these provisions shows that a prior declaration to which a ban on the assembly can be imposed becomes rather an authorization. According to the best practices, the right to freedom of peaceful assembly does not require the issuance of a permit to hold an assembly. At most, authorities may require notification for large assemblies or for assemblies where a certain degree of disruption is anticipated. The notification process shall be simple, fast, free of charge and it shall have the only purpose of protecting the enjoyment of the freedom of assembly².

SPONTANEOUS GATHERING: The requirement of a prior declaration provided by Articles 4 and 7 leaves no room for a spontaneous gathering. Indeed, article 9 makes it clear that any assembly or gathering that does not comply with the law is unlawful and susceptible to sanction. Therefore, spontaneous assemblies are not legally allowed in Burundi.

Spontaneous gatherings are generally considered as those happening in response to an event, an incident, another gathering, or even, when an organizer (if there is one) cannot meet the legal deadline for prior notification, or when there are no organizers at all. These assemblies often occur at the same time as the triggering event, and the capacity to keep them spontaneous is crucial, for any lateness would weaken their intended message³.

In his compilation of best practices, the UN special Rapporteur on the right to freedom of assembly and association recommends that spontaneous assembly shall be recognized in law, and exempted from prior notification. He emphasizes that concerns about the free flow of traffic - whether during planned or spontaneous assemblies - should not automatically take precedence over freedom of peaceful assembly. The State has a duty to design operating plans and procedures to facilitate the exercise of the right of assembly, including rerouting pedestrian and vehicular traffic⁴.

BAN ON COUNTER-DEMONSTRATIONS: Not only are counter-demonstrations banned, they are criminally punishable by a fine. Article 18 par.2 imposes a fine of 100,000 to 500,000 Burundi francs (\$60 to \$300) on counter-demonstrators.

However, everyone has a right to assemble as a counter-demonstrator to express disagreement with another demonstration. What is crucial in such circumstances is to protect the right of each group to enjoy freedom of peaceful assembly. Instead of banning this kind of demonstration, there should be an emphasis on the state's duty to take specific measures to

² The Right to freedom of Peaceful Assembly, Best Practices Fact Sheet.

³ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, second edition, Warsaw/Strasbourg, 2010, page 67

⁴ The Right to freedom of Peaceful Assembly, Best Practices Fact Sheet.

prevent the disruption of the original demonstration while protecting the right of the counter-demonstrator⁵.

RESTRICTIONS ON ASSEMBLY

Public order: Article 10 gives discretionary power to the administrative authority notified to defer or ban an assembly if maintaining public order absolutely demands it. This absolute necessity of maintaining public order is not well defined by the law. It does not clarify circumstances in which the administrative authority can lawfully defer or ban an assembly on the grounds of maintaining public order.

Article 12 emphasizes that the competent administrative authority can mandate a delegate in a public meeting that has a special power to dissolve the meeting if maintaining public order absolutely demands it.

Maintaining public order is one of the legitimate reasons provided by international human rights instruments to restrict freedom of peaceful assembly. However, this notion should not be interpreted broadly and called upon even in the event of a hypothetical disturbance of peace. The authority calling upon public order should produce material evidence that implies an imminent public disturbance. This argument should only be brought up when there is irrefutable and verifiable proof that the participants themselves will resort to violence⁶.

The right to freedom of peaceful assembly is not an absolute right and can be subject to certain restrictions. But these restrictions are the exception, not the rule. Any restrictions must not impair the essence of the right, must be prescribed by law and must be proportionate and necessary in a democratic society⁷.

Time constraint: Article 11 provides that public assemblies and demonstrations cannot begin prior to 6am or extend beyond 6pm. The competent administrative authority can authorize an assembly beyond this time limit if organizers request it in writing. The law does not make any difference between processions and parades performed in opened places and the meetings held in closed areas.

Restricting the right to freedom of assembly at night makes sense in certain situations for public demonstrations in poorly lit locales, and for assemblies that may cause nighttime disturbances. However, certain assemblies may be held after 6pm in secure and enclosed places. As long as assemblies are presumed peaceful where the law is concerned, there is no reason not to hold them at night.

LIABILITY OF THE ORGANIZER: According to article 13, coordinating and monitoring assemblies and demonstrations falls to the organizing office composed at least of 3 people, which is also responsible for policing the assembly and maintaining public order. The last paragraph of Article 13 states that members of the organizing office may incur civil action for damages caused, and criminal action for offenses committed during assembly activities, if

⁵OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, second edition, Warsaw/Strasbourg, 2010, page 66.

⁶OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, second edition, Warsaw/Strasbourg, 2010, page 51

⁷ The Right to freedom of Peaceful Assembly, Best Practices Fact Sheet

assembly or demonstration organizers turn out to be at fault. The law makes it clear that organizers may be held liable for actions committed by participants if they fail to disperse the assembly broken out in violence.

The primary responsibility for maintaining public order in this type of event should not fall on people who don't possess the position, the training, or the means to achieve it. It is an extremely important legal gap and an impediment to the exercise of the right to freedom of assembly. Indeed, in a framework where a spontaneous assembly is not permitted, and where all assemblies are subject to prior declaration identifying 3 official organizers, it is difficult to find people who will commit themselves to bear the responsibility of replacing the administration and police and suffer the consequences in case of failure to control the crowd. Collaboration between organizers, police and administrative authorities to maintain public order in an assembly or a demonstration is the only key to the full enjoyment of the right to freedom of assembly.

RECOURSE MECHANISMS: According to article 5, assembly organizers possess both a hierarchic and a judicial recourse to appeal an unfavorable decision concerning a peaceful assembly. The administrative authority has 48 hours to reply to an appeal. However, the law is not specific as to time period within which the administrative court must render its ruling. The law merely states that the court shall rule according to the emergency procedure. When the law uses vague terms for such a sensitive subject matter, it can constitute a breach for violations of the right to freedom of assembly.

States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses, including those related to assembly rights. Where the right to freedom of peaceful assembly is unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation. The law should also provide for criminal and disciplinary sanctions against those who interfere with or violently disperse public assemblies⁸.

IMPLEMENTATION PRACTICE: Since the law was enacted in Burundi, the freedom of assembly was denied to individuals and civil society organizations, particularly those involved in the promotion of accountability, human rights and good governance. Almost all declarations of assembly submitted by those organizations have been formally banned on the grounds of unlawful motives or by the use of the police force.

The language used by administrative authorities when responding to the organizers of peaceful assemblies reveals that in practice, the prior declaration is in reality an authorization.

In his June 18, 2014 letter, the Minister of the Interior wrote, in response to an administrative appeal of a demonstration banned by the Mayor of the town of Bujumbura: "...and therefore, the procession that you intend to hold on June 20, 2014 **cannot be permitted under any circumstances**"⁹.

The Mayor of Bujumbura, responding to prior declaration filed by the president of OLUCOME¹⁰, wrote: "...I regret to inform you that, following the animated press conference

⁸ The Right to freedom of Peaceful Assembly, Best Practices Fact Sheet.

⁹ Letter from the Minister of the Interior No. 530/1161/CAB/2014 to Mr. Vice President of FORSC.

¹⁰ The Observatory for the Fight against Corruption and Economic Embezzlement (OLUCOME) planned to hold a demonstration for the commemoration of the 5th anniversary of Ernest Manirumva's assassination, former vice-president of the organization.

by the Attorney General of the Republic on April 4, 2014 regarding the Ernest MANIRUMVA file, which exposes the sentiment of certain civil society organizations, including OLUCOME to seek to confuse justice, **this authorization cannot be granted**¹¹.

The administration often violates the exercise of the right to freedom of peaceful assembly without providing any written motives and with the use of police force. Although Burundian law only provides public order as a reason to restrict freedom of assembly, in practice, the administration cleverly invents reasons to ban even a properly registered assembly.

On February 4, 2014, police prevented the Bar Association of Burundi from holding its general assembly with a verbal notice that was as unfounded as it was illegal stating that the assembly was not **permitted** by the Mayor of Bujumbura¹². Yet, statutory assemblies of organizations are explicitly excluded from the scope of application of the law on public assemblies and demonstrations, as per Article 2.

On February 18, 2014, police once again denied the Bar Association of Burundi to jointly hold a training seminar with the French Bar Associations without a written motive, because the police simply prohibited those lawyers to access the training room. Although the law does not require any form of statement for trainings that are scientific in nature, the Bar had notified in writing the Mayor of Bujumbura about the training as a common courtesy¹³.

In his response to the administrative appeal filed by the Forum for the Strengthening of Civil Society (FORSC) for the march in support to Pierre Claver MBONIMPA¹⁴, the Minister of the Interior invoked the pending criminal case (Public Prosecutor vs Pierre MBONIMPA) to ban the demonstration under the following terms: *“Indeed, you claim to support Mr. Pierre Claver MBONIMPA in an ongoing judicial case before the court. It would therefore be wise to show patience and to allow the court time to render its ruling instead of distracting the public; consequently, the procession you intend to hold on June 20, 2014 cannot be permitted under any circumstances”*¹⁵.

The Mayor of Bujumbura recalled a press conference of the Attorney General of the Republic to deny a demonstration declared in good order: “...I regret to inform you that following the animated press conference by the Attorney General of the Republic on April 4, 2014 regarding the Ernest MANIRUMVA case, which exposes the attitude of certain civil society organizations as well as that of the head of OLUCOME to seek to confuse justice, this authorization cannot be allowed”¹⁶.

Some other examples illustrate the practice where the exercise of freedom of assembly is concerned: The decision of the Mayor of Bujumbura n°53/17/08 of 18th March 2014 regulates the mass sport in Bujumbura town. The decision bans mass sport Saturday before 10:30 am and restricts the jogging to specific public squares. Only a registered sport organization can seek authorization to competent authority prior to jogging on public ways.

¹¹ Letter from the Mayor of Bujumbura No. 531.17/618/CAB/2014 dated April 4, 2014 to Mr. Gabriel Rufyiri, President of OLUCOME.

¹² For a reminder of the day's event (including the interview of President of the Burundi Bar Association), see: http://www.youtube.com/watch?v=T3P_7wxGLkg

¹³ Amnesty International : Rapport sur le Burundi, Le verrouillage, lorsque l'espace politique se rétrécit, page 15 <http://reliefweb.int/sites/reliefweb.int/files/resources/Burundi%20-%20le%20verrouillage.pdf>

¹⁴ Pierre Claver MBONIMPA is a human rights defender in prison at the time this project was drafted, and president of the Association for the protection of prisoners' human rights.

¹⁵ Letter from the Minister of the Interior No. 530/1161/CAB/2014 dated June 18, 2014 to Mr. Vice President of FORSC.

¹⁶ Letter from the Mayor of Bujumura No. 531.17/618?CAB/2014 dated April 4, 2014 to Mr. Gabriel RUFYIRI, President of OLUCOME.

Despite the fact that article 5 of the Law No. 1/28 of 5 December regulating demonstrations and public meetings mentions that organizers have both hierarchical and judicial review mechanism to challenge an unfavorable decision to holding a peaceful assembly, these mechanisms reveal themselves not to be effective.

The practice has shown that the absence of time constraints on the Administrative Court process is used to jeopardize the right to freedom of peaceful assembly. On June 26, 2014, the Forum for Strengthening Civil Society filed an appeal before the Administrative Court against the June 12 decision No. 531.17/1015/CAB/2014 by the Mayor of Bujumbura. Although the law provides that the Administrative Court adjudicate such a case according to the emergency procedure, the first public hearing was planned for over 2 months after the case was filed and it took 5 months for the respondent to submit the response to FORSC's submissions. Six month later, the court has not yet delivered any ruling about the case.

[Burundi police stop prominent anti-graft activist on protest march, September 25, 2014](#) Burundi police stopped a well-known anti-graft activist on Thursday September 25, 2014 from marching to a government ministry in the capital to protest against rising corruption before next year's election. Gabriel RUFYIRI, head of the anti-corruption board (OLUCOME), said he was stopped by anti-riot police as he marched from his home to the ministry of justice where he intended to stage a two-day hunger strike.

"We have never been allowed to demonstrate," the campaigner told Reuters by phone afterwards. "They sent me home by force and I am not allowed to go out. It is like I am under house arrest," said the activist who has previously been jailed for speaking out against corruption. Police spokesman Hermenegilde HARIMENSHI said the anti-graft activist was stopped because what he was doing was illegal.

[Burundi: Halt Crackdown on Opponents, Critics, July 16, 2014](#) On March 8th 2014, police used violence to disperse a group of young people from the Movement for Solidarity and Democracy (MSD) party when they were peacefully jogging in the streets of Bujumbura, the capital of Burundi. Many of them were arrested and several others were injured. One opposition leader said that using tear gas to disperse peaceful people of the opposition, beating them and arresting them is a government maneuver to forbid the opposition to speak. Burundian police spokesman Hermenegilde HARIMENSHI explained that police received information that those young people had planned to disturb security.

On March 21, the High Court in Bujumbura sentenced 21 defendants to life in prison, 10 defendants to 10 years in prison, and 14 defendants to five years. Twenty-two defendants were acquitted. Three younger defendants, all about 17 years old, were tried by a separate chamber for minors on March 19 and sentenced on March 26 to two years in prison. "The trial of opposition party members was blatantly unfair and seriously flawed from beginning to end," said Daniel Bekele, Africa director at Human Rights Watch.

Following these events, the Mayor of Bujumbura took the **[decision n°53/17/08 of 18th March 2014](#)** regulating the mass sport in Bujumbura town. (Available in French only).

Arrests made as Burundi police disperse opposition party meeting, February 16, 2014 On February 16, 2014, riot police stopped a meeting of the opposition party UPRONA by firing teargas and clashing with participants. Members arriving for the meeting to vote on party leaders found their way blocked and at least three of them were wounded as they tried to force their way through the cordon.

Burundi's interior Minister, Edouard Nduwimana in charge of political party regulation explained that police had intervened to stop an illegal gathering, without going into further details. But UPRONA officials accused the authorities of trying to spread divisions in the party and prevent the election of leaders who have been involved in a political row with Burundi's President Pierre NKURUNZIZA and its party CNDD-FDD. The UPRONA party filed a case before de [East African Court of Justice](#) to challenge the arbitrary decision of the Interior Minister on the grounds that UPRONA is a political party lawfully established in Burundi with full right to assemble and elect it's leaders (Application N°13 of 2014).

On 28th November 2014, the court granted the applicant an Interim Inter-Parte order saying that: "In our considered view, taking into account all the aforesaid matters, we have no hesitation in terms of Article 39 of the Treaty (The Treaty of establishment of the East African Community) and Rule 73(1) of the Rules in issuing an interim order pending hearing and determination of the Reference as we hereby do and that the UPRONA Central Committee elected in 2009 convenes its meeting in accordance with the laws of the Republic of Burundi and as resolved by the Supreme Court of Burundi in2012". See the ruling [here](#).