

Civil Society in Africa

**ANALYSIS OF THE LEGAL FRAMEWORK
FOR CIVIL SOCIETY IN BURUNDI:
CASE OF THE DECEMBER 2013 LAW
ON PUBLIC DEMONSTRATIONS AND ASSEMBLIES**

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Introduction

Freedom of peaceful assembly is a fundamental right provided by international instruments relating to human rights, and is present in the constitutions of nearly every country in the world.

The enjoyment of freedom of peaceful assembly must be guaranteed to individuals and groups of individuals, associations – informal or those with legal personality. This right has been recognized as one of the pillars of a healthy and functional democracy. Its exercise allows all persons living in a country to have the opportunity to express their opinions.²

Being able to hold peaceful assemblies is of crucial importance for the work of civil society actors, including those working to promote the fulfillment of economic, social, and cultural rights, for it allows them to publicly convey their message in order to achieve their goals. In several countries, however, the right to hold peaceful assemblies has been denied or restrained by state authorities in violation of international human rights standards. As a result, the right to take part in the conduct of public affairs, as ratified by Article 25 of the International Covenant on Civil and Political Rights (ICCPR), is restrained.³

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² OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, second edition, Warsaw/Strasbourg, 2010, p. 23.

³ United Nations, General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/23/39, § 43.

The right to freedom of assembly in Burundi has been provided by different constitutions. However, the enjoyment of this right has always been restrained by public authorities through laws regulating public assemblies, laws that were extremely restrictive relative to positive provisions given by international legal instruments relating to human rights. The most recent one is the December 5, 2013, law 1/28 regulating public demonstrations and assemblies.

In our project, we provide an in-depth analysis of the provisions of that law with respect to fundamental principles espoused by international instruments and with regards to the law's practice.

The paper is divided into two chapters. The first is dedicated to general aspects of the right to freedom of assembly in Burundi and includes a historical overview (section 1) and the legal framework (section 2). The second chapter, consisting of the analysis of the law itself, includes a global analysis of the December 5, 2013, law (section 1) and various restrictions on freedom of assembly (section 2).

Throughout this analysis, we provide proposals for recommendations that support the reform of the present law.

Context

This project was achieved in the framework of a research scholarship granted by the American non-governmental legal organization International Center for Not-for-Profit Law (ICNL) based in Washington, DC, in collaboration with United States Agency for International Development (USAID). ICNL is an international organization that facilitates and supports the development of a favorable legal framework for the civil society sector. ICNL provides technical assistance through research and education to support the development of a favorable legal framework for civil society in many countries around the world.

It is in this context that ICNL supports legal practitioners through research grants so that they may contribute to law reform with the goal of creating an environment that allows the enjoyment of fundamental rights and freedoms. The organization has been working for a long time on the freedom of association and is extending its involvement on the freedom of peaceful assembly.

The project was conducted partly in Burundi on topics concerning Burundian legislation and practices, and then in Washington, DC on matters concerning international human rights law.

Methodology

The project was conducted following the documentary method that involves using publications, articles, and reports, as well as national and international legal tools: international conventions, the Constitution of the Republic of Burundi, the Arusha Peace and Reconciliation Agreement, and legislative texts.

In addition, we have consulted Burundian civil society organization leaders who sat with us and provided data on matters regarding freedom of peaceful assembly practices.

Finally, the project relies on information provided by the ICNL and the European Center for Not-for-Profit Law (ECNL) staff members, who shared experiences and good practices in the countries in which they operate.

I. Freedom of Assembly in Burundi

1. Historical overview

The evolution of the right to freedom of assembly has been strongly influenced by Burundi's political path since its independence from Belgian colonization. Although the various constitutions⁴ that governed the country have all provided for the right to freedom of assembly, there has always been a gap between the text and the people's actual enjoyment of the right.

After gaining independence in 1962,⁵ Burundi adopted a constitutional monarchy regime with a constitution greatly inspired by the Universal Declaration of Human Rights. The monarchy was ended after four years by a military coup d'état on November 28, 1966. The country has since known various military regimes⁶ deeply rooted in the ideology of the single party in power, UPRONA.⁷ The party outlined the overall political orientation of the nation and inspired state action. In this political context, all the principles governing a democratic society were completely nonexistent.

The democratization process in Burundi started around 1989, following the political transformations happening in Europe after the fall of the Berlin wall. During the La Baule conference in 1990, former French President François Mitterrand called for African heads of state to follow the example set by western countries and begin the democratization process lest they suffer economic and political sanctions from the international community.⁸

A constitutional commission was put in place in March 1991, its main function being the democratization of political life in the country. A new constitution was enacted in March 1992 recognizing political pluralism and the separation of powers, while proclaiming civil rights and public freedoms. Article 28 of this constitution declares: "freedom of peaceful assembly and association is guaranteed under the condition set by law."⁹

Burundi did not enjoy the benefits of democracy for long, for in October 1993, an unprecedented civil war struck the country following the assassination of the first democratically elected president, Melchior Ndadaye.

On July 25, 1996, a military coup suspended the 1992 Constitution, and subsequently banned the exercise of public freedoms, including in particular the right to freedom of peaceful assembly.

⁴ See the various constitutions that governed Burundi: www.uantwerpen.be/en/faculties/iob/research-and-service/centre-great-lakes/dpp-burundi/constitution/aper-u-hist-const/.

⁵ Burundi was under German rule prior to World War I, and under Belgian rule from 1918 to 1962.

⁶ Lieutenant Général Michel Micombero, 1966-1976 ; Colonel Jean Baptiste Bagaza, 1976- 1987; Major Pierre Buyoya, 1987-1993.

⁷ UPRONA: Union pour le Progrès National (Union for National Progress), the party that led the country to its independence.

⁸ François Mitterrand, speech at the La Baule conference, http://www1.rfi.fr/actufr/articles/037/article_20103.asp.

⁹ Article 28 of the Constitution of the Republic of Burundi of March 12, 1992, <http://confinder.richmond.edu/admin/docs/localburundi2.pdf>.

On August 28, 2000,¹⁰ after long periods of negotiations mediated first by Mwalimu Julius Nyerere, then by Nelson Mandela, the Arusha Peace and Reconciliation Agreement in Burundi was signed by Burundian political actors. The Arusha Agreement advocated the enactment of an inclusive constitution recognizing people's rights and freedoms.

Thus, the March 18, 2005, Constitution still in effect today was born. These two fundamental texts recognize the right to freedom of peaceful assembly as one that all persons must fully enjoy in Burundi.

2. *Legal framework of the right to freedom of peaceful assembly*

In this section we will consider legal texts, including international legal instruments, the Arusha Peace and Reconciliation Agreement in Burundi, and the March 18, 2005, Constitution of the Republic of Burundi.

A. **Regional and international legal instruments**

Burundi is party to relevant international legal instruments concerning human rights such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child.

In terms of regional obligations, Burundi is party to the African Charter on Human and Peoples' Rights and the Protocol Establishing the African Court on Human and Peoples' Rights. Furthermore, Burundi has recently joined the East African Community, whose basic principles, among others, are good governance, respect of the principles of democracy, rule of law, responsibility, transparency, social justice, equal opportunity, gender equality, as well as the recognition, promotion, and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

The table below contains legal instruments, provisions relevant to the right to freedom assembly, and Burundi's dates of accession to the treaties.

TREATY	PROVISIONS RELATING TO FREEDOM OF ASSEMBLY	DATE OF ACCESSION
INTERNATIONAL INSTRUMENTS		
Universal Declaration of Human Rights	Article 20 (1): <i>Everyone has the right to freedom of peaceful assembly and association.</i>	December 10, 1948

¹⁰Arusha Peace and Reconciliation Agreement in Burundi, <http://www.issafrika.org/AF/profiles/Burundi/arusha.pdf>

International Covenant on Civil and Political Rights	Article 21: <i>The right to peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.</i>	May 9, 1990
International Covenant on Economic, Social and Cultural Rights	Article 8: <i>The States Parties to the present Covenant undertake to ensure: d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.</i>	May 9, 1990
Convention on the Rights of the Child	Article 15: <i>1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.</i>	October 19, 1990

REGIONAL INSTRUMENTS		
African Charter on Human and Peoples' Rights	Article 11: <i>Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.</i>	July 28, 1989
Treaty Establishing the East African Community	Article 6: <i>The fundamental principles that shall govern the achievement of the objectives of the Community shall include: d) ...the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;</i> Article 7, 2. <i>The Member States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.</i>	July 1, 2007

B. The Arusha Peace and Reconciliation Agreement in Burundi

Seven years after the outbreak of civil war, political actors, with the help of the international community, reached a historic agreement that led to the end of the conflict in Burundi: the Arusha Peace and Reconciliation Agreement in Burundi.

In the chapter entitled “Nature and Historical Causes of the Conflict,” the agreement states that since independence and throughout the different regimes, a number of constant phenomena have given rise to conflict in Burundi: deliberate killings, widespread violence, and exclusion.¹¹

¹¹ Arusha Peace and Reconciliation Agreement in Burundi: Protocol I, Chapter I, Article 3, 1 <http://www.issafrica.org/AF/profiles/Burundi/arusha.pdf>.

In order to end these phenomena, parties to the agreement committed to adhere to the principles of rule of law, democracy, good governance, pluralism, respect of fundamental rights and freedoms of the individual, unity, solidarity, gender equality, mutual understanding, and tolerance between the various political and ethnic components of the Burundian people.

Thus, the Arusha agreement 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 justifiable circumstances acceptable in international law and set forth in the Constitution.¹²

Moreover, point 14 of the previously cited article of the Agreement provides for freedom of assembly under the following terms: "Freedom of assembly and association shall be guaranteed, as shall freedom to form non-profit-making associations or organizations in conformity with the law."¹³

In light of the above, it is clear that the Arusha Agreement has viewed the rights and freedoms proclaimed by international legal instruments, including the right to freedom of peaceful assembly, as one of the solutions to preventing recurrence of the Burundian conflict. The Arusha agreement remains a form of social contract that inspires political life in the country.

C. Constitution on the Republic of Burundi (March 18, 2005 Law No. 1/010)

The Constitution of the Republic of Burundi as enacted on March 18, 2005, embodies the implementation of recommendations stated in the Arusha Peace and Reconciliation Agreement.

The provisions concerning the rights to freedom of assembly provided by the Agreement have been integrated verbatim in the Constitution. Articles 19 and 32 of the Constitution pick up the dispositions provided above, respectively. The major innovation of the current constitution of the Republic of Burundi is the incorporation of international legal instruments into domestic law, facilitating their applicability without any other implementing measure.

D. Previous legislation on freedom of assembly

Freedom of assembly has been regulated by specific laws since the colonial period. However, rather than protecting and promoting the right to freedom of assembly, these texts have had the common goal of controlling and in a number of cases preventing individuals from fully enjoying this freedom. Their wording speaks volumes. Rather than regulating peaceful assemblies and gatherings, they regulate "demonstrations and public meetings."

These texts include Order No. 111/29 of Rwanda-Urundi, dated January 31, 1959, regulating public demonstrations and meetings; Order No. 111/6 of Rwanda-Urundi, dated

¹²Arusha Peace and Reconciliation Agreement in Burundi, Protocol II, Chapter I, Article 3, 1, <http://www.issafrica.org/AF/profiles/Burundi/arusha.pdf>.

¹³ Arusha Peace and Reconciliation Agreement in Burundi, Protocol II, Chapter I, Article 3, 14, <http://www.issafrica.org/AF/profiles/Burundi/arusha.pdf>.

January 18, 1962, regulating public gatherings; Decree No. 100/187/91, dated December 31, 1991, regulating public demonstrations and meetings.

The first chapter provides only a broad picture of the regulation of the right to freedom of assembly in Burundi. The remainder of the work focuses mainly on the current law on assemblies and public demonstrations. The objective is to show the extent to which this law complies with international standards regarding peaceful assemblies, both in regulation and in practice.

II. Analysis of the December 5, 2013, Law on Assemblies and Public Demonstrations

The root of the right to freedom of assembly can be found in regional and international legal instruments, as well as in the case law of the supervisory bodies of these treaties. The other root is in the constitution, which contains positive and protective provisions for the right to freedom of assembly.

However, the provisions in the constitution are often too broad to allow a just and effective implementation of the right to freedom of assembly. The vagueness of these provisions can easily lead to abuses of power by the authorities responsible for implementing this right. A law specifically regulating the exercise of freedom of assembly could be a solution to this problem.

Although nothing in the international legal instruments requires States to enact specific laws on freedom of assembly, such legislation can tremendously help protect the right against arbitrary administrative interference. Such legislation can in particular serve as a guide in the decision process by the administrative authorities and point out the circumstances in which this right may be hindered.

This research project therefore assesses whether the December 5, 2013, law on public assemblies and demonstrations is consistent with the special purpose of such a law, according to the international standards applicable concerning regulation of the right to freedom of assembly.

1. Protection or restriction of the right to peaceful assembly? Overall analysis of the text

This section is devoted to the form and content of the text in terms of principle, procedure, restrictions, and sanctions. This introductory analysis seeks to comprehensively deal with the content of the law and its tendency to protect or restrict the right to freedom of peaceful assembly in Burundi.

A. Title of the law

The law is entitled “The December 5 law No 1/28 regulating public demonstrations and assemblies.” The law clearly targets specific categories of gatherings of people, namely public demonstrations and assemblies. We believe that the law should have a title that encompasses all possible forms of gathering to comply with international standards on the right to freedom of assembly.

B. Architecture of the legal text

The text contains five chapters in total: a chapter on principles and definitions (3 articles); two chapters on procedure and restrictions (12 articles); one chapter on criminal and administrative sanctions (13 articles); and a chapter relating to final provisions (2 articles).

Where principles are concerned, it should be noted that the law only discusses one principle. Article 1 provides that: “public assemblies and demonstrations are free in Burundi.” Other than this lone statement in favor of the right to freedom of assembly, the remainder of the text consists of restrictions, administrative procedures governing these restrictions, and criminal and administrative sanctions.

In view of the above, and generally speaking, it is apparent that the law restricts the right to freedom of assembly more than it protects it.

C. General recommendations

- The law should be entitled: “The December 5, 2013 law on peaceful assemblies and gatherings in Burundi.”
- The law should provide principles ensuring the protection of the right to freedom of assembly articulated in the international instruments relating to human rights.
- The law should contain more protective provisions and fewer restrictions and sanctions.

2. *Restrictions on the right to hold a peaceful assembly*

Article 21 of the International Covenant on Civil and Political Rights guarantees the right to freedom of peaceful assembly under the following terms:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Burundi is party to the ICCPR. Moreover, Article 19 of its Constitution provides that all the international instruments relating to human rights are integral parts of the Constitution of the Republic of Burundi, and that the fundamental rights proclaimed by these instruments must not be subjected to any restriction or exemption, except in certain circumstances justifiable by public interest or the protection of a fundamental right.

The International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the Convention on the Rights of the Child provide legitimate reasons for restriction of a peaceful assembly. No restriction other than those stipulated in these provisions shall be prescribed by national law. Indeed, these restrictions themselves should be interpreted more restrictively to avoid abuses.

The Special Rapporteur on the right to peaceful assembly and the freedom of association reminds in his A/HRC/23/39/report that whenever authorities decide to restrict an assembly, they should provide assembly organizers, in writing, with “timely and fulsome reasons” which should

satisfy the strict test of necessity and proportionality of the restrictions imposed on the assembly pursuant to legitimate aims.¹⁴

The December 5, 2013, law provides a number of restrictions on the right to freedom of peaceful assembly:

- Prior declaration: Articles 4 and 7
- De facto ban on spontaneous gatherings: Articles 4 and 7 read in conjunction with Article 9
- Discretion on the part of the administration to ban any peaceful assembly: Articles 5 and 8
- Restrictions on recourse mechanisms: Article 5
- Time constraint: Article 11
- Responsibility of organizers to maintain public order during peaceful assemblies: Article 13
- Criminal and administrative sanctions: Articles 14 to 26
- Repression of counter-demonstrations: Article 18 paragraph 2

A. Prior declaration

Problem: Articles 4 and 7 provide that public demonstrations and assemblies must be subject to prior declaration. 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, and the intended itinerary of the procession or parade.

Analysis: The Special Rapporteur on the right to peaceful assembly and freedom of association believes that the exercise of fundamental freedoms should not be subject to prior declaration to the authorities, but rather to a process of prior notification in order to allow public authorities to facilitate the exercise of the right to peaceful assembly, to ensure public safety and order, and to protect the rights and freedoms of the rest of the population. This notification should undergo an assessment of proportionality that is not unduly bureaucratic, and be submitted within a period of time (48 hours, for example) determined prior to the scheduled date of the assembly.¹⁵

The law being analyzed does not explicitly state the need for the declaration. Although the idea of protecting the right to peaceful assembly cannot entirely be excluded, it is apparent that the law seeks to control and restrict the right to freedom of assembly. This claim can be made from the fact that, by law, the requirement of a prior declaration is directly linked to the

¹⁴ United Nations, General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, § 48, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/23/39&referer=/english/&Lang=F.

¹⁵ United Nations, General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, § 47, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/23/39&referer=/english/&Lang=F.

ability of the competent authority notified to either defer the assembly or ban it altogether. Furthermore, a prior declaration leading to a possible ban on the assembly becomes an authorization. Indeed, the law does not indicate the benefit of the information contained in the declaration. It can therefore be used to ban a peaceful assembly on the basis of its purpose, its organizers, its location, or the people planning to attend.

According to the Special Rapporteur, a notification should be considered overly bureaucratic if one of the following points is imposed on the organizers: that more than one organizer's name be mentioned; that only registered organizations be considered capable of organizing a gathering; that official identification documents such as passports or ID cards be presented; that details concerning the identity of other participating persons (members of security services, for example) be provided; that reasons for the gathering be specified, with respect to the principle of non-discrimination; and that the number of participants be stated, which is difficult to predict.¹⁶

Practice: Prior declaration operates as a prior authorization in the practice of the administration in Burundi.

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*"¹⁷ (emphasis added).

In response to a prior declaration by the president of OLUCOME,¹⁸ the Mayor of Bujumbura wrote: "...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 file, which exposes the sentiment of certain civil society organizations, including OLUCOME to seek to confuse justice, *this authorization cannot be granted*"¹⁹ (emphasis added).

Furthermore, prior declaration (authorization) is required to exercise the right to freedom of assembly and all other forms of peaceful assembly. It must contain all the information provided by Articles 4 and 7 lest it be deemed inadmissible by the administrative authorities.²⁰

Recommendation: Prior declaration as provided by law and interpreted by the administration goes against Articles 19 and 32 of the Constitution of the Republic of Burundi and Article 21 of the ICCPR. Reform is necessary to differentiate gatherings that may pertain to the declaration and those that may not.

- A prior declaration must be required only for demonstrations of a great scale. Above all, it must serve the legitimate reason of ensuring public safety and order for peaceful assemblies.

¹⁶ Likewise, par. 54.

¹⁷ Letter from the Minister of the Interior No. 530/1161/CAB/2014 to Mr. Vice President of FORSC.

¹⁸ The Observatory for the Fight against Corruption and Economic Embezzlement (OLUCOME) planned to hold a demonstration for the commemoration of the fifth anniversary of Ernest Manirumva's assassination, former vice-president of the organization.

¹⁹ Letter from the Mayor of Bujumbura No. 531.17/618/CAB/2014 dated April 4, 2014, to Gabriel Rufyiri, President of OLUCOME.

²⁰ See FORSC's letter No. Ref 121/7/FORSC/2014 dated July 26, 2014, to the Mayor of Bujumbura.

- It should be a simple letter indicating intent to exercise the right to freedom of peaceful assembly and requesting protection of the assembly by the administration and the police.
- Where a declaration is required, it must not be interpreted as an authorization.

B. Spontaneous gathering

Problem: The requirement of a prior declaration provided by Articles 4 and 7 leaves no place for a spontaneous gathering. Indeed, Article 9 underlines that any assembly or gathering that does not comply with the law is unlawful and susceptible to sanction.

Analysis: The requirement of a prior declaration should not be so strict as to prohibit a demonstration or a spontaneous assembly. Spontaneous gatherings are generally considered as those occurring 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 message.²¹

Freedom of association is an intrinsic right to human beings, and its exercise can only be conditioned by an administrative procedure in the event of special circumstances specifically defined by legal provisions.

Practice: Spontaneous assemblies are not possible in Burundi because a prior declaration is required.

Recommendation: We propose reforming the law to provide the possibility for spontaneous gatherings to be conducted.

C. Discretion of the administration to ban a peaceful assembly

Problem: Articles 5 and 8 give discretionary power to the administrative authority notified to defer or ban an assembly if maintaining public order absolutely demands it.

Analysis: Maintaining public order is one of the legitimate reasons provided by Article 21 of the ICCPR to restrict freedom of peaceful assembly. However, this notion should not be interpreted so broadly as to allow restrictions when a disturbance of peace is merely hypothetical. The authority should produce material evidence demonstrating an imminent public disturbance.

According to international standards, restriction of the right to freedom of assembly on grounds of maintenance of public order should only be invoked when there is irrefutable and verifiable proof that the participants themselves will resort to violence.²²

The Special Rapporteur reminds in his report on the right to freedom of peaceful assembly and association that the exercise of the right to freedom of peaceful assembly can only be subject to restrictions “that are in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” In

²¹ OSCE/ODIHR, op. cit., 67.

²² Likewise, 51.

this context, he emphasizes once again that freedom must be the rule and restriction the exception.²³

Practice: The administration often violates the exercise of the right to freedom of peaceful assembly. Although Burundian law provides only public order as a basis for restricting freedom of assembly, in practice the administration invents reasons to ban even a properly registered assembly. This practice violates three principles: the principles of legality, proportionality, and good governance.

According to the principle of legality, all restrictions imposed must have a legal basis and comply with international legal instruments on human rights. Administrative authorities should not invoke justifications other than those explicitly provided by law. Moreover, the law must be specific enough to allow individuals to assess what conduct may constitute a violation as well as the consequences.²⁴

Where the principle of proportionality is concerned, any restriction imposed on freedom of assembly must be proportional to the legitimate goal sought by the administration.²⁵

As to the principle of good governance, restrictions imposed on an assembly should be promptly communicated in writing to the organizers to allow them to appeal the decision to an independent court that would give a ruling before the date of the event.²⁶

A few examples illustrate the practice:

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 Bujumbura.²⁷ 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 basis, because the police simply prohibited those lawyers from gaining access to the training room. Although the law does not require any form of statement for trainings that are scientific in nature, the Bar had notified the Mayor of Bujumbura about the training in writing as a courtesy.²⁸

In his response to the administrative appeal filed by the Forum for the Strengthening of Civil Society (FORSC) for the march in support of Pierre Claver Mbonimpa,²⁹ the Minister of

²³United Nations, General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, § 43, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/23/39&referer=/english/&Lang=F.

²⁴ OSCE/ODIHR, op. cit., 16.

²⁵ *Id.*

²⁶ *Id.*

²⁷ For a reminder of the day's event (including the interview of President of the Lawyers' Association of Burundi), see http://www.youtube.com/watch?v=T3P_7wxGLkg.

²⁸ Amnesty International, *Rapport sur le Burundi, Le verrouillage, lorsque l'espace politique se retrécit*, 15, <http://reliefweb.int/sites/reliefweb.int/files/resources/Burundi%20-%20le%20verrouillage.pdf>.

²⁹ 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.

the Interior invoked the pending criminal case (Public Prosecutor C/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.”³⁰

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.”³¹

All the cases mentioned constitute serious violations of international human rights law (Article 21 of the ICCPR, Article 11 of the African Charter on Human and Peoples’ Rights, Article 15 of the Convention on the Rights of the Child), of the Constitution of the Republic of Burundi (Article 32), and of that same law citing Articles 4 (4), 5(2), 10(2), which stipulate that a decision of refusal must be duly justified.

Recommendation: Certain recommendations are relevant concerning the legitimate justification for restricting a peaceful assembly:

- The law must be reformed to provide only those restrictions allowed by Article 21 of the ICCPR.
- Legitimate restrictions must be interpreted in a restrictive manner and in conformity with international standards.
- The administration must keep from invoking justifications not provided by law to prohibit a peaceful assembly, as per Article 32 of the Constitution.³²
- The administration must address peaceful assembly organizers in writing, with appropriate justification.

D. Recourse mechanisms

Problem: According to Article 5, assembly organizers possess both a hierarchic and a judicial recourse to appeal an unfavorable decision concerning a peaceful assembly. 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.

Analysis: Article 14 of the ICCPR provides that everyone has the right for his/her case to be fairly and publicly heard by a competent, independent, and impartial court established by law, which will rule without undue delay.

³⁰ Letter from the Minister of the Interior No. 530/1161/CAB/2014 dated June 18, 2014, to Vice President of FORSC.

³¹ Letter from the Mayor of Bujumura, No. 531.17/618?CAB/2014, dated April 4, 2014, to Gabriel Rufyiri, President of OLUCOME.

³² Article 32: “Freedom of assembly and association is guaranteed, as well as the right to establish associations or organizations *in accordance with the law.*”

The Constitution of the Republic of Burundi similarly provides that every person has the right, in a judicial or administrative procedure, for his/her case to be heard equitably and to be judged within a reasonable time period.³³

Indeed, the terms “without undue delay” and “reasonable time period” seek to protect those who resort to courts and tribunals, and whose interests can be compromised by an unjustly lengthy judicial procedure. In the present context, the interest in question is the legitimate exercise of the right to freedom of peaceful assembly.

Thus, organizers should have effective and efficient mechanisms to appeal a decision that they deem arbitrary. Such decisions should be communicated to the organizers within a reasonable time frame to allow organizers to hold a peaceful assembly that was previously banned.³⁴

Consequently, 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.

Practice: Practice shows that not establishing time constraints on the Administrative Court process jeopardizes 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 two months after the case was filed.

This delay is undue (Article 14 of the ICCPR) and in no way constitutes a reasonable time period (Article 38 of the Constitution) to rule on the illegality of a decision prohibiting a public demonstration.

Recommendation: The law should specify the deadline by which the Administrative Court should render its judgment. We recommend a 48-hour time period for the administrative appeal.

E. Time constraint

Problem: Article 11 provides that public assemblies and demonstrations cannot begin before 6 a.m. or extend beyond 6 p.m.

Analysis: The right to freedom of assembly is admittedly not absolute. However, the potential restrictions that it may be subjected to are limited to provisions of Article 21 of the ICCPR. Restricting 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 past 6 p.m. 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.

Moreover, restricting peaceful assemblies between the hours of 6 a.m. and 6 p.m. is detrimental to the exercise of the right to freedom of assembly, on the basis that those are working hours for a majority of people. Instead of allowing peaceful assemblies only during the

³³ Article 38 of law No. 1/010, dated March 18, 2005, enacted from the Constitution of the Republic of Burundi.

³⁴ OSCE/ODIHR, *op. cit.*, 70.

day, the law should allow peaceful assemblies that pose no practical problem to be held at night, as well as alternative means of control and security for potentially dangerous assemblies.

Practice: Nighttime peaceful gatherings are nonexistent in Burundi.

Recommendation: The law should make distinctions between assemblies being held in enclosed spaces and public demonstrations. For the latter, the answer is not to ban them outright, but to regulate them on a case-by-case basis.

F. Maintaining public order in peaceful assemblies

Problem: Article 13: coordinating and monitoring assemblies and demonstrations falls to the organizing office, which is also responsible for policing the assembly and maintaining public order.

Analysis: It is the duty of the State and its agents to maintain public order, in this case, the police and local administration.

It is understandable that organizers collaborate with police and administrative authorities to maintain public order in an assembly or a demonstration. However, it is inconceivable in both national and international law that the primary responsibility for maintaining public order in this type of event should fall on people who lack the position, the training, and 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. In a framework where a spontaneous assembly is not permitted, and where all assemblies are subject to prior declaration identifying three official organizers, it is difficult to find people who will commit to bear the responsibility of acting as administration and police and suffer the consequences in case of failure to control the crowd.

The law in South Africa on the regulation of assemblies is a good alternative. It states that the peaceful exercise of the right to assemble is the joint responsibility of event organizers, police, and local administration leaders. Together, these three groups form a “security triangle” with the joint responsibility to ensure order and safety during public events. The success of the security triangle is due to collective planning, cooperation between the three groups, and a willingness to negotiate a compromise when conflicts arise.

Practice: There is no available data regarding practice in this area.

Recommendation: The law should be clear on the responsibility of each of the relevant actors: the administration, the police, and the peaceful assembly organizers. Contrary to current law, the lead role should fall on the police and the administration, since they are responsible for law enforcement.

G. Criminal and civil responsibility

Problem: 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 assembly or demonstration organizers turn out to be at fault.

Analysis: Organizers have a responsibility to provide all possible efforts to uphold the law and maintain the peaceful nature of the assembly. They should not, however, be held liable for failing that responsibility if it is shown that they have provided reasonable efforts to do so.

Likewise, organizers should not be held liable for unlawful acts committed by participants. Individual liability should arise for participants or organizers who commit an offense or fail to carry out the rules and guidelines put in place by the administration and the police.³⁵

Furthermore, when an assembly escalates into public disorder, it is the State's responsibility to provide damage control. Organizers cannot be held liable for the actions of others.

In this respect, the law is not in accordance with international standards and national laws on individual criminal liability.

Practice: There is no data concerning practice in this area.

Recommendation: All provisions that bestow shared liability on the organizers for the actions of a few must be removed and replaced with a system of individual criminal liability.

The law should not include criminal dispositions since all potential offenses in assemblies are provided for in the Burundian penal code.

H. Ban on counterdemonstrations

Problem: Article 18, par. 2, imposes a fine of 100,000 to 500,000 Burundi francs on counterdemonstrators.

Analysis: Not only are counterdemonstrations banned, they are criminally punishable by a fine. Yet, everyone has the right to assemble as a counterdemonstrators to express disagreement with another demonstration. What is crucial in such circumstances is to protect the rights of each group to enjoy freedom of peaceful assembly. Instead of banning this type of demonstration, an emphasis should be placed on the State's duty to take measures to prevent the disruption of the original demonstration while also protecting the rights of the counterdemonstrator.³⁶

Practice: Practice is nonexistent, since this type of demonstration is strictly prohibited and punishable by law.

Recommendation: We recommend decriminalizing counterdemonstrations and regulating them in accordance with universally applicable guidelines.

Conclusion

Despite the existence of the right to freedom of assembly in Burundian legislation, its exercise has never fully been realized. Depending on the political climate, the exercise of the right to freedom of assembly has been subject to either de facto restrictions or restrictions based on text, legislation, or regulation.

The democratization process of the 1990s and the Arusha peace negotiations have brought about a renewed importance of the fundamental human rights principles, which have been integrated in national texts.

³⁵ *Id.*, 93.

³⁶ Likewise, 66.

However, there is a tendency to pass increasingly restrictive laws. The law regulating public demonstrations and assemblies is an example. The text contains a good number of restrictions to the exercise of the right to freedom of peaceful assembly.

We have analyzed these restrictions in the scope of international human rights law and of basic principles that stem from international practice. For each analysis, we have put forth recommendations aiming to reform the legal text.

Ultimately, we recommend a revision of the law paired with raising the awareness of administrative and police authorities responsible for implementing the law, thus ensuring that the people residing on Burundi territory actually enjoy the right to freedom of assembly.

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