

LAW N° 1/28 OF 05 DECEMBER 2013, REGULATING PUBLIC DEMONSTRATIONS AND MEETINGS

PROPOSED AMENDMENTS



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SOS - TORTURE / BURUNDI

By the consortium of organizations
COSOME/SOS-Torture Burundi/FOCODE

October 2023

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| <p>Article 3, h: definition of public policy: "All mandatory rules affecting the organization of the nation, the economy, morality, health, security, public peace, and the essential rights and freedoms of each individual"</p> | <p>- Delete Article 3, h and replace the term 'public order' with 'public safety' throughout the text. Alternatively, adopt the following definition. It starts from paragraph 2 of article 3, h and defines the notion of trouble to public order (and not public order):</p> <ul style="list-style-type: none">- Disruption of public order (in the sense of the 2013 law): "Speech or actions which, in the course of a public meeting or demonstration on the public highway, are likely to stir up identity-based hatred or provoke violence." | <p>- Applied to the subject matter of the legislation, the definition renders the articles concerned unintelligible.</p> <p>- Moreover, the definition is too broad. It does not provide a framework for the authority's prerogatives. As a result, the administration finds itself with virtually unlimited powers.</p> |
| <p>Article 5, paragraph 1: "The prior declaration must reach the competent authority at least four working days before the meeting is held."</p> | <p>"The prior declaration must reach the Communal Administrator or the City Mayor at least three clear days before the meeting is held."</p> | <p>1. Unlike the 1991 decree, the "competent authority" to receive the prior declaration is not indicated in the text of the 2013 law. In Burundi's political context, this imprecision creates a risk of intervention by 'personalities' outside the administration, and further complicates accountability in the event of abuse of power -.</p> |

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| | | <p>The deadline of four working days is unreasonably long. It makes it impossible to react 'on the spot' - and therefore at the politically opportune moment - to the authority's decisions.</p> |
| <p>Article 5:</p> <p>"... This may be appealed through the hierarchy and before the Administrative Court, which will rule on it according to the emergency procedure."</p> | <p>"... This may be appealed through the hierarchy and to the Administrative Court, which will render and notify its decision within forty-eight hours."</p> | <ol style="list-style-type: none">1. The notion of 'emergency procedure' is imprecise and foreign to the Code of Civil Procedure (which also governs the procedure applicable before the Administrative Court). There is therefore a risk that the judicial remedy introduced by the 2013 law will be of limited (or no) use.2. Delivering the decision on time is not enough. It must be made available and brought to the attention of interested parties. |

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| <p>8, al.1:</p> <p>"The prior declaration must reach the competent authority at least four working days before the date of the gathering."</p> | <p>"The prior declaration must reach the Communal Administrator or the City Mayor at least three clear days before the date of the gathering."</p> | <p>1. Unlike the 1991 decree, the "competent authority" to receive the prior declaration is not indicated in the text of the law. In Burundi's political context, this imprecision creates a risk of intervention by "personalities" outside the administration - and further complicates accountability mechanisms in the event of abuse of power.</p> <p>2. The four-working-day deadline is unreasonably long. It makes it impossible to react 'on the spot' - and therefore at the politically opportune moment - to the authority's decisions.</p> |
| <p>Between current article 8 and 9, insert a new article - which becomes article 9.</p> | <p>"If, within the forty-eight working hours preceding the gathering, the Communal Administrator or the City Mayor has not expressly notified his refusal, the demonstration is deemed not to have been prohibited."</p> | <p>As in the case of public meetings (article 6), the aim is to make explicit the legal effect of the Administration's silence in response to a prior declaration of intent to demonstrate on the public highway.</p> |

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| Entre l'actuel article 8 et 9, insérer un nouvel article - qui devient l'article 9. | " Si endéans les quarante-huit heures ouvrables précédant le rassemblement, l'Administrateur Communal ou le Maire de la Ville n'a pas expressément notifié son refus, la manifestation est réputée non-interdite. " | Comme pour ce qui concerne les réunions publiques (article 6), il s'agit de rendre explicite l'effet juridique du silence de l'Administration à la déclaration préalable de l'intention de manifester sur la voie publique. |
| Article 12, paragraph 1: "The competent administrative authority may delegate its 'delegate' to attend any public meeting." | "The Communal Administrator or the City Mayor may delegate an executive under their hierarchy to attend the public meeting." | The current wording does not prevent the "competent authority" - which is not indicated - from appointing a person completely outside the administration to represent it, on the sole condition that the person has a written mandate. There is a risk that this "delegate" will be a person incapable of neutrality - and from whom it is difficult/impossible to demand accountability in the event of abuse of power. |

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| <p>Article 13, al.3:</p> <p>“Board members may be sued under civil law for damage caused and under criminal law for offences committed in the course of the meeting’s activities if it is proven that these(sic) are the fault of the organizers of the meeting or event.”</p> | <p>Delete from the text of the law</p> | <p>The rule violates the principle of the individual nature of sanctions. Furthermore, in terms of form, the section on the supervision of meetings and demonstrations is not the place for such provisions, whereas there is a separate section on sanctions.</p> |
| <p>Articles 14:</p> <p>Without prejudice to the penalties provided for in the Criminal Code, the following penalties shall be imposed on persons guilty of the offences provided for in this Act.</p> | <p>“Offences committed during public meetings/ demonstrations are punishable in accordance with the Penal Code or other relevant specific laws.”</p> | <ol style="list-style-type: none">1. Providing for specific criminal penalties for acts committed during public meetings/demonstrations is contrary to the spirit of international/regional rules on freedom of assembly and serves no useful purpose.2. It is sufficient to refer to ordinary criminal law. |

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| Articles 15-24 | Delete these articles | See previous comment |
| Article 25 : "Persons found guilty of the various offences defined by this law, as well as associations and organizations that instigated these gatherings, whether legal or illegal, are jointly and severally liable for any damage caused to the State and to private individuals." | "Persons found guilty of the various offences defined by this law are personally liable for damage caused to the State and to private individuals. Civil liability for damage caused during public meetings/demonstrations because of non-offending acts/omissions is governed by the rules of ordinary law". | <ol style="list-style-type: none">1. There is no basis for vicarious liability on the part of the organizations and associations that called the meeting/demonstration.2. Applied as such, the rule could lead to absurd solutions.3. The regime created is contrary to the African Commission's guidelines on freedom of assembly. |