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Political Turmoil Escalates in Burundi as Human Rights Violations Proliferate

January 19, 2016
by Chloe Canetti

Burundi, like Rwanda, has long suffered from ethnic conflict between its two main ethnic groups: the Hutu and the Tutsi. [Since 1993](#), Tutsis and Hutus have alternated power in the Burundian government and engaged in multiple attempts at peace talks to quell ethnic tensions. In 2005, the Burundian people elected the current leader of Burundi, [Pierre Nkurunziza](#). Since his [unconstitutional decision](#) earlier this year to run for a third term as president, protesters have gathered in the streets, and Burundi's security forces are taking [extreme measures](#) to stop the protests. On December 11, security forces killed [87 people](#) in the biggest crackdown since the protests began in April. Forces shot many protesters in the back as they [ran away](#) or killed them while they were [in custody](#). [The UN](#) and [human rights groups](#) such as [Amnesty International](#) are concerned that tensions in Burundi could escalate into a genocide like the one in Rwanda between the Hutu and Tutsi in [1994](#), which took almost [one million lives](#) in three months. Even if the government successfully stops the violence, it may be at the cost of the [human rights](#) of those opposed to Nkurunziza's third term.

The violence began in response to Nkurunziza's [announcement](#) that he would run for a third presidential term. Burundi's [Constitution](#) states that the President shall be elected by "universal direct suffrage" for a five-year term, renewable only once. President Nkurunziza's decision violates this section of the Constitution, and now the government is trying to [silence](#) citizens protesting this Constitutional violation. [Articles 31 and 32](#) of Burundi's Constitution guarantee freedom of expression, assembly, and association. Additionally, [The African Charter on Human and People's Rights](#) guarantees the right to freedom of assembly subject only to "necessary restrictions" in the interest of national security and the rights of others.

Burundian security forces may be violating Burundians rights to assemble peacefully. Reports state that these forces have been [arbitrarily arresting](#) both protesters and [bystanders](#) and killing protesters who are already in custody by shooting them in their heads while their hands are [tied](#) behind their backs. Permanently silencing peaceful demonstrators likely goes beyond the control of assembly the government needs to maintain national security. Human rights [groups](#) worry that President Nkurunziza may incite violence against protesters and reignite ethnic hatred between the Hutus and the Tutsis. [Human Rights Watch](#) is [calling](#) on the Burundian government to allow peaceful protests and to [allow security forces](#) to use only the amount of force necessary to keep citizens safe during the protests. The UN teamed with Human Rights Watch and other NGOs to demand that the Burundian government take immediate steps to prevent further killings of protesters and others [speaking out](#) against the government, such as human rights activists and journalists.

There is No Freedom Without Freedom of Expression: Repealing Criminal Defamation Laws in Africa

February 1, 2016
by Ginna Anderson *

Imagine a region rich in diamonds and poor in infrastructure, where mining corporations with ties to government officials and local security forces have total control over villagers' activities and operate with seemingly unmitigated impunity for even the most violent acts, from minor harassment to the brutal mistreatment of laborers and the murder of community members. Imagine that a journalist travels the long distance to this region to document the locals' stories, which implicate local and national leaders who have engaged in these acts or benefited from lucrative relationships with those who have terrorized the most vulnerable of their civilians. Imagine that the only person facing a jail sentence is the journalist.

In 2015, Rafael Marques de Morais was sentenced to six months imprisonment for defaming army generals after he published a book documenting human rights violations committed by security forces in the diamond mining region of Angola. The case received significant [international attention](#) and highlighted a favorite tool of repressive regimes worldwide—the use of criminal defamation laws to harass, punish, and bankrupt those who report on or advocate against government corruption and human rights abuses. And, according to WAN-IFRA, the World Association of Newspapers and News Publishers, “[African countries are amongst the worst offenders in using criminal defamation laws to fine and imprison journalists.](#)” Many of these colonial-era laws were enacted to stifle opposition and nationalist movements. Their purpose today remains unchanged. As the African Commission's Special Rapporteur on Freedom of Expression has noted, these laws are “[nearly always used to punish legitimate criticism of powerful people](#)” and present a systemic threat to democracy and human rights across the continent.

Fortunately, there is a coordinated and effective movement underway to repeal criminal defamation laws throughout the region. A number of African States have repealed or committed to repealing their criminal defamation laws, including Ghana, Kenya, Liberia, Niger, and Uganda. Speaking in support of legislation repealing Ghana's criminal libel and sedition laws, Ghana's then-Attorney General and Minister of Justice eloquently explained that

[these laws] were meant to be weapons in the armoury of British imperialism in its attempt to stifle and suppress the growth of Ghanaian nationalism. . . . The laws have come to symbolise authoritarian, anti-democratic, anti-media impulses within

* Ginna Anderson is a human rights attorney living and working in the District of Colombia. She helped prepare an amicus brief before the African Court in the Konaté case.

our body politic. . . . Designed to frustrate our freedom and perpetuate our servitude, these laws should have been repealed at independence.

At the regional level, the African Commission on Human and People's Rights, mandated to oversee the implementation of the African Charter on Human and People's Rights, has called for the [repeal of such laws](#) as inconsistent with Article 9's guarantee of freedom of expression. And in last year's landmark case [Konaté v. Burkina Faso](#), the African Court on Human and People's Rights held that Burkina Faso's criminal defamation law violated the African Charter. Issa Lohé Konaté, the editor of the Burkina Faso-based weekly *L'Ouragan*, was convicted of defaming Burkinabé State Prosecutor, Placide Nikiéma, after he published two articles raising questions about alleged abuse of power by the prosecutor's office, particularly in the handling of a high-profile case of currency counterfeiting. He was sentenced to twelve months in prison and fined almost 15,000 USD, a huge sum in a country with a [per capita GDP of 700 USD](#).

The question before the Court was whether Burkina Faso's laws, as written and as applied to Mr. Konaté, violated the requirement that any law restricting freedom of expression, even for a legitimate State purpose such as the protection of the rights and reputations of others, must still be "necessary in a democratic society." A key criterion for assessing whether or not a measure is "necessary in a democratic society" is whether or not it is proportionate to the interest to be protected. And in assessing the proportionality of a law enacted to protect the rights and reputations of another, the Court noted the longstanding principle that statements about public officials are entitled to heightened protection "otherwise public debate may be stifled altogether." Applying these principles, the Court unanimously found that imprisonment for defamation violates the right to freedom of expression and that custodial sentences could only be considered proportional for very serious crimes, such as incitement to violence.

The *Konaté* decision is a significant step forward in the jurisprudence of the African Court. However, the decision has been criticized for stopping short of holding that *any* criminal sanctions violate the right to freedom of expression. Advocates such as South Africa's [Dario Milo](#) have argued that the Court did not go far enough.

Regardless of whether the Court should have gone farther, however, supporting, and challenging, African nations to reexamine their criminal defamation laws in light of the Court's decision would address a substantial amount of the repressive use of these laws. Advocates should confidently rely on the decision in challenging criminal defamation laws, in courts and legislatures, which impose prison and onerous fees. At the same time, they must urge States to accept the growing [international consensus](#), which rejects criminal penalties as fundamentally inconsistent with the right to freedom of expression.

For journalists like Rafael, and the hundreds of other journalists and human rights advocates who continue to fight criminal penalties for speaking out against the powerful, the challenge will be to continue their efforts to advance transparency and accountability while waiting for the inevitable advance of the law.

First, Intimidate All the Lawyers: Threats to the Rule of Law in Lesotho

March 7, 2016

by Ginna Anderson*

On Friday, February 12, 2016, Advocate Khotso Nthontho was [arrested and briefly detained](#) in Maseru, Lesotho. Although he was released by court order that same night, in the intervening hours both his home and car were riddled with bullets in a not-too-subtle threat. The immediate cause for the arrest and shooting appears to be retaliation for Advocate Nthontho's attempt to have officers of the Lesotho Defense Force (LDF) held in contempt of court for failing to comply with an order to release his clients from pretrial detention. Advocate Nthontho is not the only lawyer in Lesotho facing retaliation for insisting on steadfastly fulfilling his duty to his clients regardless of political cost or intimidation.

Advocate Nthontho is one of five lawyers, including Haae Phoofolo, Christopher Lephuthing, Koili Ndebele, and Tumisang Mosotho, representing soldiers facing a highly politicized and contentious [court-martial](#) for an alleged failed attempt at a *coup d'état* in 2015. These soldiers, and their lawyers with them, are in the cross-winds of the [current crisis in Lesotho](#), which escalated last year in the wake of the assassination of ex-army chief Maaparankoe Mahao on June 25, 2015. Following the killing, the LDF disappeared scores of soldiers, only producing them, shackled, in civilian courts after their families and lawyers alleged [kidnapping](#). Several soldiers showed signs of [torture](#). All were accused of being [co-conspirators to mutiny](#) with Mahao, a charge that remains to be assessed against any evidence, amid swirling rumors and political tension. In a sign of just how politically sensitive these cases are, the lawyers representing the soldiers have been [threatened, stood over in the courtroom](#) by armed LDF soldiers in an attempt to intimidate both the lawyers and the court, and placed on [reported "hit lists,"](#) which are circulated on social media, implying that they are potential assassination targets. But in spite of these intimidation efforts, the lawyers continue to push forward in defense of their clients' rights and the rule of law in Lesotho.

In so doing, they are upholding the core values of a legal community that, although as diverse as the global community it serves, is, at its best, guided by a common set of principles that seek to ensure access to justice and legal counsel to all persons who need it. These principles are best summarized in the [United Nations \(UN\) Basic Principles on the Role of Lawyers](#), adopted nearly thirty years ago. Of the twenty-nine principles enumerated, perhaps most relevant to the situation in Lesotho are the guarantees for the functioning of lawyers. Principle 16 requires states to ensure that lawyers are able to represent their clients without harassment and intimidation or other penalties for fulfilling their professional obligations. Principle 17 provides protection to lawyers facing security risks as a result of their work. Principle 18 ensures that lawyers are not identified with their clients.

* Ginna Anderson is a human rights lawyer working and residing in Washington, DC. She recently traveled to Lesotho, where she met with lawyers and judges concerned about ongoing threats against the independence of the legal profession and judiciary.

These Principles are more than mere abstract assertions, they represent the real and practical concerns facing lawyers and governments committed to the rule of law and realization of individual rights. Throughout history, lawyers representing unpopular clients or taking on controversial cases have been [threatened](#), [charged with crimes related to their advocacy](#), and even [killed](#). At the same time, it is a truism that repressive regimes and corrupt interests flourish where lawyers and courts are unable to operate without fear of reprisal. For this reason, law societies and bar associations have consistently [decried threats](#) against individual lawyers and the independence of the legal profession.

In Southern Africa, organizations such as the [SADC Lawyers Association](#), the [Southern Africa Litigation Centre](#), and the relevant national Law Societies, are vocal watchdogs for threats against the legal profession and the independence of the judiciary. These groups are loudly and justifiably expressing concern at the crescendo of threats in Lesotho. It has become increasingly clear that Advocate Nthontho and his colleagues are targets for those who resent any attempt to hold the LDF accountable to a thorough investigation and fair proceedings in the wake of Mahao's assassination. By refusing to allow the indefinite detention of these soldiers and insisting upon their clients' rights, including the right not to be tortured, Advocate Nthontho and his colleagues have made the brave and impolitic choice to defend the rule of law in Lesotho at a time of crisis.

The court-martial trial is scheduled to begin [later this year](#). As the proceedings draw closer, the attempts at intimidation are likely to increase. It is vital that the international legal community and the human rights community monitor these proceedings and prepare to swiftly respond to threats against the independent lawyers of Lesotho. There is no innocuous attempt to subvert the independence of the legal profession or intimidate a lawyer from fulfilling his duty to his client.

African Union Summit Focuses on Human Rights and Women

March 14, 2016

by Andrea Flynn-Schneider

“The era of exclusion is over,” [United Nations Secretary-General Ban Ki-moon](#) said to a room full of delegates at the [26th Ordinary Summit of the African Union](#) (AU), which took place from January 21-31, 2016 at the AU Headquarters in Addis-Ababa, Ethiopia. This year’s designated theme, “African Year of Human Rights with a particular focus on the Rights of Women,” [marked](#) the second consecutive year that gender equality ranked as the AU’s highest priority and reminded African leaders of the importance of furthering the organization’s vision as embodied in [Agenda 2063](#), which “emphasizes a bottom-up, inclusive, participatory, and people-driven approach to development.” Ban K-moon [explained](#), “To change the dynamic, we must resolutely invest in empowering women and expanding opportunities available to them.” Since the [AU’s establishment](#) in 1963, the organization has implemented an extensive [body of legal mechanisms](#) to address and promote gender equality and women’s rights, including the [African Charter on Human and Peoples’ Rights](#) which celebrates its [30th anniversary](#) this year.

The 2016 summit [focused on raising awareness](#) of women’s rights and creating implementation strategies to increase women’s participation in politics, access to education and healthcare, address gender-based violence, and promote economic inclusion, to name a few. [According to Mahawa Kaba Wheeler](#), the Director of the [African Union Women Gender and Development](#) (AUWGDD), “the AU believes that removing [the] barriers that impede women from fully enjoying their human rights, can empower the continent.” However, while Ms. Wheeler [praised](#) the continent for being “one of the fastest growing developing regions in the world, registering economic growth levels ranging from 2 percent to 11 percent” per year, she [conceded](#) that African women continue to remain “disproportionately affected by poverty, discrimination, and exploitation.”

Consequently, African women continue to face many obstacles to enjoying equal rights and opportunities. For example, while school enrollment of young girls has [increased](#) by 56% across the continent since 1970, 28 million girls still do not attend school. Early child marriages, in some countries with [rates](#) as high as 50%, also serve as an impediment to gender equality. Specifically looking to legal frameworks, [17 countries](#) have yet to ratify the [Maputo Protocol](#), [considered](#) “the first comprehensive legally binding instrument on the promotion and protection of women’s human rights in Africa.” This instrument is important as it [guarantees](#) equal rights for women in the political process, as well as control over their reproductive health, including an end to the unsafe practice of female genital mutilation (FGM).

Furthermore, many countries have conflicting [dual legal systems](#) comprised of both a formal legislative framework and customary law. While customary law is traditionally easier for local populations to access, it also usually [reinforces](#) gender stereotypes against women and fosters inequality. Moreover, the [exclusion](#) of customary law from constitutional protection isolates women since the issues that commonly affect them regularly fall within the legal spheres controlled by customary systems.

Although the continent may have a long way to go in forging a path towards greater gender equality, vast achievements can and should be noted for women's rights. For [example](#), of 54 African Heads of States and Governments, three are women, [including](#) the presidents of Liberia and Mauritius, and the Interim President of the Central African Republic, a feat that was unthinkable only a decade ago. In addition, 15 African countries [rank](#) in the top 37 in the world for women's participation in national parliaments. The AU itself [embodies](#) this trend in "gender parity," with five of the ten commissioners being women. Moreover, 2016 marks [36 years](#) since the AU's adoption of [The Convention on the Elimination of all Forms of Discrimination Against Women](#) (CEDAW), and the [1995 Beijing Declaration and Platform for Action](#), considered a [key instrument](#) of global policy on gender equality.

In order to continue this progress, the AU advocated that member states should [enhance](#) "gender-responsive budgeting" in order to provide education for girls and create skill-building programs for women. The Commission [further suggested](#) greater cooperation with civil society organizations, and explained that by "bridg[ing] the gap between continental, regional, state, and local levels," member states can create larger networks for working towards solutions for women.

The AU will face many [challenges](#) throughout 2016, not only with responding effectively to gender inequality, but also with ending the crisis in Burundi and coordinating the fight against terrorism. The close of the Summit symbolizes, at the very least, a continental commitment to alleviating the barriers to women's rights. In his final statement to the Summit, Secretary-General Ban Ki-moon [urged](#) member states to remember what the Universal Declaration of Human Rights says: "everyone, without distinction of any kind, is entitled to human rights."

Presidential Politics — Removing Public Discourse from Uganda's Presidential Election Process

March 16, 2016
by Laura Collins

On February 20, 2015, Ugandan President [Yoweri Museveni won re-election](#) after garnering nearly twice as many votes as the closest opposition candidate. Museveni's 30-year rule over the country is now set to extend another term.

The victory does not come without [controversy and serious questions of legitimacy](#). In perhaps the most striking incident, police arrested and detained opposition candidate Kizza Besigye three days before the election and again the day after the election. On election day, the government shut down all access to social media across the country. [U.S. Secretary of State John Kerry expressed concern](#) and urged Museveni to pull back the police and security forces that have perpetuated widespread terror, repression, and intimidation throughout the election cycle. According to Human Rights Watch, the Ugandan government showed an overt disregard for human rights [on election day](#) and the days preceding. Other reports allege that the months leading up to the election were almost as bad, wrought with [questionable government moves](#) aimed at silencing opposition support and eliminating dissenting opinions from public discourse.

Much of the government's actions aimed at blocking President Museveni's opponents were perpetrated under the auspices of executing [Uganda's 2013 Public Order Management Act](#) ("POMA"). POMA allows the government to implement many restrictions on public meetings and grants the police [wide discretion](#) over the content and management of public meetings. Domestic civil society groups and [international human rights organizations question](#) both the legality of the law and its harsh application, [particularly during this critical election cycle](#).

Human rights groups regularly report the widespread restrictions on expression and peaceful assembly in Uganda. [Throughout 2014](#), the government arrested political activists and dispersed peaceful assemblies under POMA. As election tensions heightened in 2015, so too did the police crackdown on peaceful assembly and association. [In September 2015](#), for example, police used teargas to break up crowds gathered to see opposition candidate Amama Mbabazi, despite the absence of violence or unruliness at the gathering. In a separate incident that month, police again recklessly used tear gas at a primary school, stinging the eyes and faces of young students. According to Human Rights Watch, not only do the police direct violence against people peacefully assembling, they have also [threatened and even injured](#) journalists who have attempted to provide coverage of these types of incidents. Most concerning for human rights groups is the uneven implementation of POMA in election-related situations, with the police enforcing POMA only against opposition candidates and their supporters.

International law calls upon states to protect freedom of expression, speech, and assembly. Specifically, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and

Article 9 of the African Charter on Human and People's Rights (ACHPR) protect freedom of expression and information. In so doing, [the ACHPR reaffirms](#) that "the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms." Additionally, Article 21 of the ICCPR and Article 11 of the ACHPR protect freedom of assembly. Domestically, Uganda's own Constitution explicitly provides freedom of speech, expression, and assembly in Article 29. Indeed, in 2004, the [Constitutional Court of Uganda](#) upheld the constitutionally mandated freedom of expression in a case involving a journalist who made comments critical of President Museveni on a live radio talk show. The [Onyango-Obbo v. Attorney General](#) Court held that two provisions of the Uganda Penal Code unconstitutional because the law's criminalization of some forms of subversive dialogue from journalists was counter to the constitutional grant of freedom of expression. In its opinion, the Court observed, "It is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information."

In light of the Presidential election's outcome and the global response, there is an immediate need for Ugandan leadership to review Uganda's obligations under both international and domestic law to protect freedom of expression and assembly and to correct the wrongs of this election cycle. Human Rights Watch has called on the Ugandan Parliament to [review POMA](#), as well as other legislation restricting expression and association. Other organizations have [recommended specific changes](#) needed to fix the freedom of expression limitations inherent in POMA, including repealing restrictions on assembly locations, revising use of force provisions, and improving definitions for key language such as "spontaneous public meeting." In regard to the election, Amnesty International [called the decision to block access](#) to social media and mobile phones on election day a "blatant violation of Ugandans' fundamental rights to freedom of expression and to seek and receive information." Now that Museveni has won again, the international community should pay close attention to how the Ugandan government responds to the outcry against these human rights abuses and should continue to push for reform.