

**BURUNDIAN CIVIL SOCIETY ORGANISATIONS AND THE MONITORING
OF DEVELOPMENT EFFECTIVENESS: CAPACITY, STRUCTURE AND
ENGAGEMENT FRAMEWORK FOR GOVERNMENT, DONORS AND CIVIL
SOCIETY ORGANISATIONS**

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GENERAL INTRODUCTION

0.1. Introduction

“There is no development without equitable distribution of sacrifices and benefits, as such, there is no development without the sting of democracy which is a prerequisite for such a distribution, neither can there be development without the strength of a civil society rich in its diversity and contradictions.”¹

The concern about aid effectiveness goes back to the period following the fall of the Berlin Wall (1989). With the disappearance of geopolitical issues that characterized this period, questions arose on the justification of official development assistance and its effectiveness, particularly in sub-Saharan Africa. The 2002 Monterrey summit gave concrete expression to a new international commitment highlighting the need to show the effectiveness of development assistance.

This resulted in the Rome Declaration on Aid Harmonization (2003) and further in the Paris Declaration (2005) which aimed at reforming the ways we deliver and manage aid to increase its effectiveness, particularly in reducing poverty and inequality, increasing growth, building capacity and enhancing progress towards the Millennium Development Goals (MDGs) leading to an elaborate process of monitoring aid.

The Paris Declaration (2005) on the effectiveness of development assistance identified some partnership commitments based on the principles of ownership, alignment, harmonization, results based management and mutual accountability and further defined twelve indicators of progress for Official Development Assistance ODA².

In order to accelerate and deepen the implementation of the Paris Declaration on aid effectiveness, ministers from developing and donor countries responsible for promoting development and bilateral and multilateral development agencies meeting in Accra on 4th September 2008 *“reaffirmed their commitment to the Paris Declaration to CSOs who were considered as truly independent development actors in their efforts to complement those of governments and the private sector....”*

CSOs will engage in “a multi-stakeholder process led by themselves and intended to enhance the effectiveness of their actions in favor of development” and in the process, commit to: “

¹ Alain Marie, “La ruse de l’Histoire: how in the name of liberalism, structural adjustment gave birth to a new Africa”, Maxime Haubert and Pierre-Philippe Rey (coord.) *Civil societies and markets. Social change in the post-colonial world*, Paris, Karthala, 2000, p. 296

² See Paris Declaration on aid effectiveness, p.12, Paris from 23 February to 3 March 2005.

- *improve coordination between the efforts of CSOs and government programs;*
- *strengthen the accountability of CSOs on results achieved;*
- *improve information on CSO activities;*
- *work with CSOs to create conditions conducive to maximizing their contribution to development”³*

Moreover, five years before, the Cotonou Agreement (2002) between the EU and the 77 ACP countries had explicitly recognized civil society as a development partner. The agreement recommended that civil society be associated at several levels of aid implementation. It provided that where appropriate, non-state actors including CSOs will be:

- *informed and involved in consultations on policy and strategic cooperation, priorities for cooperation and political dialogue;*
- *allocated financial resources;*
- *involved in the implementation of projects and programs of cooperation in their areas of specialization in which they have a comparative advantage;*
- *given financial support for capacity building⁴ in order to develop their potential, create effective mechanisms for consultation and promote strategic alliances⁵;*

In 2011 and for the first time in history, civil society organizations were invited to the world's fourth High Level Forum on Aid Effectiveness in Busan. Burundian civil society was represented and actively participated in the forums that followed.

Busan thus became the bedrock of the recognition of civil society as a key player in the development of countries.

The conclusions of the forum particularly recognized that:

“CSOs play an important role in empowering people to assert their rights, promoting rights-based approaches, defining development policies and partnerships and their implementation. They ensure all areas are considered for development and complement what is provided by the State.”

Stakeholders therefore agreed to;

- *fully implement their respective commitments to enable CSOs to fully play their role as independent development actors, with particular attention to creating a consistent environment with the international commitments to which they subscribe;*

³ See Accra Agenda for Action, from September 2 to 4, Accra-Ghana, P. 5

⁴ The agreement provides for financial support of up to 15% of the overall budget for the capacity building of NSAs. The total budget is € 15.2 billion for the 9th EDF plus balances from previous EDF amounting to € 10 billion.

⁵ Infokit Cotonou, the new ACP-EU partnership agreement, publication of the European Centre for Development Policy Management, The Netherlands, January 2001

- *Encourage CSOs to implement practices that strengthen their accountability and their contribution to the effectiveness of development guided by the Istanbul Principles and the International Framework for CSOs for effective development*⁶.

Three years after the High Level Forum in Busan, the Burundian CSOs movement has continued to develop and integrate in the international context.

Today, there are approximately 5,625 CSOs in Burundi⁷. 34% of these organizations operate in the provinces outside Bujumbura while 60% are within Bujumbura Municipality. It should be noted that certain associations established in Bujumbura Municipality operate in rural provinces.

Civil society has thus become a key player in governance in Burundi. CSOs are more vocal in sensitive areas such as human rights, governance, fight against corruption and better still the control of government activities. Others contribute to social, economic and cultural development of local communities and populations and the country in general. They are each useful in their area of intervention.

For this reason, development partners now include this asset both in the conditionalities of development support and in the formulation of programs and projects of cooperation. The participatory and inclusive approach is preferred in different areas of intervention. This was the case during the development of the CSLP⁸, the National Strategy for the Fight against HIV/AIDS, the National Strategy for Governance, etc

The civil society interacts with the public sector through six pillars of good governance namely; the rule of law, good governance, responsibility and accountability of leaders, transparency in the management of the State, citizen participation and the mechanism of permanent negotiation and search for compromise.

In order to achieve the expectation of citizen participation on development effectiveness for better aid management, it is important to clean up the legal environment in which CSOs work and involve them as a partner in development through strengthening accountability, transparency

⁶ Fourth High Level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November to 1 January 2011, p. 7 and 8.(See also www.busanhlf4.org)

⁷ Figures from the Ministry of Internal Affairs of Burundi as at 31 March 2014 (excluding religious organizations that are around 600).

⁸ The NPO *Biraturaba* was interested in the latter and sought to engage other CSOs. They then held a workshop in September 2010, where the SP / REFES provided them with experts to advise on the entire development process, implementation and monitoring and evaluation of the CSLP. In November, they organized another to reflect on their contribution in terms of methodologies, identify CSOs priorities, the terms of advocacy on peace building in a development context, especially in line with the new approach of the World Bank and International Alert. Finally, in December, a thematic analysis workshop was organized to tow the private sector with a view to regional integration;

development planning and implementation and the sharing of all information relating to official development assistance.

However, this partnership can only be profitably established if we improve the knowledge of the latter. This study is thus relevant as it aims at mastering the institutional and legal environment and the political and economic context in which CSOs operate. It further seeks to understand their contributions in the definition of national policies and priorities, synergies developed, challenges and constraints, capacities, frameworks or dynamics of existing partnerships between civil society, donors and CSOs, access to information resources, mutual accountability between CSOs and government, access to financial resources, etc..

Today, the major challenge facing CSOs is participation with their own experts in existing frameworks such as sector clusters. The question is no longer whether CSOs should be involved or not, the door is open but they must know how to enter.

0.2. Framework and purpose of research

The purpose of the research is to study in detail the environment (legal, economic and political) in which the Burundian civil society is operating as well as Burundi's compliance with its international commitments on CSO development after the fourth High Level Forum in Busan in 2011. The study also intends to identify opportunities and constraints of all kinds related to this environment, its involvement in setting priorities and government policies.

The research was conducted in the aftermath of the fourth High Level Forum in Busan where all stakeholders in the forum reaffirmed the essential role of civil society in development and hence its importance in participation in the process of monitoring the effectiveness of aid. The study will focus on changes generated after the forum, the Paris Declaration on aid effectiveness, the Istanbul principles, existing national or regional dynamics, mechanisms of access to information on development policies (CSLP, Sectoral Policies etc) This study thus seeks to provide answers to these questions.

It will end with a series of recommendations particularly aimed at strengthening existing efforts and frameworks of partnership between CSOs, donors and government in monitoring the effectiveness of development aid, sanitation of the legal and socio-economic environment, as well as strengthening potential national, regional, or international synergies for improved aid effectiveness.

0.3. Methodology

To understand the engagement framework of Burundian CSOs in the monitoring of development aid, we used three methodologies:

0.3.1. Interview guides/questionnaires

Three questionnaires were developed based on the target audience. The first was sent to a number of targeted representative CSOs, with the participation of these civil society actors whilst attaching much more importance on organizations involved in monitoring the effectiveness of development assistance in Burundi. The second was sent to major donors or donors based in Bujumbura and even those based in the provinces while the third was sent to the government (Ministry of internal affairs, districts, provincial and district administrations, CNCA : National Aid Coordination Unit , REFES etc).

The main aspects covered by the questionnaires or interview guides were related to the: ease/legal difficulties in approval and operations, CSOs intervention sectors, geographical coverage, organizational aspects, material and financial resources, governance issues - both from an internal perspective of the associations as well as their relations with the government, monitoring structures of aid effectiveness, framework for partnership between CSOs, donors and government in the context of monitoring of development aid, reliability and transparency in the allocation of funding etc..

Regarding the interviews we wish to report two major difficulties. The first was that since the material time for the study was limited, some interviews had to be postponed repeatedly, either because the leaders of the CSOs, donors and public institutions were busy with work within the provinces or even outside the country, or their deputies feared to provide certain information without the express approval of the legal representatives, or the administrative procedure was long (some letters requesting access to documentation have not been replied to date).

The second is the lack of transparency within some organizations especially on sensitive issues such as budget, reports which are classified “top secret” and are subject to a variety of sometimes complicated procedures before issuance.

It is also worth noting that visits were made to some municipalities and provinces in the interior regions of the country in order to better understand the realities faced by organizations working in the provinces and their daily challenges.

0.3.2. Document review

Burundian civil society associations are governed by a variety of laws that we had to analyze in order to identify opportunities and constraints. Beyond this common law, organizations are governed by their own statutes whose analysis can be a source of useful information.

Finally, some CSOs according to their own dynamics temporarily either periodically or incidentally produce reports and studies through which we can see and appreciate their work and the constraints they face.

0.3.3. Analytical approach

The analysis focused on international and national legal frameworks, institutional frameworks, interviews and reports from some targeted organizations. It was able to identify major trends in terms of inputs, opportunities, constraints, challenges and opportunities that would make Burundian civil society organizations more effective and more efficient in monitoring development assistance and complement government efforts in development.

0.4. Presentation of the study

The research results are organized around seven chapters. The first chapter aims at providing a quick reminder of the history of the civil society, its distant origins and its present structure. The second chapter focuses on the current environment in which the civil society operates and the past environment, emphasizing on the social, political and economic challenges encountered in the daily implementation of the mandate for which they were created.

The third is longer than the first two as it emphasizes on the key legislative and regulatory issues of the legal environment with a much deeper analysis of the laws governing Non Profit Organizations (NPOs) and related texts.

The fourth chapter deals with minority group representing CSO, taking the example of the Batwa ethnical group. In the fifth chapter it is shown how Burundian CSOs participate in political decision-making process and how they get access to relevant information they need. The sixth chapter puts a focus on the partnership between CSOs and donors as far as mechanisms of funding and aid mobilization are concerned. The last chapter tries to bring response to the question of this research which is: “what is the framework of engagement of CSOs and what their role in monitoring of the development effectiveness is?”

The work will conclude with a series of recommendations to address the different actors in order to promote greater CSOs involvement in monitoring the effectiveness of aid and strengthen the multi-partite dialogue between CSOs, donors and the government of Burundi.

I. BRIEF HISTORY OF THE DEVELOPMENT OF CIVIL SOCIETY IN BURUNDI

The distant origins of civil society in Burundi lie in the traditions of the country. Though it is truly difficult to date the founding dynamics, the same may undoubtedly be sought in the institution of Bashingantahe which might roughly be translated as “guarantors of justice and integrity⁹”.

This institution which is an offshoot of the society and not a creation of the pre-colonial monarchy which helped to legitimize and consolidate it, has always advocated for moral standards in both social and political life and even been against power as it has always endeavored to, as much as possible mitigate the excesses of political powers¹⁰.

The Bashingantahe (village elders) sometimes constituted a counterweight to monarchical and princely powers. We thus began to see in the 80s the emergence of informal groups followed by a regulation of the domain in the 90s.

The late 80s witnessed the emergence of informal groups following the failure of the cooperative movement that had emerged at the initiative of Prince Louis RWAGASORE¹¹ and appears to be the distant origin of the civil society movement in Burundi.

Production groups and mutual assistance associations which were often informal gradually emerged. The concept of civil society as such began to emerge with the beginning of the democratic process in Burundi in the 1990s.

It is through the Decree-Law No. 1/11 of 18 April 1992 on the organic framework of nonprofit organization that we can start talking about a birth of the Burundian civil society.

This legislation would update the legislative framework for the civil society movement. With this law in place, there was a proliferation of associations for the most diverse purposes: human rights, self-promotion, associations of people from particular constituencies (Municipality, province, etc.), religious associations, etc. In addition, thousands of “community” organizations that emerged in the provinces can be considered as part of the Burundian civil society.

⁹ See E. NGAYIMPENDA, *Report on the Burundian civil society*, Bujumbura, 2012, P.31.

¹⁰ During the second half of the 19th century for example, the bashingantahe settled a land dispute between king Mwezi Gisabo and one of his neighbors, a simple subject, and ruled in favor of the latter. See also on the same issue, Nsanze, A., *A royal domain in Burundi: Mbuye, around 1850-1945*, Paris, SFHOM, Bujumbura, Burundi University/CCB, 1980.

¹¹ Son of King Mwambutsa IV, Burundi independence hero, he was killed on 13 Oct. 1961 before the country's accession to independence on 1 July 1962

The socio-political crisis in Burundi since 1993 was the basis of further rise in the civil society movement mainly due to the fact that the country had experienced a period of democratic openness towards the end of the previous decade.

Since violence was the backdrop of the crisis in question, people had to be vigilant in order to prevent or denounce violations of human rights or exert pressure to ensure that perpetrators of abuses were brought to justice. In addition, poverty and emergency arising or aggravated by the crisis created many needs that the State alone could not address.

In response to these challenges, many civil society organizations emerged. Their areas of intervention were expanded compared to what we knew before the crisis: development and self-promotion, fight against poverty, either support or promotion of vulnerable, disaster struck on disadvantaged groups, mutual aid, solidarity, promotion, protection of human rights, protection of labor rights etc..

In addition, given the failures of the State observed in different places, citizen participation proved indispensable to correct such failures as well as to increase their participation in the good governance of the country. Civil society participation when optimal is without doubt a major asset for the country. If the impact of civil society on political life remains to be determined, its backtracking is neither feasible nor desirable.¹²

While associations were limited to less than fifty in 1992, they were almost a thousand by the end of 2001. In October 2006, the number of organizations approved by the Ministry of the internal affairs was 2,675 representing a growth rate of 300 organizations per year since 2001.

Civil society organizations still operate within a legal framework defined by parliament. The basis of their existence is freedom of association. This right has always been recognized by the fundamental law. Its contours and the modalities of its functions are fixed by law.

The enactment of laws is a function of the legislature. That is clearly understood under a regime of effective separation of powers but certainly not when there are doubts on it. In addition, the activity of civil society organizations is part of a specific socio-political environment. The relations with those in power are sometimes characterized either by tension or by acquaintances. We will first examine the overall CSO environment in Burundi before describing the legal and regulatory framework in which they operate.

¹² See J.BIGIRIMANA *Analysis of the bill on the organic framework of NPOs in Burundi*, Bujumbura, 2013, p.2.

II. SOCIAL, POLITICAL AND ECONOMIC CONTEXT OF BURUNDIAN CSOs

Civil Society can only evolve in a democratic system where it can freely express its opinions on different areas of intervention. It must avoid guardianship by the State, have a capacity to denounce discrepancies in State organs or others, have the right to assemble, associate and express itself etc.

However, civil society in Burundi mainly developed during an identity crisis period marked especially by ethno-identity stigma which created divisions even within the civil society and a stigma which would inevitably stick. From the first moments of the crisis that followed the assassination of President Melchior Ndadaye in 1993, civil society was itself strongly marked by identity divisions or was labeled as such. The position taken by any organization was interpreted as advocacy by the dominant ethnic group in the organization. Pronouncements sometimes contradicted and betrayed an obvious subjectivity¹³.

Gradually, the Burundian civil society is gaining experience and evolving through experience sharing with external organizations.

An almost permanent misunderstanding was maintained between some CSOs and government in most cases with one side doing this in order to keep intact its freedom and action field or even enlarge it, while the other seeking to completely lock or gradually reduce this field¹⁴. The State and civil society found themselves in an ambiguous relationship that evolved in terms of situations and power relations influenced by external actors who by their actions reinforced the legitimacy of civil society against the State.

The context in which the Burundian civil society was evolving is thus a very particular context marked by strong reluctance to accountability and fluctuating tensions depending on the situation and issues of the day. CSOs are today victims of a perception by the government as playing the role of the opposition and therefore there is an attempt by government to create its' "own civil society" fighting for its cause and eventually counteract the actions of CSOs which are misunderstood by political powers.

II.1. A political context marked by strong reluctance to accountability

Issues related to governance, security, corruption, democracy and respect for human rights remain politically sensitive. Any denunciation in these areas is seen by the perpetrators as

¹³ C.SEBUDANDI, *Civil Society: complementarity, identity and duality*, Bujumbura, 2012, P.11

¹⁴ Ibid

unacceptable and inappropriate intrusion into matters under the relevant authorities. Sporadic warnings are therefore made against whistleblowers “*Mind your own business!*” Whistleblowers may become the target of judicial harassment, death threats and are sometimes even assassinated¹⁵.

The large mobilization of civil society following the assassination of anti-corruption activist Ernest Manirumva also contributed to a deterioration of relations between civil society and the State. The civil society not only asked that the whole truth about this case be known but that justice is done. Given the inability of the justice system to uncover the truth, civil society conducted parallel investigations which came up with important revelations to support the outcome of the case.

The above investigations implicated senior officials of the National Police or even the State. These facts were confirmed by a team from the FBI which had been involved in the investigation and recommended that DNA tests be conducted on some senior officials of the Police and the National Intelligence Service. Since the civil society engaged in discovering the truth in this case with determination, this attracted the wrath of the State actors and led to the suspension of the Forum for strengthening civil society (FORSC) and threats on withdrawal of licenses of other organizations¹⁶.

Today for example, the issue that is separating many civil society organizations and government is the candidature of Pierre Nkurunziza, the current President of the Republic of Burundi in the presidential elections of 2015. Civil society is denouncing this violation of the constitution. Heated debates on this issue are increasing tensions between the government and CSOs. This opinion is of course shared by the opposition parties even if the argument differs. Through repeated attitudes of civil society in some media, the latter are being accused of rooting for opposition political parties and tension characterizing the context has been exceptionally rekindled.

Moreover, the controversy around the delicate recent report of the Special Representative and Head of the United Nations Office in Burundi (BNUB) on the likely distribution of weapons by

¹⁵ The emblematic case is that of the murder of Ernest Manirumva on 9 April 2009, who was Vice-President of the Observatory for the Fight against Corruption and Economic Embezzlement (OLUCOME). Strong presumptions weigh on some senior Police officers but no investigation was opened against them. Speculation about the motives of the murder is that the victim was working on a big corruption case in which senior officials of the State were involved. The commitment of civil society to the truth about the assassination has created tension between the Burundian civil society and the State.

¹⁶ The Association for the Promotion and Defense of Human Rights and Detained Persons (APRODH) and the Observatory for the Fight against Corruption and Economic Embezzlement (OLUCOME).

the ruling party CNDD-FDD to its youth wing is an illustration of the tensions between CSOs and the leaders of the Country.

In some instances, depending on the needs of government, civil society is taken as a partner most often to justify important decision for example in the definition of CSLPII and the participation of some CSOs in sector clusters.

II.2. Tumultuous relationship between CSOs and government

The relationship between civil society and governments must be such as to enable CSOs achieve their goals fairly¹⁷. This relationship must be guided by the principles of independence and neutrality on the part of civil society.

This multifaceted relationship is dependent on several factors. Among them, the person who embodies authority, the organization's sector of intervention, the issues being tackled, the strategic interests in question etc. It is important to note that these factors may not be evident and sometimes CSOs do not have any special relations with the administrative authorities. They are neither supported nor interfered with by the administration.

In some cases the relationship between CSOs and the government is strained and misunderstandings are observed leading to the hampering of the civil society initiatives by the administration

The variations in these relationships may depend on the nature of the activity of the CSO concerned or even the temperament of the person in charge of the public service concerned. Where development activities are concerned, relationships can be cordial but when civil society has to play their watchdog role against the authorities, particularly on issues related to human rights violations, economic mismanagement, corruption or any case of bad governance, the administration usually becomes hostile and claims to have exclusive privilege to manage the society. Without being exclusive, a clear example is the case of the journalist working for Radio Without Borders BONESHA FM in Rumonge, Bururi province who was threatened for reporting the possible distribution of firearms by the ruling party, CNDD-FDD to its youth wing.

Generally, the administration interferes with the work of CSOs whenever the issues at stake are governance or financial.

¹⁷ Fairly, since CSOs are required to include obligations that ensure political neutrality

II.3. Civil society seen by the government as a “fifth pillar¹⁸” of the opposition and foreign powers:

At different periods in the past as it is today, and in varying circumstances, the positions of some public authorities are convergent and describe civil society as some sort of fifth pillar of the opposition or as working in collaboration with foreign countries. It is often after denunciations and publication of abuse by authorities that such accusations are made.

Civil society does not aim to capture power and should be seen as a partner and not as a State opponent. However, relations between public authorities and civil society are often tense and the former's systematic iron fist control is common in Burundi. Censorship and intimidation are commonplace.

Risks of political nature are the most significant risk faced by civil society. Most often, it is organizations working in the Governance field such as human rights, fight against corruption ... that are under pressure. Attempts are made to control them through the strategy of disciplining¹⁹ by the State. This Organization/State confrontation is based on the fact that the former wishes to involve itself in the sphere of State sovereignty. In so doing, the leaders would like to keep them out of the area of State legitimacy. For this strategy to succeed it adopts symbolic violence against these non-state actors regarded as opponents or enemies of the Nation. As revealed by the respondent from the Action for Peace and Development (APD), some CSOs experience delays or refusals when seeking permission to undertake their works in many places as a counterblast from political instance to their unwanted critics or acts.

II.4. A civil society plagued by bicephalisation

Another strategy borrowed by governments to curb civil society initiatives is the strategy of “bicephalisation” of the management of certain organizations or civil society unions. To counteract their feared actions, parallel management is imposed on some CSOs. New organizations and unions created by the State are supported by the latter and counteract the efforts of independent organizations. Such is the case of PISC versus FORSC and unions such as SPSBU versus SLEB, STEB and CONAPES which are unions working in the field of education.

In this perspective, CSOs in the eyes of those in power are activists for opposition political parties yet they do not seek to capture or retain political power. Thus, its most prominent

¹⁸ C.SEBUDANDI, op.cit. p. 12.

¹⁹ M. Foucault, *Monitor and Punish*, Paris, Gallimard, 1975.

activists are subject to muzzling through legal harassment by the authorities whereas what would be appropriate would be a response to the criticisms²⁰.

In general, the political landscape is considered quite restrictive for civil society. The sensitive strings being impunity, lack of an independent judiciary and denunciations of crimes committed by State agents such as torture by human rights groups. Any denunciation in these areas is seen by the perpetrators as unacceptable and inappropriate intrusion into matters under the relevant authorities. Whistleblowers sometimes are the target of judicial harassment, death threats and are sometimes even murdered²¹.

II.5. A civil society dependent on donors

This issue will be discussed in the chapters that follow but it is clear that effective and optimal functioning of an organization depends on its ability to mobilize the necessary resources for the implementation of its program.

In Burundi, this exercise is extremely difficult mainly due to two factors: First, apart from the low capacity of the organizations in financial mobilization, widespread poverty makes it very difficult for the population to make contributions. When such contributions are made, they are so modest that they cannot support any major action.

CSOs therefore do not have a choice and must turn to external donors to finance their activities. This poses a major challenge to the organizations since to benefit from the generosity of donors an organization must have past achievements to its credit, without which it will not receive anything. It is a vicious circle that encloses emerging organizations in a fatal pessimism²².

²⁰ E. Sentamba, *Better interaction between the State and civil society in Burundi*, available on the website spip.idecburundi.org

²¹ As already mentioned, the reference case is that of the murder of Ernest Manirumva on 9 April 2009, who was Vice-President of the Observatory for the Fight against Corruption and Economic Embezzlement (OLUCOME). Strong speculation is that Senior Police were involved.

²² C. SEBUDANDI, *Op.Cit.*, p.18

III. LEGAL AND REGULATORY FRAMEWORK OF CSOs IN BURUNDI

Burundi is a signatory to several international agreements including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights etc. All these agreements guarantee the right of association and all its corollaries, especially the freedom of expression and freedom to belong to a trade union.

The current Constitution of the Republic of Burundi dating back to 2005, considers all treaties and conventions ratified by Burundi as part of it with the possibility of invoking such reference in regard to freedom of association. There is also a law governing the operation of non-profit organizations which dates back to the eve of democratization in Burundi²³. Other specific laws govern the operation of the press and trade unions in Burundi who are also full-fledged actors of civil society.

III.1. The Constitution of the Republic of Burundi

Freedom of association is enshrined in Article 32 of the Constitution of Burundi, which reads: *“Freedom of assembly and association is guaranteed, as well as the right to form associations or organizations in accordance with the law²⁴”*.

This provision is elliptical, which is quite normal in a constitution since the modalities of its application are detailed in a different law. This law must be consistent with the constitutional provisions which indicates not only the text and its generally accepted interpretation in domestic law, but equally ensures conformity with the obligations of the State under international law. To determine the exact scope of a constitutional provision, or more generally any legal text, it is often necessary to take into account the preamble and other related provisions. The following paragraph is relevant in this regard:

“Proclaiming our commitment to fundamental human rights as particularly defined in the Universal Declaration of Human Rights of 10 December 1948, the International Covenants on Human Rights of 16 December 1966 and the African Charter on Human and Peoples' Rights of 18 June 1981 (paragraph 2) [...]”

²³ Decree-Law No. 1/11 of 18 April 1992 on the organic framework of NPOs in Burundi

²⁴ *Codes and Laws of Burundi (31December 2006)*, p.6.

The commitment to respect fundamental rights as expressed in the paragraph quoted above requires the constant concern of the legislature to establish laws in conformity with the requirements of the international law of human rights and the judge to punish their violation²⁵.

Article 19 of the Constitution of 18 March 2005 establishes the applicability of international conventions discussed in these terms:

“[...] 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 are an integral part of the Constitution of the Republic of Burundi. These fundamental rights are not subject to any restriction or derogation, except in certain circumstances justifiable in the interest of the public or the protection of a fundamental right. (Article 19).

By such reference to standards formally external to the Constitution, the constituent power maintains the brevity of the Constitution while signaling its adherence to standards to which it attaches particular importance²⁶.

This results in the establishment of procedures for exercising the right under analysis. As is the case for all other freedoms and rights, the legislator must ensure compliance with the relevant provisions of treaties to which the Constitution refers, taking into account the interpretation given to the enforcement bodies of these instruments.

Compliance targets previous legislation as well as those introduced after the entry into force of the Constitution.

Any law that disregards this rule is liable to censure by the Constitutional Court. Freedom of association is one of the rights and freedoms enshrined in international and regional instruments on human rights to which Burundi is a party that clearly benefits from this framework.

²⁵ J. BIGIRIMANA, *Critical analysis of the bill on organic framework of NPOs in Burundi*, Bujumbura, 2013 p. 7.

²⁶ A. ROBLOT-Troizier, “Reflections on constitutionality by reference” *Cahiers du Conseil Constitutionnel* No. 22, p. 1.

III.2. Law governing non-profit organizations in Burundi

Apart from the Constitution, the main legislation that organizes the creation and operation of non-profit organizations is the Decree-Law No. 1/11 of 18 April 1992, which has remained unchanged to date despite its gaps and obsolete provisions as well as the multiple attempts to reform it in the past or which continue today.

In its explanatory memorandum, the Decree-Law No. 1/11 of 18 April 1992 on the organic framework of non-profit organizations (NPO) indicates the need to “*fit all the generally applied legal rules to the irreversible evolution of Burundi and to harmonize the rules in accordance with the issues they seek to organize.*” In practice, this would involve unifying three pieces of legislation: the Decree-Law of 27 November 1959 on NPOs, Order No. 11/234 of 8 May 1959 on associations not governed by special legal provisions and of the Royal Decree No. 100/170 of 1 March 1963 relative to organizations established mainly by foreigners or where foreigners can exercise a dominant influence.

In fact, the aforementioned Decree repeals and replaces the three pieces of legislation mentioned above (Article 46).

In summary, we note that Burundi has made significant efforts to establish a more or less favorable legal framework, but the existing legislation is still complex and in some respects obsolete²⁷.

Before proposing solutions to the challenges faced by the civil society, we will succinctly analyze the scope of the above-mentioned law, the requirements for approval of a CSO, the barriers to the registration of an NPO and the operating constraints of CSOs. .

a) Scope of the Decree-Law No. 1/11 of 18 April 1992 on the organic framework of non-profit organizations

The NPO Act clearly states its scope and defines a nonprofit organization as an organization “*that does not engage in commercial or industrial activities and whose main purpose is not to provide its members material or monetary gain. However, is not considered as a lucrative activity, any operation carried out by organization, designed to grow its portfolio in order to better achieve its purpose*” (Article 1).

²⁷ For example, all existing foundations in Burundi are subject to the legal regime by the Order of Rwanda-Urundi No. 3 of 26 January 1926, which is inconceivable after the departure of the colonial administration. Under this order, the existence of a foundation is subject to the establishment of a fund for the establishment of a public interest institution, including philanthropic, religious, scientific, artistic and educational work. All this is archaic because in practice, foundations operate as simple NPOs.

Political organizations, mutual associations, public utility institutions, or foundations do not fall within the scope of the new law.

b) Conditions of approval/licensing of a non-profit organization

The main provisions of the decree law on the establishment and approval of an NPO are as follows: In terms of approval, the Ministry has the power to grant legal personality to an NPO upon request by its legal representative (Article. 3);

The statutes must be a deed drawn up by a notary, with a list of the founding members and their nationality. A minimum of 5 members is required. No person shall, except after emancipation, be a member of an association before reaching the legal age of majority fixed at 18 years (Article 8).

These statutes and the list of founding members must be accompanied by authenticated Minutes²⁸ of the constitutive General Assembly with persons designated to represent the organization (Article 4).

It is thus clear that the approval process for NPOs is difficult especially for organizations outside Bujumbura which are forced to travel to Bujumbura hence making the registration costly in terms of logistics. Moreover, the documents required are many, expensive to produce and take long to obtain. For example, an extract of criminal records is a prerequisite for obtaining a certificate of good conduct which is issued by the provincial governor or the mayor. The entire exercise is not easy for rural organizations.

Below is a summary of the documents that must be presented to the Ministry by an NPO in Burundi:

- *Curriculum vitae and extract of criminal records of each member of the Executive Committee;*
- *NPO's "activity implementation program" and "action plan."*

²⁸ The minutes shall be authenticated by an independent notary and the operation does not cost a lot. However the major problem is related to the fact that notarial offices are very few in the country and are located only in 3 major cities namely Bujumbura, Gitega and Ngozi. Access to these services for people living far from these cities is problematic.

Other documents required are:

- *Bylaws authenticated by a notary in triplicate;*
- *Complete identity documents of each Executive Committee member*
- *Minutes of the constitutive General Assembly authenticated by a notary in triplicate*
- *A letter of request for approval addressed to the Minister of Internal Affairs by the legal representative of the applicant association.*

In addition a folder must be provided to file the documents!

The 1992 law also requires mandatory mentions in the statutes to be authenticated: name of the organization, headquarters which must be in Burundi, purpose for which it was formed, origin of resources, the conditions necessary for its operations, mode of deliberations for its General Assembly, beneficiary of its assets in the event of liquidation, membership and exclusion conditions of members ... (Article 5). Moreover, the legal personality must be published in the Official Gazette of Burundi (BOB) in order that the existence of the organization may be challenged by third parties (Article 6).

At first glance, it may appear that this law is beneficial to CSOs because it does not particularly restrict the scope of non-profit activity performed in order to achieve the objectives of the organization. It does not provide for an organ to ensure the achievement of this objective or payments except the fee for the authentication of statutes and other intermediate steps. However, it contains several barriers regarding the approval and operation of CSOs that should be removed.

c) Barriers to approval and operation of CSOs

A good analysis of the law on CSOs reveals a number of shortcomings detrimental to the development of civil society. This mainly relate to:

- *Vagueness surrounding the approval procedure* which sometimes leads to abuse whereby the approval of an organization is subject to the goodwill of the administrative authority. No recourse is provided in the event of refusal of approval. The text merely states that the competent authority may refuse approval for “*non-compliance with the conditions laid down in Articles 4 and 5, or when the object of the organization is contrary to law, public order or morals*” (Article 6).
- *Absence of a fixed period within which the administration must issue approval.*
- Harmful silence of legislation on potential administrative and financial support that the State should extend to NPOs. Whereas foreign NGOs enjoy exemptions and other privileges in the exercise of their activities, local NGOs whose financial

limitations are known are not entitled to any facility in this regard. The State does not provide any form of financial support even if its official discourse sometimes recognizes the vital contribution of civil society in developing countries.

- *Much remains to be done* regarding community organizations. These groups are not governed by any statute because the law on non-profit organizations cannot be applied to them given their nature of production and sharing of part of the dividends earned among shareholders.

d) **Formation of unions of civil society organizations**

The law in force does not put particular restrictions on the establishment of collaborative networks between civil society actors. However, in practice we observe that the exchange of information and collaborative relationships are not developed due to several factors as identified in the UNDP study on strategies to strengthen and support the civil society. The study noted in particular:

- ***Attempts by authorities to stifle the emergence of a strong civil society:*** here governments seek to curb or discourage the creation of strong and credible spaces of action.
- On the legal front, the NPO Act is incomplete then silent on the operating rules for unions.
- ***Internal weakness of civil society organizations:*** most organizations are at an embryonic stage and still lack the capacity to manage critical organizational matters. The network cannot therefore be strong since member organizations are weak.
- ***Absence of a clear common vision within civil society:*** the establishment of unions is usually initiated in response to an immediate need, either to better position the civil society in its role in relation to the overall system or to strengthen the civil society. This process results from a vision that is sorely lacking in most of the leaders of the Burundian civil society.
- ***Distrust among members of civil society organizations:*** there is fear that the formation of a larger association would lead to the creation of another autonomous and competing organization that will have nothing to do with the member organizations. Since it would enjoy greater credibility than a simple CSO, the fear is that the association would compete with individual CSOs. This fear could result from the absence of basic rules of collaboration²⁹.

²⁹ See C. SEBUDANDI and NDUWAYO, *Study on the strategy and support program to civil society in Burundi*, Bujumbura, 2002, p. 40

Unions certainly exist in Burundi. For example, the Association of Women's Groups and NGOs in Burundi (CAFOB) which was approved in January 1997 brings together 46 women's organizations. The Network of Women for Peace brings together forty associations and women's groups. The Observatory of Government Action (OAG) was established in 1999 and includes within it eighteen civil society organizations. The Association for the promotion of youth movements (CPAJ) exists since 1994. It has 24 member organizations. FORSC today brings together 146 organizations.

A closer look however shows that these organizations are not strictly speaking Unions. They are NPOs having a separate legal personality from that of member organizations and which instead of guiding member organizations end up displacing or overshadowing them.

Burundian civil society suffers a serious lack of strategic alliances among CSOs themselves that could enable them unite around common interests or goals. A shared vision and alliances are only temporary³⁰ between large organizations located mostly in the capital and community organizations.

Timid and disparate initiatives on ground are starting to come up. For example OAP that works in the province of rural Bujumbura with community organizations with a strong leadership and is a strong alliance of farmer groups.

e) Right of CSOs to access funds and resources

The right of an association to have access to funds and resources is an essential element of the right to freedom of association. Many Burundian CSOs are established with the hope of obtaining external funding. Funding sources are not diversified. The bulk of the funding comes from grants from international NGOs or other external financial institutions.

The 1992 Act states that associations may receive grants, donations and bequests. There is no legislation or institutional structures dealing with grants or public support to CSOs.

According to a UNDP study, own revenues derived from contributions or other sources, account for less than 1% of the total budget of more than 98% of CSOs surveyed. This presents an extremely fragile situation in terms of autonomy and sustainability of all organizations including those which seem advanced³¹.

³⁰ An example is the coalition of 500 CSOs that came to together to advocate against the cost of living, led by OLUCOME and ABUCO and other CSOs in 2012 which led to the suspension of certain measures by the State

³¹ See SEBUDANDI C. and G. NDUWAYO, *Study on strategy and support program to civil society*, UNDP, 2002.

For large organizations, funding varies depending on nature, scope of activities, donor's interest in projects submitted and to a large extent the credibility and reputation of the applicant association. This latter aspect leads to a phenomenon of concentration: acquisition of means often reinforces visibility and reputation consequently attracting other donors. This situation is even more desperate in Burundi where civil society has not yet developed appropriate strategies for self-financing³².

Moreover, institutional donor support to CSOs remains limited. Almost all CSOs interviewed believe that financial resources are insufficient and own contribution revenues without funding cannot run an NPO. Institutional support remains very limited. Apart from the NGO 11.11.11³³ which allocates 40% of its funds to institutional support, other donors seem reluctant to support payment of local staff, consumables etc and require CSOs co-financing which is sometimes not possible.

III.3. A partially unconstitutional press law

Burundi has just marked a big reversal in terms of respect for freedom of the press through the enactment of Law No. 1/11 of 4 June 2013 amending Law No. 1/025 of 27 November 2003 regulating the press in Burundi. This law was enacted while the civil society in general and the media in particular were on the front lines urging that it be returned to the government for review.

The enactment of this law pushed Burundi backwards in the world ranking of press freedoms conducted annually by RSF (Reporters Without Borders), falling from position 132 to 142. This is a sign that freedom of the press is in decline since according to RSF, Burundi enacted disturbing laws³⁴.

RSF further noted that “...*this law is more disturbing because it is part of a threefold legislation to restrict the freedom of association and political expression, confirming the authoritarian drift of the Burundian government, which does not seem to concern the Western embassies*”³⁵.”

Indeed, world media and civil society expected that after the second Forum on communication held on 4 and 5 March 2011 whose goal was to “*lay the groundwork for a national*

³² Idem., p.36

³³ 11.11.11.Supports six organizations involved in the development and monitoring of policies: REJA, OAG, FOCODE, BIRATURABA, OAP and PARCEM

³⁴ www.sociétécivile-burundi.org : world ranking of press freedom, Burundi down 10 places, February 2014.

³⁵ Ibid.

communication policy, particularly through the development of a methodology to review the legal and regulatory framework of communication, with the major themes being the decriminalization of press offenses and the establishment of a forum for dialogue between the media and partners, through a mechanism of regulation and self-regulation” we would have a better law guaranteeing freedom of expression but the disappointment was big upon its promulgation.

Important points of decline and challenged by the world media and civil society are:

- Protection of information sources: the reporter can be compelled to provide the source of the information before the courts in cases listed by law in violation of the principle of protection of sources (Article 20);
- Ban on release of certain information including that which undermine order and public safety, information on secrecy of national defense, State security and public safety or information affecting the stability of the currency (Article 18 of the Press Law);
- Pecuniary penalties for newspapers ranging from 2,000,000 to 8,000,000 Burundi Francs (Article 24);
- Immediate execution notwithstanding any remedy decisions of the National Communication Council (Article 58 paragraph 13)

This law will nevertheless be partially invalidated by the Constitutional Court after the introduction of a constitutional complaint lodged on 19 July 2013 by UBJ (Burundi Union of Journalists) at the Constitutional Court of Burundi.

UBJ challenged the constitutionality of Articles 19 b, i and h, Article 21, Article 58 paragraph 13 and Articles 61, 67, 68 and 69.

The court will rule on 8 January 2014 on the unconstitutionality of the provisions of Articles 61, 62, 67 and 69 relative to fines to be imposed on the heads of media houses in case of violation media laws on the grounds that they are unconstitutional in particular Article 40 of the latter is contrary to the principle of presumption of innocence, which provides that:

“Any person charged with a criminal offense shall be presumed innocent until proven guilty according to law in a public trial during which the necessary guarantees for their free defense will be ensured”

Other Articles will remain applicable, particularly those relating to the dissemination of information concerning “undermining the credit of the State and the national economy” (Article 19, i) those affecting the stability of the currency (article 19, b) propaganda information by an enemy of the Burundian nation in times of peace as well as in times of war (Article 19 h); the obligation to provide information to the courts in the cases listed in Article 22, the binding nature of decisions made by the National Constitutional Court notwithstanding any remedy ...

UBJ then referred the same matter to the East Africa Community courts that have not yet delivered their verdict. Meanwhile the fate of the press law is uncertain and the government has not reviewed its copy in preparation for promulgation.

In fact the contested provisions open loopholes for the authorities who continue to abuse or use them whenever they want to pursue a media house that disseminates information that does not please them. The most recent and valid example concerns information on weapons which could be in the process of being distributed to youth affiliated to CNDD-FDD Imbonerakure where two correspondents of radio ISANGANIRO and Bonesha FM (Eloge NIYONZIMA and Alexis NKESHIMANA) appeared before the Tribunal de Grande Instance in Bubanza on 21 and 24 April 2014 to deliver the sources of information broadcasted on a likely distribution of weapons to the youth of CNDD-FDD party. Moreover, this information was contained in a confidential BNUB report which also alerted the Security Council about a possible genocide in preparation if care is not taken.

Journalists continue to be under all sorts of pressure: intimidation, harassment, death threats and/or threat of closure of media houses by the National Communications Council, a public regulatory body in charge of media that some private media are described as biased and pro-government.

III.4. Binding legislation on trade unions

The exercise of freedom of association is regulated by two texts, namely: the Decree-Law No. 1/037 of 7 July 1993 amending the Labour Code of Burundi³⁶ with regard to private and public companies, and Law No. 1/015 of 29 November 2002 regulating the exercise of the right to form trade unions and the right to strike in public service.

Chapter IV of the Decree of 7 July 1993 on professional organization deals successively with the freedom of association, the establishment of trade unions, rights and obligations of trade unions, union of trade unions and finally termination of activities and dissolution of unions.

Article 7 of this Code recognizes that workers governed by the Labour Code have the right to *“organize themselves freely in accordance with the charter of national unity, the constitution, laws and regulations for the protection of their professional interests”*

At the same time, this article states that *“any person may defend his rights and interests through union action”*. To facilitate the exercise of this freedom, employees and employers must bargain collectively and sometimes resort to strikes and lockouts in accordance with the conditions laid down by law (Article 8). Article 268 defines the procedures for the exercise of this right, particularly through posting communications, meetings and the collection of contributions, while

³⁶ BOB, 1993, n°9.

at the same time laying down principles designed to protect employees from the tyranny employers who are tempted to restrict the enjoyment of freedom of association.

Article 250 sets 50 as the minimum size of the group of employees of a company that can form unions, the same threshold is used for civil servants. This provision could be interpreted as an attempt to restrict the freedom of exercise of the right to form trade unions but we must also say that the viability of a union both in terms of capacity to mobilize members and collection of resources is evidently related to the size of the company.

The order for registration of a trade union is made more than 45 days after the date of filing the application with the relevant department. Reports linking trade unions and this ministry are similar to those linking NPOs and the Ministry of the Interior: They particularly target the nature and frequency of administrative reports to submit, administrative monitoring of up the lives of unions etc. In case of unjustified refusal of registration, the applicant may within three months appeal to the Supreme Court which may order registration where appropriate.

The legislation also protects union officials, in that they cannot in principle be subjected to judicial, administrative or other proceedings for the proper exercise of trade union rights that the law accords them.

All in all, for both State agents and workers of parastatals or private sector, the legislation provides a relatively convenient framework to defend trade union rights. However, the full exercise of trade union rights has many limitations³⁷:

- i) Strike action entitles the employer to suspend its obligations vis-à-vis the employee, including the suspension of all financial rights yet the latter depends on this employment for survival and the organization he is representing is unable to put up a reserve on him. This situation certainly weakens the potential to demand or defend workers' rights while both public and private employers are generally sensitive to the strike;
- ii) Imbalance between supply and demand for employment leaves employers with a big margin of flexibility;
- iii) Poor financial health of companies coupled by technical, legal and management constraints constantly expose employees to loss of jobs whilst encouraging an oppressive and unjust culture on the part of employers.
- iv) Finally, the political interpretation or attempted veiled politicization that always accompanies any work stoppage are a powerful paralysis of the labor

³⁷ E. NGAYIMPENDA, *Report on the Status of CSOs*, p. 40.

movement. The State has still encouraged the creation of parallel unions whose mission is to sabotage any kind of claim.

We note that in practice, the relationship between unions and government are tumultuous and conflicting³⁸. This is largely a result of the nature of the issues addressed in the claims.

Conflicts mainly arise when the demand by unions for better working conditions imply increasing the State budget.

In this context, the State which is often unable to solve the problem accuses the non-state actors of being in the payroll of the political opposition. This conspiracy strategy invoked by the Burundian government seeks to control the non-state actors. Thus, unions such as CONAPES, SLEB, STUB and SYNAPEP are often accused of this “betrayal” because they are sometimes intransigent. The strategy deployed by the state and its representatives therefore is the attempted “bicephalisation” of unions through a clear desire to impose their leaders or to infiltrate the leadership of these organizations³⁹.

The State sometimes uses a strategy of duplication by creating new “parallel unions” which they finance in order to counteract the harmful effects of those it considers its opponents. The determination by the government to subjugate unions is demonstrated by the creation of unions subservient to the CNDD-FDD party. For example, two new teachers' unions, namely the Union of Primary School Teachers of Burundi (SEEPBU) and the Independent Union of Secondary School Teachers of Burundi (SIPESBU) were recently established by the government.

III.5. Freedom of meeting and public demonstration: Law n°1/28 of 5 December 2013 regulating demonstration on public roads and public meeting

Freedom of meeting and freedom of association are both enshrined in the Constitution of the Republic of Burundi(article 32).

Throughout the first article of the Law regulating freedom of meeting and public demonstration promulgated in December 2013 states one can read that “freedom to organize meetings and public demonstration is guaranteed in Burundi”. In some respects, this law gives a leeway to exercise freedom of meeting and public demonstration even though in others it seems to restrain such freedoms.

In its explanatory memorandum the law explicitly recognized that « ... *even tough consecrating the principle of freedom of meeting and public demonstration, the present law enacts barriers to*

³⁸ E. NGAYIMPENDA, *op.cit*, p. 83 and 84.

³⁹ Ibid

such freedoms. Thus, the competent authority is vested with power to refuse or differ the meeting or public manifestation inasmuch as public order is at risk.” Then, it is quite understandable that these freedoms cannot be entirely and fully exercised because of this power granted to the public authority who can either accept or refuse the meeting or public demonstration after a personal appreciation based on vague and unclear concept of “ordre public”.

Therefore, before holding a public meeting, a number of requirements have to be fulfilled: as a prerequisite, any meeting conducted by a CSO must be declared to administrative competent authority who decides whether to defer or forbid the meeting if it conflict with the public order (article 4). Deposit of the prerequisite declaration has to be done four working days before the date of the public assembly or meeting (article 5 and 8)

Then, CSOs in Burundi do not have possibility to undertake public meeting whenever they want. They are under the obligation to get the public competent authority informed of their initiatives before expiration of a quite long period of 4 days. Indeed, the public power controls the activities of CSOs and can horn in their works. To better understand this, the article 10 of the Law says: *“At any time, the administrative authority can, even though a regular declaration has been done, defer or cancel any meeting, procession, parade, assembly on the public road and in public places, if the maintenance of public order is necessary”*.

In the same angle, the article 12 says that *“the administrative authority is allowed to send one or more delegates to any public meeting with a mandate to attend the meeting. In this case, the delegate has the capacity of suspending or cancelling the meeting if it conflicts with the public order”*.

If delegation of representative with ability to defer the meeting or cancel it is within the realm of possibility, this demonstrates that freedom of meeting is not yet fully guaranteed in Burundi. It also shows that the political power is not yet to abandon its traditional will to merge in internal affairs of CSOs.

On the ground, several facts show this tendency to restrain the exercise of freedom of meeting. Administrative authorities fall back abusively on the concept of public order to forbid unwanted meeting of some CSOs; all depending on the relationships between the CSOs and the administrative authorities and mostly the sensitiveness of the intervention field of the CSO; the most sensitive intervention subject matter being human rights defense, fight against corruption, private media,...or any organization denouncing public power’s abuse or likely to do so.

As a matter of facts, numerous speaking cases that have hitherto happened can be raised.. For example, in its correspondence dated 11.12.2013, the mayor of the city of Bujumbura wrote to all hotels in Bujumbura that henceforth, any organization that wants to hold a meeting in any hotel in Bujumbura must first have a permit issued by his department. The effects of this directive have been fast since the Bar association of Bujumbura was twice prevented from holding a meeting with the police claiming that it had not received an authorization yet it had

informed the officials in the mayor's office as required by law. Moreover, such activity was not of a public nature and therefore was not subject to such a reporting regime.

When organizations united around “the campaign justice for MANIRUMVA” wanted to demonstrate to demand that the trial of MANIRUMVA ends, the Mayor of Bujumbura refused to authorize the demonstration fronting the classical argument that public order was at risk.

Any attempt to publicly demonstrate or even a meeting organized by civil society to denounce an abuse of powers is sanctioned by quick release of heavily armed police. The only demonstrations allowed are those in support of the government or organized by the government. Recently the mayor even stopped in writing a synergy of radios broadcasting a program which dealt with developments in the MANIRUMVA trial even though such an activity does not fall under his official powers.

In the provinces, administrative authorities must be informed before meetings or workshops are held. This red tape sometimes blocks or delays activities as confirmed by the CSO representatives interviewed.

On 29 April 2014, UBJ tried to organize a demonstration in support of freedom of the press without success. Despite having informed the Mayor of this event co-organized by the Ministry of Communication, the police quickly intervened to prevent the journalists' protest.

On the 11th of June 2014, as some CSO and the Mass Media Professionals' Organization (OPM) had addressed a letter to the Mayor of Bujumbura to let him know their intention to undertake a public pacific demonstration in support to Pierre Claver MBONIMPA, the President of APRODH in Prison of MPIMBA, the Mayor opposed a refusal to that declaration. His argument against the demonstration was that it was likely to be of an insurrectionary character.

The different incidents revealed by this study though not exhaustive, make us understand that there are no real positive changes to freedom of association, assembly or public demonstration not only in terms of legislation but also in practice. The creation of a good working environment by the government also depends on the engagement of CSOs in monitoring aid effectiveness and possible partnerships between the two.

III.6. New legislative developments: a quick look at the draft bill on NPOs

Up-to-now, CSOs are regulated by the Decree-Law of 1992 on NPOs. There is no specific law regulating CSO as separate to NPOs. Then, these are at legislative level assimilated to NPOs. Even in the change to be brought by the Bill on NPOs, there is no such a separation, nor is there any debate around distinction between CSOs and NPOs. The current legislative debate is focused on the necessity to review some provisions of the existing law on NPOs after an open collaborative consultation of the main interested stakeholders as a sign of respect of international commitments of the Republic of Burundi such as the respect of freedom of association and meeting, the freedom of speech, association ...

Currently, the CSOs are not fond of the Bill. In their view, the bill is taken as an expression of the will of the public powers to handicap the development of CSOs. This bill, in the view of CSOs, is not in line with laws and international standards in regard with the rights and freedoms granted to them. The following developments describe briefly the important changes by the bill and the CSOs' position.

In fact, the bill aims to regulate the organization and operations of any "NPO" as well as any union created by NPOs. It excluded from its scope mutualism associations/partnerships, associations of a political nature, foundations, professional or corporate organizations, cooperatives and faith based organizations (Article 3).

The bill guarantees freedom of association. According to Article 5 of the bill, NPOs "are created and freely administered *in accordance with the legislation in force*, their statutes and their internal rules and regulations" Nevertheless the formation of unions of organizations is either prohibited or subjected to cumbersome formalities.

Under paragraph 2 of the article: "*these groupings, coalitions and similar arrangements can only be formed between nonprofit organizations subject to the provisions of this Act.*"

Therefore, no coalition is possible with an NPO which is subject to a specific law (Article 2) or an organization working individually such as mutualist associations, political associations, foundations, professional or corporate organizations, cooperatives or pre-cooperative groups and faith based organizations (Article 3). Paragraph 3 of Article 70, states that "[The] unions and forums must prior to their approval demonstrate that their component associations operate in conformity with this Act".

The major innovation of the bill is that it establishes two regimes: the declaration regime which is managed by the local authority and will involve the community, associations and the approval regime (Article 8).

The declaration regime (Article 9 to 13) which remains the general regime is a realization of the constitutional recognition of the right of association. The declaration is made to the local authority and should the local authority administrator fail to respond within two months after the filing of the declaration, it is assumed the declaration is accepted and a legal personality is accorded. Any registration refusal will be justified in writing (Art. 10 paragraph 4)

The approval regime (Article 14 to 20) will be subject to public interest and subsidies/grants respectively. To be recognized as a “public NPO” an NPO must have existed for at least two years with significant achievements in ten areas of public interest listed in the bill. Procedures for the acquisition of public interest status will be defined by decree.

Unions will be approved as normal NPOs. The approval procedure is open to any non-profit organization, but it is mandatory for Non-profit Associations working in several provinces, having more than 500 members, Union type or foreign.

The formalities in the approval regime remain complex. After submission of the complete application dossier, the Minister has two months within which to rule on the approval and “upon expiration of this period and unless there is valid reason”, He has only one month within which he is obliged to approve the association (Article 17 paragraph 2).

The notion of “valid reason” as a justification for refusal gives the Minister too much freedom of judgment yet what is at stake is freedom. It should be noted that as in the case of approval at the local authority level, he must justify his decision by demonstrating how the purpose of the association contradicts the law, public order and morals⁴⁰.

In addition, the bill provides for the issuance of a registration certificate signed by the Minister in charge of approval of non-profit organizations and countersigned by the sector Minister in charge of the area of intervention prior to commencement of activities (Article 18). This certificate is renewable annually in the manner specified by the Minister in charge of approval of NPOs (Article 18 paragraph 3).

Almost all CSOs believe that the planned annual registration is a “*Damocles sword hanging over the heads of NPOs and a reversal in the exercise of freedom of association*”⁴¹

The right to form unions is guaranteed by the new bill (Article 30 paragraph 2). It is subject to restrictions that some analysts describe as inconsistent with the freedom of association⁴². In fact NPOs which are simply declared or approved are free to form clusters, networks, forums,

⁴⁰ J. BIGIRIMANA, *op.cit.*, p.16

⁴¹ Ibid.

⁴² Ibid.

permanent or temporary associations but under the new structure thus created, NPOs must submit an application for approval. The members of this new non-profit organization may be only legal persons or a combination of natural and legal persons.

In addition to the funding contained in the Decree-Law of 1992, the financial resources of non-profit associations also come from State grants allocated to public interest NPOs. Revenues from contributions, donations and grants are not taxable (Article 53). The bill is not clear on whether foreign funding is allowed or not. Freedom of association however provides that NPOs can draw on external funding.

In terms of financial assistance, the Government accords to public interest organizations assistance in the areas of tax and customs, bonds and other bank guarantees. They may also receive subsidies from the State and at the same time be accorded a privileged partner status for any aspect in the management of public affairs.

The civil society actors interviewed were divided on whether or not to receive subsidies from the government. While, some see it as an effective and even a legitimate advantage in terms of the contribution that civil society make to the implementation of social programs, others see in this possibility an open path to abuses and interference by the State in the activities of civil society. Aid could also be a means of division and annihilation of CSOs where the government decides to grant aid in a subjective and discriminatory manner.

Organizations are required to submit activity reports as follows; NPOs subject to the declaration regime (Article 12) submit to the district and provincial authorities while NPOs subject to the approval regime (Article 20) and public interest organizations (Article 24) submit to the Minister of internal affairs.

As long as the State does not give grants to CSOs, this provision is viewed by some members of civil society as interference in the affairs of NPOs. Some CSOs believe that there are no reasons why associations should be accountable to administrative or political authorities. Accountability should be to members and any mandatory reporting to the State “violates the privacy of CSOs”⁴³.

In our opinion, this is proof of the continuing mistrust between government and CSOs. The latter being advocates of transparency in the management of Aid should rather serve as models. CSOs have no valid reason to resist administrative and financial control if they are well managed. Production of reports and their communication to the public at large and to particular populations is proof of the spirit of accountability and transparency that CSOs should demonstrate.

⁴³ See J. BIGIRIMANA, *op. cit.*, p. 20

The penalties in section 1 of Chapter X provide that, at the request of any interested person or the public prosecutor, the Administrative Court may order the withdrawal of the license of any organization for various reasons contained in the law.

The Minister in charge of approval of NPOs may on his own or at the request of an interested person decide to suspend an organization in question for a period not exceeding two months. This provision causes jitters in the world of associations which believes this power may be misused.

IV. CSOs REPRESENTING MINORITY GROUPS: CASE OF THE BATWA

According to statistical estimates from the colonial period to date, the Batwa⁴⁴ represent 1% of the Burundian population. There is no official census to indicate the accurate number of the Batwa or other ethnic groups in Burundi. However, during an investigation into the land situation of the Batwa, UNIPROBA⁴⁵, estimated that there were 78,071 Batwa⁴⁶ out of an estimated over 8 million Burundians, which represents about 1%.

The Batwa community is a super minority scattered throughout the national territory. It is marginalized social component in Burundi that has always lived by hunting and gathering but is now settling. The Batwa are ardently claiming the right to property and gradually integrating into the decision making organs.

Currently, the laws are interested in promoting the Batwa especially following advocacy conducted by a very active association called UNIPROBA (Unite for the Promotion of Batwa), an indigenous Burundian organization that works to protect and promote the rights of the Batwa in Burundi.

Following the negotiations of the Arusha Agreement, the problems of the Batwa began to be a concern of governments. Article 7 of Protocol I of the Arusha Agreement of 28 August 2000 states that *“The deliberate promotion of disadvantaged groups, particularly the Batwa in order to correct the imbalances in all sectors.”*

⁴⁴ Minority pygmy like people who lived by hunting and gathering (alongside the Tutsi and Hutu, the two main communities in Burundi)

⁴⁵ UNIPROBA (Unite for the Promotion of the Batwa, the most representative organization of Batwa having observer status at the African Commission on Human and Peoples' Rights)

⁴⁶ UNIPROBA *Report on the land situation of the Batwa in Burundi*, Bujumbura, January 2008, p.16

The preamble of the Constitution of 18 March 2005⁴⁷ considers the protection and inclusion of ethnic, cultural and religious minority groups in the general system of good governance, the prohibition of discrimination, the achievement of equality and social justice as constitutional principles.

The Batwa are increasingly present in decision making bodies. For example the constitution provides for the appointment of three people from the Batwa community in parliament which gives them the power to influence policies related to their promotion and protection. The UNIPROBA advocates for the effective recognition of the Batwa and improvement of their living conditions.

V. PARTICIPATION OF CIVIL SOCIETY IN THE POLICY MAKING PROCESSES

The participation of civil society in the policy-making processes is increasingly an absolute imperative to ensure aid effectiveness⁴⁸. Development partners themselves believe it is a key requirement. CSOs are considered as social economy companies, actors in building citizenship and government⁴⁹ partners. Through these different roles, they contribute to cooperation, negotiation, opposition and are as an alternative to the State, they help to produce public goods and services and encourage participation in economic and social development⁵⁰. With this conviction, the Accra Agenda for Action recommends that governments in developing countries work closely with parliaments and local authorities in the development, implementation and monitoring of national development policies and plans and in this process partner with civil society organizations⁵¹. The donors on their part, pledged to support efforts to increase the capacity of all development actors vis-à-vis, parliaments, central and local governments, civil society, research institutes, media and the private sector in order for them to participate actively in the dialogue on development policy and the role of aid in achieving the development objectives of a country⁵².

Currently, Burundian CSOs are becoming more involved in the definition and orientation of development policies. They have been particularly active in the development and monitoring of the Strategic Framework for Peace building (CSCP) and the Strategic Framework for Growth

⁴⁷ Law No. 1/010 of 18 March 2005 promulgating the Constitution of the Republic of Burundi, *Burundi Official Bulletin*, No. 3 TER/2005, p.1 to 35.

⁴⁸ The Different High Level Forums on Aid Effectiveness often insist on the privileged place of CSOs in the new approach to effective management of development assistance.

⁴⁹ J. PLANCHE, Supporting the emergence and strengthening of civil society, understand the issues, GRET, August 2004, p.32.

⁵⁰ Ibidem

⁵¹ Accra Agenda for Action, Paragraph 13, point a

⁵² Accra Agenda for Action, Paragraph 13 b

and Fight against Poverty (CSLP2). The development of the National strategy for good governance and fight against corruption also enjoyed significant contribution of the civil society engaged in this sector⁵³.

However, it is important to note that the involvement of CSOs in policy-making processes being a new activity does not always happen smoothly. In fact, the government is still very reluctant to involve them at all levels of policy development. The government criticizes CSOs for lack of organization and expresses difficulty in finding legitimate interlocutors to ensure full representativeness. This seems to be the basis of attempts by the government to cheat in the selection of partners which is often denounced by CSOs.

V.1. Space for dialogue between government and CSOs

Burundi currently has an official and legal framework for cooperation and coordination of development and peace building stakeholders. In 2008, a partners' coordination group (GCP) was established to enable coordination, monitoring and dialogue with partners on issues of development and peace building. The coordinating group (GCP) consists of sector clusters, a monitoring and evaluation group, a high level Strategic Forum and Policy Forum in which all stakeholders including civil society and the private sector are involved, albeit at a low level but their participation is still formally recognized⁵⁴.

At the local level there are provincial development committees, community development committees and hillside/village development committees in which civil society is invited⁵⁵. These development programs monitoring structures which are devolved and decentralized are operational only in some provinces but the dynamics of their implementation are highly recommended in official documents. The participation of civil society as an actor is only recognized within Provincial Development Committees (CPD) for example, Mwaro CPD has 6 CSO representatives though it does not regularly holds meetings which are fixed at the end of every quarter. CCDC and CDC are established by communal law and are open only to elected officials even if communities may participate as observers.

It is worth noting that periodically, the Minister of Internal Affairs organizes meetings with representatives of CSOs. Unfortunately, rather than being opportunities for dialogue between CSOs and the government on their overall performance and/or partnership between the two, these meetings are opportunities for the Minister to caution CSOs after behavior deemed

⁵³ The organizations involved in this sector have managed to integrate into the document the National strategy for good governance and fight against corruption paragraph 20 of the Accra Agenda for Action on the support of civil society organizations (see page 36).

⁵⁴ Terms of Reference of the Partners Coordination Group, P.1.

⁵⁵ Civil society note for the mobilization of funds related to CSLPII, unpublished, P.3.

offensive by the government. The interest and participation of CSOs in these meetings is consequently significantly reduced⁵⁶.

In partnership with UNDP, a framework for more structured and operational cooperation between CSOs is being set up as desired by most CSOs. A draft of its implementation plan is at an advanced stage. It is currently being discussed by CSOs and the government⁵⁷

V.2 The Institutional framework of aid management

Aware of its low capacity to coordinate and mobilize the aid due, essentially, to the incoherence of legal texts and statutes regulating public institutions and mechanisms having a stake in that process, the Government of Burundi, with support of its partners, has put in place in 2005 a new structure of aid coordination; the National Committee for Aid Coordination, CNCA in short. Setting up such a mechanism has been appreciated by Burundi development partners, who were gathered in their retreat of March, 14, 2014.

In their roundtable held in Bujumbura from 24 to 25 may 2007, donors supported the idea of Burundi Government to set up the Group for Coordination of Partners (GCP) as a framework for dialogue between the Government and its partners.

Thus, the CNCA is an operational unit and national entity with a special mission to coordinate and ensure the efficacy of the aid with regards to the commitments taken through the Paris Declaration; the permanent Secretariat of the CNCA being the secretariat of the GCP is designed to undertake follow-up and monitoring of decisions taken basing on coordination units within ministries.

Three levels constitute the operating chart of the GCP:

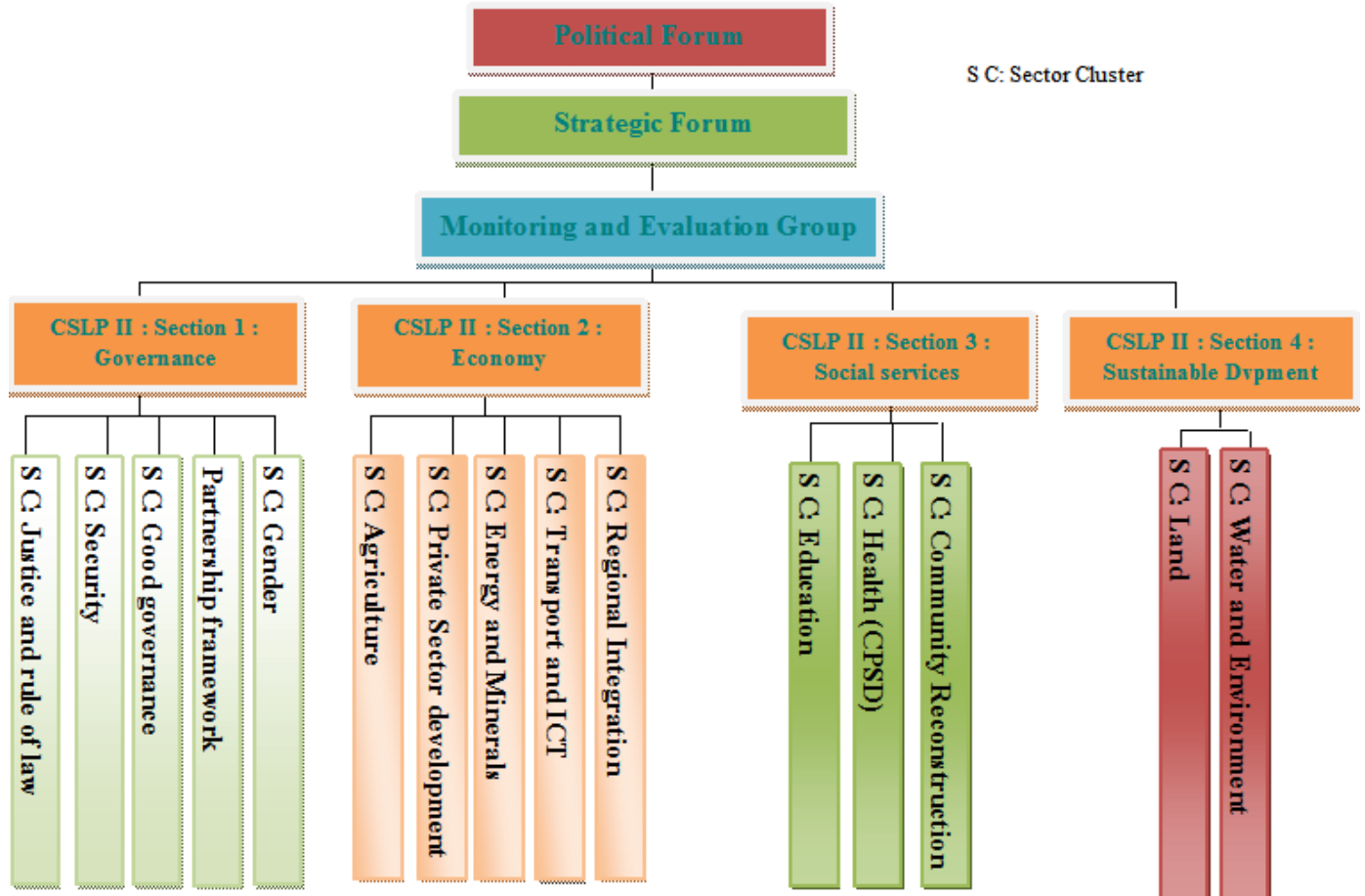
1. At the bottom, the first level is made of Sector Clusters dealing with technical issues pertaining to drafting and monitoring their strategies. They discuss the technical aspects of the implementation of their programs.
2. The second level, the Strategic Forum of the Group of Coordination of Partners, deals with issues coming from Sector Clusters.
3. The third level made of the Political Forum of the GCP gives political orientations to the Strategic Forum in order to ensure the effective implementation of the CSLP and an

⁵⁶ Out of the 5,625, there has never been a presence of 100 CSOs according to the Director of the Department of Administrative, Legal and Policy Affairs at the Ministry of the Internal Affairs.

⁵⁷ This is a recommendation from the meeting of the Minister of the Internal Affairs with CSOs in Gitega in 2013

effective link between the development and peace-building agenda and then consolidate the partnership between the Government and its partners.

The following is the operational chart of the GCP-CSLP II dating back to February 2012:



CSOs, on their initiative, have constituted what they called the « Thematic Synergies » and the « Geographic Synergies » in order to take part to the activities of Sector Clusters. In fact, the thematic synergies are structures of civil society sufficiently flexible and light that leave the independence to any CSO to choose the interesting theme to join but the head of which is an organization that leads all the remaining organizations composing the thematic synergies.

Currently there is:

- The Good Governance Synergy led by PARCEM which attends the meetings of the Good Governance Sector Cluster
- The Youth and Employment Synergy, led by the CPAJ
- The Justice and Rule of Law Synergy;

- Land Synergy ;
- Community Reconstruction Synergy

The thematic synergies of CSOs are not yet covering all sector clusters. Some of them are more active than the others. The first two synergies and the one dealing with land issues are the most active. The remaining are being reinforced while the new ones are being created under the initiative of BIRATURABA, the focal point chosen by CSOs to monitor the partnership CSO-Government⁵⁸.

Meanwhile, other synergies are being set-up in order to cover all Sector Clusters making the operational chart of the CNCA to ensure a large participation in those groups. This is the case of, among others, the Gender Synergy, the Security Synergy and the Health Synergy.

Indeed, CSO face some challenges in this regard. The most important pertain to the lack of involvement of some CSOs, the low level of exchange of information between them and the public authorities, the lack of a structure of coordination of CSO having material and human resources, the denigration of synergies by CSOs with experience to work within the “project” based approaches, misrepresentation of rural CSOs,...

The Geographic synergies are quite new. They are pilot initiatives of Biraturaba NPO which are being tried in the Province of Mwaro (Centre of Burundi). These consist in provincial synergies created to influence political decisions process within the CPDs which are provincial decentralized structures to be set up in the framework of the CSLP.

Biraturaba has extended its works to the commune level. It has tried communal synergies of CSO. These ones gather CSOs operating at the commune level which elect among them the leading CSOs that also have a say and therefore contribute in the drafting process of the Communal Community Development Plans (PCDC).

Satisfactory outcomes are observed in the provinces or communes where these synergies are operational. For example, communal synergies succeeded to get a section on good governance integrated in the PCDC of communes in the Province of Mwaro. This section is not included in any plan of any other commune of any other Province of Burundi

Then, these initiatives prove themselves to be good and encouraging. Even though, their geographical coverage remains small, good practices of Biraturaba can inspire other CSOs and development partners. Biraturaba is capitalizing on them and is urging other CSOs and development partners to spread them in other provinces for them to become nationwide in order to reach at an effective and national participation of CSOs in political decision-making and development processes of the country.

⁵⁸ Interview with one of Program Manager of Biraturaba

V.3. CSOs participation in development planning

Few years ago, Burundian CSOs are actively contributing to conceive, draft and implement development plans. Even the Government recognizes their involvement⁵⁹. Thus, CSOs largely and actively contributed in the drafting process of the Strategic Framework for Peace-building in Burundi in 2005, the Burundi 2025 Vision, the National Strategy of Good Governance and Fight against Corruption, the documents of the Strategic Framework of Fight against Poverty (CSLP I and II).

Indeed, the Strategic Framework of Peace-building has been conceived under the auspices of Biraturaba NPO. The civil society learnt from the experience of Biraturaba and took that opportunity to give their voice and value their priorities in the drafting process of development plan that were to follow.. Furthermore, Biraturaba is coordinating activities aimed at reviewing the CSLP II.

To this point, Burundi Government recognizes the existence a dynamic civil society highly contributing to promote and set-up a State of law respecting human rights⁶⁰. On their side, CSOs are proud of this recognition of their role by the Government⁶¹ in the processes of conception and implementation of development plans. Nonetheless, a lot of efforts need to be undertaken because it has been proven that the Government has in some instances tried to circumvent the CSOs.

⁵⁹ Though his speech when he was opening the conference of Burundi development partners held in Geneva from 29 to 30 October 2012, the First Deputy-President confirmed that the little success observed in the fight against corruption are partly the outcomes of the contribution of the civil society (See Paragraph 22 of the Speech).

⁶⁰ Paragraph 13 of the Speech

⁶¹ See the 6th paragraph of the Final Declaration of Burundi CSOs and the mass media that attended the Conference held in Geneva from 29 to 30 October 2012

V.4. Experience of a Burundian CSO in participation to development effectiveness: A case study of Savings and Internal Lending Community (SILCs) of Biraturaba

Biraturaba (can be translated as “they are our concern”) is a Burundian CSO active for development since 2002. It is a pioneering association that monitors aid and development effectiveness. It intervenes within following areas:

- Peace-building,
- Fight against poverty
- Environment protection,
- Community recovery.

Except promoting CSOs participation in the process of policy-making undertaken by Biraturaba as a catalyst for Burundi CSOs in the aid effectiveness monitoring process, this CSO, through its Community recovery intervention field has improved lives of several poor and marginalized persons.

As a lesson learnt from its work experience with poor people, Biraturaba noted that these ones are victims of economic and social exploitation by usurers and politicians who keep them in a kind of slavery. Instead of diminishing, their poverty increase gradually while usurers become richer and richer.

To contribute to the socio-economical autonomy of poor people, Biraturaba promotes a system of savings and internal community loans by setting-up number of groups called SILC launched in several areas since 2006. Biraturaba does this either on its own initiative throughout project funded by its partners or at request by other CSOs.

Biraturaba organizes grassroots trainings targeted to ordinary citizens on methodology of solidarity, savings and internal community loans. The basic methodology is that selection of members of a community (SILC) is done by members of the community on their own in order to constitute small groups of 10 to 25 members. It is at the occasion of their weekly or bi-monthly meeting (for a maximum duration of two hours) that members of the same group gather their fees and membership. The amount gathered is managed in two different funds. The first fund is dedicated to solidarity purpose and the second is for savings and internal community loans. The purpose of this methodology is to provide services of mutual assistance, savings and internal community loans in a community without access to formal loans services..

For a better management of the groups, rules of conduct are convened by members of the groups and a committee for management made of 5 persons is elected. Such a committee is vested with power to organize meetings of members of the group. If a group is made of both males and females, at least 3 of the 5 members of the managing committee must be females.

In the framework of projects implemented in partnership with its funders, Biraturaba has created more than 300 SILCs groups in Buterere, Mutimbuzi (Province of Bujumbura) and in Buganda (Cibitoke Province), each one made of 15 to 25 members since 2011. Currently more than 8000

persons, mostly the ex-combatants, former refugees among whom 60 to 70% are women are getting benefit of a system entirely controlled by its beneficiaries.

The outcomes of SILCs are very encouraging:

- The low self-esteem feeling which is due to their situation of dependence of member of of SILCs leave place to the self-esteem feelings. New development oriented abilities are acquired by members of SILCs who can take by themselves their own initiatives.
- Members of those groups succeed to avoid usurious practices which are rife in the area, deepening the vulnerability of families. In the Communes of Mutimbuzi and Buterere, the usurers apply an interest rate which average comprised between 100% and 400% for a period of 2 to 4 months.
- Women members of the SILCs undertake income generating activities and can therefore contribute to the family needs related expenses. This gives them value in front of their husbands and reinforces their self-esteem.
- The methodology used by SILCs strengthens social cohesion and solidarity. This is an invaluable outcome appreciated by members in this post-conflict period of Burundi⁶².

V.5. Access to CSO information in Burundi on public policies and law

The right to information is enshrined in the juridical instruments ratified by Burundi such the African Charter of Human Rights and People. The article 9 of the Charter provides that everyone has the right to information.

The same right is granted to Burundian citizens (because the Africa Charter has been integrated in the Constitution of the Republic of Burundi by the article 19 of the constitution) either individually or collectively through the associations to which they are affiliate.

Furthermore, the declaration on the freedom of speech in Africa adopted by the African Commission of Human Rights and Peoples in 2003 states that: *“the public bodies keep the information not for them but as custodians of public goods and everyone has the right of access to that information according to internal rules established by laws”*.

Thus, access to information is a means of participation in the affairs of the community or the country. It is an indicator of the level of governance⁶³ It shows transparency and equity in the management of public affairs. Moreover, it demonstrates the level of participation of citizens and users to governance. .

⁶² See Biraturaba's annual report

⁶³ Analysis of the issue of access to administrative and public information in Burundi, OAG, Bujumbura, 2011, p. 34

Information to be accessed can be divided into two main categories: Information related to public politics and government priorities and information pertaining to laws and statutes.

V.5.1. Access to public politics and national priorities related information

A relationship is to be found between transparency and democratic appropriation for CSOs. In this way, CIVICUS indicates that « A quite important indicator of access to information on public politics is the way in which the budget process is transparent and open to public participation. The annual budget is a key political public process implying political priorities of development planned on the ground⁶⁴».

In Burundi, the budget process has never involved CSOs neither during government politics and priorities definition, nor during the drafting or implementation processes. Burundian CSOs are under-informed on public politics and any other budget system remains within the government circle. Several studies undertaken by the OAG (Observatory of the Action of the Government) found that CSO access to information related to public politics remains very low and that transparency of budget and administrative documents is very poor in Burundi.

The following is a testimony from a CSO on the access to information .Biraturaba association as well as other CSOs interviewed said they had difficulties in accessing information from government structures (CSLP, sector policies, laws etc).

“Access to information held by Burundian authorities is difficult. Whereas information on government activities should be public, at first contact you will be asked: Who are you? Who sent you? On the other hand, most of our CSOs do not also put effort to get this information. For example, debates in parliament are open to the public; how many people from the civil society attend these sittings? Nobody! CSOs must thus also put a little effort to access some information”.

The access to information becomes a real challenge when note is taken on the lack of a specific law on such an important issue. Even the international or regional instruments are less explicit as far as access to information is concerned. They are too general. Promulgation of such a law in Burundi would help to improve the situation which nowadays, in the view of CSO having contributed to this study, is alarming and prejudicing to them. CSOs face similar challenges in case of access to legal information.

⁶⁴ Enabling Environment to civil society organizations: a synthesis of progress made after BUSAN, Work Group on POAD, 2013, p. 16

V.5.2. Access to legal information

Another challenge faced by Burundian CSO is the access to legal information. In fact, the only official medium of access to laws and statutes in Burundi is the Burundi Official Journal (BOB). This Journal publishes all laws and rules of Burundi through the Centre of Studies and Juridical Documentation (CEDJ). Publication of laws in newspapers and other mass medias is very unusual and is done in case of exceptional texts such as the Constitution, the electoral code ...and that for a very short period.

A website of the Burundi parliament: www.assemblee.bi has recently been launched and publishes all promulgated laws.

The access to the above information medium is reserved to the only CSOs with ability to access them. These are CSOs essentially located in Bujumbura or in any other urban center of the country opened to the ICT use. Challenging is also the cost of legal text at the CEDJ which is between USD 5 and 10. This is a limitation to the access to legal information to CSO, most of CSOs being unable to support on their own the minimum of their administration cost.

Initiatives of some CSOs to popularize laws remains targeted to the only most usual laws (the code of family and people, the land code...) but they seldom do that for the mineral code, the tax code, the code on public markets, the conventions and international treaties ...

The inaccessibility to the legal information is likely to prejudice CSOs especially in their capacity to influence politics, the transparent management of public affairs. In this regard, citizen participation diminishes because of the lack of such information.

These challenges will hopefully be addressed as far as CSOs build useful partnerships with relevant donors and funders who are proud to help those CSOs to fulfill efficiently their mission.

VI. PARTNERSHIP BETWEEN CSOS AND DONORS

Most of Burundian CSOs work on basis of funds granted by donors and are therefore dependent to them. Own material and financial resources are very limited. The ones without external funding are invisible on the ground. Without donors' support they cannot have significant influence on the community, to the service of which they are supposed to be.

CSOs share funders and donors whose requirements in terms of reporting, funding procedures, monitoring and evaluation ... vary from donor to donor. Some donors' requirements on the ground are stringent and complex so that most of CSOs with poor operational and management capacities cannot benefit from their grants.

In this way, to get some funds, it may be required to CSOs to contribute by co-financing the project using its own funds and are obliged to get in several funding agreement with multiple donors for a single project.

Some CSOs have build confidential relationship with donors or have entered with them in durable partnership while others miss any donor support. Rural CSOs are the most affected by the lack of funding.

Above these challenges of CSOs to attract funds that some donor are trying to solve throughout capacity building programs (example: the project OSCAR funded by the EU), CSOs involved in dialogue opportunities between the government and its development partners, build good relationships with them as much of funds comes from them.

VI.1. Major donors and the distribution of aid to CSOs

To date, there is no reliable data on the distribution of development assistance to various CSOs in Burundi as there are no studies conducted on this subject⁶⁵.

Generally, Burundian CSOs live in a vegetative financial situation. As indicated earlier in this report, in 2002, a study by the United Nations Development Program on CSOs revealed that for 98% of CSOs surveyed, only 1% of their budget was funded by own resources derived from contributions or other sources⁶⁶. It is worth noting that the situation has hardly changed to date.

It is also important to note that regarding the major providers of aid, CSOs draw funds from the same donors as the Government of Burundi. In 2009, for example, major donors financing the investment projects were notably the European Union, United Nations, World Bank, Germany, Belgium etc⁶⁷.

⁶⁵ The response of some CSOs officials interviewed

⁶⁶ G. C. SEBUDANDI and NDUWAYO, *op. cit.*, P.36

⁶⁷ *Report on ODA flows to developing edition 2009*, Bujumbura, May 2010, p.19.

Besides these major donors, we emphasize the important role of Northern NGOs in mobilizing support from bilateral partners and forwarding the same to organizations in the South.

VI.2. Funding mechanisms for CSOs and proportion of development aid

Burundian CSOs are to a large extent dependent on foreign aid. Own resources derived primarily from members' contributions cover only 1% of the annual budget.

With regard to external funding, it is usually disbursed in the form of project financing (for more than 80% of funds). These funds can thus be classified under development aid as long as they are allocated to sectors that have an impact on growth. There are also partners who provide institutional support to civil society though they are a small proportion compared to project funds. This weakened the influence of CSOs in political processes in the medium and long term when institutional monitoring mechanisms offered them opportunities for participation.

The big difficulty in accessing funds by CSOs is according to most of them, the complicated and restricting procedures and donors who are not easily accessible. Flexibility in the simplification of procedures is sometimes impossible since the decision making centers are located outside Burundi⁶⁸.

All donors have procedures and requirements that CSOs must meet to access their funds. Sometimes, the relatively low capacity of Burundian CSOs does not allow them direct access to some funding. For example apart from GIRIYUJA and MEMISA who received aid very recently, no Burundian CSOs managed to get direct funding from EU. These funds normally intended for CSOs in Burundi are awarded to foreign NGOs with higher technical and management capacity.

The complication of procedures that are difficult even for the staff of the EU is in fact rooted in the genuine concern to guarantee good use of aid and which is sometimes difficult to collect from European taxpayers⁶⁹.

The EU therefore implemented the OSCAR project that serves as an interface between CSOs and EU and provides capacity building for CSOs, improves the civil society environment (legal and regulatory framework), establishes consultation frameworks for CSOs and facilitates the exchange of information on procedures.

The OSCAR project did not dissipate the fears and concerns of CSOs as they still believe the procedures are quite complicated and complex even after an extensive onsite training program

⁶⁸ Those who run the NGOs and other agencies do not have the option of bypassing the procedures required by their offices located in Europe.

⁶⁹ Comments of the Project manager at EU.

for CSO representatives and Non-State Actors under the ARCANE project and the OSCAR project thereafter⁷⁰.

The alignment of partners principle advocated by the Paris Declaration therefore remains limited to only national development strategies and policies in key sectors but the level of alignment to procedures remains too low and hampers the development of Burundian CSOs.

VI.3. CSO participation in the aid mobilization process

Although their involvement is more recent in this regard, Burundian CSOs, working with the Government and other partners have for some time played a very significant role in the strategic planning and the process of aid mobilization for development. The specific contribution of civil society is currently recognized by the government⁷¹.

CSOs participated actively in consultations organized in the framework of the development of CSLPII⁷². These consultations mainly targeting CSOs and the private sector were organized for three reasons; clarifying the role of CSOs and the private sector in the CSLP process, studying the modalities of their participation in the sectoral groups of the Partners Coordination Group and lastly to listen to their recommendations on the priorities of CSLPII⁷³.

After the development phase, CSOs accompanied the government to the partners of Burundi conference held in Geneva on 29 and 30 October 2012 with the same message of support to the government⁷⁴. The contribution of CSOs in the development of CSLP and organization of the Geneva Conference was noted by the Government of Burundi which warmly thanked them⁷⁵.

Some CSOs are directly involved in facilitating access to funding from non-traditional partners; this is particularly the role played by Biraturaba in negotiating funding for waste management in Bujumbura by allowing contact between the relevant authorities and providers of technical and financial support.

⁷⁰ Comments of organizations like FORSC Biraturaba, FOCODE

⁷¹ Republic of Burundi, National Strategy for good governance and fight against corruption 2011-2015, p.35.

⁷² *CSLPII Document*, p.35, paragraph 119.

⁷³ *CSLPII Document*, p.35, paragraph 121.

⁷⁴ Cf final declaration of CSOs and Burundian media attending the conference of partners of Burundi held in Geneva from 29 to 30 October 2012.

⁷⁵ Closing speech of the Geneva Conference by the 2nd Vice President of the Republic of Burundi

VI.4. Main funding priorities of donors

The Paris Declaration on aid effectiveness contains an important principle of alignment that currently guides the funding priorities of donors. This principle requires that partners base their entire support to national development priorities⁷⁶.

In this regard, it is noted that the main priorities of civil society as well as those of the government are recorded in the CSLPII which was developed after consultations among all development partners including civil society. Each component of CSLPII has a number of priority activities. For example, we note that priorities under the consolidation of the rule of law component are among others the strengthening of justice and rule of law, strengthening good governance and performance of institutions, public finance management reform etc⁷⁷.

VII. MULTI-STAKEHOLDER PLATFORM FOR DIALOGUE AND THE ROLE OF CIVIL SOCIETY ON AID EFFECTIVENESS

As has already been pointed out above, the Partners Coordination Group (GCP) is a multi-stakeholder platform for dialogue between development partners in Burundi.

CSOs participate at different levels of GCP and play an important role in research on aid effectiveness. Some sectors still have low CSO participation due to their lack of dynamism in organizing regular meetings and development and sharing of strategic documents and progress.

VII.1. Consultation framework: sector clusters, CNCA, sector conferences

- Sector clusters: As indicated above sector clusters are formed around the priorities in sectoral poverty alleviation strategies and policies. They are presented as the backbone of national strategies such as CSLP 2. They are composed of representatives of the ministries, international partners and other key stakeholders. Discussions in the sector clusters revolve around sectoral planning documents (Priority action plan, sectoral framework for medium term expenditure, various implementation and evaluation reports etc.). Civil society and other stakeholders are in principle represented in different clusters. As such, it has the opportunity to influence the agenda of meetings and make proposals on issues to be debated⁷⁸.

⁷⁶ See the Paris Declaration, paragraph 16.

⁷⁷ Cf Chapter 2 of the CSLPII document.

⁷⁸ Interview with an official of the civil society working group on monitoring and evaluation of CSLPII.

- CNCA: The National Committee for Aid Coordination is an inter-ministerial committee⁷⁹ established by Decree No. 100/128 of 12/12/2005. It is the highest national coordinating body on aid.

Its permanent secretariat represents the government side in any dialogue with development partners and is the reference interlocutor when it comes to presenting the order of national priorities for the allocation of external resources⁸⁰. The role of civil society in the decree establishing the CNCA is not clearly established. However, experience shows that it is regularly invited to committee activities through, perhaps the loophole in Article 4 of the aforementioned Decree stating that "The other members of the government, donors and stakeholders not mentioned in Article 3 will participate in the committee meetings by invitation or when an issue directly concerning them is placed on the agenda." A civil society representative is invited to participate in meetings of the GCP monitoring and evaluation group that prepares meetings of the Political and Strategic Forum.

- Sector conferences: The main objective of sector conferences is to provide a platform for the Government of Burundi to submit well-crafted projects and programs to technical and financial partners. They are organized by leadership of sector clusters who must capitalize on the experiences and lessons learned from member groups in the organization of their joint annual reviews. In the organization of conferences related to their areas of work, sector clusters are assisted by the Technical Monitoring Committee of the Geneva⁸¹ Conference commitments which has within its membership some CSOs (PARCEM and Biraturaba).

VII.2. Strengths and weaknesses of institutional partnership

The institutional dialogue partnership between the government and its partners, including civil society about aid effectiveness is too new but is still an important breakthrough in the involvement of non-state actors on this subject. However, the partnership has a number of shortcomings both in its composition and in its functioning.

The leadership of all sector clusters does not give civil society a deserved⁸² place within the clusters which leaves the latter not feeling sufficiently integrated. This failure to give

⁷⁹ CNCA is composed of the following members: Minister of planning, Minister of Finance, Minister of external relations and Minister of Internal affairs.

⁸⁰ The national policy document on official development assistance, p.29.

⁸¹ The Technical Committee was established by Order No. 121/VP2/25/2012 the 2nd Vice-President of the Republic signed it on 20 December 2012. Civil society is also represented at the Technical Committee for monitoring and evaluation of the commitments of the conference in Geneva (see various reports of committee meetings).

⁸² We have already noted that all sectoral groups are chaired by the representatives of the Ministries and co-chaired by international partners.

responsibilities to civil society within the sector clusters can be a source of fatigue and disinterest on the part of civil society. The meetings held in the absence of civil society are not invalidated and some sector clusters do not make any effort to involve CSOs representatives in their meetings.

The other major challenge is related to the fact that the various organs of the Partners Coordination Group, specifically the sector clusters do not hold regular meetings in accordance with their terms of reference, while other groups may hold meetings without the knowledge of CSOs. CSOs who denounce government failures are often indexed⁸³ and excluded from discussion in these official bodies.

VII.3. Proposals for strengthening the multi-stakeholder platform for dialogue

CSOs seem more than ever determined to contribute to national development through active participation and contribution to the Partners Coordination Group structures (sector clusters, monitoring and evaluation group, strategic forum and policy forum). CSOs are also committed to advocate for the Government of Burundi when dealing with their technical and financial partners who do not necessarily have direct contact with the government. It is for these reasons that CSOs participated in mobilizing funds for the implementation of CSLPII especially through awareness and advocacy among their external partners.

Supported by the mandate conferred on them by both national and international instruments (good governance strategy, national policy on official aid management, Paris Declaration, Cotonou Agreement etc), CSOs are slowly taking up the good habit of working together to strengthen monitoring in order to ensure citizen participation, accountability of leaders and hence the effectiveness of aid⁸⁴.

On its part the government has also shown real willingness, at least through the commitments contained in the various strategic policies to clean up the management of development assistance. What remains is following the words with action.

⁸³ Interview with the focal point of the Working Group on CSO monitoring of CSLPII.

⁸⁴ Civil society note for mobilization of funds related to CSLPII

CONCLUSION AND RECOMMENDATIONS

This study reveals that the Burundian civil society is a young civil society with a complex political, social and economic context. Given this assumption, it is normal to expect some malfunctions within it leading to failure in establishing consultative structures which could enable it develop synergies between organizations and consequently influence the game of power relations.

However, some ongoing activities are building on this momentum especially since several national and international stakeholders have realized the importance of associations/unions in the balance of the society and are already investing in capacity building of these unions.

Existing laws and legal reforms envisaged are unlikely to maximize a good working environment for CSOs. The timid establishment of formal consultation frameworks between CSOs and government will hopefully allow the establishment of a consensus.

On the other hand, consultations are beginning to take shape but should be consolidated to allow civil society at all levels to be consulted in the definition, implementation and monitoring and evaluation of policies.

Although they are still very few, some organizations are doing work which is relatively visible on monitoring aid effectiveness and the process is decentralizing outside Bujumbura at the initiative of the same organizations. The government may be reluctant to widely open the doors but some already forcing their way.

In view of all the foregoing, we believe the following recommendations would help create a healthier working environment for CSOs and enable them participate in setting policies and priorities as well as monitoring aid effectiveness.

Recommendations to the Government:

To the government we recommend that it continue with the process of reforming the law on NPOs non-profit organizations whilst ensuring promotion of broad consultation around the new legislation on civil society, decentralizing the debate even in provinces and other jurisdictions where most civil society activities are conducted. Also, the government would simplify the procedures of approval and operation of CSOs at either the national level or at the level of any other decentralized administrative entities in order to create conducive working condition of CSO. Into ongoing reforms, integration provisions on the functioning of CSOs' alliances and networks into the ongoing reforms would be a good entry. Indeed, these networks would be very useful if the Government creates better relationships between the public and civil society via a platform and a permanent consultative framework of its action and significantly improve its relationship with public actors.

Implementing a tax legislation enabling the pursuit of civil society activities by introducing some measures to lessen the taxes and other levies weighing mostly on lean and difficult to obtain financing, provided they contribute to the achievement of general interest would come in support to CSOs who most of the time face capacity and operational challenges, the Government. In this way, the Government would award tax exemption to all CSOs during acquisition of equipment for official use or income taxes for staff pursuing interests and social goals by accomplishing tasks of the State in several areas (health, education, development, etc) Enabling environment to CSOs will be achieved in Burundi if the Government takes as serious concern the lack of the law on the access to the information. Thus promulgating of this law would be an invaluable asset to the work of CSO in Burundi. In the same angle, the Government needs to integrate international legal instruments protecting civil society into local legislation. There is also a strong need to establish a multi-stakeholder national forum for dialogue between CSOs, government and donors on monitoring the effectiveness of aid. This is to be initiated by the government.

Recommendation to CSOs:

CSOs need to build strategic alliances and collaborative relationships between Burundian CSOs first, and then develop cooperation with other CSOs in the world "Solidarity increases the chances of successful advocacy and positioning of civil society as a real power of mobilization and action". Thus, they should integrate into coalitions and regional and international forums. This will allow them to share experiences with large organizations in the region and internationally and thus increase their capacity. Also, they should create structured networks that may take the form of unions or inter-unions and should enhance the level of information sharing between CSOs themselves, because in practice, Burundian CSOs hide information especially in relation to financial resources. However, they should draw lessons from past failures to put in place strong movements. Other networks to be created by CSOs should aim at influencing public politics and the process of adoption of laws, policies and development plans.

Moreover, they should strengthen their operational capacity on the ground. By investing more effort in outreach activities, CSOs can address the criticism against them and change the adversarial relationship between it and the Government. They can equally enhance collaboration and partnership between civil society and the grassroots population; the latter being a source of support in case of abuse by the government, etc;

Also, they need to initiate projects aiming at involving them in the process of monitoring aid effectiveness and submit the same proposals to donors without waiting for the donors to take such initiative. It seems recommendable to CSOs to serve as model of accountability and especially on all matters of internal governance and visibility as well as prove the quality of their

work to donors and government; CSOs must demand accountability from the government in a constructive way, i.e. the aim should be to improve the situation of the country.

To contribute efficiently to the development effectiveness, CSOs should increase the level of participation of CSOs in sector clusters and strengthen the existing synergies in the framework of monitoring aid effectiveness;

Recommendation to donors:

This study found out that there is a need of institutional grants to support to CSOs to enable their effectiveness. It is then recommendable to donors to provide such grant which should aim at enabling the selected organization to be truly operational, ensure its sustainability in terms of continuation of its activities as well as in the acquisition of financial, logistical and operational resources. They should contribute to strengthening the capacity of CSOs on selected themes based on shortcomings and deficiencies identified in order to increase their technical and managerial capacity and avoid concentration of aid. Also, donors should provide technical and financial support to CSOs active in the sector clusters: provide or train experts, offer logistical and financial resources to the focal points of different sector clusters.

By putting pressure on the government to open spaces for dialogue between CSOs and the government and if necessary make this partnership a condition for aid, donors can help to establish a framework for dialogue between CSOs, donors and government on monitoring aid effectiveness. However, the achievement of this, call on technical or financial support that donors need to provide. For efficiency, we propose the establishment of a restricted structure for the preparation of the framework whose tasks would include determining the level of participation, defining the objectives and the expected results of the framework. The second step will be to conduct broad consultations among CSOs from all the country to choose those who will represent them in the platform. It shall also be done within the NGOs and donors but also within the institutional frameworks representing the government.

Not only donors need to provide funds but also they should advocate for simplification of funding procedures and more flexibility to enable CSOs access funding and expand their interventions to reach CSOs in the provinces (see decentralization of interventions);

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