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## WilmerHale Achieves Victory in Development for Free Speech Rights in East African Community Partner States

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On May 15, 2015, WilmerHale achieved a significant victory on behalf of the Burundian Journalists' Union (BJU) in a case before the East African Court of Justice (EACJ). The decision represents an important development for free speech rights in East African Community Partner States. The Court found that certain provisions of the press law were in violation of Burundi's obligations of good governance, which include principles of democracy, under the Treaty for the Establishment of the East African Community and ordered Burundi to take measures to implement the judgment. Working together with the Media Legal Defence Initiative (MLDI), a team of WilmerHale attorneys drafted various legal submissions focusing on international human rights law, and assisted with the preparation of evidence.

On June 4, 2013, the Republic of Burundi enacted a new law that severely curtailed the freedom of the press and journalists' freedom of expression. The law has been the subject of widespread criticism, including by the UN Office of the High Commissioner for Human Rights and the African Union Special Rapporteur for Freedom of Expression and Access to Information. As an interested party, the BJU brought an action against the Republic of Burundi before the EACJ in Arusha, Tanzania, a regional international court with jurisdiction to oversee the implementation of the Treaty.

The BJU's action alleged that the law was in violation of Burundi's obligations to respect the principle of good governance under Articles 6(d) and 7(2) of the Treaty, which included accountability, transparency and the promotion and protection of democracy.

The Court first held that it had exclusive jurisdiction to apply and interpret the Treaty, and that the question whether by enacting the Press Law Burundi has violated Articles 6(d) and 7(2) "is a matter squarely within the ambit of this Court's jurisdiction." It concluded that the action as framed and argued was properly before the Court.

The Court re-confirmed, on the basis of its previous case-law, that Articles 6(d) and 7(2) of the Treaty were justiciable and gave rise to actionable obligations for Partner States. It held that "under Articles 6(d) and 7(2), the principles of democracy must of necessity include adherence to press freedom" and that "a free press goes hand in hand with the principles of accountability and transparency which are also entrenched in Articles 6(d) and 7(2)." The Court further held that Partner States,

including Burundi, must abide by the operational principles in Articles 6 and 7 of the Treaty, and that their national laws must follow those principles. Moreover, by virtue of Article 8(2), Partner States are under an obligation to give effect to the Treaty.

Specifically, the Court declared that those content-based restrictions under the Press Law imposing an obligation on journalists "not to disseminate information on the stability of the currency, offensive articles or reports regarding public or private persons, information that may harm the credit of the State and national economy, diplomacy, scientific research and reports of Commissions of Inquiry by the State" were in violation of the principles under Articles 6(d) and 7(2) of the Treaty. The Court also declared that the obligation under the Press Law for journalists to disclose their sources of information did not meet the expectations of democracy and was in violation of Articles 6(d) and 7(2).

The Court ordered Burundi to take measures, without delay, to implement the judgment.

The WilmerHale team included Partner [Steven Finizio](#), Senior Associate [Daniel Costelloe](#), and former Senior Associate Brendan Casey, who worked in conjunction with Nani Jansen and Alinda Vermeer of MLDI. Donald Deya, an attorney based in Tanzania argued the case on behalf of the BJU at the EACJ.