

Flygtningenævnets baggrundsmateriale

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BURUNDI

Provisions in force

- ▶ Law No. 1/05 of 22 April 2009 concerning the revision of the [Penal Code](#).

*Sexual relations
with someone of
the same sex*

Article 567.

Whoever has sexual relations with someone of the same sex shall be punished with imprisonment for three months to two years and a fine of fifty thousand to one hundred thousand francs or one of those penalties.

Human rights situation

A 2014 shadow report to the Human Rights Committee that oversees the ICCPR describes the repressive conditions under which LGBT people live in Burundi.¹ The legal and social situation of LGBT people in Burundi is also captured in a 2016 report produced by the East African Sexual Health and Rights Initiative.² The day-to-day lives of Burundian lesbian women, who are reportedly forced to hide their true selves and use secret memes and code to connect with each other on social media platforms and chat apps for fear of social rejection, discrimination and violence, were documented in a 2019 article by Megha Mohan for the BBC.³ The journalist pointed out the lack of data and testimonies about what being LGBT+ in Burundi is like, and drew attention to alleged cases of domestic abuse towards lesbian women.

The story of Jean-Daniel Ndikumana, a Burundian LGBT activist who claims he had to seek asylum in Belgium because of his sexual orientation, gives an insight into the life of gay men in the country: subjection to verbal and physical abuse from an early age, rejection by family members when

coming out, and constant fear for their safety as adults.⁴

In October 2017, several news portals reported that numerous people had been arrested for “engaging in homosexuality” and forced to pay exorbitant bribes for their release after a ‘hunt’ was announced by police that month.⁵

UN voting record

In 2011 and 2014, Burundi was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the first two SOGI Resolutions.⁶ However, in 2016, Burundi voted against the adoption of Resolution 32/2 which created the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.⁷

At the session of Third Committee of the UN General Assembly held in November 2016, Burundi

¹ Mouvement pour les Libertés Individuelles et al., *The status of lesbian, gay, bisexual and transgender rights in Burundi: A Shadow Report* (2014).

² East African Sexual Health and Rights Initiative, *A landscape analysis of the human rights of sex workers and lgbt communities in burundi* (2016).

³ “The secret language of lesbian love. The wives, mothers and friends who hide their sexuality”, BBC, 8 February 2019.

⁴ “LGBT activist from Burundi visits U.S.”, *Washington Blade*, 1 September 2016.

⁵ “Two gay teens arrested for dancing together as Burundi starts ‘official hunt’ for LGBTI people”, *Gay Star News*, 10 October 2017; “Burundi: Crackdown on LGBTQ community”, *Mambaonline*, 13 October 2017; “Burundi announces ‘official hunt’ for LGBTI people”, *76crimes Website*, 9 November 2017.

⁶ Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

⁷ Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

voted against the LAC amendment to remove Operative Paragraph 2,⁸ and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Burundi voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Burundi's National Human Rights Institution, the Commission Nationale Indépendante des Droits de l'Homme, does not appear to address SOGIESC issues in its work.

International advocacy and supervision

Universal Periodic Review

Burundi received 11 direct recommendations in its 2nd UPR in 2015 regarding sexual orientation, the majority regarding decriminalisation, to which the delegation is recorded as saying: "[w]ith regard to discrimination against homosexuals, the delegation acknowledged that the Criminal Code of 2009 still punished homosexuality. That situation was in line with the country's customs and values, and the delegation asked for the international community's understanding while Burundian society prepared for a change in mentality. The head of the delegation did emphasise, however, that he would raise the issue with the Government."⁹

In its 3rd cycle of the UPR carried out in January 2018, Burundi noted (functionally rejected) all 11 SOGIESC recommendations. Argentina, Australia, Ecuador, Iceland, New Zealand, Timor Leste and Uruguay asked for the decriminalisation of consensual same-sex sexual relations.¹⁰

Burundi referred to the SOGIESC situation in its closing remarks, expressing that "once again, we've

been asked about same-sex sexual intercourse. We reject calls for decriminalisation. This is because the mindset in Burundi hasn't developed yet to allow for this. So, we're going to reject that recommendation."¹¹

Treaty Bodies

In November 2014, the **Human Rights Committee (CCPR)** unambiguously stated that Burundi should decriminalise consensual same-sex sexual acts and effectively protect LGBT people from threats to their physical integrity and from discrimination.¹²

In December 2014, the **Committee Against Torture (CAT)** directly addressed discrimination based on SOGI, urging Burundi to decriminalise same-sex consensual acts and take all necessary measures to effectively protect LGBT from threats and any form of violence.¹³

In October 2015, the **Committee on Economic, Social and Cultural Rights (CESCR)** recommended that the State party repeal all provisions that could lead to the discrimination, prosecution or punishment of individuals on the basis of their sexual orientation or gender identity and that it take all appropriate steps to ensure that lesbian, gay, bisexual and transgender individuals may exercise all their socio-economic rights."¹⁴

Special Procedures

In December 2015, the **Special Rapporteur on the situation of human rights defenders** observed that those promoting and protecting the rights of LGBT people were particularly vulnerable,¹⁵ because of discrimination and violence.¹⁶ He also expressed his concern over the fact that no authorised associations were known to be working specifically on LGBTI issues.¹⁷

⁸ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

⁹ *Report of the Working Group on the Universal Periodic Review: Burundi*, A/HRC/23/9, 25 March 2013.

¹⁰ "UPR-Burundi", *ILGA Website*, 19 January 2018.

¹¹ "UPR-Burundi", *ILGA Website*, 19 January 2018, Section C.

¹² *Concluding observations on the second periodic report of Burundi*, CCPR/C/BDI/CO/2, 21 November 2014.

¹³ *Id.*, para 23.

¹⁴ *Concluding observations on the initial report of Burundi*, E/C.12/BDI/CO/1, 16 October 2015.

¹⁵ *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Burundi*, A/HRC/31/55/Add.2, 30 December 2015, para. 51.

¹⁶ *Id.*, para 56.

¹⁷ *Id.*, para. 90.