

BURUNDI: AMEND GENDER-BASED VIOLENCE LAW

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Burundi's 2016 law against gender-based violence was a milestone achievement, bringing improved protection, including through a consent-based definition of rape and prohibiting harmful traditional practices. However, it falls short of regional and international best practice, and in some instances undermines rather reinforces the fight against gender-based violence. This briefing proposes how to strengthen protections, including through revisions of the law.

BACKGROUND

During Burundi's civil war from 1993 to 2005, NGOs raised the alarm about high levels of violence against women, in particular rape and other forms of sexual violence. However, as Amnesty International and others reported, high levels of rape and sexual violence persisted even after the end of the conflict.¹

Recognizing the gravity of the situation, women's rights organizations in the country started advocating more than a decade ago for a specific law to eliminate gender-based violence. The government also took action, and in 2009 developed a National Strategy to Combat Gender-Based Violence and included greater protections for women and girls in the revised Penal Code.² A draft law concerning the prevention, protection of victims, and repression of gender-based violence (GBV law) was under discussion by 2011,³ the same year that the Heads of State of the International Conference on the Great Lakes Region (ICGLR) adopted the Kampala Declaration on sexual and gender-based violence.

The GBV law was adopted by the Burundian National Assembly in 2016, after considering amendments by the Senate on the 2015 draft law. It was signed into law by the late former President Pierre Nkurunziza on 22 September 2016.⁴

The UN Secretary-General's seminal 2006 in-depth study on all forms of violence against women notes that "violence against women is both a means by which women's subordination is perpetuated and a consequence of their subordination."⁵ Further, "explanations for violence that focus primarily on individual behaviours and personal histories [...] overlook the broader impact of systemic gender inequality and women's subordination. Efforts to uncover the factors that are associated with violence against women should therefore be situated within this larger social context of power relations."⁶

This analysis aptly applies to the Burundian context. Although measures have been taken to promote gender equality, such as the constitutional requirement that at least 30% of posts in government, legislature and judiciary must be held by women, in practice society remains strongly patriarchal. Studies have shown that while social norms may be beginning to shift, mostly in university-educated households in urban settings, many barriers to women's economic and social autonomy remain deeply rooted with men maintaining control over most financial and household choices.⁷ Patriarchal norms are reinforced by leaders at the highest level. In her comments at a September 2020 forum on the contribution of women leaders to economic empowerment, reproductive health and the fight against Covid-19, First Lady Angeline Ndayishimiye called on women to respect their husbands saying

¹ Amnesty International, *Burundi: No protection from rape in war and peace* (Index Number: AFR 16/002/2007), 9 October 2007, <https://www.amnesty.org/en/documents/afr16/002/2007/en/>

² Republic of Burundi, Ministry of National Solidarity, Human Rights and Gender, National Gender Policy 2012-2025, July 2012, http://www.presidence.gov.bi/wp-content/uploads/2017/04/politique_nationale_genre_png_2012-2025.pdf, p. 16

³ Spès-Caritas Ndironkeye and Marie-Christine Ntagwirumugara, Concertation des collectifs des associations féminines de la région des grands lacs (COCAFEM/GL), Etude portant sur les lois et recherches en matière de violences faites aux femmes au Burundi, 2011, <http://www.observaction.info/violences-de-genre/etude-portant-sur-les-lois-et-recherches-en-matiere-de-violences-faites-aux-femmes-au-burundi/>, p. 52.

⁴ National Assembly of Burundi, L'Assemblée Nationale adopte à l'unanimité le Projet de loi portant Prévention, Protection des Victimes et Répression des Violences basées sur le Genre, <https://assemblee.bi/spip.php?article1057>

⁵ UN Secretary-General (UNSG), Report: *In-depth study on all forms of violence against women*, 6 July 2006, UN Doc. A/61/122/Add.1, para. 72.

⁶ UNSG, *In-depth study on all forms of violence against women* (previously cited), para. 73.

⁷ Yssa Oumar Basse and Jocelyne Kwizera, *Norms and practices impeding gender equality in Burundian society*, 25 July 2017, <https://careevaluations.org/wp-content/uploads/Norms-and-practices-impeding-Gender-Equality-in-Burundi.pdf> and Search for Common Ground, *Analysis of cultural barriers to women's economic empowerment in Burundi*, February 2021, https://www.sfcg.org/wp-content/uploads/2021/02/Gender_Barrier_Analysis_Tuyage_February_2021.pdf

that equality between men and women would never exist in Burundi as the Bible states that “the man is the head of the family as Christ is the head of the Church.”⁸

This briefing assesses the 2016 GBV law against this backdrop. On the one hand, the law offers protective measures to women within the context of Burundi’s largely conservative society. On the other hand, by emphasizing protection rather than agency, some of those very measures end up reinforcing the patriarchal tendencies that undermine women’s equality and increase the risk of gender-based violence.

GENERAL COMMENTS ON THE GBV LAW

The 2016 GBV law brought in several innovations and improvements to strengthen protections against gender-based violence, especially by explicitly outlawing various “harmful traditional practices”. That said, many civil society actors in Burundi agree that the 2016 law requires amendments and corrections.⁹

Most pressing are inconsistencies between the GBV law and the 2017 revised Penal Code, which create uncertainty and potentially negate some of the more progressive provisions in the 2016 law. When the Burundian government presented the 2016 GBV law to the National Assembly, the Minister for Human Rights, Social Affairs and Gender explained that the law went further than the provisions on gender-based violence introduced in the 2009 Penal Code, that it filled several gaps and completed the Penal Code in force.¹⁰ The following year, in 2017, when introducing the revised Penal Code, the Minister of Justice was asked whether there was a risk of duplication, with judges choosing whether to apply the provisions of the Penal Code or the specific GBV law. She replied that it was the 2016 GBV law that should be applied because it had been voted to complete the Penal Code and that if judges and magistrates were applying the Penal Code instead it was perhaps due to ignorance.¹¹

However, the GBV law clearly states that “without prejudice to the relevant provisions of the Penal Code and the Criminal Procedure Code, the present law’s objective is the prevention, protection and repression of gender-based violence” (Article 1). It is clear therefore that where there are inconsistencies between the GBV law and the Penal Code in force, the Penal Code must be applied. This is problematic for the application of the current law, because several of the improved protections provided in the GBV law have not been carried forward into the 2017 revised Penal Code, which maintains the same text as the 2009 Penal Code.

As part of their calls for amendments to the GBV law, women’s rights activists have been advocating for greater clarity and a harmonisation of the law and the Penal Code. Indeed, the African Commission on Human and Peoples’ Rights (ACHPR) in its Guidelines on Combating Sexual Violence and its Consequences in Africa provides that to ensure consistency in the national legal framework “States must review or repeal provisions contained in other instruments of their domestic law that are contrary

⁸ Radio Television Nationale du Burundi, « L’OPDAD organise un forum de haut niveau des femmes leaders », 5 September 2020, <https://rtnb.bi/fr/art.php?idapi=4/2/167>

⁹ See, for example, Iwacu, « AJCB : « Que la loi sur les VBG soit révisée pour une application effective » », 19 December 2022, <https://www.iwacu-burundi.org/ajcb-que-la-loi-sur-les-vbg-soit-revisee-pour-une-application-effective/>; Iwacu, « Lutte contre les VBG : un cadre légal brumeux », 7 December 2021, <https://www.iwacu-burundi.org/lutte-contre-les-vbg-un-cadre-legal-brumeux/>;

¹⁰ National Assembly of Burundi, L’Assemblée Nationale adopte à l’unanimité le Projet de loi portant Prévention, Protection des Victimes et Répression des Violences basées sur le Genre, <https://assemblee.bi/spip.php?article1057>

¹¹ National Assembly of Burundi, Analyse et adoption du Projet de loi portant Modification de la Loi N°1/05 du 22 avril 2009 portant Modification du Code Pénal, <https://assemblee.bi/spip.php?article1632>

to the legislation adopted / amended”.¹² This could be achieved either through amendments to the GBV law, the Penal Code, or both.

Prevailing patriarchal attitudes in Burundian society have at times been evident in the actions of law enforcement towards women. In a highly publicized case in 2021, a woman was reported missing after leaving her husband. When she was found three months later, the police presented her to the media and announced that they were investigating her for family abandonment, an offence punishable by up to two months in prison. Before going to the police, she had been in hiding at a safe house run by a women’s rights organization, which was in turn investigated for threatening state security and complicity in the woman’s actions.¹³ In light of such a response to a woman in a vulnerable situation who had apparently been seeking refuge, it is essential that there is clarity on which provisions law enforcement officers, prosecutors and judges should apply in cases of gender-based violence and these should be the provisions that provide the greatest level of protection to victims.

DETAILED ANALYSIS

What follows is an analysis of the GBV law’s provisions grouped into positive innovations and problematic provisions. These groupings are very broad and nuanced analysis highlights both positive and negative aspects sometimes within the same article.

POSITIVE DEVELOPMENTS

One of the major inconsistencies between the Penal Code and the GBV law is the definition used for rape. Article 2 (h) of the GBV law defines rape as: “Any act of a sexual character, of whatever nature and by whatever means, that is committed by a person on another who does not consent.” In focusing on the absence of consent rather than the use of force or other coercive means, the definition of rape in the GBV law is more progressive than the definition in the Penal Code and is in line with current international standards.¹⁴ Clarity on which definition should be applied – to be in line with international human rights law, this would be the one contained in the GBV law – is essential to avoid confusion among judges, magistrates, police and other judicial and law enforcement officials.¹⁵

¹² African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Combating Sexual Violence and its Consequences in Africa, May 2017, para. 66.2.

¹³ Indundi TV (Youtube), “Pierre Nkurikiyel Emelyne Ndayishimiye retrouvée après plus de 3 mois d’absence depuis son mariage”, 24 May 2021, <https://www.youtube.com/watch?v=H286SvOHqQw>

¹⁴ Platform of independent United Nations and regional expert mechanisms on violence against women and women’s rights, “Absence of consent must become the global standard for definition of rape”, 25 November 2019, <https://www.ohchr.org/en/press-releases/2019/11/international-day-elimination-violence-against-women25-november-2019>

¹⁵ The definition in the Penal Code reads:

Art.578.- Commits rape, either with violence or serious threats or by coercion against a person, directly or through a third party, either by surprise, by psychological pressure, either on the occasion of a coercive environment, or by abusing a person who, due to an illness, by the alteration of his faculties or by any other accidental cause would have lost the use of his senses or would have been deprived by some artifice, and even if the victim is the spouse of this person:

1° Any man, whatever his age, who introduces his sexual organ, even superficially in that of a woman or any woman, whatever her age, who has obliged a man to introduce, even superficially, his sexual organ into hers;

2° Any man who has penetrated, even superficially, by the anal route, the mouth or any other orifice of the body of a woman or a man his sexual organ, any other part of the body or any other object whatsoever;

Another positive development is the inclusion of definitions of several harmful traditional practices specific to the Burundian context. These include:

- “• **Levirate: a custom of forcing a widow to marry her brother-in-law or her father-in-law;**
- **Gukanda (umuvyeyi): a form of marital rape tolerated by the culture in which a man forces his wife to have intimate relations with him after childbirth before she recovers;**
- **Guteka ibuye rigasha: cultural practice which consists, for a man, in forcing his wife or daughter to have sexual intercourse with a traditional healer so that the prescribed remedy has its expected effects;**
- **Gukazanura: customary practice which recognizes a man's right to have sexual intercourse with his daughter-in-law first on the day of his son's wedding.” (Article 2 (w))**

However, the law does not provide clear penalties for all the harmful traditional practices included in the definitions. It only provides clear penalties (in Article 33) for “Guteka ibuye rigasha” and “Gukazanura” in line with the Penal Code’s provisions against rape. One might assume that “Gukanda” is included in the penalty for marital rape and that levirate is included in the penalties against forced marriage, but this is not explicitly stated. In addition to the harmful traditional practices cited above, Article 2 (w) also includes a definition of “Multiple union: Living in free unions (cohabiting) with several partners at the same time”. This would imply that “multiple union” is considered a harmful traditional practice. It is not mentioned elsewhere in the law or included in Article 33, which stipulates penalties for other harmful traditional practices.

In its definitions of domestic violence and gender-based violence, the GBV law recognizes a comprehensive range of types of violence. It recognizes that domestic violence is any act of “physical, sexual, psychological or economic violence that occur within the family or household” (Article 2 (x)), and that gender-based violence is “any act of violence directed against a person because of their gender and causing or likely to cause physical, sexual, economic, psychological or emotional harm or suffering, including the threat of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life” (Article 2 (a)). As such, the law’s definition of gender-based violence is in line with the definition of violence against women laid out in the Protocol to the African Charter on the Rights of Women in Africa (more commonly known as the Maputo Protocol). A more comprehensive definition of gender-based violence would recognize it as violence directed against a person because of their gender, sexual orientation, gender identity and/or gender expression, or because of their failure to conform to restrictive gender norms.

The law goes on to define economic violence as the “denial to one of the spouses of access to family resources or to have a job” (Article 2 (s)), which is punishable by a fine of 20,000 to 100,000 Burundian francs (approximately 7 to 35 USD) (Article 50). Psychological and emotional violence are defined as “acts of intimidation, threats, insults, derogatory remarks towards the spouse” (Article 2(t)). These are punishable by a sentence of one month to two years in prison and a fine of 50,000 – 100,000 Burundian francs (18-35 USD) (Article 49).

Article 21 imposes a duty on direct neighbours of victims of gender-based violence and administrative officials to intervene as soon as they become aware an incident is taking place to rescue and protect the victim against the continuation of the act. If they fail to act, they may be sanctioned under the Penal Code. While the precise provisions are not stated, this would presumably be, under Articles 497 and 498 on “lack of public solidarity” and which carry sentences of one to twenty years for not

3° Any person who introduces, even superficially, any other part of the body or any object in the female sex;

4° Any person who forces a man or a woman to enter, even superficially, her anal orifice, her mouth by a sexual organ;

Is punished by five to fifteen years of penal servitude and a fine of fifty thousand francs to a hundred thousand francs.

reporting a crime, intervening to stop a crime or helping a person in peril, where they could do this with no risk to themselves. However, the law does not make a distinction between failing to intervene to stop a crime and failing to report a crime. It does not take a survivor-centred approach, which should consider the wishes of victims, who may have valid reasons not to want to report a crime and should not be forced to report. The law should also make a distinction between the obligations of state officials and bystanders.

The GBV law also allows associations that have been duly registered for two years – and whose statutes include the fight against gender-based violence or any other wilful attack on the life and integrity of the person or destruction or damage punishable by the relevant provisions of the Penal Code – to lodge a complaint of gender-based violence on behalf of the victim, with their consent or the consent of their guardian, in the case of a minor (Article 29). Article 102 of the Code of Criminal Procedure, which was passed in 2018, now supersedes this provision and now requires that an association be registered first for five years (Article 102).

A final positive provision to highlight is the establishment of a specialised GBV chamber in each high court (Tribunal de Grande Instance) and the provision of instructing magistrates specialised on gender-based violence (Article 28). The Code of Criminal Procedure, however, also includes such specialised chambers at appeal courts as well (Article 416). This is a further provision that would need to be harmonised if and when the GBV law is amended.

PROBLEMATIC PROVISIONS

Whereas the law introduces some welcome advances in protection against gender-based violence, it also contains a number of problematic provisions. These include provisions that fail to provide adequate penalties and so give the impression that gender-based violence offences are not as serious as other comparable criminal offences. The African Commission on Human and Peoples' Rights has made clear that the national legal framework must "provide for penalties commensurate with the seriousness of the acts of sexual violence".¹⁶ Other problematic provisions have no obvious relation to the prevention or prosecution of gender-based violence offences, are in clear violation of the right to privacy, and undermine women's right to bodily autonomy.

Article 7 on the equal rights of both spouses in regard to reproductive health and family planning (and household goods): As it stands, the article is in line with the relevant provision of the Convention on

ARTICLE 7

Spouses enjoy equal rights notably in matters of reproductive health and family planning, and regarding household goods.

the Elimination of Discrimination against Women (CEDAW) (Article 16 (1) (e) and (h)). However, it does not recognize the bodily autonomy of women and that only they have the right to determine what happens to their body, including, for example, choices related to the timing and spacing of children. This is especially worrying in light of Article 122 of the Code of the Person and the Family which identifies the man as the head of the household. The Maputo Protocol,

which Burundi has signed but not ratified, in its Article XIV (1) frames health and reproductive rights as rights of women without mentioning any involvement of husbands or partners in decision-making.

¹⁶ African Commission on Human and Peoples' Rights (ACHPR), Guidelines on Combating Sexual Violence and its Consequences in Africa, May 2017, p. 30.

Article 27 on marital rape: Marital rape (*viol conjugal*) is a criminal offence in Burundi and defined in the GBV law. Perpetrators may be sentenced to 15 to 30 days in prison and/or a fine of 10,000 to 50,000 Burundian francs (4-18 USD). The offence, termed as ‘domestic rape’ (*viol domestique*), had already been included in the 2009 Penal Code (Art. 554) and remains in the 2017 revised Penal Code (Art. 577) – but in both cases with a lower sentence of eight days in prison and the same fine. The Penal Code does not offer a definition of ‘domestic rape’. In the Penal Code (Art. 578 of 2017), rape without aggravating factors, carries a prison sentence of five to 15 years and a fine of 50,000 to 100,000 Burundian francs (18-35 USD). The discrepancy between the punishments for rape, generally, and marital rape, is striking. Article 578 defining rape, explicitly specifies that it includes

ARTICLE 2(I)

Marital rape: marital rape occurs when sexual intercourse is imposed by the aggressor on their victim, if they are united by the bonds of marriage.

incidents when the victim is the spouse of the perpetrator. It is not clear if both articles apply with, for example, the offence of marital rape being considered in addition to the more general charge of rape; or if only one provision were to apply, how that choice would be made. Regardless of the existing relationship between perpetrator and victim, definitions of rape should always be consent-based. The African Commission on

Human and Peoples’ Rights, in its Guidelines on Combating Sexual Violence and its Consequences in Africa, states that the applicable penalties for sexual violence should not take into extenuating circumstances into consideration, including the conjugal relationship between perpetrator and victim.¹⁷

Women’s rights advocates have cited the challenges faced in bringing cases of marital rape to court, as it remains a taboo subject in Burundian culture and because judges find it difficult to conceive of a woman refusing her husband sexual relations and therefore minimising the infraction in their rulings. It has also been noted that there is some confusion between the concepts of ‘marital rape’ and ‘conjugal duties’, with a misplaced belief that the Personal and Family Code (Code des Personnes et de la Famille) imposes such duties.¹⁸ While the Code does require married couples to cohabitate (Art. 121 and 128), it does not explicitly mention so-called ‘conjugal duties’.

ARTICLE 38

Any person who abducts a girl to marry her or marry her to another person is punished by three months to five years of imprisonment and a fine of 50,000 to 100,000 francs.

The regularization of the marital situation does not exonerate the suspect or their accomplice of their criminal responsibility.

Article 38 penalizing the abduction of a girl to marry her or to force her to marry someone else:

This act is punishable by three months to five years in prison and a fine of 50,000 to 100,000 Burundian francs (18-35 USD). The law prevents the ‘regularisation of the marital situation’ from exonerating the suspect or their accomplice. While this is a welcome repression of a harmful traditional practice, the punishment is not as heavy as for comparable offences under the Penal Code. Under the 2017 Penal Code, human trafficking of a child by means of abduction is punishable by 15

to 20 years’ imprisonment and a fine of 500,000 to 10 million Burundian francs (180-3500 USD) (Penal Code Art. 246 and 255).

In Equality Now and Ethiopian Women Lawyers Association v. Federal Republic of Ethiopia, the African Commission on Human and Peoples’ Rights found that the State had an “obligation to

¹⁷ ACHPR, Guidelines on Combating Sexual Violence and its Consequences in Africa, May 2017, p. 37.

¹⁸ Iwacu Burundi, « Lutte contre les VBG : un cadre légal brumeux », 7 December 2021, <https://www.iwacu-burundi.org/lutte-contre-les-vbg-un-cadre-legal-brumeux/>

adopted (sic) escalated and targeted measures to ensure that this practice ceases completely.”¹⁹ Reflecting the severity of the offence, the Commission further requested Ethiopia to pay \$150,000 to Woineshet Zebene Negash as compensation for the damage she suffered not only as a victim of abduction and rape with a view to forcing her to marry, but also for the failure of the State to provide justice.²⁰

ARTICLE 56

Any person found guilty of having falsely accused another person of having committed an offence of gender-based violence provided for by this law is punished in conformity with the criminal legal provisions in force.

Article 56 on false accusations: The law recalls in Article 56 that anyone who makes a false accusation is liable to be punished in conformity with the legal provisions in force. Given that the issue of false witness statements is covered in the Penal Code (Article 414), this provision is redundant and should be taken out. The ACHPR Guidelines provide that legislation should not include “any provisions that could result in dissuading victims from denouncing sexual

violence, such as rules that could lead to the prosecution of the victims for adultery, “immoral acts”, “crimes of indecency”, “false allegations” of sexual violence, slander, or mischievous accusations.”²¹ This type of provision can dissuade victims from reporting sexual violence.

Article 60 on “incitement of violence” : A provision that provoked confusion and some outrage at the time of promulgation of the law was Article 60 that criminalized anyone who incited gender-based

ARTICLE 60

Whoever incites gender-based violence by indecent dress, pornographic or belligerent images, inhuman acts (speeches, writing, dances, games) and other occurrences in the same vein is punished by imprisonment of six months to three years and a fine of 50,000 to 100,000 francs, or only one of these penalties. The penalty is doubled if the victim is a minor.

violence including by ‘indecent dress’. The penalty for the offence ranged from six months to three years in prison and a fine of 50,000 to 100,000 Burundian francs (18-35 USD), or one of the above. The provision encourages the practice of victim-blaming and implies that there could be mitigating circumstances for acts of gender-based violence. In addition, the criminalisation of ‘indecent dress’ violates women’s freedom of expression and freedom of religion or belief. It also exacerbates discrimination on grounds of gender. The UN Working Group on discrimination against women in law and in practice has repeatedly

expressed concern that laws criminalizing ‘indecent dress’ are disproportionately used against women and based on gender stereotypes.²²

Provisions penalizing cohabitation and extramarital sexual relations (Article 24 and 42 on the prohibition of “free unions” and Article 41 on adultery): The GBV law criminalizes both cohabitation and extramarital sexual relations. While “adultery” and “concubinage” (cohabitation of a married person with someone who is not their spouse) were already included in the Penal Code under the section on “crimes against marriage”, the total ban on unmarried cohabitation is a new development.

¹⁹ African Commission on Human and Peoples’ Rights (ACHPR), Communication No. 341/2007 Equality Now and Ethiopian Women Lawyers Association v Federal Republic of Ethiopia, decision adopted during the 19th Extra-Ordinary Session from 16 to 25 February 2016, para. 152.

²⁰ ACHPR, Communication No. 341/2007, para. 160 (c).

²¹ ACHPR, Guidelines on Combating Sexual Violence and its Consequences in Africa, May 2017, para 66.1.

²² Joint urgent appeal of mandates of Working Group on discrimination against women in law and in practice, Independent Expert on Sudan, Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, and Special Rapporteur on violence against women, UN Doc: JUA SDN 6/2015, 27 August 2015, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21664>

All of these offences violate a range of human rights, including the rights to privacy and equality and non-discrimination.

Under the GBV law, “free unions” or “ugucikiza/ugucikira” are defined as “when a man and woman live together as husband and wife without being united by marriage ties (Article 2 (c)). This is distinguished from marriage that has been celebrated in accordance with Burundian laws (Article 2 (d)). Article 24 of the GBV law prohibits “free unions”. The penalty for individuals found guilty under this provision is imprisonment from one to three months and a fine of 100,000 to 200,000 Burundian francs (35-71 USD) (Article 42). As the National Assembly reported at the time when the draft of the GBV law was discussed, this prohibition on free unions was included at the express request of the late former President Nkurunziza.²³

Though criminalized, cohabitation is a common practice in Burundi.²⁴ Rather than providing economic, social and legal protections for partners (in practice, primarily women) and their children when free unions are dissolved, the GBV law instead heightens the insecurity of their position by criminalizing free unions.

In its concluding observations on the combined fifth and sixth periodic reports of Burundi in 2016, the CEDAW Committee expressed concern about the absence of a statutory framework in the country regulating what they term “de facto unions” and ensuring the economic equality of women and men, in particular upon the dissolution of such a union. The Committee recommended that Burundi expedite the development and adoption of legislation regulating the economic aspects of de facto/free unions.²⁵

Article 2(y) of the GBV law defines “adultery” or “kurenga ibigo” as engaging in sexual relations with another person who is not your spouse. A person convicted of adultery or “kurenga ibigo” may be punished with imprisonment from one month to one year and payment of a fine from 100,000 to 200,000 Burundian francs (35-71 USD). This penalty may be increased four times if adultery or “kurenga ibigo” was committed in the family home (Article 41).

Aside from being inconsistent with CEDAW provisions (particularly Article 16 on marriage and family relations), laws criminalizing both cohabitation outside of marriage and consensual sexual relations outside of marriage violate Article 17 of ICCPR, which states that “no one shall be subjected to arbitrary or unlawful interference with privacy, family, and home.” The UN Human Rights Committee expressed its opinion that adult consensual sexual activity in private is covered by the concept of “privacy” and criminalizing private sexual acts between consenting adults constitutes an arbitrary interference with privacy and cannot be justified.²⁶

The UN Working Group on Discrimination against Women has also specified that sexual relations between consenting adults should not be criminalized, and must not be punished by fine or imprisonment.²⁷ The Working Group has noted that, for example, where “adultery” is a criminal offence, this means in practice that women will continue to face extreme vulnerabilities, and violation

²³ Inama nshingamateka (National Assembly of Burundi), Facebook post, 2 August 2016, <https://www.facebook.com/inama.nshingamateka/posts/pfbidOpqL8WsGm3ASw5k9vFNjAnkLmwJMYDYzjTdahA6k83aRUXLY9hEQp1CNgwfcJY3ol>

²⁴ In the demographic survey previously cited, approximately 20% of those aged 15-49 years currently in a union said that they were living together rather than officially married. Source: Republic of Burundi : MPBGP, MSPLS, ISTEUBU and ICF, Troisième Enquête Démographique et de Santé au Burundi, 2017 (previously cited), <https://dhsprogram.com/pubs/pdf/FR335/FR335.pdf>, p. 65

²⁵ CEDAW, Concluding observations Burundi 2016, UN Doc. CEDAW/C/BDI/CO/5-6, paras. 50-51.

²⁶ Human Rights Committee, Toonen v. Australia, Communication No. 488/1992, Views of 31 March 1994, UN Doc. CCPR/C/50/D/488/1992 (1994)

²⁷ Statement by the United Nations Working Group on discrimination against women in law and in practice, 18 October 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>

of their rights to dignity, privacy and equality, given the continuing discrimination and inequalities they face.²⁸ In 2017, the Working Group raised its concerns with the Government of Burundi about the criminalization of adultery in the 2009 Penal Code.²⁹ No government reply has been made available.

These observations echo those of CEDAW, which has repeatedly observed that laws criminalising extramarital sex, are in practice, disproportionately invoked against women.³⁰ CEDAW has also called for States parties to repeal the criminalization of extramarital sexual relations.³¹

Likewise, the ACHPR in its Guidelines on Combating Sexual Violence and its Consequences in Africa states that legislation to combat sexual violence must include “a prohibition on any provisions that could result in dissuading victims from denouncing sexual violence, such as rules that could lead to the prosecution of the victims for adultery [...]”.³²

RECOMMENDATIONS

The importance of the adoption of Burundi’s GBV law in the fight against gender-based violence in the country cannot be underestimated. It opens the door towards better prevention, protection and justice measures if the habitual challenges of ensuring adequate resources for its implementation can be overcome. However, while the law introduces many positive elements into Burundi’s legal framework, it reflects in other provisions prevailing gender inequalities in the country. While this law is just one tool in the broader work that remains to be done to achieve gender equality in the country, revising it to ensure that its provisions do not result in human rights violations will make it a more effective tool in this struggle.

In that light, Amnesty International recommends that the National Assembly:

- Undertake a comprehensive reform of Burundi’s laws, including the Penal Code, to ensure that all these laws effectively prevent, protect from and prosecute acts of gender-based violence.
- Ensure that there is a consistent, consent-based definition of rape in all laws, and that marital rape is treated as seriously as other forms of rape, and the same penalties are imposed.
- Revise Article 7 of the GBV law on the equal rights of both spouses in regard to reproductive health and family planning (and household goods), so that it emphasizes clearly that women have the independent right to make choices about their own reproductive and sexual health and to decide on the spacing of pregnancies, in line with the Maputo Protocol. Equal rights as to the disposal of household goods should remain.

²⁸ Working Group on discrimination against women in law and in practice, Background Note: Adultery as a criminal offence violates women’s human rights, October 2012, pp. 8-9, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/AdulteryasaCriminalOffenceViolatesWomenHR.pdf>

²⁹ UN Working Group on discrimination against women in law and in practice, Communication to Government of Burundi, 15 November 2017, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Communications/32/OL-BDI-15-11-17.pdf>

³⁰ CEDAW, Concluding observations Mexico 2012, UN Doc. CEDAW/C/MEX/CO/7-8, para. 13; CEDAW, Concluding observations Libya 2009, UN Doc. CEDAW/C/LBY/CO/5, paras. 24-25; CEDAW, Concluding observations Congo 2012, UN Doc. CEDAW/C/COG/CO/6, paras. 43-44.

³¹ CEDAW, Concluding observations Qatar 2014, UN Doc. CEDAW/C/QAT/CO/1, paras. 23-24; CEDAW, Concluding observations Libya 2009, paras. 24-25;

³² African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Combating Sexual Violence and its Consequences in Africa, May 2017, p. 45.

- Taking a survivor-centred approach, revise Article 21 of the GBV law on the obligation of direct neighbours to intervene to ensure that actions, in particular reporting of a crime, are not taken against the wishes of the victim.
- Revise the penalties provided for in Article 38 on the abduction of a girl with the intention to marry her or to force her to marry someone else, in line with the Penal Code provisions (Articles 246 and 255) on human trafficking of a child by means of abduction.
- Repeal the following provisions of the GBV law:
 - Article 60 on incitement to gender-based violence and particularly any reference, such as to “indecent dress”, that could criminalize victims of violence, in addition to stigmatizing victims and reinforcing harmful gender stereotypes;
 - Article 56 on false accusations, on the grounds that it can dissuade victims from reporting;
 - Articles 24 and 42 prohibiting “free unions” or cohabitation;
 - Article 41 criminalizing “adultery”.

In addition, Amnesty International recommends that the Government of Burundi:

- Ratify the Maputo Protocol as a matter of urgency, noting that 3 December 2023 marks the 20th anniversary of Burundi’s signature.
- Implement the recommendations of the CEDAW Committee in their 2016 Concluding observations, in particular to:
 - Implement the 2016 GBV law effectively and enhance the prevention and protection of victims and the prosecution of perpetrators of sexual and gender-based violence and, to that end, provide systematic training on all its provisions to judges, law enforcement personnel and lawyers;
 - Ensure that victims are destigmatized and encouraged to report incidents of gender-based violence, that they have access to effective protection and redress, including compensation, and that perpetrators are prosecuted by a competent criminal court;
 - Remove obstacles faced by victims of gender-based violence to access justice, including by eliminating the requirement of a medical certificate to initiate criminal proceedings for rape;
 - Provide sufficient assistance and protection to women and girls who are victims of gender-based violence, including by increasing the number of shelters and providing medical treatment, psychosocial rehabilitation and reintegration programmes, especially in rural areas, and through the coordination of interventions and support services in cooperation with civil society organizations and international partners;
 - Effectively implement the national plan to combat gender-based violence (2010) and allocate adequate resources to ensure its implementation in a coordinated and effective manner, paying special attention to women in situations of vulnerability;
 - Intensify public awareness efforts, through consistent strategic media campaigns and educational programmes, to address gender-based violence and discrimination against women;
 - Ensure the systematic collection and analysis of data on all forms of gender-based violence against women, disaggregated by age, region and relationship between the victim and the perpetrator;
 - Investigate, prosecute and adequately punish all cases of violence against women and ensure reparations for victims;

- Ensure that women have access to justice by, among other things, adopting gender-sensitive procedures to investigate sexual violence, and conducting training and adopting gender-sensitive codes of conduct and protocols for the police and the military and building the capacity of the judiciary so as to ensure its independence, impartiality and integrity;
- According priority to the protection of victims and witnesses from reprisals whenever they seek access to justice or cooperate with the judiciary;
- Ensure access by women who are victims of sexual violence to comprehensive medical treatment, mental health care and psychosocial support provided by health professionals who are appropriately trained to detect sexual violence and to treat its consequences, as well as access to forensic testing;
- Expedite the development and adoption of legislation regulating the economic aspects of de facto unions.

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