

**3RD CYCLE: BURUNDI UNIVERSAL PERIODIC REVIEW
DECEMBER 2017
ADVOCACY SHEET**

BACKGROUND.

In December 2008, the Special Rapporteur on the situation of Human Rights Defenders, the Independent Expert on the situation of human rights in Burundi and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health had expressed their concerns about a bill criminalizing same-sex relationships in an urgent appeal. Despite their calls, on April 22nd, 2009, the revision of the adopted Penal Code included discrimination against same-sex relationships by criminalizing same-sex relationships in Article 567. Moreover, a ministerial order from June 7th, 2011 on the school regulation includes same-sex relationships among misconducts punishable by expelling.

During the 15th session of the UPR, in its 2nd review cycle held on January 24th, 2013, the Report submitted by the Government of Burundi did not provide any information on sexual orientation, gender identity and expression. In the 4 joint submissions from civil society, concerns were identified on: protection from all forms of discrimination including on the basis of sexual orientation and gender identity, and recommendations that those grounds should be included in anti-discriminatory legislation; providing education and awareness-raising sessions on these issues to police and all other law enforcement officials. The Government of Burundi had received a total of 11 recommendations on SOGI from States 1 all of which have been rejected.

VIOLATIONS ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY.

- Right to Equality and Non-Discrimination.
- Right to Life, Liberty and Security of a Person.
- Right to Health.
- Right to Freedom of Expression and Peaceful Assembly.
- Right to Education.

DISCRIMINATORY LAWS AND POLICIES.

Despite this existence of human rights standards as well as binding obligations on the Republic of Burundi, arising from the Universal Declaration of Human Rights and other international treaties, pacts and conventions ratified by Burundi, all of which form an integral part of the Constitution of Burundi, LGBT individuals continue to be victims of human rights violations and face growing discrimination and stigmatization in Burundi.

Article 567 of the Penal Code, that came in force on April 22nd, 2009, punishes same-sex relationships between two consenting adults'. This legitimizes hostility and other human rights abuses against LGBT persons. The Ministerial Order number 620/613 of June 7th, 2011 which sets school regulations mentions same-sex relations separately from other sexual acts, exposing young and adolescents actually or perceived to be LGBT to discrimination, to threats accompanied by extortion, and to the expulsion from school on the basis of denunciation by their peers.

AGGRESSIONS, ARBITRARY ARRESTS AND DETENTIONS, INHUMAN AND DEGRADING TREATMENT.

LGBT individuals continue to be subjected to verbal and physical aggression on the basis of their appearance or perception within the general Burundian society. Since 2011, 22 cases of arbitrary arrest and detention have been documented overall.

In general, arrests that are initially made on the basis of sexual orientation and end up invoking other reasons in cases of confrontation with the legal representation of the arrested individual while still in custody.

Over the past years, there have been numerous cases of arbitrary arrest and unlawful detention of members of the LGBT community in Burundi by the police.

Although being clear, Article 567 has been used in numerous arrests by law enforcement officers to extort money from LGBT people who most often give in for fear of being taken to jail. The latest arrest was made in October 2017.

Seven individuals who were just sharing tea were arrested in the urban area of Kamenge during the day by the police because they have been perceived to be LGBT, and charged on the grounds of homosexuality while they were in detention.

In all these cases, arbitrary arrests and detentions fuel the LGBT community's fear and reluctance to effectively interact with the law enforcement authorities, who are supposed to protect them as citizens.

DENIAL OF ACCESS TO HEALTH SERVICES.

Since 2007, significant progress has been made in the area of HIV prevention for men who have sex with men in Burundi. Sexual minorities have been included in the 2012-2016 strategic plan fighting against AIDS as a vulnerable, most at-risk group. The representation of men who have sex with men has as well been ensured within the Country Coordinating Mechanism (CCM).

However, despite the level of progress achieved thus far, cases of discrimination and stigmatization have continued to be reported within healthcare facilities and from administrative authorities through either the systematic denial of medical treatment on grounds of the criminalization of same-sex conducts, or by calling upon healthcare providers to not provide services under threat of arrest to LGBT individuals.

LGBT individuals continue to experience discrimination and stigma within the HIV/AIDS and STI treatment structures. This discrimination and stigma contributes enormously to the unwillingness from LGBT individuals to reach out to health facilities to seek their services. This contributes significantly to and increases the HIV prevalence rate of 4.8% amongst men who have sex with men (MSM), while the rate is 1.1% for the general population.

RESTRICTIONS ON FREEDOM OF ASSOCIATION AND TACIT DENIAL OF REGISTRATION FOR LGBT GROUPS.

Burundi's Constitution of March 18, 2005 guarantees the freedom of expression and peaceful assembly in Articles 31 and 32. Nevertheless, none of the LGBT identifying groups has had the status of an association as such. The denomination of the members of these groups (as LGBT) has been invoked each time to either request a statutory review of the constitutive acts of these groups, or to informally deny granting them ministerial approval on grounds of objectives or a mission which conflicts with the 'national laws in force'.

On at least three occasions, the Burundian authorities have suspended meetings, training workshops or film screenings organized as expressing solidarity, or discussions on sexual orientation either via calls for their cancellation or sending the police to the venue for their suspension.

The law No. 1/02 of 27 January 2017 on the organic framework of non-profit organizations constitutes an interference in the financial management of such associations, and can constitute an effect of unexpected closure or suspension arbitrary decided by the competent Ministry.

RECOMMENDATIONS.

- Repeal Article 567 of the Penal Code criminalizing same-sex relationships between consenting adults.
- Establish a complaints mechanism within the police to prevent, investigate and prosecute all forms of discrimination and violence including those based on real or perceived sexual orientation and gender identity.
- To develop in the next two years a manual for healthcare professionals and providers on how to treat LGBT patients competently, that is based on the principles of equality and non-discrimination.
- Providing comprehensive training programs for healthcare professionals on the specific needs and rights of LGBT patients.
- Amend the Ministerial Order number 620/613 of June 7th, 2011 establishing the school regulation in force in Burundi, and prevent its discriminatory application based on real or perceived sexual orientation and gender identity.
- Take all necessary positive measures to guarantee all freedom of assembly and expression without any discrimination by ensuring that the registrations procedures are not imposing unjustifiable limitations, including on grounds of morality and public order.