

# THE STATUS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS IN BURUNDI A Shadow Report

September 2014



## EXECUTIVE SUMMARY

The Government of Burundi is failing in its obligation under the ICCPR to respect and to ensure the following rights:

- Article 2 (non discrimination)
- Article 7 (degrading treatment)
- Article 9 (security of person)
- Article 10 (treatment of detainees with dignity)
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- Article 17 (privacy)
- Article 19 (freedom of expression)
- Article 21 (freedom of assembly)
- Article 22 (freedom of association)
- Article 24 (protections for children, without discrimination)
- Article 26 (equal protection of the law and equality before the law)

The 2005 Constitution of Burundi contains strong anti-discrimination provisions and was endorsed by the large majority of voters in a referendum. In 2009, however, the Government of Burundi passed legislation criminalizing same-sex sexual relations, providing for imprisonment under Article 567 of the Penal Code. This legislation infringes on the rights of LGBT individuals to non-discrimination and equal protection of the law, and on the rights to security, privacy, and treatment with dignity. The argument by the State that same-sex sexual relations clash with local customs in Burundi does not justify the criminalization of that conduct.

When Burundi criminalized same-sex sexual relations, the State organized demonstrations against the LGBT community, and high-ranking officials made speeches characterizing homosexuality as ‘a curse.’ These acts by the State violate its obligation to respect the rights in the ICCPR.

Since passage of the legislation, the number of acts targeting individuals because of their real or perceived sexual orientation or gender identity has increased. These acts are carried out by private individuals as well as by State actors, the very people charged with safeguarding the rights guaranteed under the ICCPR. In fact, instead of protecting people, the police are a source of discrimination, violence, and extortion. As a result, they are often feared by the LGBT community. The failure to protect against acts targeting individuals based on their real or perceived sexual orientation and gender identity constitutes a violation of the obligation to respect and ensure the rights in the ICCPR.

Burundi also has legislation (Article 565 of the Penal Code) that imposes fines for public acts that offend ‘public decency.’ The provision is vague, open to arbitrary interpretation, and as discussed in this report violates Articles 2, 19, and 26 of the ICCPR. Another Penal Code provision (Article 564) prohibits the production, exhibition, performance, sale, distribution, and

transport of materials that are considered contrary to 'public decency.' This provision is broadly worded, open to arbitrary application, and violates the ICCPR.

This report presents cases of violations by private and State actors targeting LGBT individuals. It appears that these acts have taken place with impunity, with no investigation, prosecution, punishment, or remedy. This report also presents cases where victims of offenses by private individuals have turned to the police for help only to be threatened by the police. Moreover, it shows how the Government's policies are tearing at the fabric of society by pressuring parents to abandon their children.

The legislation criminalizing same-sex sexual relations, statements by State officials, and government inaction in the face of acts targeting LGBT individuals all send the message that these individuals can be deprived of their rights with impunity.

Based on the cases highlighted in this report, we urge the Human Rights Committee to make the following recommendations to the State of Burundi.

### **Recommendations**

In order to fulfill its obligations in the ICCPR, the State of Burundi should make it a priority to:

- Repeal Article 567 of the Penal Code criminalizing same-sex sexual relations.
- Stop the practice of arbitrarily detaining individuals based on their sexual orientation or gender identity and expression through the establishment and implementation of non-discrimination policies and training for law enforcement.
- Investigate, prosecute, and punish those responsible for submitting members of the LGBT community to detention and degrading treatment based on their sexual orientation and gender identity and expression.
- Amend Ministerial Decree No.620/613 of 7 June 2011 establishing school regulations in Burundi to eliminate homosexuality as a cause for expulsion, prohibiting simply 'sexual relations in flagrante delicto.'

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## **INTRODUCTION**

The Burundi civil society organizations Mouvement pour les Libertés Individuelles (MOLI) and Rainbow Candle Light have come together to produce this shadow report on the human rights situation in Burundi. They were assisted in this effort by Cristina Mansfield and Professor Stephanie Farrior of Vermont Law School and by Stefano Fabeni of the Global Initiative for Sexuality and Human Rights of the Heartland Alliance.<sup>1</sup>

Burundi ratified the International Covenant on Civil and Political Rights (ICCPR) in 1990. The upcoming review of Burundi will be the State's second review under the ICCPR, the first having taken place in 1994.

### **Constitution of Burundi**

Several provisions of the Burundi Penal Code are discriminatory and not only violate the ICCPR but are also in conflict with the State's Constitution. In Article 19, the Constitution of Burundi guarantees the rights in the Universal Declaration of Human Rights, the two Covenants and other human rights instruments.<sup>2</sup> The relevant provisions of the Burundi Constitution are as follows:

- Article 14 guaranteeing security of person.
- Article 21 guaranteeing respect for human dignity.
- Article 22 guaranteeing equality before the law and equal protection under the law.
- Article 23 stating that no one shall be subject to arbitrary treatment by the State and that the State will be responsible for indemnifying all those subject to such arbitrary treatment.
- Article 25 guaranteeing the right to freedom, including from physical and psychological harm, and the right to be free from cruel and degrading treatment.
- Article 28 establishing the right to privacy.
- Article 29 establishing the right to choose one's partner in life.
- Article 30 establishing that parents have a natural right and a natural duty to educate and raise their children; every child has a right to the protection of family, society, and State.
- Article 31 guaranteeing the right to freedom of expression.

<sup>1</sup> This report was prepared by law student Cristina Mansfield and Professor Stephanie Farrior of Vermont Law School. Special thanks to Stefano Fabeni (J.D., LL.M.), Managing Director of the Global Initiative for Sexuality and Human Rights of Heartland Alliance (HA-GISHR), and Star Rugori, Irwin Iradukunda, and J.F. Régis Ninteretse of MOLI.

<sup>2</sup> "The rights and duties proclaimed and guaranteed in the Universal Declaration of Human Rights, international human rights treaties, the African Charter of Human and Peoples' Rights, as well as the Charter of National Unity, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child form an integral part of the Constitution of the Republic of Burundi. These rights are fundamental and non-derogable, except in certain circumstances justifiable in the public interest or the protection of a fundamental right." Constitution, March 18, 2005, Art. 29 (Burundi).

- Article 39 stating that that no one shall be detained ‘except in cases determined by law.’
- Article 43 prohibiting arbitrary State interference in people’s private life.
- Article 54 recognizing the right to work.
- Article 55 establishing the right to health care.

### **Penal Code**

Articles 564, 565, and 567 of the Burundi Penal Code violate the ICCPR. Article 567 criminalizes same-sex sexual relations; Article 564 prohibits materials considered ‘contrary to public decency’ (‘bonne mœurs’); and Article 565 criminalizes public acts that ‘offend modesty’ (‘blesent la pudeur’).

Article 567, adopted In April 2009, imposes a sentence of up two years on individuals who have sexual relations with someone of the same sex. Article 567 states:

Quiconque fait des relations sexuelles avec la personne de même sexe est puni d’une servitude pénale de trois mois à deux ans et d’une amende de cinquante mille francs à cent mille francs ou d’une de ces peines seulement.<sup>3</sup>

This criminalization of same-sex sexual relations violates ICCPR Articles 2(1) and 26, which guarantee protection from discrimination and equal protection of the law, by targeting individuals based on their sexual orientation. In *Toonen v. Australia*, the Human Rights Committee found that references to ‘sex’ in Articles 2(1) and 26 of the ICCPR include sexual orientation and that any domestic law criminalizing private, same-sex relations violates the principle of non-discrimination, and interferes with the right to privacy under Article 17.<sup>4</sup> Therefore, Article 567 is in direct conflict with the ICCPR.

In addition to being discriminatory, Article 567 does not define ‘sexual relations’ and thus is vague and ambiguous. It is unclear what specific conduct would give rise to an offense, and whether a simple demonstration of intimate affection may be considered a relation for the scope of criminal law. The provision does open up LGBT individuals in Burundi to arbitrary charges and abuse. The statute does not specify a standard of evidence or whether the State may arrest people who ‘appear gay.’ The provision inadmissibly interferes with the privacy of LGBT individuals and leaves them constantly under threat, thus undermining their right to security of person.

Another article of concern is Article 564, which prohibits the production, exhibition, performance, sale, distribution, and transport of materials that are considered contrary to

<sup>3</sup> “Whoever has sexual relations with a person of the same sex will be punished by a prison sentence of three months to two years and a fine of 50,000 to 100,000 francs, or by one of these penalties.” (unofficial translation)

<sup>4</sup> *Toonen v Australia*, Communication No. 488/1992, U.N Doc CCPR/C/50/D/488/1992 (1994).

public decency ('bonnes mœurs'). The penalty for a violation of this provision is a fine. Article 564 states:

Quiconque a exposé, vendu ou distribué des chansons, pamphlets ou autres écrits, imprimés ou non, des figures, images, emblèmes ou autres objets contraires aux bonnes mœurs, est condamné à une amende de cinquante mille francs à cent mille francs.

Est puni des mêmes peines, quiconque a, en vue du commerce ou de la distribution, détenu, importé ou fait importer, transporté ou fait transporter, remis à un agent de transport ou de distribution, annoncé par un moyen quelconque de publicité des chansons, pamphlets, écrits, figures, images, emblèmes ou objets contraires aux bonnes mœurs.

Dans les cas prévus par les alinéas précédents, l'auteur de l'écrit, de la figure, de l'image, celui qui les a imprimés ou reproduits, les fabricants de l'emblème ou de l'objet sont punis d'une amende de cinquante mille francs à cent mille francs.

Quiconque a chanté, lu, récité, fait entendre ou proféré des obscénités dans des réunions ou lieux publics devant plusieurs personnes et de manière à être entendu de ces personnes, est puni d'une amende de dix mille francs à vingt mille francs.<sup>5</sup>

The Burundi Penal Code does not define 'public decency.' The absence of a standard of measurement means that State actors cannot know when an act violates the provision. This renders the provision inherently vague and conflicts with ICCPR Article 9, which holds that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Article 564 also conflicts with Article 18 of the Burundi Constitution, which states that no one shall be detained "except in cases determined by law."

A third law of concern is Article 565, which punishes public acts that "offend modesty" ("blesent la pudeur"). The penalty for a violation is also a fine. Article 565 states:

Quiconque a publiquement outragé les mœurs par des actions qui blesent la pudeur est puni d'une amende de cinquante mille francs à cent mille francs.<sup>6</sup>

As with Article 564, Article 565 is vague and ambiguous. The Penal Code provides no definition of 'public decency' and no standard to measure what offends 'public modesty.' The vagueness and ambiguity of Article 565 puts it in conflict with ICCPR Article 9 and with Article 18 of the Burundi Constitution that proscribe the deprivation of liberty unless an act falls within a clear statutory offense.

<sup>5</sup> Loi N. 1/05 du 22 portant révision du Code Pénal, Article 564.

<sup>6</sup> Whoever offends public decency through actions that affect public modesty will be punished by a fine of fifty thousand to one hundred thousand francs. (unofficial translation)

The acts described in this report indicate that these provisions have set the conditions for the targeting individuals on the basis of their real or presumed sexual orientation or gender identity with impunity.

### **Government Justifications for Criminalizing Same-Sex Relations Are Invalid**

In January 2013, Burundi participated in its first Universal Periodic Review. During the UPR, several States raised the issue of discrimination based on sexual orientation and gender identity. The Government of Burundi acknowledged that the 2009 Criminal Code punishes LGBT individuals. In response to recommendations that Burundi decriminalize same-sex relations, the delegation declared that, “Burundi could not commit to recommendations that clash with customs of the population.”<sup>7</sup> Furthermore,

“In that respect, it added that all recommendations made on decriminalizing sexual relations between consenting adults of the same sex and abolition of all rules on discrimination based on sexual orientation did not enjoy the approval of the Government. The delegation stated that the 11 recommendations on homosexuality were not accepted.”<sup>8</sup>

General Comment No. 18 on Non-Discrimination points out that “the Covenant sometimes expressly requires [States] to take measures to guarantee the equality of rights of the persons concerned.”<sup>9</sup> Any legislation adopted by a State party “must comply with the requirement of article 26 that its content should not be discriminatory.”<sup>10</sup> Similarly, General Comment No. 28 on Equality of Rights between Men and Women suggests that in the face of discriminatory customs and traditions, “States parties should review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting discrimination by private actors in areas such as employment, education, political activities and the provision of accommodation, goods and services.”<sup>11</sup> It is precisely when prevailing customs are discriminatory that States are required to take measures to combat discrimination in all forms, including sexual orientation and gender identity. The State of Burundi’s arguments regarding the discriminatory 2009 Penal Code are thus unconvincing.

<sup>7</sup> A/HRC/23/2 Report of the Working Group on the Universal Periodic Review, March 25, 2013 ¶ 511.

<sup>8</sup> A/HRC/23/2 Report of the Working Group on the Universal Periodic Review, March 25, 2013 ¶ 511.

<sup>9</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989. UN Doc. A/45/40, para. 5.

<sup>10</sup> *Id.* para 12.

<sup>11</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 28: Equality of Rights between Men and Women, March 29, 2000. U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).



## **Recommendations**

The State of Burundi should:

- Repeal Article 567 of the Penal Code criminalizing same-sex relations.
- Take measures to ensure that Articles 564 and 565 of the Penal Code are implemented in a way that comports with the State obligation to ensure the rights in the ICCPR.
- Condemn all acts and rhetoric by political leaders that reinforce homophobia and the degradation and humiliation of the person.

## **Articles 2 & 26 – Non Discrimination and Equality Before the Law**

Under Articles 2 and 26 of the ICCPR, States are mandated to protect against discrimination and ensure equality for people within their jurisdiction. Article 2 requires a State to undertake “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” This provision imposes on States a negative obligation to refrain from discrimination and a positive obligation to adopt measures to enforce and protect the rights enshrined in the treaty. Article 26 guarantees equality before the law and equal protection of the law and prohibits any discrimination under the law.<sup>12</sup>

Notwithstanding the guarantees of the Convention, the people of Burundi continue to suffer violations of their rights under the ICCPR because of *de jure* and *de facto* discrimination based on sexual orientation and gender identity. The anti-homosexuality legislation is in direct contravention of the ICCPR and together with official pronouncements has created an atmosphere in which both public and private actors are violating the rights of individuals on grounds of their real or presumed sexual orientation and gender identity with impunity.

### **Official Intolerance and Promotion of Homophobic Attitudes**

Not only is the State encouraging homophobia through its criminalization of same-sex relations, the situation of LGBT individuals in Burundi is worsened by public expressions of intolerance by high-level officials. As illustrated by the examples below, such displays of intolerance represent a failure of the State to fulfill its obligation under Articles 2 and 26 to ensure the rights of people in Burundi:

- In March 2009, the government organized a demonstration in Bujumbura demanding the criminalization of same-sex sexual relations. Ten thousand people attended the

<sup>12</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989. UN Doc. A/45/40, para. 1.

demonstration, which was followed by public debates in which high-ranking officials spoke against decriminalization and against tolerance of acts that they ‘cursed.’<sup>13</sup>

- In November 2009, the President of Burundi issued public statements describing homosexuality as a ‘curse,’ even attributing his reception of the Assisi Peace Prize to his stance against homosexuality.<sup>14</sup>
- In July 2011, the Minister of Education passed a decree explicitly listing ‘homosexuality’ as one of the permissible justifications for expelling a student from secondary school for the current school year.<sup>15</sup>
- On December 10, 2013, an International Human Rights Day celebration in support of LGBT individuals scheduled at the French Institute of Burundi by the Dutch Embassy was cancelled without any official explanation. Reports suggest that the Minister of External Relations applied pressure on the Dutch Embassy to cancel the event, considered to be ‘against Burundi culture.’ This was the first such occurrence in Burundi. Cancellation of the event generated debate on a Facebook page maintained by professionals living in Bujumbura. The debate lasted until January 4, 2014, and many of the sentiments expressed were hostile, intolerant, and xenophobic.<sup>16</sup>

Official expressions of intolerance contribute to the incitement of discrimination, violence, and social stigmatization of members of the LGBT community. Such expressions by government officials are contrary to the State’s obligation under Article 2 of the ICCPR to ensure rights without discrimination. Since passage of the legislation criminalizing same-sex sexual relations and official statements that accompanied enactment, attacks on LGBT people have increased in Burundi.

### **Detention and Threats of Detention of LGBT Individuals**

In recent years there have been numerous cases of LGBT community members in Burundi being illegally arrested and detained by law enforcement. In some instances, the reason for their detention is their perceived sexual orientation or gender identity and expression. In other instances, LGBT persons have been detained after reporting being the *victim* of a crime. In all cases, illegal stops and detentions inspire fear and reluctance of the LGBT community to interact with law enforcement officials who are supposed to be protecting them.

- In April 5, 2012, two women reported being stopped by a police officer after they had an argument. The officer accused them of being homosexuals when they admitted to being a couple after a long interrogation as to the reason for the argument. The women were detained for seven days by the *Commissariat Municipal de la Police (ex-BSR, Bureau Spécial*

<sup>13</sup> Burundi : 10.000 manifestants pour une criminalisation de l’homosexualité. Burundi ARIB. Le 6 Mars 2009. [http://www.arib.info/index.php?option=com\\_content&task=view&id=687&Itemid=63](http://www.arib.info/index.php?option=com_content&task=view&id=687&Itemid=63)

<sup>14</sup> Le Burundi n’est pas prêt à légaliser l’homosexualité, selon le Président Nkurunziza. Site web de la Présidence du Burundi. Le 27 Septembre 2011. <http://www.presidence.gov.bi/spip.php?article1939>

<sup>15</sup> MOLI Burundi Rapport Education 2012-LGBT-FR, Ordonnance Ministérielle No 620/613 du 7 Juin 2011 portant fixation du Règlement Scolaire en vigueur au Burundi. <http://fr.scribd.com/doc/94795366/MOLI-Burundi-Rapport-Education-2012-LGBT-FR>

<sup>16</sup> <https://www.facebook.com/groups/BujumburaProfessionalsNetwork/permalink/722433257774473/>

*de Recherche*) on the pretext that they were being investigated. They were released thanks to pressure generated by activists.<sup>17</sup>

- In August 2011, a transgender person had her wallet stolen by a man in Kamenge, Bujumbura. She dragged the suspect to the Kamenge police station. Instead of receiving assistance she was accused of stealing the man's driver's license. She was detained and beaten. She sustained injuries to her forehead and arms, and her hair was cut off. When her friends intervened, the police stated that they recognized her homosexuality based on her hairstyle. She was detained for three days and denied medical attention for her injuries.<sup>18</sup>
- In April 2011 a district officer from the police station in Kamenge Quarter of Bujumbura targeted two members of the LGBT community based on their gender identity. The officer implied they were gay and threatened to arrest them if they did not give him money. The women paid \$75 and were released. They did not report the incident to the authorities for fear of repercussions.<sup>19</sup>
- At around 7 p.m. on November 25, 2013, a group of youths was arrested by the police during a birthday party organized by \*Pacific in a bar in Nyakabiga in response to a report by an unidentified person. After sealing the escape routes, the police ordered them to stop their activities. They contended that the group had organized the party during the workweek, while parties are usually held on weekends. They also accused them of purposely organizing the event in another town. (\*Pacific lives in Buyenzi, near Nyakabiga, where the banquet hall was rented to celebrate the birthday). The police arrested three people, including \*Pacific, a family member, and a family friend. The three were taken to the municipal police station of Bujumbura for questioning, which lasted over four hours. Those arrested with \* Pacific were released around 1 am the same day. \*Pacific was released Wednesday, November 27, 2013 at 10 am, after two days of unjustified detention.<sup>20</sup>

### **Failure to Investigate, Prosecute, and Punish Acts of Discrimination**

As part of its obligation to ensure that citizens are not subject to violations of the ICCPR, the Government of Burundi has a duty to take measures to safeguard the rights of members of the LGBT community and to provide a remedy when rights are violated. Yet in numerous instances the Government of Burundi has failed to prevent, investigate, prosecute, and punish acts of discrimination.

<sup>17</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014. p.6. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf)

<sup>18</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf)

<sup>19</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf).

<sup>20</sup> *Idem.*

- In May 2012, at discreet activities marking the International Day Against Homophobia (IDAHO), a transgender person reported to MOLI that he was stoned by unidentified persons. The victim was accompanied by a Human Rights Defender, who sustained a broken leg during the incident. The Human Rights Defender was taken to the Hospitalo-University Centre of Kamenge where his leg had to be immobilized for 14 days.<sup>21</sup>
- In August 2011, a transgender girl in a privately run orphanage in Mugeru was accused of stealing a mobile phone. Residents living in the vicinity of the orphanage forced her to undress so that people could see if she was a 'real girl.' The orphanage staff then tied her to a pipe for three hours. Her arm was semi-paralyzed as a result of this treatment. No action was taken against those responsible. A civil lawsuit was filed in 2011 against three individuals for ill treatment and failing to render aid to a person in danger and remains pending.<sup>22</sup>

The State of Burundi has failed to exercise due diligence to investigate, prosecute, and punish acts of violence against individuals on grounds of their sexual orientation and gender identity. As a consequence, LGBT people are afraid to report violations that target them to the authorities. The State has also failed to provide a remedy to the LGBT members who have suffered due to the Government's failure to protect their right, as mandated under Article 2(3) of the ICCPR.

### **Recommendations**

To fulfill its obligations under Articles 2 and 26, the State of Burundi should:

- Prohibit public expressions of intolerance and support for events promoting intolerance by government officials; penalize violations.
- Enact laws that protect all people in Burundi without distinction as to their sexual orientation, sexual identity, or gender expression.
- Investigate, prosecute, and punish all state and private actors responsible for acts of discrimination and violence toward persons in Burundi, regardless of their sexual orientation or gender expression.
- Stop the practice of arbitrarily detaining individuals based on their sexual orientation or gender identity and expression through the establishment and implementation of non-discrimination policies and training for law enforcement.

<sup>21</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf).

<sup>22</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014, p.7. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf)

- Investigate, prosecute, and punish those responsible for submitting members of the LGBT community to detention, extortion, and degrading treatment based on their sexual orientation and gender identity or expression.
- Add sexual orientation and gender Identity issues to the monitoring mechanism of the Independent National Commission on Human Rights in Burundi.

## Articles 2 & 26 – Discrimination in Employment

Burundi is failing in its obligation to protect against discrimination in Article 2 and to respect and ensure the rights to equal protection of the law and equality before the law in Article 26. LGBT people in Burundi are denied access to work because of their sexual orientation or gender identity when state and private actors practice discrimination in employment, as in the cases below:

- In February 2012, a woman applied for work with an IT company. She was asked why she wore men’s clothing and whether she was really a girl. “Go dress like a girl and come back,” they told her, but she never returned. In light of the legislation discussed earlier in this report, the woman did not feel that she had any recourse against discrimination through the government.<sup>23</sup>
- In May 2012, a transgender person was verbally attacked and physically threatened by a crowd in a market for being ‘a fag’ and ‘a demon’ who were shouting that she should not work at the market. The person was detained at the police station in the central market of Bujumbura for ‘her safety.’<sup>24</sup>
- In May 2011 in Gitega Province a person known in the area to be gay was refused employment. Her prospective employer told her: “Go change your personality and come back to see us to talk about the job you want.”<sup>25</sup>
- According to a Human Rights Watch Report published in 2009, a teacher was fired from her job when her sexual orientation was discovered. At a different job, a jealous male colleague locked her in a room and threatened to kill her. Although she considered reporting him to the authorities, she decided against for fear he would report her sexual orientation.<sup>26</sup>

To fulfill its obligations under Articles 2 and 26, Burundi must adopt measures that protect the rights of individuals to work regardless of their sexual orientation.

<sup>23</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf), p.17

<sup>24</sup> Case documented by MOLI, may 2012, p.8.

<sup>25</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf), p.17

<sup>26</sup> Interdit: Institutionnalisation de la discrimination contre les gays et lesbiennes au Burundi p. 7. 29 juillet, 2009. See: [http://www.hrw.org/sites/default/files/reports/burundi0709fr\\_brochure\\_web.pdf](http://www.hrw.org/sites/default/files/reports/burundi0709fr_brochure_web.pdf)

## **Recommendations**

The State of Burundi should:

- Take measures to prohibit discrimination on grounds of sexual identity or sexual orientation by private and public actors in the area of employment.

### **Articles 2 & 26 – Discrimination in Education**

The State of Burundi is failing in its obligation to prevent discrimination in education. Articles 2(1) and 26 of the ICCPR prohibit discrimination in education. The LGBT community has a high dropout rate because of the daily discrimination and violence individuals suffer at the hands of teachers and students in schools. More than 90% of LGBT individuals that have approached organizations for assistance in the last four years have limited education. They are only qualified to do unskilled work. They make very little money and are for the most part poor. Their difficult situation is directly related to their lack of education.

- In June 2011, the Minister of Secondary Education enacted Ministerial Decree No.620/613 of 7 June 2011. Article 9 of the decree lists the justified reasons for expelling or refusing admission to students for the academic year. The first reason is ‘homosexuality’ and the second is ‘sexual relations in flagrante delicto.’ The decree provides no standard of measurement for ‘homosexuality,’ no presumption of innocence, and no process for appeal. The existence of the decree provides opportunities for school administrators and teachers to threaten children. The decree continues to be in force.<sup>27</sup>
- Two cases have been reported – one in Kayanza (in the north), and one in Bujumbura – of children being expelled merely on suspicions related to their sexual orientation. These expulsions have taken place despite Ministry of Education assurances that the decree would only be applied in flagrant cases.<sup>28</sup>
- The Government’s stance on homosexuality reinforces parental views that same-sex relations are wrong. Under pressure from society, more and more parents are disowning their children and turning them out of the home because of their sexual identity or sexual orientation. Most of the documented cases of disowned children involve high school or university students who eventually have to quit school to earn a living. Between 2010 and 2013, MOLI documented 17 cases of families turning their children out of the home. Some of these cases have been solved with mediation, but many others have not.<sup>29</sup>

<sup>27</sup> Mouvement pour les Libertés Individuelles (MOLI), Rapport sur l’Ordonnance Ministérielle No 620/613 du 7 Juin 2011 portant fixation du Règlement Scolaire en vigueur au Burundi, Mai 2012

<sup>28</sup> Case documented by MOLI, July 2014.

<sup>29</sup> Cases documented by MOLI, July 2014.

In permitting openly anti-gay policies in schools, the State of Burundi is directly in conflict with the ICCPR's right to freedom from discrimination in education. To fulfill its obligations under the ICCPR the State of Burundi must:

### **Recommendations**

The State of Burundi should:

- Amend Ministerial Decree No.620/613 of 7 June 2011 establishing school regulations in Burundi to eliminate homosexuality as a cause for expulsion, prohibiting simply 'sexual relations in flagrante delicto.'
- Educate Department of Education officials, staff, and instructors on sexual orientation and gender identity.
- Institute measures against all Department of Education employees who discriminate against children and teachers based on their sexual orientation and gender identity.
- Take steps to reverse social norms that cause parents to reject their child due to the child's sexual orientation or gender identity.

### **Article 7 – Cruel, Inhuman or Degrading Treatment**

#### **Article 9 – Security of Person**

#### **Article 10 – Treatment of Detainees with Humanity and Dignity**

The State of Burundi is failing in its obligation under Articles 7 and 9 of the ICCPR to protect individuals from degrading treatment and to guarantee their security of person. The Government discriminates against individuals because of their sexual orientation or gender identity through their detention and arrest practices as well as through their failure to hold accountable those who unlawfully detain these individuals, as the examples below illustrate. Law enforcement officers target members of the LGBT community for their perceived sexual orientation and gender identity. They detain them unlawfully and treat them in a cruel and degrading way. Sometimes LGBT members are detained and abused when they go to the police *in search of assistance*. The Government of Burundi is taking no action against those who violate the ICCPR in such a way.

The State of Burundi is equally failing in its obligation under Article 10 to protect the right to be treated with humanity and dignity when deprived of liberty. Law enforcement officials and private actors detain LGBT individuals and subject them to undignified and cruel conditions of detention. These conditions include forced removal of clothing, visual physical exam to identify the person's sex, cutting of hair, and use of restraints.

- In May 2012, at discreet activities marking the International Day Against Homophobia (IDAHO), a transgender person reported to MOLI that he was stoned by unidentified



persons. The person was accompanied by a Human Rights Defender, who sustained a broken leg during the incident. The Defender was taken to the hospital where his leg had to be immobilized for 14 days.<sup>30</sup>

- In June 2014, MOLI reported two new cases of arbitrary arrest of LGBT persons. These were held in cells with other detainees and placed at risk of rape.<sup>31</sup>

The following cases, mentioned elsewhere in this report, are also examples of the State's violations of Articles 7, 9, and 10:

- In August 2011 a transgender person had her wallet stolen by a man in Kamenge, Bujumbura. She dragged the suspect to the Kamenge police station. Instead of receiving assistance she was accused of stealing the man's driver's license. She was detained and beaten. She sustained injuries to her forehead and arms, and her hair was cut off. When her friends intervened, the police stated that recognized her homosexuality based on her hairstyle. She was detained for three days and denied medical attention for her injuries over the detention period.<sup>32</sup>
- In August 2011, a transgender girl in a privately run orphanage in Mugeru was accused of stealing a mobile phone. Residents living in the vicinity of the orphanage forced her to undress so that people could see if she was a 'real girl.' The orphanage staff then tied her to a pipe for three hours. Her arm was semi-paralyzed as a result of this treatment. No action was taken against those responsible. A civil lawsuit was filed in 2011 against three individuals for ill treatment and failing to render aid to a person in danger and remains pending.<sup>33</sup>

In permitting state and private actors to detain LGBT individuals unlawfully and treat them in a degrading way, the State of Burundi is in violation of its obligation to respect and to ensure the rights to freedom from degrading treatment and to liberty and security of person.

### **Recommendations:**

To fulfill its obligations under Articles 7 and 9, the State of Burundi should:

- Stop the practice of arbitrarily detaining individuals based on their perceived or real sexual orientation or gender identity and expression through the establishment and implementation of non-discrimination policies and training for law enforcement.

<sup>30</sup> Mouvement pour les Libertés Individuelles (MOLI), J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013), Mai 2014.

<sup>31</sup> Cas documenté par MOLI Juillet, 2014.

<sup>32</sup> Mouvement pour les Libertés Individuelles (MOLI), J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013), Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf)

<sup>33</sup> Ibid., p.14.



- Investigate, prosecute, and punish those responsible for submitting members of the LGBT community to detention, extortion, and degrading treatment based on their sexual orientation and gender identity.
- Set standards for humanitarian detention based on international human rights standards.
- Provide detainees access to counsel and medical assistance for appropriate cases.

### **Article 17 – Privacy**

The State of Burundi is failing in its obligation under Article 17 to respect and ensure the right to privacy. People’s rights to sexual expression and gender identity are violated when they are forced to disrobe to prove what sex they are and when they are questioned about their private relationships. They also take the form of other intrusive inquiries. The continued existence of Article 567 criminalizing same-sex sexual relations interferes with the right to privacy as highlighted by the Human Rights Committee in *Toonen v. Australia*. Similarly, the Ministry of Education decree fosters institutional interference with the right to privacy of school children.

- In August 2011, a transgender girl in a privately run orphanage in Mugeru was accused of stealing a mobile phone. Residents living in the vicinity of the orphanage forced her to undress so that people could see if she was a ‘real girl.’ The orphanage staff then tied her to a pipe for three hours. Her arm was semi-paralyzed as a result of this treatment. No action was taken against those responsible. A civil lawsuit was filed in 2011 against three individuals for ill treatment and failing to render aid to a person in danger and remains pending.<sup>34</sup>
- MOLI has recorded various instances of teachers humiliating school children based on the children’s sexual orientation or gender identity and expression.<sup>35</sup>

### **Recommendations**

To fulfill its obligations under Article 17, the State of Burundi should:

- Repeal Article 567 and the Department of Education Decree provision on same-sex relations.
- Stop the practice of arbitrarily detaining individuals based on their perceived or real sexual orientation or gender identity and expression through the establishment and implementation of non-discrimination policies and training for law enforcement.
- Investigate, prosecute, and punish those responsible for submitting members of the LGBT community to detention, extortion, and degrading treatment based on their sexual orientation and gender identity.

<sup>34</sup> Mouvement pour les Libertés Individuelles (MOLI), *j’aime mon pays mais mon pays ne m’aime pas, rapport des droits de l’homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014.

<sup>35</sup> Case documented by MOLI, July 2014.

## Article 19 – Freedom of Expression

Although the limitations clause of Article 19 does permit restrictions on this right if “necessary” to protect public morals, any restrictions must be sufficiently precise for individuals to know what conduct is not permitted; any restrictions must also be necessary and not an invalid infringement of the right to freedom of expression.

The State of Burundi is failing in its obligation under Article 19 to guarantee the right to freedom of expression without interference. Article 565 of the Penal Code, which makes it a crime for anyone to “offend public decency,” violates freedom of expression because it is vague and permits law enforcement to decide arbitrarily what does and does not offend public decency. This creates an atmosphere in which LGBT members are not free to express themselves because they cannot be sure what is offensive or prohibited by the law. Government failure to ensure the right to freedom of expression makes those who express their identity in ways that do not conform to mainstream cultural norms vulnerable to attack from both public and private actors. As a result, LGBT members who exercise their right to freedom of expression are targeted because of their choice of hairstyle, clothes, and other expressions of sexual orientation and gender identity.

- In May 2012, a transgender person was verbally attacked and physically threatened by a crowd in a market for being ‘a fag’ and ‘a demon’ who should not work at the market. The person was detained at the police station in the central market of Bujumbura for ‘her safety.’<sup>36</sup>
- In May 2011 in Gitega Province a person known in the area to be lesbian was refused employment. Her prospective employer told her: “Go change your personality and come back to see us to talk about the job you want.”<sup>37</sup>
- In February 2012, a woman applied for work with an IT company. She was asked why she wore men’s clothing and whether she was really a girl. “Go dress like a girl and come back,” they told her, but she never returned. In light of the legislation discussed earlier in this report, the woman did not feel that she had any recourse against discrimination through the government. Youth are particularly vulnerable to this form of discrimination because of high unemployment rates for that age group.<sup>38</sup>
- In August 2011 a transgender person had her wallet stolen by a man in Kamenge, Bujumbura. She dragged the suspect to the Kamenge police station. Instead of receiving assistance she was accused of stealing the man’s driver’s license. She was detained and beaten. She sustained injuries to her forehead and arms, and her hair was cut off. When her

<sup>36</sup> Mouvement pour les Libertés Individuelles (MOLI), *J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013)*, Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf), p.14.

<sup>37</sup> *Ibid.*, p.17.

<sup>38</sup> *Ibid.*, p.12

friends intervened, the police stated that recognized her homosexuality based on her hairstyle. She was detained for three days and denied medical attention for her injuries.<sup>39</sup>

- In August 2011, a transgender girl in a privately run orphanage in Mugeru was accused of stealing a mobile phone. Residents living in the vicinity of the orphanage forced her to undress so that people could see if she was a 'real girl.' The orphanage staff then tied her to a pipe for three hours. Her arm was semi-paralyzed as a result of this treatment. No action was taken against those responsible. A civil lawsuit was filed in 2011 against three individuals for ill treatment and failing to render aid to a person in danger and remains pending.<sup>40</sup>
- In June 2011, the Minister of Secondary Education enacted Ministerial Decree No.620/613 of 7 June 2011. Article 9 of the decree lists the justified reasons for expelling or refusing admission to students. The first reason is 'homosexuality' and the second is 'sexual relations in flagrante delicto.' The decree provides no standard of measurement for 'homosexuality,' no presumption of innocence, and no process for appeal. The existence of the decree provides opportunities for school administrators and teachers to threaten children. The decree continues to be in force. In addition to being discriminatory, the ordinance violates the right to privacy because children cannot express themselves in school.<sup>41</sup>
- Two cases have been reported – one in Kayanza (in the north), and one in Bujumbura – of children being expelled merely on suspicions related to their sexual orientation. These expulsions have taken place despite Ministry of Education assurances that the decree would only be applied in flagrant cases.<sup>42</sup>

The Government's stance on homosexuality reinforces parental views that same-sex relations are wrong. Under pressure from society, more and more parents disown their children and turn them out of the home because of their sexual orientation or gender orientation. Most of the documented cases of disowned children involve high school or university students who eventually have to quit school to earn a living.

The State of Burundi is responsible for fostering an atmosphere in which members of the LGBT community can be targeted for asserting their right to freedom of expression with impunity.

### **Recommendations:**

To fulfill its obligations under Article 19, the State of Burundi should:

<sup>39</sup> Mouvement pour les Libertés Individuelles (MOLI), J'aime mon pays mais mon pays ne m'aime pas, rapport des droits de l'homme: la situation des personnes présumées et réellement Lesbiennes, Gays, Bisexuelles, Transgenre et Intersexuées au Burundi (2003-2013), Mai 2014. [http://moliburundi.org/wp-content/uploads/2014/06/MOLI\\_LGBTI\\_HR\\_Report\\_2014\\_EN.pdf](http://moliburundi.org/wp-content/uploads/2014/06/MOLI_LGBTI_HR_Report_2014_EN.pdf)

<sup>40</sup> Ibid., p.14

<sup>41</sup> Mouvement pour les Libertés Individuelles (MOLI), Rapport sur l'Ordonnance Ministérielle No 620/613 du 7 Juin 2011 portant fixation du Règlement Scolaire en vigueur au Burundi, Mai 2012

<sup>42</sup> Mouvement pour les Libertés Individuelles (MOLI), Rapport sur l'Ordonnance Ministérielle No 620/613 du 7 Juin 2011 portant fixation du Règlement Scolaire en vigueur au Burundi, Mai 2012

- Amend Article 565 of the Penal Code criminalizing behavior that offends public decency to make it more specific.
- Take action against public and private actors who violate the right to freedom of expression of LGBT members.
- Amend Ministerial Decree No.620/613 of 7 June 2011 establishing school regulations in Burundi to eliminate homosexuality as a cause for expulsion, prohibiting simply ‘sexual relations in flagrante delicto.’

### **Article 21 – Freedom of Assembly**

### **Article 22 – Freedom of Association**

The State of Burundi is failing in its obligation in Article 21 to protect the right of peaceful assembly and in Article 22 to protect the right of association. No restrictions may be placed on the right to assemble and the right to associate other than those imposed in conformity with the law and necessary “in the interests of national security or public safety, public order (‘ordre public’), the protection of public health or morals or the protection of the rights and freedoms of others.” In Burundi these conditions are not present and therefore the State has an obligation to allow people to assemble peacefully and to associate freely.

Violations of Article 21 and Article 22 take place when authorities interrupt gatherings of the LGBT community without valid cause. Violations occur too when the State fails to establish an environment in which members of the LGBT community feel secure coming together. Violations also occur when high-ranking public officials apply pressure to cancel events without cause. This is the situation that the LGBT community faces today.

LGBT organizations in Burundi are not permitted to register unless they work in the field of HIV/AIDS. The absence of a legal status prevents LGBT groups from defending the rights of sexual minorities. By preventing LGBT groups from registering, the State of Burundi is exposing vulnerable persons to greater risk because they have no one to protect them and fully represent their interests.

- On the evening of November 25, 2013, a group of young people was celebrating a birthday at a bar in Nyakabiga. After receiving an anonymous tip, the police arrived and blocked the exits. The police justified their actions by describing the gathering as a camouflaged ‘gay union celebration’ and pointed to the unusual dress worn (in fact, it was Maasai tribal dress). They arrested three people, including P., a member of his family, and a family friend. These were taken to the Bujumbura Municipal Police Station and interrogated. Two of them were released after for four hours, but P. remained in custody for two days until activists were able to secure his release. No charges were filed. Following the media attention that the case received, P. was turned out by his family.
- In June 2014, uniformed officers visited the community center in Remuruka and took pictures while searching for a member of the community they labeled the ‘leader of homosexuals in Burundi.’ Their motives remain unclear.

Until all people in Burundi can exercise their right to freedom of assembly with confidence and without fear, the State of Burundi is in violation of its obligation to respect and ensure the right to freedom of assembly.

### **Recommendations**

To fulfill its obligations under Articles 21 and 22, the State of Burundi should:

- Stop the practice of interfering in gatherings of individuals who are gathered for peaceful purposes.
- Support and guarantee the rights of freedom of expression, association, and peaceful assembly for minority sexual identity organizations and ensure that any restrictions to these rights are not applied in discriminatory manner.
- Allow LGBT groups to register and conduct human rights defense work.

### **Article 24 – Children**

The State of Burundi is in violation of its obligation in Article 24 to protect its children without discrimination. General Comment No. 17 notes with respect to children: “In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.”<sup>43</sup>

Children in Burundi suffer discrimination when school administrators are authorized to expel students on the vague grounds of ‘homosexuality.’ Children are discriminated against when the Government establishes an environment in which they are targeted because of their appearance, sexual orientation, or gender identity. They are particularly harmed when the Government promotes norms that pressure families to reject their own children and turn them out of the home. Children suffer permanent harm when the social norms condoned by the Government force them to drop out of school and limit their future opportunities to earn a livelihood.

- In June 2011, the Minister of Secondary Education enacted Ministerial Decree No.620/613 of 7 June 2011. Article 9 of the decree lists the justified reasons for expelling or refusing admission to students. The first reason is ‘homosexuality’ and the second is ‘sexual relations in flagrante delicto.’ The decree provides no standard of measurement for ‘homosexuality,’ no presumption of innocence, and no process for appeal. The existence of the decree provides opportunities for school administrators and teachers to threaten children.

<sup>43</sup> Human Rights Committee, General Comment 17, Article 24 (Thirty-fifth session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 23 (1994), para 3.

- Two cases have been reported – one in Kayanza (in the north), and one in Bujumbura – of children being expelled merely on suspicions related to their sexual orientation. These expulsions have taken place despite Ministry of Education assurances that the decree would only be applied in flagrant cases.<sup>44</sup>
- The Government’s stance on homosexuality reinforces parental views that same-sex relations are wrong. Under pressure from society, more and more parents disown their children and turn them out of the home because of their sexual identity or sexual orientation. Most of the documented cases of disowned children involve high school or university students who eventually have to quit school to earn a living. Between 2010 and 2013, MOLI documented 17 cases of families turning their children out of the home. Some of these cases have been solved with mediation, but many others have not.

The children of Burundi are the country’s future. When Government policies encourage teachers to expel their students and parents to reject their own children, the future of the country is bleak.

### **Recommendations:**

To fulfill its obligations under Articles 2 and 26, the State of Burundi should:

- Amend Ministerial Decree No.620/613 of 7 June 2011 establishing school regulations in Burundi to eliminate homosexuality as a cause for expulsion, prohibiting simply ‘sexual relations in flagrante delicto.’
- Educate Department of Education officials, staff, and instructors on sexual orientation and gender identity.
- Institute measures against all Department of Education employees who discriminate against children and teachers based on their sexual orientation and gender identity.
- Take steps to reverse social norms that cause parents to reject their child due to the child’s sexual orientation or gender identity.

<sup>44</sup> Mouvement pour les Libertés Individuelles (MOLI), Rapport sur l’Ordonnance Ministérielle No 620/613 du 7 Juin 2011 portant fixation du Règlement Scolaire en vigueur au Burundi, Mai 2012

## **RECOMMENDATIONS**

To fulfill its obligations in the ICCPR, the State of Burundi should:

### **Penal & Civil Code**

- Repeal Article 567 of the Penal Code criminalizing same-sex relations.
- Amend Article 565 of the Penal Code criminalizing behavior that offends public decency to make it more specific.
- Take measures to ensure that Articles 564 and 565 of the Penal Code are implemented in a way that comports with the State obligation to ensure the rights in the ICCPR.
- Criminalize violations of privacy rights by private actors.
- Support and guarantee the rights of freedom of expression, association, and peaceful assembly for minority sexual identity organizations and ensure that any restrictions to these rights are not applied in discriminatory manner.
- Enact laws that protect all people in Burundi without distinction as to their sexual orientation, sexual identity, or gender expression.
- Take measures to prohibit discrimination on grounds of sexual identity or sexual orientation by private and public actors in the area of employment.

### **Government Action & Social Norms**

- Condemn all acts and rhetoric by political leaders that reinforce homophobia and the degradation and humiliation of the person; investigate, prosecute, and punish all state and private actors responsible for acts of discrimination and violence toward persons in Burundi, regardless of their sexual orientation or gender expression.
- Prohibit public expressions of intolerance and support for events promoting intolerance by government officials; penalize violations.
- Take steps to reverse social norms that cause parents to reject their child due to the child's sexual orientation or gender identity.

### **Arbitrary Detention & Detention Conditions**

- Stop the practice of arbitrarily detaining individuals based on their perceived or real sexual orientation or gender identity and expression through the establishment and implementation of non-discrimination policies and training for law enforcement.
- Investigate, prosecute, and punish those responsible for submitting members of the LGBT community to detention, extortion, and degrading treatment based on their sexual orientation and gender identity.
- Include sexual orientation and gender Identity issues to the monitoring mechanism of the Independent National Commission on Human Rights in Burundi.
- Set standards for humanitarian detention based on international human rights standards.
- Provide detainees access to counsel and medical assistance for appropriate cases.

### **Expulsion from Schools for Reason of 'Homosexuality'**

- Amend Ministerial Decree No.620/613 of 7 June 2011 establishing school regulations in Burundi to eliminate homosexuality as a cause for expulsion, prohibiting simply 'sexual relations in flagrante delicto.'
- Educate Department of Education officials, staff, and instructors on sexual orientation and gender identity.
- Institute measures against all Department of Education employees who discriminate against children and teachers based on their sexual orientation and gender identity.

### **Privacy & Freedom of Association, Assembly & Political Voice**

- Stop the practice of interfering in gatherings of individuals who are gathered for peaceful purposes.
- Ensure that procedures are in place to facilitate freedom of assembly in public places without discrimination.
- Take action against public and private actors who violate the right to freedom of expression of LGBT members.
- Take steps to ensure that election authorities do not have discretion to bar election candidates based on their sexual orientation or gender identity.



## **QUESTIONS TO THE STATE OF BURUNDI**

1. What actions does the State of Burundi intend to undertake to repeal or amend the discriminatory provisions of the criminal code, most notably articles 565 and 567?
2. What actions does the State of Burundi intend to undertake to end the practice of arbitrarily detain individuals on the basis of their real or presumed sexual orientation or gender identity and expression, to end any degrading treatment, and ensure that policies and training are established to sensitize and educate law enforcement agencies to the respect of human rights regardless of sexual orientation and gender identity?
3. What actions does the State of Burundi intend to undertake to amend Ministerial Decree No.620/613 of 7 June 2011 establishing school regulations in Burundi to eliminate homosexuality as a cause for expulsion of students from schools?
4. What actions does the State of Burundi intend to undertake to ensure the freedom of association and assembly of LGBT organizations that are currently undermined by state actors and by homophobic discourse of political leaders?