



**“I love my country, but my
country does not love me.”**

Human Rights: The Situation of Lesbian, Gay, Bisexual,
Transgender and Intersex Persons in Burundi
(2003-2013).

Mouvement pour les Libertés Individuelles (MOLI)

May 2014



Mouvement pour les Libertés Individuelles
MOLI

« I LOVE MY COUNTRY, BUT MY COUNTRY DOES NOT LOVE ME. »

HUMAN RIGHTS: THE SITUATION OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEXUAL PERSONS IN BURUNDI

2003-2013

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The Mouvement pour les Libertés Individuelles (*trans. Movement for Individual Freedoms*, or MOLI) is based in Burundi. The movement was created in May 2010 to reinforce efforts to achieve justice and equal rights for lesbian, gay, bisexual, transgendered and intersexual persons. MOLI is devoted to the documentation and research of issues relating to sexual orientation and identity; work that had not figured prominently in the agendas of other organizations prior to MOLI's inception. MOLI works towards its goal by conducting original research and reporting on the subject; through policy advocacy at state and state-affiliated institutions, as well as with private organizations and international organizations; by offering technical support and capacity building to other organizations in their development of policies towards lesbian, gay, bisexual, transgendered and intersex persons; and the mobilization of resources. MOLI is a non-governmental civil society organization, and does not rely on public funding for its operations.

Vision: MOLI's vision is an African society where marginalized people live their sexuality freely and fully enjoy the same human rights as all.

Mission: MOLI's mission is to contribute to the positive development of the human rights of the marginalized individuals in the African society through advocacy, documentation, research and capacity building with different stakeholders in the human rights fora.

Objectives: MOLI's objectives are as follows:

- Contribute to the promotion of human rights and freedom for sexual minorities;
- Providing assistance and support to sexual minorities;
- Facilitate the sharing of experiences among associations at the national, regional and international levels about the rights and health of sexual minorities.

Thanks

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MOLI welcomes and celebrates the courage and determination of the LGBT persons and human rights defenders who have directly and indirectly collaborated in the collection of data presented in this report.

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This report has been translated into English by Stephan Sonnenberg, Interim Director of the International Human Rights and Conflict Resolution Clinic at Stanford Law School, in California, USA.

Georges Kanuma (1972-2010)

Passionate human rights defender and first openly gay person in Burundi. Passed away on April 14, 2010 following kidney failure.

Georges Kanuma began the activist struggle for the human rights of lesbian, gay, bisexual, transgender and intersex persons in Burundi.

He was President of the first association bringing together sexual minorities in Burundi, l'Association pour le Respect et les Droits des Homosexuels au Burundi (*the Association for the Respect of the Rights of Homosexuals in Burundi*, or ARDHO), Coordinator of the program to bring sexual minorities into the National Association for the Support of Persons Living with HIV/AIDS (ANSS), and founder of the Rainbow Candle Light Association.



ACRONYMS AND ABBREVIATIONS

AIDS	: Acquired Immune Deficiency Syndrome
ANSS	: Association Nationale de Soutien aux Séropositifs et Sidéens (National Association for the Support of Persons Living with HIV/AIDS)
CNDD-FDD	: Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (National Council for the Defense of Democracy – Forces for the Defense of Democracy).
CNIDH	: Commission Nationale Indépendante des Droits de l’Homme (National Independent Human Rights Commission)
CNLS	: Conseil National de Lutte contre le SIDA (National Council for the Fight against AIDS)
CSO	: Civil Society Organization.
HIV	: Human Immunodeficiency Virus.
IGAs	: Income Generating Activities.
LGBTI	: Lesbian, Gay, Bisexual, Transgender and Intersexual.
MLS	: Ministère de la Lutte contre le SIDA (Ministry of the Fight Against AIDS).
MOLI	: Mouvement pour les Libertés Individuelles (Movement for Individual Freedoms).
MSP	: Ministère de la Santé publique (Ministry of Public Health).
PES/CNLS	: Permanent Executive Secretary of the CNLS.
PLWHA	: Person Living with HIV/AIDS.
PSNLS	: Plan Stratégique National de Lutte contre le SIDA (National Strategic Plan to Combat AIDS).
RCL	: Rainbow Candle Light.
SNR	: Service National des Renseignements (National Intelligence Service).
STD	: Sexually Transmitted Disease.
TWR	: Together for Women’s Rights.
UNAIDS	: Joint United Nations Programme on HIV/AIDS.
USD	: US Dollars.
VTC	: Voluntary Testing Center.

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TERMINOLOGY

Sexual Orientation: relates the loving or sentimental physical attraction between one person towards another. Everyone has a sexual orientation, and it is an integral part of a person's identity. Homosexuals are attracted to persons of the same sex. There are typically three categories of sexual orientation that fall along a spectrum: heterosexuality, homosexuality, and bisexuality. Sexual orientation is independent of gender identity.

Gender Identity: is a deeply felt and experienced sentiment. A person's gender identity usually corresponds with the sex that person had at birth. Sometimes, a person's appearance and mannerisms, as well as other outward features can contradict with society's expectations of what constitutes normal behavior for someone of that sex.

Homosexuality: Relates to the emotional, physical, spiritual and/or sexual attraction exclusively towards persons of the same sex (homosexuals are also called "lesbians" if they are women and "gays" if they are men).

Heterosexuality: Relates to the emotional, physical, spiritual and/or sexual attraction exclusively towards persons of the opposite sex.

Bisexuality: Relates to the emotional, physical, spiritual and/or sexual attraction to people of either sexes, or more broadly speaking, the fact of engaging in loving, sentimental or sexual relations with persons of the same sex or the opposite sex. Bisexuality does not represent an equal attraction to either sex; the degree of attraction towards one sex over another varies significantly.

Lesbian: describes a woman attracted emotionally, physically, spiritually and/or sexually to other women.

Gay: describes a man attracted emotionally, physically, spiritually and/or sexually to other men.

Bisexual: describes a person whose sexual orientation is that of a bisexual.

Transgender: describes a person whose gender – their psychological and social relationship to the concepts of man and woman, or their complete sexual identity – does not correspond to their biological sex. A transgender man believes himself to be and identifies with being a man, even though he was born with female genitalia. A transgender woman believes herself to be and identifies with being a woman, even though she was born with male genitalia.

Intersex: describes a person whose genitalia are difficult or impossible to define as either male or female according to traditional standards. This anatomical ambiguity is the result of chromosomal and/or hormonal variations, with different degrees of physical manifestations.

METHODOLOGY

This report is based on research that was conducted from November 2013 to February 2014. Two human rights researchers analyzed MOLI's archives and verified the accuracy of the files and case documentation of MOLI employees, as well as the reports produced by the organization since 2010. Of particular note in the preparation of this report was the Shadow Report on Human Rights Violations on the basis of sexual orientation and gender identity in the Republic of Burundi. This report was submitted October 2011 at the 50th session of the African Commission on Human and People's Rights by five Non-Governmental Organizations (NGOs), of which MOLI was one, and written in response to the Republic of Burundi's Periodic Report. The research in this report also makes use of substantively relevant official policy pronouncements and judicial reasoning, drawing on both domestic and international sources.

The information collected is referenced throughout the report, and consulted publications are cited. The persons interviewed for this report represent only a small fraction of the total number of LGBTI persons and human rights defenders in the State of Burundi. The names of some of the interviewees have been changed to protect their privacy. In cases where the real names of individuals were changed, the change is indicated with an asterisk (*).

SUMMARY

On April 22, 2009, Burundi amended its Criminal Code to criminalize sexual relations between consenting adults of the same sex for the first time in its history. This date marks the official start of the public debate over homosexuality in Burundi. The State of Burundi has legal obligations to protect the rights of all its citizens arising from the Universal Declaration of Human Rights, and various treaties, pacts and international conventions that the State of Burundi has ratified, as well as under the Constitution of the State of Burundi. Nonetheless, LGBTI persons in Burundi continue to be the victims of human rights violations and face increasing discrimination and stigmatization.

Remarkable progress has been made securing the right to health for sexual minorities since 2007, especially with regard to access to national HIV/AIDS prevention programs. Nonetheless, significant gaps persist. Until today, despite the ongoing efforts of groups and organizations that self-identify as focusing on LGBTI issues, and the legal recognition of two LGBTI associations, there still are no organizations that have been recognized as representing LGBTI individuals. There remains a persistent climate of discrimination and stigmatization that results from threats of verbal and physical aggression. As a result, the activist movement to secure the human rights of LGBTI or presumed LGBTI individuals has found itself seriously weakened and pushed underground, just as has happened in most other African countries. The criminalization of sexual relations between consenting same-sex adults has cast a psychological chilling effect on LGBTI persons, most of whom remain in the shadows, and do not take advantage of existing support structures designed for their benefit for fear of being “outed” as LGBTI persons or as persons having sexual relations with persons of the same sex. That problem is at the core of some of the reported ineffectiveness of the programs designed to serve vulnerable and marginalized populations, including LGBTI persons, as well as the lack of those programs’ accessibility.

The purpose of this document is to communicate to the various stakeholders involved in the crafting of policy and legislation, the law enforcement community, the human rights defenders and LGBTI organizations, as well as the diplomatic missions in Burundi an update on the situation of sexual minorities in Burundi, and to contrast the socio-economic reality of these persons with the existing measures in place. The goal is to make recommendations designed to improve interventions targeting the well-being of sexual minorities, insofar as they can be considered part of Burundi’s vulnerable and marginalized population.

In brief, this report takes stock of progress to date and the overall state of the movement for the human rights of LGBTI persons in Burundi, as well as the situation of LGBTI persons and presumed LGBTI persons, all with an eye to the political, legal, economic, social and cultural context in Burundi.

INTRODUCTION

In 2003, an informal meeting of several people led to the formation of the first group of openly gay, lesbian, bisexual, transgender and intersex persons in Burundi (though consisting primarily of five gay men). The goal of this group was the mutual assistance and psychological and moral support to other persons who share the same “unconventional” sexual orientation.

In 2007, first the first time, men who have sex with men were included in the National Strategic Plan Against HIV/AIDS as a high risk group. Feu Georges Kanuma gave a public presentation about homosexuality in Burundi during a regional workshop to strengthen the capacity of young activists to incorporate gender and human rights considerations into the fight against HIV/AIDS in the Great Lakes, organized by UNSECO at the Swedish Center during April 23rd to April 27th, 2007.

In 2009, Burundi’s Penal Code was revised to criminalize sexual relations between two persons of the same sex, violating multiple articles of the Burundian constitution. Article 567 constitutes blatant interference in the private lives of a part of the Burundian population: sexual minorities.

By criminalizing sexual relationships between two same sex consenting adults, the State of Burundi violated one of the most fundamental human rights: the right to privacy. This right, is mentioned in the Constitution of Burundi using the following terms: “No one shall be subject to arbitrary infringement of his or her private life, family, domicile or correspondence, nor to attacks on his or her honor and reputation.” No one so far has been prosecuted under this provision. But several cases of human rights violations perpetrated against LGBTI or presumed LGBTI persons on the basis of their sexual orientation and gender identity have been documented. These have been made worse by the silencing and invisibility of sexual minorities in Burundi.

On June 7, 2011, the National Minister of Education introduced an ordinance on the school rules in force in Burundi, ranking “homosexuality” among the offenses punishable by a one-year suspension from school, mentioning also that “sex in flagrant delicto” is punishable by the same penalty.

On May 17, 2012, the Remuruka Center opened its doors in Bujumbura. The Remuruka Center is a community center serving the LGBT community. The Burundi government has neither welcomed nor condemned this initiative, but it has conducted two unannounced visits by National Intelligence Service (SNR) agents.

On January 24, 2013, during the Universal Periodic Review, the Burundi government’s response to the recommendation that it decriminalize sexual relations between two consenting same sex adults was neither satisfactory nor overtly disappointing. The Government of Burundi had appealed for the international community’s understanding and respect for Burundi’s culture and social mores, adding that it’s the governments’ opinion decriminalization was not possible at the moment.

On December 10, 2013, a peaceful public meeting in support of LGBTI persons in Burundi was cancelled for reasons that are still not clear. This meeting was scheduled to coincide with International Human Rights Day, and had been planned to take place in the Institut Français du Burundi (French Institute of Burundi) in the capital Bujumbura.

THE LEGAL AND POLITICAL ENVIRONMENT FOR LGBTI INDIVIDUALS IN BURUNDI

THE CONSTITUTION AND NATIONAL LAWS

The Constitution of the Republic of Burundi was adopted by referendum on February 28th, 2005 and implemented on March 18, 2005 by his Excellency, Domitien Ndayizeye, at that time President of the Republic of Burundi. The Constitution begins with a preamble that sets forth the principles of positive equality and social justice. Although the text does not mention the concept of sexual orientation, the inclusion of specific non-discrimination clauses into the text of the constitution suggests a path forward.

Articles 13 and 14 of the Constitution of Burundi¹ set forth the fundamental values of everyone's equal worth and dignity, equal protection before the law, economic, social and political rights without distinction based on race, language, religion, sex or ethnic origin. The Constitution of Burundi establishes the respect for human dignity and tolerance of the diversity of all citizens of Burundi, without discrimination. It does not make specific mention of sexual orientation or gender identity.

“Every individual has the duty to respect and consider his fellow without discrimination, and to maintain relationships aimed at promoting, safeguarding and reinforcing respect and tolerance.”

Article 67, Constitution of Burundi.

In addition, every citizen of Burundi has the right to participate directly or indirectly in the affairs of State without legal distinctions. He or she has the right to participate in public functions of his or her country as they are delineated in Article 51 of the Constitution of Burundi.

The State has the duty to provide public education and to enable access to this resource (art. 53).

Burundi has ratified a number of texts that define the respect for the fundamental rights of human beings as they are set forth in the Universal Declaration of Human Rights of December 10, 1948, international agreements specific to Human Rights signed on December 16, 1966. Burundi has also signed the African Charter of Human and Peoples' Rights on June 28, 1989; subsequently ratified on July 28, 1989.²

The Constitution of Burundi also establishes the principle of respect for human dignity and tolerance of the diversity of every citizen of Burundi, without any discrimination.

Finally, according to Article 19 of the Constitution of Burundi, the rights protected by international conventions to which Burundi is a party are integrated into the Constitution of Burundi.³

¹ Constitution of the Republic of Burundi, http://www.justice.gov.bi/IMG/pdf/Constitution_de_la_Republique_du_Burundi.pdf

² Organization of African Union, African Charter of Human and People's Rights ("Banjul Charter"), June 27 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <http://www.unhcr.org/refworld/docid/3ae6b3630.html>

³ Article 19: The laws and obligations proclaimed and guaranteed, among others, by the Universal Declaration of Human Rights, international agreements related to human rights, the African Charter of Human and Peoples' Rights, the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) are an integral part of the Constitution of the Republic of Burundi. These fundamental rights cannot be the subject of restrictions or derogations, except in certain instances justified by the general interest or in order to protect a fundamental right.

THE CRIMINALIZATION OF SEXUAL BEHAVIOR BETWEEN PEOPLE OF THE SAME SEX IN BURUNDI

Through its section devoted to fundamental individual rights, the Constitution of Burundi guarantees respect and human dignity to all. Article 38 guarantees the right to privacy, including in one's family affairs and personal communications with others.

On April 22, 2009, the State of Burundi revised the Penal Code. The revisions formalized discrimination against sexual minorities into the law by criminalizing sexual relations between people of the same sex. Article 567 states that "whomever has sexual relations with a person of the same sex shall be punished with a prison term of between three months and two years, or a fine of 50,000 – 100,000 Francs (approximately \$30-60 USD), or both.

This criminalization was preceded by numerous diverse lobbying efforts that the legislation had prompted, and following pressure from the President of the Republic Pierre Nkurunziza⁴ and several religious leaders⁵, Parliament finally adopted the legislation against the advice of the Senate, which had up until that point argued against including the text into the criminal code.

Popular homophobic attitudes also spiked during the public debates over homosexuality during this period of legislative debate over the revision of the Criminal Code. On March 6, 2009, the government, and more specifically the ruling party, organized a protest against homosexuality⁶ that drew over 10,000 people to Bujumbura. This action demonstrates a concerted effort to animate the population against LGBTI persons and "homosexuality," which the President of the Republic of Burundi described in no uncertain terms as an "aberration."

The public interventions⁷ of Burundi's Head of State and the "anti-homosexual" demonstrations organized by the CNDD-FDD⁸ contributed to reinforce the atmosphere of tension vis-à-vis sexual minorities. The President, Pierre Nkurunziza declared that his opposition to homosexuality was one of the reasons why he had received the International Assisi prize.⁹ He has also said that those persons who engage in homosexual behavior are the same who "bring unhappiness."¹⁰

Such pejorative statements by Burundi's political leadership has the result of stigmatizing individuals because of their sexual orientation and their gender identity and expression, and feed violence and hate against LGBTI persons. They create a hostile environment for the development and enjoyment of LGBTI individuals' human rights in their respective localities across Burundi.

According to a January 2012 study carried out by MOLI, the reforms to Burundi's penal code prompted a ministerial regulation on June 7, 2011 seeking to harmonize school administration throughout Burundi that included among its problematic provisions that students would be suspended from school for the entire school year for homosexuality.

⁴ Human Rights Watch report, July 2009, "*Forbidden : Institutionalizing Discrimination Against Gays and Lesbians in Burundi*" http://www.hrw.org/sites/default/files/reports/burundi0709_brochure_web.pdf

⁵ MOLI report, May 2010, Religions et Homophobie au Burundi : la haine voilée des religions contre les homosexuels au Burundi, www.moliburundi.wordpress.com.

⁶ 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

⁷ According to Président Nkurunziza, Burundi is not ready to legalize homosexuality. Website of the Presidency of Burundi. Sept. 27. <http://presidence.bi/spip.php?article1939>

⁸ Burundi: President furious as Senate rejects anti-gay law. The East African. Le 30 Mars 2009. URL: <http://www.afrika.no/Detailed/18123.html>

⁹ International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). Burundi: President Claims Honour for Fighting Homosexuality. URL: <http://ilga.org/ilga/en/article/maU2vv01pR>

¹⁰ Interview with a MOLI staff member, Oct. 4, 2011.

SEXUAL ORIENTATION AND GENDER IDENTITY IN INTERNATIONAL LAW

Together, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention to Eliminate All forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the United Nations Declaration on the Right and Obligation of Individuals, Groups and Institutions to Promote and Protect Human Rights and Universally Recognized Fundamental Liberties, represent the international human rights laws that guarantee to all the right to freedom. These texts all pertain to “human beings,” therefore the rights articulated in them are equally applicable to all human beings, regardless of their sexual orientation. They protect against all forms of discrimination based on a person’s sexual orientation or gender identity.

By ratifying international human rights treaties, the Government of Burundi has committed itself to implement measures and national legislation in line with their commitments under international law.

In June 2011, the Human Rights Council, adopted resolution A/HRC/RES/17/19, which is the first United Nations resolution on sexual orientation and gender identity.¹¹ The resolution passed with only a slim majority. Notably, however, the resolution was passed due to pressure from Council Member States from all regions of the world. Its adoption opened the doors to the first official U.N. report on the subject, which was prepared by the U.N. High Commissioner for Human Rights.¹²

States obligations to protect the human rights of LGBT and intersex persons are well-established in the Universal Declaration of Human Rights and other international treaties which have since been signed, given that they **rely on two foundational principles of international human rights law: equality and non-discrimination. The first words of the Universal Declaration of Human Rights are unequivocal: “All human beings are born equal in dignity and rights.”**¹³ All states, independently of their history or regional specificity, must guarantee these rights to all. Governments that refuse to protect the fundamental rights of LGBTI persons commit violations of international law.

Equality and non-discrimination are fundamental principles of international law and human rights. Everyone, without distinction, shall enjoy all of his or her human rights, including those relating to equality before the law and protection against discrimination with regard to sexual orientation and gender identity, among other prohibited grounds.¹⁴

All individuals, regardless of their sex, sexual orientation, or gender identity, enjoy the rights guaranteed by the international human rights treaties. Notably, the right to life, the right to security of one’s person and private life, the right not to be subjected to torture, the right against arbitrary arrest and detention, the right not to be discriminated against, and the right to free expression, association and peaceful assembly. These rights are enumerated in articles 3, 5, 9, 12, 19, and 20 of the Universal Declaration of Human Rights.

¹¹ Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the United Nations High Commissioner for Human Rights.* http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

¹² Report of the United Nations High Commissioner for Human Rights, "Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity" (A/HRC/19/41).

¹³ Navya Pillay, United Nations High Commissioner for Human Rights.

¹⁴ Fact Sheet, UNFE. https://unfe-uploads-production.s3.amazonaws.com/unfe-8-UN_Fact_Sheets_v6_-_Equality.pdf

ABUSE AND HUMAN RIGHTS VIOLATIONS AGAINST PEOPLE IN BURUNDI BASED ON THEIR SEXUAL ORIENTATION AND/OR GENDER.

THE INSTITUTIONALIZATION OF HOMOPHOBIA

The Protector who violates

On April 22, 2009, Burundi for the first time in its history criminalized sexual relations between consenting adults when it promulgated Law nr. 1/05 revising the Criminal Code. This law represented a significant erosion of the human rights of LGBTI persons in Burundi, consisting of civil and political rights (such as the right to life, equality before the law, and freedom of expression), economic, social and cultural rights (such as the right to work, social security and education), and collective rights (such as the right to development and self-determination).

Indeed, after the law was adoption, homophobic acts and initiatives proliferated across the territory of Burundi. For example, a movement of close to 10,000 individuals was formed by the ruling CNDD-FDD party to organize and carry out a march decrying relationships between LGBTI persons in Burundi. This signaled the party's determination to discriminate against and stigmatize LGBTI persons in Burundi.

Afterwards followed public debates, where time and again certain high-ranking officials and state dignitaries spoke out against efforts to decriminalize or tolerate the “cursed” or “counter-nature” homosexual acts.

In June 2009, shortly after sexual relations between two persons of the same sex had been criminalized, a transgender person was arrested in Bujumbura on the grounds of homosexuality by a judicial police officer. Alex* was freed after posting bail of approximately 200 USD to the judicial police officer in order to avoid spending the night in a jail cell where the other prisoners had begun to verbally and physically assault him the moment he arrived.

In April 2011, MOLI received a complaint according to which an officer in the Kamenge district of Bujumbura targeted two individuals on the basis of their gender expression. He allegedly harassed and threatened them that he would expose and arrest them unless they paid him money.¹⁵

In August of 2011, MOLI documented a case where a transgender woman became the object of abuse of police officers in Bujubura. A man stole her wallet, and when she went to the police station to complain, he accused her of having stolen his driving license. Without opening an investigation, the police put her in detention, beat her, and cut her hair.¹⁶ And when one of her friends attempted to intervene on her behalf, the police told him: “we are sure he is homosexual because of his haircut.”¹⁷ The victim was incarcerated for three days, and received no medical care for her injuries during this time.

On April 5, 2012, MOLI recorded one case where two lesbian women were arrested. They were on April 4, 2012 after an argument in one of the two women's offices. After being subjected to a long and intense interrogation over the reasons for their argument, a judicial police officer accused of homosexuality¹⁸ after they admitted that they had been a couple. The two women were detained for seven days at the National Intelligence Service for “purposes of investigation” into the statements that one of the two women had made, and into the fact that the two women were a couple. They were released due to lobbying efforts of LGBTI activists, working in synergy with civil society actors and diplomatic representatives in Burundi on April 11, 2012.

¹⁵ Id. HA48-LB.

¹⁶ Id. HA09-BW.

¹⁷ Id.

¹⁸ Case MO-CA-12

Late on November 25, 2013, towards 19h00, police arrested a group of young persons celebrating the birthday of one of those gathered. Police were acting on the tip of an unidentified person. The event had been organized by Pacifique* in a Nyakabiga bar.

After blocking the exits, the police ordered those present to cease their activities, accusing them of having organized a party during the week when parties are to be celebrated only during weekends. Next, they accused them of having left their local communities to organize a party in another community (Pacifique* lives in the community of Buyenzi, a community neighboring Nyakabiga where he had rented the reception hall to celebrate the birthday).

The police officers arrested three persons, including Pacifique*, a member of his family, and a family friend who had been invited to the party. They drove them to the Bureau Spécial de Recherche (Special Investigative Office, or BSR) to be interrogated for more than four hours. The persons arrested together with Pacifique* were released at 1h00 in the morning the following day.

Pacifique* was released at 10h00 on Wednesday, November 27, 2013 by the Municipal Commissioner of the Bujumbura City Government, thanks to efforts by MOLI and other LGBTI organizations to engage Burundi's diplomatic community and with the help of Pacifique's* lawyer.

At 19h00 on December 10, 2013, the Dutch Embassy planned to screen a film at the Institut Français au Burundi (French Institute in Burundi, or IFB) to commemorate international human rights day. The goal of the evening was to highlight the daily courage that gay persons in Burundi must muster, given the socio-cultural conditions in the country.

It was also an opportunity to support Pacifique*, who had been driven from his home in response to the media exposure that followed his arrest. The proceeds of the film and the sale of popcorn were intended to support Pacifique* and pay for his rent to allow him to move to a more secure location.

For unknown to MOLI, the evening was cancelled by the Embassy of the Dutch Government.

Even if sexual relations between persons of the same sex in Burundi are punishable, the law cannot be applied except in cases of "flagrant violations." [Accusations] based on mere presumptions about a person's sexual orientation are patently "illegal." Persons who face discrimination on the basis of their gender identity or gender expression are often perceived of as homosexuals. These individuals, therefore, often refrain from reporting violations of their rights, either because they do not know their rights or because they fear being accused of wrongdoing under Article 567 of the law.

This improper implementation of the law amplifies the vulnerability of homosexual persons to verbal, physical and sexual abuse. It also undermines the self-esteem and self-respect of homosexuals, making it more difficult to raise awareness about safe sexual practices.

The extortion of suspected homosexuals by public officials, notably police officers, constitutes another abuse of power by the State of Burundi against sexual minorities. Such behavior functions to institutionalize impunity and facilitate corruption by law enforcement officers.

HOMOPHOBIA IN SOCIETY

At the social level, consenting sexual relations between two adults of the same sex are a delicate and sensitive subject. In Burundi, as in most other African societies, sexuality is a taboo subject.

As a result, lesbian, gay, bisexual, transgender and intersex persons, or persons who are considered to be such, suffer social stigma in Burundi.

In Burundi, homophobia manifests itself at the social level by disdain, insults and physical attacks against LGBTI persons.¹⁹

Since 2010, MOLI recorded multiple instances of discrimination, verbal and physical abuse, poor treatment, and instances of persons being shunned socially or within their own families, threats of harassment by private persons and reports of extortion by police against sexual minorities.

The most vulnerable category of persons are youth dependent on their parents for support. Many parents, upon discovering the sexual orientation of their children, expel them from the family home. Most of these individuals are still students without work, often between 15 and 20 years of age, and find themselves forced to engage in sex acts to survive.

In August 2011, a transgender girl in the province of Gitega (in the middle of the country) suffered abuse by the employees of an orphanage in Mugeru. They had accused her of having stolen a mobile telephone. The transgender girl was subjected to cruel, inhuman and degrading treatment, and was forced to disrobe by her tormentors so they could “see if she is really a girl.” She was beaten, imprisoned, and tied to a shower head for three hours, from 15h00 to 19h00 in the evening. Since that time, her case has been taken to the courts, and the victim still has a semi-paralyzed arm even after physical rehabilitation.

On May 17, 2012, following discrete festivities commemorating the international day against homophobia which had been organized by the LGBTI community in Bujumbura with the support of several partners, an LGBTI activist and a transgender woman in his company had rocks thrown at them by unidentified persons. The activist was injured in the knee and taken that evening to the emergency room of the University Medical Center of Kamenge, and subsequently needed to keep her left leg immobilized for 14 days to heal.

In February 2011, a mosque in Bujumbura published the name, sexual orientation and residential address of an LGBTI human rights defender with the goal of forcing him to live in hiding.²⁰

Between May 2011 and January 2013, 17 cases of familiar exclusion²¹ (instances where a family shunned one of their members) were documented. Some have been successfully mediated, but others are still pending.

In November 26, 2013, the media attention that had arisen after the police arrest of Pacifique* and alleged that he had camouflaged a “celebration of gay union” as a birthday party – as evidenced by the fact that individuals were wearing “non-traditional” clothing (which in fact were Masai clothes) – forced Pacifique to flee his home and spend several weeks sheltering with friends. On December 6, 2013, the announcement on a Facebook group of professionals living in Bujumbura that there would be an evening film screening on December 10, 2013 at the IFB to support Pacifique*, generated a vigorous debate²² where most of the comments posted were

¹⁹ Burundi: Gays and Lesbians Face Increasing Persecution, Human Rights Watch, 2009.

<http://www.hrw.org/news/2009/07/29/burundi-gays-and-lesbians-face-increasing-persecution>

²⁰ Summary of the Case classified under HA034-OM, MOLI.

²¹ These figures are derived from data compiled by the Social Reintegration Service of the Remuruka Community Center between May 2011 and January 2013.

²² Messages found on the Bujumbura Professionals Network :

<https://www.facebook.com/groups/BujumburaProfessionalsNetwork/permalink/72243325774473/>

hostile in nature, interspersed with intolerance, homophobic and xenophobic sentiments. This debate lasted until January 4, 2014. Most, but not all, of those making these statements were citizens of Burundi.

In addition, many LGBTI persons described to us the discrimination they faced in the form of degrading words and insults from neighbors and passers-by in the streets as they went about their daily business.

For example, a transgender woman reported in May of 2012 that she had been held in a police post in the central Bujumbura market after having been accused of being “a fag (“pédé”), a demon” and that as a result she was no longer allowed to work at the market. This constitutes a flagrant violation of the right to have one’s honor and personal dignity respected, the right to development, and the right to self-determination.

But even as certain political and religious figures and most parts of society continue to promote hatred of LGBTI individuals in Burundi in the name of religion,²³ culture, traditions and values, a competing tradition of tolerance²⁴ is also taking hold, bit by bit, among the youth of Burundi.

In 2010, MOLI had an interview with Feu Monseigneur Elie Buconyori, Bishop of the Free Methodist Church. In the interview, the bishop stated that “homosexuality is a spiritual sickness,” which is why science so far has been unable to “efficiently” deal with the issue, as he put it, of homosexuality.²⁵

In a society where more than 90% of the population is Christian, it is worth recounting some noteworthy facts on how some religious groups equate homosexuality with pederasty.²⁶ Some think that only a homosexual act is a sin, whereas the mere homosexual temptation is not. The most radical religious groups see homosexuality as a dangerous threat to society and are opposed vigorously to its being recast as a normal form of human sexuality.²⁷ Even though religions are increasingly trending towards tolerance, they have also frequently been at the heart of various social or religious repressive upheavals. Religious leaders in Burundi, still tend to fall more in the latter, less tolerant, category. According to how the sacred texts are interpreted, the population reacts, protests, or submits to the years of doctrine accordingly.²⁸

In brief, the relationship between religion and society has a spiritual and psychological impact on sexual minorities in Burundi, resulting – no doubt – in the constant need to question how to be true to one’s faith if that faith recognizes neither the individual who we are, nor the individual whom we love? How do we open our eyes to our own reality and keep hope in a universal recognition that is today dragging its feet and seems more and more difficult to reconcile with religion?²⁹

²³ Les Burundais vivant en Égypte rejettent la pratique de l’homosexualité dans leur pays. Site web de la Présidence du Burundi. 17 Mars 2009. http://www.burundi-gov.bi/Les-Burundais-vivant-en-Egypte?debut_articles=720

²⁴ Article on the Blog, Zeration : <http://www.zeration.com/article-le-burundi-est-il-un-paradis-pour-les-homosexuels-112221037.html>

²⁵ MOLI Report, 2010. Religions et Homophobie au Burundi : La haine voilée des religions contre les homosexuels au Burundi.

²⁶ Pederasty refers to the sexual attraction between an adult male and a male minor DE VILLERS, Marie-Éva (2003). *Multi dictionnaire de la langue française*, 4e édition, Éditions Québec Amérique.

²⁷ Author unknown (2008). « Beaucoup de groupes religieux estiment que l’homosexualité est un péché », *Zagay* (9 janvier), www.za-gay.org/actu/227/rerelations-homosexualite-religion/ (Last assessed by January 20th, 2014).

²⁸ DELAPORTE-DIGARD, Alain (2011). « Homosexualité et religions », *Buddhachannel* (13 décembre) www.buddhachannel.tv/portail/spip.php?article767 (Last assessed by January 20th, 2014)

²⁹ Delaporte-Girard, 2011.

THE RIGHT TO EDUCATION, MIXED

While the literacy rate for LGBTI persons is similar today to that of society in Burundi as a whole, one must also take note of numerous occasions where LGBTI youth dropped out of school as a result of daily discrimination and bullying at school by peers and teachers.

On June 7, 2011, the Minister in charge of primary and secondary education, professional development and literacy, Mr. Sévérin Buzingo, issued a Ministerial Ordinance³⁰ that applied to all secondary schools in Burundi. Mr. Buzingo issued this Ordinance as part of an initiative to harmonize the laws governing the education system in Burundi.

This ministerial ordinance relates to the regulation in schools, and has been in force since that date. Research conducted by MOLI in January of 2012 into the origins of this ordinance revealed that it was first conceived in a series of meetings of the Provincial Directors of Teaching and the Minister's advisors. The regulations were the product of lacking understanding of sexual orientation and gender expression since it relies on the term "homosexuality" to refer to sexual practices between people of the same sex in a school environment.

The regulations in question designate homosexuality as an offense punishable with suspension and a ban on admission into any school of the Burundi education system for the remainder of the academic year.³¹

This measure is totally contrary to Burundi's commitments to the human rights of the child, the right to education, and the Universal Declaration of Human Rights.

In 2005, the state of Burundi declared an initiative to achieve "Education for all." This regulation represents a retreat from that goal, by denying certain individuals access to education as a result of their sexual identity / gender expression, and is therefore a real threat to the collective development of the nation of Burundi.

Certain questions remain unanswered: how will school administrators seek to prove alleged homosexuality? And will this regulation not give rise to injustice, and prompt harassment among students? And what will happen to transgender students? Will they not be the direct target of this regulation as a result of their gender expression?

³⁰ Ordonnance Ministérielle No 620/613 du 7 Juin 2011 portant fixation du Règlement Scolaire en vigueur au Burundi (Annexe) <http://www.ccprcentre.org/doc/2013/10/Rapport-LOI-NGO-final-version.pdf>

³¹ Article 9 de l'ordonnance ministérielle n° 620/613 du 7/6/2011, portant fixation du règlement scolaire.

DENIAL OF THE RIGHT TO WORK

“We do not employ persons like you”

The labor law of the Republic of Burundi stipulates clearly, that “the law guarantees that everyone has equal chances of employment and treatment as an employee, without discrimination. The law forbids distinction, exclusion or preferential treatment based on race, color, religion, sex, political opinion, union membership, ethnic or social origin in matters of hiring, promotion, remuneration and contract termination.”³²

The reality is different. A good number of LGBTI persons are refused employment due to their sexual orientation or gender identity or expression. A woman in Bujumbura, for example, was fired from her teaching job because of her sexual orientation.³³

In May 2011, in the province of Gitega, an openly gay person³⁴ was refused employment. The employer told him “go change your personality and then come talk to us about the work you want to do.”

Similarly, in February 2012, a lesbian went to look for work in an information technology company,³⁵ and was asked questions such as “Why do you wear such masculine clothing?” and “are you really a woman? Are you possibly a lesbian?” Before ending the interview, the woman was told to dress like a woman before returning. She has not returned.

“At the end of my university studies, I sought an internship at a private company. They called me for a meeting with director of the company, but he told me I should take out my earrings and jewelry if I wanted to work in his company.”

Carlos*, Transgender woman, 28 years old.

Finding employment is a major challenge across the LGBTI community, since only persons with higher education [niveau supérieur], who express themselves in conformity with their sex at birth, and who have not yet come out publicly have access to employment opportunities. More than 90% of the LGBTI persons that interacted with MOLI in the past four years had not completed higher education and

were employed as unqualified laborers for little pay. Most were relatively poor. The social and political discrimination which they suffered has a negative social impact on their economic situation and deteriorates the self-esteem of LGBTI persons in Burundi. This has a very real impact on the self-determination and integrity of a human being.

³² Article 6, Dispositions générales Code du Travail de la République du Burundi, <http://justice.gov.bi/IMG/pdf/T2-Legis- sociale - Legis- du Travail.pdf>

³³ Human Rights Watch report, July 2009, “Forbidden : Institutionalizing Discrimination Against Gays and Lesbians in Burundi” http://www.hrw.org/sites/default/files/reports/burundi0709_brochure_web.pdf

³⁴ Case documented in May 2011, MOLI.

³⁵ Interview with an individual from the LGBTI community, MOLI.

DENIAL OF PARENTAL RESPONSIBILITIES

“You are no longer my child.”

In African societies, the familial relationships are governed by a conservative view of values. In Burundi, “sexual” questions generally are taboo subjects in families. Due to a patriarchal system, women are even more affected.

Sexual orientation, gender identity and expression enshrine hetero-normativity directly into social myths and legal texts.

Since 2010, MOLI has already documented 17 cases of persons who self-identify as LGBTI who had been chased away from their homes by their parents. Dylan’s was one of those cases. After discovering the truth about Dylan’s sexuality, he suffered verbal violence from his parents: “We do not want a curse on our family. We do not want you to train other children in your disappointments. Do not come back to our house.”

In most cases, the LGBTI persons who are chased away are still in school or at university, still dependent on their parents. Usually this will force the students to abandon their studies for lack of financial means and enter the job market. Without many jobs to choose from, some get involved in sex work to survive.

From a psychological point of view, being cut off from their families and discriminated against by the entire Burundian society, while also being denied safe housing, food, clothes, and education, often traumatizes LGBTI persons into situations of debauchery, depression, and attempts to commit suicide.

“I do not study but I did obtain my high school diploma. Because I was chased away from home by my family, I was unable to continue my university studies. Now I am a homosexual sex worker.”

Parfait*, Gay, 26 years old.

THE LGBTI ORGANIZATIONS: ACTIVISM'S HIDDEN FACE IN BURUNDI.

HOW WAS THE LGBTI MOVEMENT FORMED IN BURUNDI?

The first LGBTI group was founded in 2003 when a small group of friends and acquaintances—all of them LGBTI activists—got together under the leadership of Georges Kanuma (1972-2010). This group of friends evolved into an organization that had more than a dozen people who called themselves "Association for the Respect for Rights of Homosexuals" (ARDHO).

To recap, the revision of the Criminal Code of Burundi in 2009, criminalized sexual relations between consenting adults of the same sex.

In light of the continued growth of the association, its members in June 2009 felt the need to incorporate. As a result, the nonprofit "Association for the Respect of the Rights of Homosexuals" (ARDHO) was recognized by the Ministry of the Interior under the name "*Humure*" (Kirundi for "*do not be afraid*"). Given the conservative political culture of the country and the influence of Burundi's religious leaders in advocating for homophobia whenever given the chance, organizers hoped to get preemptive approval of the organization.³⁶

In 2007, following advocacy by LGBTI activists and organizations with public health institutions, men who have sexual relations with other men (MSM) were included for the first time as a high-risk population in the SEP / CNLS National Strategic Plan, alongside timid interventions on behalf of sexual minorities.

In 2010, after the passage of the new law criminalizing homosexuality,³⁷ there was some disagreement among activists as to the best way to continue pushing for equal rights for all in Burundi, without discrimination based on sexual orientation and gender identity or expression. "*Humure*" split into four organizations: Humure (focused on advocacy and the provision of health services to LGBTI individuals); Rainbow Candle Light (focused on issues of sexual health for MSM); Together for Women's Rights (focused on issues of lesbians, bisexual women and transgender people); and MOLI (focused on the human rights of LGBTI people in Burundi).

Humure

Currently, the association is actively involved in two areas of gay rights: (1) advocacy and community mobilization efforts, and (2) efforts to improve the health of sexual minorities through advocacy, peer education, and greater access to health services.

Tel: +25722274590

Email: humurebu@gmail.com

Web:

<http://glnondiscrimination.org/about/humure-asbl/>

Together for Women's Rights (TWR)

TWR's objectives are : (1) to fight against all forms of discrimination based on sexual orientation; (2) to fight against HIV / AIDS / STIs, breast cancer and cervical cancer; (3) to contribute to the growth and development of Lesbian, Bisexual and Transgendered (LBT) / Women who have sex with other women (WSW) / Female Sex Workers (FSW) individuals.

TWR's activities are open to all victims of discrimination, especially LBT / WSW / FSW individuals who suffered discrimination based on their sexual orientation.

Email: togetherforwomensrights@gmail.com

Rainbow Candle Light (RCL)

Working towards a society free of oppression, stigma, discrimination, hatred and crime, in which all people enjoy equal rights, opportunities, peace, prosperity, dignity and live in harmony.

RCL's programming includes: sexual and reproductive health; advocacy and research; Mobilization and community development.

Email: rainbowcandlelight@gmail.com

Web: <https://www.rclburundi.org>

³⁶ Religions et Homophobie au Burundi, available on the ILGA website: <http://ilga.org/ilga/fr/article/mrLkfpk17y> (last accessed May 18, 2014).

³⁷ Law Nr. 1/05 of April 22, 2009 Revising the Criminal Code, Republic of Burundi.

Rainbow Candle Light in 2012 managed to become the second LGBTI organization to be approved the Ministry of the Interior, and therefore have its legal status as an organization recognized officially. The others are still in the agreement process with the NHD.

Note that during the process of incorporating these LGBTI organizations, the incorporation documents were returned several times to eliminate the use of words such as "homosexual," "gay," "lesbian," "gay," "bisexual," transgender," and "intersex."

Thus, the only two registered LGBTI organizations in Burundi had to present themselves publicly as non-sexual identity focused, using terms such as "groups of marginalized people," and avoiding any mention of the words "gay," "homosexual," "lesbian," "gay," "bisexual", "transgender", or "intersex"; in return for their legal incorporation.

"Freedom of assembly and association is guaranteed, as well as the right to form associations or organizations in accordance with the law."

Article 32, Constitution of Burundi

LGBTI HUMAN RIGHTS DEFENDERS IN BURUNDI.

Human rights organizations are composed of people who contribute their efforts voluntarily and on a daily basis towards the struggle against discrimination, stigmatization, and violence based on sexual orientation and gender identity or expression. Since 2003, several such exceptional individuals have been struggling to achieve progress.

These individuals braved the silence and taboos surrounding issues of sexuality and especially LGBTI issues. Most of these individuals do so at the risk of being rejected by their families, friends and acquaintances.

These individuals braved the silence and taboos surrounding issues of sexuality and especially LGBTI issues. Most of these individuals do so at the risk of being rejected by their families, friends and acquaintances.

From its start in 2003, LGBTI activism has not been easy in Burundi. Over 80 % of LGBTI activists were rejected by their nuclear families, and 95% dropped out of school to work. In addition, activists received numerous telephone threats, and had to suffer through messages of hate and homophobic violence by public officers (Police, Administration, National Intelligence Services), high-ranking politicians of the country's major political parties³⁸ as well as other key personalities (religious leaders, and the population of Burundi in general).

“Everyone has the duty to contribute to the preservation of peace, democracy and social justice.”

Article 73, Constitution of Burundi.

MOLI has documented a total of five cases of death threats, verbal and physical aggression, or arbitrary detention³⁹ of LGBTI human rights defenders in Burundi.

In 2013, Marc*, an LGBTI human rights defender, received a surprise visit at his

home in the outskirts of Bujumbura from two people claiming to work for the SNR. This came after several anonymous calls, which had been spread over a year. Marc was not home at the time of the visit, and thus the people asked those present at the home about Marc's* activities. After Marc* reported the incident to the district authorities and the local police station, a brief investigation revealed that the mystery visitors were members of the CNDD-FDD youth wing seeking ways to extort money from Marc*.

³⁸ Interview with CR, Human Rights Activist on behalf of LGBTI persons, Burundi, MOLI.

³⁹ Case MO-CA-12

ACCEPTANCE AND SELF-ESTEEM OF TRANSGENDER AND INTERSEX PERSONS IN BURUNDI

THE SITUATION GLOBALLY OF TRANSGENDERED AND INTERSEX PERSONS

Evidence of transgendered persons runs throughout known human history. In Africa, some concrete examples are intertwined with local cultures. For example, the *Bitesha* (*kitesha* plural) in Congo, are subject to alternative gender roles among the Basongye groups of the Luba nation, located north of Central Bantu. *Bitesha* (plural of *kitesha*) are either men or women. As to men, their behavior is unconventional, especially with reference to clothes and work, and they are expected to have unconventional sexual behaviors as well. Women also adopt unconventional behavior in terms of clothes and common activities, but often have sexual relationships with bitesha men.

Demanding credibility and sustaining activism. A guide to sexuality-based advocacy.
Global Rights, 2008.

In many communities, sexuality, sexual practices and gender expressions are organized according to the roles and gender identity.

The first Kirundi-Dutch dictionary, published by the missionary Burgt, contains words that refer to sex between two people of the same sex, transgender and intersex.⁴⁰

As elsewhere, transgender and intersex individuals in Burundi are seen as individuals who "missed" a gender. Because their gender identity is so often the subject of social confusion, they are thus perhaps the most visible face of the LGBTI community. This is only fueled by the apparent conflict between their psychological and gender expression and their biological gender. There is little psychological support for such individuals in Burundi, and most efforts to intervene have ended in obvious failure. Transgender and intersex people form a minority within another minority group, and are thus the most vulnerable. They are often the victims of prejudice and myths against them. As a result of transphobia⁴¹ and accentuated by homophobia: transgender and intersex individuals are often wrongly considered to be homosexuals.

Culture and traditions vary across countries, and public attitudes vary considerably even within countries. The emphasis of international human rights law is therefore on universality. It requires of all states, regardless of their dominant cultural values or traditional religious belief systems, that they protect the fundamental rights of all individuals⁴².

⁴⁰ Homosexuality in "Traditional" Sub-Saharan Africa and Contemporary South Africa, By Stephan O. Murray, Pge 28

⁴¹ Transphobia is the aversion to transsexualism and against transgendered persons or persons with a different gender than their sexual identity. Transphobia manifests itself in the form of physical violence (assaults, hate crimes, rapes, or homicide), or in a discriminatory or intolerant behavior towards transgendered individuals (employment discrimination, a refusal to rent rooms, or discriminatory access to medical treatments). <http://en.wikipedia.org/wiki/Transphobia>.

⁴² Fact Sheet: Criminalization, United Nations Free & Equal (UNFE), [https://unfe-uploads-production.s3.amazonaws.com/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_\(1\).pdf](https://unfe-uploads-production.s3.amazonaws.com/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_(1).pdf).

THE LOST BOYS AND GIRLS IN SEARCH OF AN IDENTITY AND DIGNITY

Transgender and intersex people have been part of Burundi's population long before LGBTI civil society groups took up their cause. But due to the tainted, sexist and discriminatory traditions in Burundi, many of them drawn from the Judeo-Christian religions, a good number of such individuals simply gave in to the will of their families by simply marrying a person of the opposite biological sex. The bravest thought it best to live a life of celibacy while waiting for the perfect spouse, even despite opposition from their families.

Less than 10 transgender and intersex individuals came out from the shadows in 2003 when the first LGBTI association was founded in Bujumbura.

"I was chased away from my family for a whole year because I refused to marry a man."

Jared*, transgender man, 32 years old.

In 2012, the number of people identifying as transgender and intersex was unchanged: some had emigrated because of pervasive transphobia, others sought to re-enter the shadows. This was also due in part to the fact that almost all LGBTI organizations were based in Bujumbura,

with the exception of one recently founded group based elsewhere. There were also no committed and effective transgender or intersex activists fighting for Human Rights, due in large part to the fact that most never finished high school.

Nevertheless, the few transgender people interviewed confirmed that they suffered many of the same threats as LGB individuals, and described mounting frustration and psychological disorders, as well as tension within their families, schools, and places of worship.

ACCESS TO JUSTICE AND HEALTH SERVICES – ESPECIALLY HIV/AIDS SERVICES – FOR LGBTI INDIVIDUALS IN BURUNDI

ACCESS TO JUSTICE

Since 2010, when homophobia was institutionalized in the form of Article 567, MOLI has documented one case of physical violence and abuse sufficient to cause the partial paralysis of the victim's upper limbs,⁴³ 42 cases of verbal abuse and discrimination, 17 cases of individuals being rejected by their family and social networks, and 12 cases of threats and harassment on the basis of the victim's sexual orientation and gender identity.

At the time of publication, MOLI has also provided legal assistance in a case of discrimination and violence which MOLI documented and reported upon.

In that case,⁴⁴ a police complaint was filed on August 22, 2010, and the first court appearances took place in September 2010. The issue is currently pending before the Gitega Court of First Instance.

MOLI, which documented and provided assistance to the victims of that event, had attempted to refer the case to four separate non-governmental organizations that provide legal services to victims of human rights violations. Their respective interventions were either fictitious, or absent altogether, and the organizations consider LGBTI people not to be "beneficiaries" of their intervention expertise.

Many organizations claiming to promote greater respect for human rights have approached MOLI to discuss possible legal collaborations. But as was mentioned above, most of these meetings have yet to result in any positive outcome in any of the referred cases. In short, LGBTI individuals are not the beneficiaries of the specialized support and legal defense programs of Burundi's human rights community. As a result, human rights violations that target victims on the basis of their sexual orientation or gender identity remain judicially unaddressed.

⁴³ CBR Case, August 2011, Gitega, Burundi.

⁴⁴ CBR Case, Gitega, Burundi. MOLI.

ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES

The World Health Organization (WHO) and the Joint United Nations Programme on HIV and AIDS (UNAIDS) have both shown that the criminalization of sexual relations between consenting same sex adults also has a disastrous effect on public health. This is particularly true for efforts to curb the spread of HIV. Such policies deter those who are most at risk of infection from getting tested and seeking treatment, for fear of being viewed as criminals.⁴⁵

Laws and punitive provisions against Lesbian, Gay, Bisexual, Transsexual and Intersex individuals continue to hamper effective responses to HIV/AIDS. There are numerous examples of such rights violations, ranging from individuals being denied access to health services, to interference with the freedom of association by means of harassment, violence and murder.

One study conducted in Senegal, for example, showed that the prosecution and harassment of LGBTI people in 2008 led to "spreading fear" and the "disbanding" of LGBTI social networks. According to this study, health professionals stopped promoting HIV prevention strategies among MSM out of fear for their own safety. Those who continued to provide care noted a sharp decline in the participation of MSM.⁴⁶

Since the diagnosis of the first cases of AIDS were documented in Burundi in 1983, many efforts have taken place to control the spread of this scourge, since there was no cure or preventive treatment.⁴⁷

To deal with the scourge, the CNLS was set up by the Government of Burundi. Its first strategic plan was issued in 2002 and extended until 2006.

The following year, in 2007, the CNLS strategic plan included sexual minorities as a vulnerable and high-risk group until 2011.

In 2009, the Association Nationale de Soutien aux Séropositifs et Sidéens (National Association for the Support of Persons Living with HIV/AIDS, or ANSS) was the first Burundian Civil Society Organization to implement a program dedicated to MSM and implemented by MSM. The program's goal was to facilitate access to various prevention services and to support MSMs. It has allowed some MSMs to receive free support, and continues to this day support MSMs and later LGBTI by providing them with voluntary testing services, counseling, distributions of condoms and lubes; and awareness raising about the vulnerability of LGBTI persons to STIs and HIV/AIDS.

In 2011, the Permanent Executive Secretariat of the CNLS published the results of a National Assessment of the Action Plan to Fight AIDS.⁴⁸ Among other achievements between 2007 and 2011: Actions on behalf of sexual minorities were carried out by eleven local organizations thanks to the support provided by the PRIDE project, the King Baudouin Foundation, and the NGO Heartland Alliance International. Because of this, 825 homosexuals and 100 women and girl bisexuals and lesbians benefitted from various services to fight against AIDS. A total of 115 people attended a wellness center called "REMURUKA," 35 received individualized health services, 15 individualized counseling, 17 received group counseling, and 21 received social reintegration support services. In addition, nearly 180,000 lubes were distributed to sexual minorities and sex workers.

⁴⁵ Fact Sheet: Criminalization, United Nations Free & Equal (UNFE), [https://unfe-uploads-production.s3.amazonaws.com/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_\(1\).pdf](https://unfe-uploads-production.s3.amazonaws.com/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_(1).pdf).

⁴⁶ L'homophobie et les lois punitives continuent de menacer la riposte au VIH et les droits de l'homme. <http://www.unaids.org/fr/resources/presscentre/featurestories/2012/august/20120828punitiveaws/>

⁴⁷ See Page 10. Plan Stratégique National 2007-2010, CNLS.

<http://bnub.unmissions.org/LinkClick.aspx?fileticket=6rdpcRAIXIU%3D&tabid=2961&mid=5313&language=en-US>

⁴⁸ Bilan National du Plan d'Action de lutte contre le SIDA, Cfr. Page 26

[http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_BI_Narrative_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_BI_Narrative_Report[1].pdf)

In 2011, Arc Ingénierie carried out a behavioral study⁴⁹ commissioned by the SEP/CNLS of 410 MSM individuals in Bujumbura. The results revealed that the rate of HIV prevalence among MSM was 2.3%. In rural areas, the infection rate among MSM was 4.3%. Only small percentages of those surveyed knew their HIV status: only 23.2% of those surveyed had received an HIV test in the preceding 12 months and know the result. Social determinants influencing the infection rate include early sexual intercourse (48.8% of MSMs had their first sexual intercourse with a man before their 15th birthday), multiple sexual partners (MSMs had an average of 3 partners in the last 6 months). MSMs are not widely accepted by society and their families. More recently, the criminal code penalizes Burundi the practice of homosexuality.⁵⁰

"This group consists largely of young people, pupils and students, and most have sexual intercourse with women who usually do not know their status as MSMs. Condom use is low for sex with men as well as for heterosexual intercourse."⁵¹

As regards the level of knowledge about HIV, only a small proportion (21.4%) of LGBTI people surveyed had a good understanding of ways to prevent HIV transmission from one individual to another.

Between 2007 and 2012, more than \$22 million USD have been invested in the fight against HIV / AIDS in Burundi by the Global Fund. Nonetheless, LGBTI people living in rural areas have not been the focus in many of the initiatives focusing on sexual and reproductive health.

In March 2012, a multidisciplinary team published a manual covering family planning as well as information about sexual and reproductive health, tailored to youth and adolescents. This publication was produced with the support of the Ministry of Public Health and the Fight against AIDS. Despite its title, which focuses more on family planning, this manual also focuses on sexual and reproductive health among those who engage in anal or oral intercourse.⁵²

This manual does not take into account certain aspects of health care services adapted for young individuals⁵³ and the special needs of different sectors of the population, including vulnerable and underserved groups such as LGBTI individuals.

In short, despite the risk factors, Gay, Lesbian, Bisexual, Transgender and Intersex individuals in Burundi face numerous barriers to the enjoyment of their sexual and reproductive health, including: discrimination, stigmatization, marginalization, lack of specialized services, lack of access to preventive care, and a lack of awareness of which services to provide to gay, lesbian, Bisexual, and Transgendered women by sexual and reproductive health professionals.

⁴⁹ 2011 study of MSM, CNLS.

⁵⁰ *Idem.*, 49.

⁵¹ Strategic Plan in the fight against HIV/AIDS, 2012-2016, Permanent Executive Secretariat, National Counsel in the fight against AIDS.

⁵² Cfr. page 22, *Manuel des prestataires en PF et SSR adaptés aux jeunes et adolescents*. The definition provided is as follows : "Sexual deviation implies a deviation from the standard. There is no question of right or wrong, only a difference from what might be considered the majority's way of doing things."

⁵³ These characteristics are based on a 2001 global WHO study, as well as the discussions held at a WHO experts' advisory panel held in Geneva in 2002.

CONCLUSIONS AND RECOMMENDATIONS

TO THE PRESIDENT PIERRE NKURUNZIZA AND TO THE GOVERNMENT OF BURUNDI

We recommend:

- As father of the Nation of Burundi, renounce all acts and words designed to reinforce homophobia, the degradation and humiliation of other humans. Use the state's machinery to pursue and punish all forms of discrimination and violence towards the citizens of Burundi, regardless of that person's sexual orientation or gender expression.
- Support the repeal of Ministerial Order No. 620/613 of 7 June 2011, which defines homosexuality as one of the possible grounds for suspension from school, referring to "any sexual contact *in flagrante delicto*";
- Support and guarantee the rights to freedom of expression, association and peaceful assembly for organizations focusing on the rights of sexual minorities, and ensure that any restrictions of these rights do not discriminate;
- Ensure the implementation of laws that protect all Burundian population without distinction of sexual orientation, identity and / or gender expression.

TO THE REPRESENTATIVES OF THE PEOPLE OF BURUNDI

We recommend:

- To engage in a critical analysis based on updated scientific evidence so as to deepen their knowledge about sexual diversity, and to harmonize laws accordingly;
- Denounce all homophobic acts, all acts designed to degrade and humiliate other human beings. Lesbian, Gay, Bisexual, Transgender and Intersex individuals, or those alleged to be so, face such pressures on daily basis in Burundi on the basis of their sexual orientation and of gender identity;
- Repeal Section 567 of the Penal Code criminalizing sexual relations between consenting same sex adults, as well as other laws used to punish individuals because of their sexual orientation or gender identity. These laws are in violation of international standards of human rights and restrict the right to health for sexual minorities;
- Develop a law to prevention, repress and make reparations for violence based on sexual orientation, gender identity and gender expression;
- Make use of your observer role at the Commission on Justice and Rights of the Human Person by inquiring, investigating, and responding to the human rights violations perpetrated by law enforcement agents against sexual minorities.

TO THE MINISTRY OF PUBLIC HEALTH AND THE FIGHT AGAINST AIDS IN BURUNDI

We recommend:

- Strengthen the Burundi National Council on the Fight Against HIV/AIDS' initiatives promoting the sexual and reproductive health of sexual minorities;
- Involve sexual minorities in the decision making process and implementation strategy of the Burundi National Council on the Fight Against HIV / AIDS national programs, so as to develop programming that responds to the real sexual and reproductive health needs of sexual minorities;
- Adapt and improve the "Manual of Providers in Family Planning and Sexual and Reproductive Health Adapted to Youth," published by the National Program for Reproductive Health in Burundi.

TO THE INDEPENDENT NATIONAL HUMAN RIGHTS COMMISSION (CNIDH)

We recommend:

- Engage, communicate and collaborate with organizations focused on LGBTI rights;
- Raise the Government's awareness of cases where individuals' human rights were violated on the basis of their sexual orientation and gender identity, and propose measures likely to improve the protection of human rights based on the principles of equality and non-discrimination;
- Contribute to the elimination of discriminatory laws directed against sexual minorities by ensuring that the country's laws, regulations, and practices are harmonized with the Constitution and other international and regional human rights instruments ratified by Burundi. Work also to ensure the effective implementation of such policies.

TO THE MINISTRY OF THE INTERIOR AND THE PUBLIC SAFETY OF BURUNDI

We recommend:

- Ensure that all Burundian citizens, regardless of their sexual orientation and identity or their gender expression, enjoy security of their person;
- Establish links between law enforcement officers at local police stations and members of marginalized and vulnerable groups, such that the latter can seek police assistance in situations where their human rights are violated;
- Inform, educate and regularly remind police staff of the details of Burundi's criminal procedure and the conditions of detention guaranteed therein, in accordance with the Universal Declaration of Human Rights.

TO THE UN AGENCIES IN BURUNDI: UNDP, UNAIDS, OHCHR, UNICEF, UNESCO, UN WOMEN, WHO AND UNFPA

We recommend:

- Provide financial support and assist in the mobilization of financial resources for LGBTI advocacy in Burundi;
- Support the documentation of human rights violations against sexual minorities and report these findings to the Government of Burundi using the international mechanisms foreseen in the International Covenant on Civil and Political Rights, as well as the Universal Periodic Review at the United Nations Human Rights Council;
- Organize bilateral discussions with the Government of Burundi on the recent resolutions, documents and research that show that the criminalization of sexual relations between consenting same sex adults constitutes an obstacle in the fight against HIV/AIDS;
- Organizations supporting childhood programming and education initiatives should conduct formal and informal advocacy with the Government of Burundi, focusing on the impact of laws that discriminate on the basis of sexual orientation and gender expression and their impact on Burundi's Millennium Development objectives;
- Ensure that the issue of sexual minorities and their human rights are incorporated into any capacity building efforts for health professionals, police officers, and judicial bodies.

TO CIVIL SOCIETY ORGANIZATIONS IN BURUNDI

We recommend:

- Renew the denunciation of the discriminatory laws and provisions against LGBTI people in Burundi;
- Document the human rights violations against sexual minorities in Burundi, in collaboration with organizations dedicated to the protection of the rights of Lesbian, Gay, Bisexual, Transgender and Intersex individuals in Burundi;
- Include and involve sexual minorities in efforts to improve sexual and reproductive health, human rights, and community development;
- Ensure that all members of the organization have access to relevant information about sexual orientation and gender identity;
- Continue to demonstrate support for Lesbian, Gay, Bisexual, Transgender and Intersex advocacy organizations as they seek greater equality before the law and non-discrimination in Burundi;
- Support, wherever possible, Lesbian, Gay, Bisexual, Transgender and Intersex civil society organizations so as to enable them to achieve their objectives;
- Monitor government action against organizations and individuals that identify with Lesbian, Gay, Bisexual, Transgender and Intersex causes in Burundi.

TO LGBTI ORGANIZATIONS

We recommend:

- Actively educate Lesbian, Gay, Bisexual, Transgender and Intersex individuals about the value of seeking out health and legal services in case where their human rights have been violated;
- Actively encourage their membership to document and refer all instances of human rights violations against them;

- Launch awareness raising campaigns about LGBTI issues and the vulnerability of sexual minorities to STIs and HIV/AIDS;
- Redouble efforts to recruit health care professionals into awareness raising efforts on the topic of LGBTI sexual and reproductive health;
- Coordinate the various interventions designed to raise awareness about issues of LGBTI sexual and reproductive health in Burundi;
- Observe, monitor and help disseminate the recommendations of programs designed to improve the sexual and reproductive health of LGBTI people in Burundi.

TO DONOR COUNTRIES AND FOUNDATIONS SUPPORTING HIV/AIDS PROGRAMMING AND THE PROMOTION OF HUMAN RIGHTS IN BURUNDI

We recommend:

- Ensure that the key organizations involved in the promotion of human rights and/or the fight against HIV/AIDS incorporate the human rights of sexual minorities in Burundi into their programming;
- Ensure that funds intended to support the fight against HIV/AIDS, address also the needs of vulnerable groups, including sexual minorities, and monitor the use of these funds;
- Ensure that the issue of the sexual minorities' human rights is included into any training initiatives funded by third party donations, especially if they target health professionals, law enforcement officers, and the judiciary.

« I love my country, but my country does not love me. »
Human Rights: The Situation of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in
Burundi (2003-2013).

Mouvement pour les Libertés Individuelles – MOLI
Bujumbura, Burundi.

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