

UPR: Burundi
Action Canada for Population and Development
& Canadian HIV/AIDS Legal Network

Mr. President, distinguished members of the delegation,

An issue of serious concern raised by many States during the UPR of Burundi, and reflected in paragraph 81, recommendations 4 and 5 of the Working Group report, relates to the proposed criminalization of consensual homosexual conduct, in the revision of Burundi's criminal code. Such provisions, if adopted, would be a violation of established international human rights law and a major blow to public health.

We welcome recent steps by Burundian legislators to integrate fundamental human rights norms into the country's criminal code, in particular the abolition of the death penalty. On February 17, the Senate also rejected, by a large margin, the provision that would have criminalized consensual homosexual conduct for the first time in the country's independent history. However, we are gravely concerned that the National Assembly has recently voted to restore that provision. We urge legislators to eliminate the new provision as they move to harmonize different versions of the criminal code; should it survive the harmonization process, we urge the President to veto it.

The criminalization of homosexual conduct would place Burundi at odds with the overwhelming movement across the world that for two decades has seen progress toward decriminalization. It would also put in place a provision that mimics old colonial laws that served the colonizers as instruments of surveillance and repression. As the High Commissioner for Human Rights, Ms. Pillay, stated in December, 2008:

"There remain all too many countries which continue to criminalize sexual relations between consenting adults of the same sex in defiance of established human rights law. Ironically, many of these laws are relics of the colonial era, and are increasingly becoming recognised as anachronistic, and as inconsistent both with international law and with traditional values of dignity, inclusion, and respect for all.

The law would also violate the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (ICCPR), to which Burundi is a party.

We also note that the new provision would severely hamper Burundi's efforts to combat the HIV/AIDS pandemic. HIV/AIDS is primarily transmitted by heterosexual contact in Burundi, as in the rest of sub-Saharan Africa. However, the law would force a part of Burundi's population into silence and invisibility. Such a move would cripple life-saving outreach, education, and care efforts.

We therefore urge the National Assembly, and the President of Burundi should the provision reach his desk intact, to act in accordance with Burundi's legal obligations under international human rights law by rejecting Article 522 of the draft criminal code.