

Burundi

1. Discriminatory family code

The Code of Person and Family was modified in 1993 to amend discriminatory provisions. Despite having a formal legal system that ensures gender equality, important aspects of family life (such as matrimonial arrangements, succession, legacies and gifts related to marriage) are still governed by customary law.¹ According to the Committee on the Elimination of Discrimination against Women, a key challenge has been the lack of awareness and understanding of the reforms at a community level due to limited publicity from the government.²

Under Article 88 of the Code of the Person and the Family, the **legal age of marriage** in Burundi is 18 years for women and 21 years for men. However, exceptions to these provisions based on serious causes (not specified) can be approved by the Provincial Governor.³ Forced marriages are prohibited under Article 29 of the Constitution.⁴ Article 145 of the Code of the Person and Family, however, protects marriages contracted between under-aged individuals if the under-aged wife is pregnant or has already given birth.

According to the 1993 amendments, men and women share **parental authority** and have equal rights and responsibilities in regard to guardianship, wardship, trusteeship and adoption of children.⁵ However, Article 122 of the Code of the Person and the Family provides that the male is the head of the household, thereby codifying the unequal position of the woman in the family.⁶ The woman can become the head of the household only in his absence or if he faces a legal restriction.

The principle of gender equality and non-discrimination on the grounds of sex is enshrined in the 2005 Constitution, and according to the Personal Status and Family Code, Article 159, sons and daughters have equal **inheritance** rights, though surviving female spouses do not.⁷ Further, inheritance is largely governed by customary laws that discriminate against women.⁸ In its 2001 report to the Committee on the Elimination of Discrimination against Women, the Burundian government reported that under customary law, rural women cannot inherit from their fathers or from their husbands.⁹ Notably, the 2000 Arusha Agreement provided for reforms that would

¹ CEDAW (2008), p. 3

² CEDAW (2008), p. 3

³ CEDAW (2007), pp. 11-12

⁴ CEDAW (2007), p. 48

⁵ CEDAW (2001), p. 39

⁶ CEDAW (2008), p. 3

⁷ World Bank (2013a)

⁸ CEDAW (2008), p. 3

⁹ CEDAW (2001), p. 36

improve the status of women including inheritance rights.¹⁰ However, in 2007, the government reported that these reforms had been stalled due to other political priorities.¹¹ The International Crisis group reported in 2014 that implementation of the Arusha continued to be superficial.¹²

In 2008, the Committee on the Elimination of Discrimination against Women (CEDAW) noted concerns about the particular treatment of widows due to the discriminatory customary inheritance practices.¹³ It is reported that widows cannot inherit land from their husbands and often their brothers will not welcome them back into their family homes, leaving widows landless and homeless.¹⁴

Women and men have the right to initiate **divorce**, under the Civil Code.¹⁵

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There are a number of other Burundian laws that discriminate against women in the institution of the family. For example, the Penal Code defines the crime of **adultery** in terms more favourable to men than to women.¹⁶ Further, the Nationality Code of Burundi does not grant women equal rights with men with respect to the **nationality** of their children.¹⁷

2. Restricted physical integrity

Rape and gender-based violence are criminalised under Article 559 of Burundi's revised Criminal Code. A 2009 revision of the Penal Code (Law No. 1/05) defines rape and provides for its punishment (Articles 554 and 558), including life imprisonment as one of the available penalties.¹⁸ It also criminalises marital rape, although the punishment is only eight days imprisonment and a fine.¹⁹

Reforms to the Penal Code specifically criminalise **domestic violence**, with penalties of three to five years.²⁰ Domestic violence against women is reported to be common and on the rise since the ceasefire in 2002 and, although population-based studies are also lacking in this area, affects one in two women in Burundi according to data collected by the African Development Bank.²¹

Sexual harassment is also reported to be common in the family and in the community.²² Sexual harassment is criminalised in Article 563 of Law No. 1/05.²³ The law prohibits sexual harassment, including the use of orders, severe pressure, or threats of physical or psychological violence to obtain sexual favours. The sentence for sexual harassment ranges from fines to penalties of one month to two years in prison. The sentence for sexual harassment doubles if the victim is less than

¹⁰ CEDAW (2007), p. 16

¹¹ CEDAW (2007), p. 16

¹² International Crisis Group (2014)

¹³ CEDAW (2008), p. 5

¹⁴ Farha, L. (2000), p. 3

¹⁵ Article 158

¹⁶ Penal Code, Article 3; CEDAW (2008), p. 3

¹⁷ Nationality Code, Article 4; CEDAW (2008), p. 7

¹⁸ Global Network of Women Peacebuilders (2011), p. 71

¹⁹ USAID (2010)

²⁰ US Department of State (2012)

²¹ African Development Bank (2012), p. 50

²² ACAT Burundi and OMCT (2008), p. 3

²³ Global Network of Women Peacebuilders (2011), p. 68

18 years old. The government does not actively enforce this law. There are reports that sexual harassment occurs, but no data has been found on its frequency or extent.²⁴

There is no evidence that **female genital mutilation** is practised.

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Women's physical integrity in Burundi is also compromised by limited reproductive choices. In Burundi, **abortion** is only permitted to save the pregnant woman's life, to preserve her physical health or to preserve her mental health. It is illegal in the event of pregnancy through rape or incest.²⁵

Women's safety in Burundi has been significantly affected by **conflict**. Violence against women was particularly severe during the armed conflict and included rape, torture, and enslavement of young girls and women. Since the ceasefire, it is reported that violence against women and children continues to increase.²⁶ However, according to the Global Network of Women Peacebuilders, transitional justice mechanisms have been underway in Burundi since national consultations on the topic took place in 2009, during which time participants requested a Special Tribunal be set up to provide reparations for victims and survivors of violence during the conflict.²⁷

According to information provided in the 2010 Interim Report on Sexual and Gender-Based Violence by the Ministry of National Solidarity, Human Rights, and Gender, the following are the most recently-available national statistics on sexual and gender-based violence: 3,715 cases reported, 823 cases investigated (22%), 60 cases prosecuted (1.6%) and 53 cases penalised (1.4%).²⁸

Despite the problem of endemic sexual violence receiving widespread attention, including a national plan to combat gender-based violence,²⁹ there remain significant barriers to women seeking justice through the legal system. A report by the Global Network of Women Peacebuilders found that the underreporting of sexual and gender-based violence cases in Burundi is due to several factors, including: lack of medical evidence due to lack of access to medical facilities, slowness of judicial proceedings and corruption in the justice system.³⁰ The World Organisation on Torture reports that sexual violence is generally trivialised in the community, as well as within the police and the judiciary.³¹ As such, perpetrators enjoy a culture of impunity for their actions. Further, the fear of stigmatisation and reprisal also prevents women from reporting sexual violence.³² And, according to the African Development Bank, women victims of violence rarely report the incidents to the police, especially in cases of rape.³³

A recent report by the Global Network of Women Peacebuilders indicates that a National Strategy for the Fight Against Gender Violence is in place, although it is unclear how well it is implemented.³⁴

²⁴ US Department of State (2013)

²⁵ Article 510 of the Penal Code; UN DESA (2013)

²⁶ United Nations General Assembly (2008a), p. 6

²⁷ Global Network of Women Peacebuilders (2011), p. 72

²⁸ Global Network of Women Peacebuilders (2011), p. 68

²⁹ African Development Bank (2012), p. 52; this plan is not mentioned by name

³⁰ Global Network of Women Peacebuilders (2011), pp. 68-69, 81

³¹ ACAT Burundi and OMCT (2008), p. 2

³² ACAT Burundi and OMCT (2008), pp. 2-3

³³ African Development Bank (2012), p. 51

³⁴ Global Network of Women Peacebuilders (2011), p. 81

3. Son bias

The male-to-female **sex ratio** at birth in 2013 is 1.03 and for the working age population (15-64 years old) is 0.98.³⁵

There is evidence to suggest that Burundi is a country of low concern in relation to **missing women** due to high adult sex ratios.

4. Restricted resources and assets

Men and women in Burundi have the same legal position in matters related to the conclusion of contracts (Civil Code, Article 336) and the administration of property (Personal Status and Family Code, Article 120).³⁶ However, customary law is discriminatory against women with respect to **access to land**. As noted in the Family Code section, customary laws provide that women cannot inherit land from their fathers or husbands.³⁷

In regard to **access to non-land assets**, the 1993 amendments of the Code of Person and Family provide for joint management of family property but with some limitations. Wives can act independently only in the absence of their husbands.³⁸ Further, Article 126 of the Code provides that a wife's consent is not required for any decision regarding joint property.³⁹

Concerning **financial services**, women in Burundi no longer need to obtain their husband's permission to open bank accounts, engage in business or obtain loans. The law in Burundi provides that any spouse, male or female, must provide permission for the other spouse to take out a loan.⁴⁰ It is reported that the number of women acquiring loans for commercial activity or to purchase homes has increased in recent years. For example, in 2001, the Republic of Burundi reported that in 1995 women received only 1.4% of loans from commercial banks.⁴¹ In 2007, the government reported that women were receiving up to 35% of loans from some commercial banks in 2005.⁴² However, according to the most recent data from the World Bank, only 0.5% of women received loans from formal financial institutions in 2011 (compared to 2.9% of men).⁴³ Microfinance institutions in Burundi tend to target women for loans, with one institution providing 67% of its loans to women.⁴⁴ In 2011, women made up approximately 65% of all microfinance borrowers in Burundi.⁴⁵

5. Restricted civil liberties

The amendments of the Code of Person and Family granted women the right to **freedom of movement**. The law stipulates that married couples should collectively choose their place of residence.⁴⁶ However, the persistent and increasing threat of sexual violence and domestic violence

³⁵ CIA. <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 28/03/2014)

³⁶ World Bank (2013a)

³⁷ CEDAW (2007), p. 11

³⁸ CEDAW (2001), p. 8

³⁹ United Nations General Assembly (2008b), p. 9

⁴⁰ CEDAW (2001), p. 33

⁴¹ CEDAW (2001), p. 34

⁴² CEDAW (2007), p. 43

⁴³ World Bank (2013b)

⁴⁴ Republic of Burundi and East African Community (2009), p. 16

⁴⁵ Microfinance Information Exchange (2013)

⁴⁶ Family Code, Article 124; World Bank (2013a)

against women, along with the threat of other forms of violence associated with conflict, pose a significant obstacle to women's freedom of access to public space.⁴⁷

With respect to **political voice**, Article 164 of the 2004 Constitution reserves 30% of National Assembly, Senate and ministerial positions for women.⁴⁸ Under Article 38.3 of the Electoral Code, electoral candidate lists must take into account gender balance, with one in four candidates being a woman.⁴⁹ However, the Global Network for Women Peacebuilders notes that legislated **quotas** are not strictly observed in practice.⁵⁰

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Maternity leave is available for public sector workers under Article 55 of the Statute for Public Servants. And the Constitution recognises women's equal **right to work** and right to equal pay. However the CEDAW Committee expressed concern in 2007 about lack of maternity leave and its effect on women's labour force participation.⁵¹

⁴⁷ United Nations Economic and Social Council (2006), p. 7

⁴⁸ CEDAW (2007), p. 21

⁴⁹ The Quota Project (2013)

⁵⁰ Global Network of Women Peacebuilders (2011), pp. 61, 81

⁵¹ CEDAW (2007), p. 34

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