

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: AFR 16/004/2009

24 April 2009

Burundi: New legislation abolishes death penalty; bans homosexuality

Amnesty International today said that the adoption of a new Criminal Code in Burundi is a cause for celebration and disappointment.

On the one hand, the new code abolishes the death penalty and makes torture, genocide, war crimes, and crimes against humanity punishable offences. On the other hand, it outlaws homosexuality.

Amnesty International welcomed the abolition of the death penalty in Burundi, saying that it further strengthens the international trend away from executions.

But the organization said this good news is undermined by the government's decision to criminalize homosexuality, in violation of Burundi's obligations under international and regional human rights law. It also flies in the face of Burundi's constitution, which guarantees the right to privacy.

According to the penal code, those found guilty of engaging in consensual same sex relations risk imprisonment of two to three years and a fine of 50,000 to 100,000 Burundian francs (42 to 84 US dollars). Amnesty International is concerned that this new legislative provision will result in the imprisonment of people solely for their actual or imputed sexual orientation, including for private sexual relations between consenting adults. Amnesty International calls on the authorities to remove the restrictive provision from the law.

Background

Burundi becomes the 93 country in the world to abolish the death penalty for all crimes. The last executions of people sentenced to death by civilian courts were carried out in 1997, when six people were executed after grossly unfair trials. A local human rights organization stated at the end of 2008 that there were approximately 800 people on death row.

The criminalization of homosexuality is discriminatory and contrary to Burundi's obligations under the International Covenant on Civil and Political Rights (ICCPR), which protects the rights to freedom from discrimination (articles 2 and 26), freedom of expression (article 19), freedom from arbitrary interference with the right to privacy (article 17) and freedom of conscience (article 18).

Article 2 of the African Charter on Human and People's Rights prohibits discrimination, article 3 promises every individual equality before the law and article 26 prescribes that *"Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."* The Executive Council of the African Commission on Human and Peoples' Rights, in their tenth ordinary session stated that *"Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights...The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation."*

Local health organizations have stated that the provision may limit the effectiveness of their work to curb HIV/AIDS. They have stated that the current amendment undermines attempts to ensure that people have access to voluntary counselling and testing, to information about prevention of infection and access to treatment where needed.

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