



COUNTRY PROFILE

Article 13 of the Constitution of Burundi provides that 'All Burundian people are equal in merit and in dignity. All citizens enjoy the same rights and have the same protection of the law'. No Burundian will be excluded from the social, political, or economic life due to sex, amongst others. The government of Burundi is tasked to 'guarantee to all the option to live in Burundi sheltered from', amongst others, discrimination.⁹⁵ All citizens are equal before the law and there should be no discrimination based on, amongst others, sex.⁹⁶ Article 28 recognises the respect of family life and Article 30 recognises the family as the 'natural base cell of society'. Article 19 further guarantees the freedom of marriage with the 'free and full consent of the future spouses'. However, the Article's second paragraph prohibits marriage between persons of the same-sex.

Family law in Burundi is based on French and German law and the traditional legal system.⁹⁷ The country uses civil law in most of its courts. Nevertheless, customary law usually dictates matters such as succession and, in that case, traditional laws are used at the local level. Concerning gender equality, the norms related to gender roles are deeply rooted in patriarchy and the society is patrilineal 'in which man incarnates authority within the household, makes crucial decisions, and provides livelihood to the members of the household'.⁹⁸ Women's role in the family is so subordinate that there is a saying that Burundian men use which is translated into *'the hen does not sing when the cock is there'*.⁹⁹

Treaty	Date of ratification	Reservations/Declarations
CEDAW	8 January 1992	None
African Charter	28 July 1989	None
Maputo Protocol	Not ratified Signed: 3 December 2003	-

MAIN TRENDS IN FAMILY LAW

Concerning marriage, the Constitution protects the rights of women as demonstrated in the section above. The Law on the Protection of Victims and the Prevention and Punishment of Sexual and Gender-based Violence provides for several safeguards for women in the family. For instance, Article 38 provides for the punishment of anyone who kidnaps a girl for marrying her or to have her married. Article 39 criminalises forced marriage, including the forced marriage of widows to their step-brother, step-father, or the husband of a deceased sister. Article 59 further protects widows from harmful practices such as anyone preventing her from accessing the property from the marriage.

Article 535 of the Penal Code criminalises domestic violence, and Article 2 of the Law on the Protection of Victims and the Prevention and Punishment of Sexual and Gender-based Violence defines as 'all acts of physical, sexual, psychological or economical violence that occur within the family or within the family home'. Article 23 also provides that it is a crime to amicably settle domestic violence cases. Article 555 of the Penal Code criminalises marital rape. However, the sentence for the same is minimal since it is less than 30 days imprisonment or a fine.

Article 103 of the Code of Persons and Family provides that nobody can contract a second marriage without the annulment or dissolution of the first one, essentially prohibiting polygamy. Women and men have the same rights to initiate divorce, either by a joint request from the spouses or by one of the spouses according to a determined cause.

According to Article 123 of the Code of Persons and Family, both spouses are responsible for caring for their children. Even in instances of divorce, women have the same rights as men concerning legal guardianship according to Article 185 of the Code of Persons and Family.

⁹⁵ Article 17 of the Constitution of Burundi 2018. Available at https://www.constituteproject.org/constitution/Burundi_2018 (accessed 17 April 2024)

⁹⁶ Article 22 of the Constitution of Burundi 2018

⁹⁷ Sunulex.Africa 'The Burundian legal system' Available at <https://sunulex.africa/en/theburundianlegalsystem/> (accessed 8 July 2022)

⁹⁸ YO Basse and J Kwizera 'Norms and practices impeding gender equality in Burundian society' (2017) 5. Available at <https://careevaluations.org/wp-content/uploads/Norms-and-practices-impeding-Gender-Equality-in-Burundi.pdf> (accessed 17 April 2024)

⁹⁹ Ibid

KEY GAPS AND CONTESTATIONS

(i) Constitutional prohibition of same-sex marriage:

The constitutional prohibition on same-sex marriage is a challenge for same-sex couples to found a family.

(ii) Exceptions to the legal age of marriage:

While Article 88 of the Code of Persons and Family provides for a man to be at least 21 years old and a woman to be 18 years old at the time of marriage, they can be allowed to marry below those years by the governor of the province, with the consent of their parents in case of serious reasons. Moreover, Article 2 of the Law on the Protection of Victims and the Prevention and Punishment of Sexual and Gender-based violence prohibits child marriage and punishes any guardian, parent or anyone who encourages a child to marry.

(iii) Non-recognition of traditional/customary marriages or informal partnerships:

The Code of Persons and Family also only recognises civil marriages and does not provide for the registration of traditional/customary marriages or informal partnerships. This is problematic for women who are in such marriages since they are not afforded protection of the law.

(iv) Recognition of husband as the head of the family:

Article 122 of the Code of Persons and Family recognises the husband as the head of the communal household. The wife only replaces him when he is absent or prohibited.¹⁰⁰ This provision entrenches patriarchal power.

(v) No statutory provisions for women's succession rights:

This affects women's inheritance on their family side and in the instance their husband passes on. Customary law dictates succession rights of women and in most instances it is discriminatory.¹⁰¹

RECOMMENDATIONS

Ratification: Ratify the Maputo Protocol without any reservations.

Legal reforms:

- ▶ Remove the same-sex marriage prohibition in the Constitution.
- ▶ Amend the Code of Persons and Family to: recognise both spouses as heads of the family; remove the exceptions to marriage under the age of 18.
- ▶ Adopt a law on the succession rights of women.
- ▶ Increase the punishment for marital rape.

Institutional reforms: Adopt mechanisms to recognise the rights of women in traditional/customary marriages while campaigning for civil marriages.

¹⁰⁰ <https://www.equalitynow.org/discriminatory-law/burundi-decree-law-no-1-024-of-28th-april-1993-amending-the-code-of-the-person-and-the-family/> (accessed 17 April 2024)

¹⁰¹ <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/Burundi.pdf> (accessed 17 April 2024)