

November 2014

General situation of LGBTI people

Despite what many claim, homosexuality is not new to the African continent. There is documentation of same sex sexual practice and gender transgression in all places and at all times throughout history.

The situation of LGBTI (lesbian, gay, bisexual, transgender and intersex) persons in African countries is generally very difficult. Over 35 countries in Africa criminalise certain same-sex sexual acts and few have any anti-discrimination or other supportive legislation. The psychosocial impact of living under criminal laws is huge and the consequent and continual threat of arrest or violence constitutes in itself a violation of the right to peace, safety and security of the person. The impact includes depression, anxiety, substance (drug and alcohol) use and addiction with social and psychological consequences for those affected. Living openly, or even just being perceived as an LGBTI person, often brings a risk of getting rejected when applying for employment, housing and education as well as being denied access to food and health care, including SRHR services and information. This exclusion and marginalisation contributes to poverty and leads to further vulnerability and constitutes a violation of the socio-economic and political rights of those who suffer these oppressions. Loss of social networks, in terms of supporting families or the support from state institutions, also contributes to poverty.

In recent years, LGBTI movements and persons on the African continent have become more visible and vocal in claiming acceptance and rights. At the same time, many African countries have experienced a backlash, in terms of human rights of LGBTI persons, fuelled by religious fundamentalism. One of the most extreme examples is Uganda, where evangelical pastors from the US have paired up with homophobic politicians to spread anti-LGBTI propaganda. The same development is visible in other African countries, not at least in middle and central African countries.

Legal and human right instruments

Constitutional provisions and legal framework

As of 2014, 36 countries in Africa criminalise certain same-sex sexual acts. In most cases through so called 'sodomy laws', often introduced during the British colonial rule and kept after independence, criminalising anal sex or "sex against natural order". The extent to which the legislation is implemented varies between countries. Men have mostly been targeted in this colonial-inherited legislation, but in more recent legislation women are also targeted. Trans-gender persons are rarely mentioned in laws, as focus is often on the same-sex acts, but are still often a target for arbitrary arrests and accusation of homosexuality. Few countries support trans-gender persons with medical support to undergo sex correction and there are few countries that have any anti-discrimination legislation in support of trans-gender persons. On the contrary, authorities often assume that trans-gender persons are homosexuals, and they face the same persecution, often targeted because of their visibility and non-conforming gender expression.

In countries where the penal codes are not implemented, 'sodomy laws' can still be used by authorities to legitimise harassments and arbitrary arrests and to deny LGBTI persons rights like freedom of expression or the right to organise, as well as everyday matters like custody of children, marriage or family insurance. In countries that do not have laws that explicitly criminalise homosexuality, authorities routinely use other laws to penalise or arrest LGBTI persons, e.g. disorderly conduct, public indecency, contempt of religion and prostitution. In countries where the penal codes are implemented, punishments range from imprisonment of varying lengths to the death penalty.

Legal	Illegal (male and/or female same-sex)	Death penalty	Anti-homosexuality propaganda laws
Benin, Burkina Faso, Cape Verde (2004), Congo, Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Gabon, Guinea-Bissau (1993), Madagascar, Mali, Mozambique (2014), Niger, Rwanda, São Tomé & Príncipe, South Africa (1998).	Algeria, Angola, Botswana, Burundi, Cameroon, Central African Republic, Comoros, Egypt (female unclear), Eritrea, Ethiopia, Gambia, Ghana (male), Guinea, Kenya, Lesotho, Liberia, Libya, Malawi, Mauritania, Mauritius (male), Morocco, Namibia (male), Nigeria, Senegal, Seychelles (male), Sierra Leone (male), Somalia, South Sudan, Sudan, Swaziland (male), Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.	Mauritania, Sudan, as well as 12 northern states in Nigeria and the southern parts of Somalia.	Gambia (2014), Nigeria (2013), Tanzania (2014) Uganda (2013, abolished 2014 but appealed and re-written to be presented in parliament).

Reference: ILGA, 2014, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults*

The accountability of governments in Africa for the Human Rights of LGBTI persons is generally very poor. Very few governments in Africa have shown themselves willing to make commitments to protect the rights of LGBTI persons.

Some countries are responding to the visibility of the LGBTI movement by sharpening their words against LGBTI rights. Uganda, Liberia, Zimbabwe and Mali are debating the limitation of the rights of LGBTI persons. Nigeria, Tanzania, Uganda and Liberia have passed laws against homosexuality, although the Ugandan law 2014 was repealed (at least temporarily). Some newly adopted constitutions (Kenya, Zimbabwe) explicitly discriminate LGBTI persons.

Yet, some progress on a political level can be found in other countries, especially in southern Africa. In Malawi, the new elected president seems to open up for a decriminalisation and in South Africa, the country with one of the most protective constitutions for LGBTI persons in the world, the LGBTI movement pushes the government to take action against the hate crimes. Mozambique has a labour code that prohibits discrimination on the basis of sexual orientation, but at the same time they are not allowing LGBTI organisations to register. Namibia is still criminalising same-sex acts through colonial

“common law”, while not implementing the legislation and allowing LGBTI movements to work freely. The (un-official) marriage of two men passed without interference from government and had some positive reviews in media.

Regional and international human rights instruments

During the past years, there have been several referendums in the UN on resolutions with reference to sexual orientation and the rights of LGBTI persons. The number of African nations that have raised their voices against LGBTI rights and voted against these resolutions is notable. South Africa is the African country mostly voting in favour of LGBTI rights at UN and other international level.

In May 2014, the African Commission on Human and Peoples' Rights adopted a resolution condemning violence based on sexual orientation and gender identity. The resolution calls on “State parties to ensure that human rights defenders are able to work in an environment free from stigma, reprisals or criminal prosecution as a result of their human rights protection activities”. It further urges States to recognise acts of violence and abuse by individuals and groups by enforcing appropriate laws prohibiting and punishing all forms of violence including those

targeting people on the basis of their sexual identities. They must also ensure the proper investigation and diligent prosecution of perpetrators and have the necessary judicial procedures to respond to the needs of victims. This resolution is a milestone, but it has yet to be followed up by most national governments.

Sexual and Reproductive Health and Rights, HIV/AIDS and Gender Based Violence

Where it is taboo to talk about sexuality in general, it is even more difficult to talk about homosexuality. It becomes a breeding ground for arguments about homosexuality being a western influence, a sinful lifestyle and a threat to the heterosexual family. So it is important to raise LGBTI issues within the sexual and reproductive health and rights (SRHR) field, to promote an understanding of homosexuality and trans-gender as a natural part of the complex spectrum of human sexuality and gender identity

When promoting a positive attitude to sexuality, it is also important to include the practices of women who have sex with women (WSW) and men who have sex with men (MSM), who may identify as heterosexual and/or trans-gender. Sexuality education in school that promotes a positive view of sexuality and of sexual diversity is essential for creating a society that respects the human rights of LGBTI persons.

Stigma and discrimination paired with health staff's lack of knowledge of LGBTI-related issues around sexual health and education means that LGBTI persons many times cannot access health care that is adequately adjusted to their specific and individual needs. Their sexual orientation or gender identity risks coming under scrutiny by health care workers who are both ignorant about and biased against their sexuality or gender identity. This vulnerability is often invisible in external (Western) analyses that are largely based on identity categories rather than on the lived realities, practices, patterns and trends in the contexts in which lesbian, gay, bisexual, and transgender people live.

Lesbian women might risk being discriminated against while attending family planning and other reproductive health services. LGBTI persons'

decision to have children is either frowned upon or used as an argument for the person to enter a heterosexual relationship. This pressure often also comes from their families and the rest of the community. The reality is that many lesbians and women who have sex with women also have intimate sexual relationships with men alongside their same sex relations because of the social stigma and the hostility towards their sexuality and gender identity.

Coherent with the global pattern, MSM and male to female transsexuals (MTF) in Africa are, in percentage, more affected by HIV than the general population, also in high risk countries where the prevalence for heterosexual persons is high. Marginalisation, self-stigmatisation, discrimination and lack of access to information and services make it more difficult for MSM and MTF persons to protect themselves from infection. HIV prevalence among MSM has been found to be as high as 25 per cent in Ghana and 43 per cent in coastal Kenya. MTF are often involved in sex-work, something which is also criminalised by many African countries, putting sex-workers at even higher risk of stigmatisation and arbitrary arrests.

In those African countries where information is available, research indicates that only 12 per cent of MSM have access to HIV services. Stigma, discrimination and fear of public exposure mean that these groups are less likely to access appropriate services. Furthermore, LGBTI groups are usually not included in National Strategic Plans and most countries in Africa have failed to report on MSM indicators.

Violence against LGBTI persons is increasing in countries where politicians and religious leaders are hostile (and thereby indirectly or directly legitimising violence), resulting in murders and "corrective rapes". Violence is often based on non-conforming gender identity or sexuality, also a form of gender-based violence. "Corrective rapes" often targets lesbians with masculine expression or transgender, FTM, persons or others that have non-conforming gender expressions.

Civil society organisations and institutions active in the LGBTI field

African LGBTI communities organise in various ways, depending on the specific conditions of the country in question. In countries where homosexuality is criminalised, LGBTI organisations are often not allowed to register as such. In these countries the organisations are often, but not always, small and ‘young’ and face many challenges to their growth and development. They sometimes work under other official names and titles, e.g. ‘HIV prevention’ or ‘women’s or human rights’, or operate as branches within larger and better-established LGBTI friendly organisations. In some countries, the LGBTI communities have not come to the point where they are able to demand LGBTI rights openly and officially, but prefer to work as social or health support groups. These organisations remain dependant on others for their survival and are often unable to act autonomously and without conditionality in funding. The restrictions that LGBTI-organisations work under often violate the right to freedom of association and expression and constrain the ability of the organisations to become true participants of the civil society, freely able to organise and advocate for and defend the human rights of LGBTI people.

To promote meaningful participation and empowerment of LGBTI persons, the LGBTI community generally needs

- Legitimacy, e.g. by participation in public dialogues, lobbying and sensitisation advocacy work with states and religious groups without fear of persecution, ability to articulate and address immediate rights violations of LGBTI people,
- Ability to monitor government decisions in terms of development and implementation of legislation and policy,
- Capacity development of organisations, and
- Systems to speedily and efficiently help human rights defenders of the rights of LGBTI people to mount defence, protection and emergency responses,

However, the needs and strategies of the LGBTI movement differ from country to country. All support should be provided in full cooperation and agreement with local activists.

Some important regional LGBTI organisations on the continent are:

CAL – Coalition of African Lesbians:

<http://www.cal.org.za/new/>

Pan Africa ILGA - gathering 41 organisations in Africa: <http://africa.ilga.org>

AMSHER – The African Men for Sexual Health and Rights: <http://www.amsher.org/>

S.H.E - The Social Health and Empowerment feminist collective for transgender and intersex women in Africa, a feminist body working on the African continent. Based in South Africa but working regionally with trans and feminist issues.

<http://transfeminists.org>

Iranti-org - is a queer human rights visual media organisation, formed with the clear intention of building local partnerships and movements that use media as a key platform for lobbying, advocacy and educational interventions across Africa. It works and educates regionally, though based in Johannesburg, South Africa. <http://www.iranti-org.co.za>

Other important supporting CSOs and institutions are:

Africagroups of Sweden –Swedish NGO, supporting HIV, SRHR and civil society organisations in 5 countries in southern Africa

The African Commission on Human Rights
www.achpr.org

HIVOS - a Dutch organisation, important funder of LGBTI organisations and allies. www.hivos.org

IGLHRC - the International Gay and Lesbian Human Rights Commission. It is supporting organisations on the African continent, e.g. with lobbying work within the UN system. It has a South Africa-based office www.ighlrc.org

ILGA - The International Lesbian, Gay, Bisexual, Trans and Intersex Association, an umbrella organisation gathering more than 670 member organisation world-wide: www.ilga.org

International HIV/AIDS Alliance

Panos Network - works to strengthen independent journalism and information flows for poor and marginalised people. Has several offices; in East Africa <http://www.panosea.org/>, Southern Africa <http://www.panos.org.zm/> and <http://www.panos-ao.org/>

RFSL, the Swedish Federation for the rights of LGBTQ persons. Organiser of global training Rainbow Leaders, active member of ILGA, partnership with several organisations globally: www.rfsl.se

SafAids - promotes effective and ethical development responses to Sexual Reproductive Health and Rights, HIV and TB through advocacy, communication and social mobilisation. <http://www.saf aids.net/>

UHAi- Provides grants and capacity support to sex worker and lesbian, gay, bisexual, transgender and intersex (LGBTI) organisations in the five East African countries: Burundi, Kenya, Rwanda, Tanzania and Uganda. <http://www.uhai-eashri.org/ENG/>

What Sweden can do at the regional level? – 9 questions to discuss

There are enormous obstacles for LGBTI people to take part in the democratic processes, through which human rights and individual freedoms can be realised such as civil, economic, social, cultural and political development. Regional level programmes have great potential to support movements which are oppressed in their respective countries, to raise issues which are difficult at the national level and to encourage regional action in the African Commission for on Human and Peoples rights and in the UN system. In line with the Swedish regional strategy the following questions could be discussed:

- Could Sweden do more to keep updated on the legal and security situation and the judgements and priorities of the LGBTI movements in the region? Offer protection to activists and organisations at risk? Monitor and participate in trials against LGBTI persons and LGBT organisations?
- Could Sweden do more to systematically influence regional mechanisms that have the potential to engage with sexual orientation and gender identity issues (SOGI)? E.g. by raising LGBTI rights in dialogue with regional human rights organisations and institutions and supporting the capacity development of the National Human Rights Institutions (NRHI) to enhance their understanding and work to protect and promote the human rights of LGBTI people.
- Could Sweden do more to enhance the capacity of regional LGBTI actors and activists by supporting regional networking and capacity development of Human Rights and LGBT organisations and to encourage synergies and experience exchange?
- Could Sweden do more to support embassies and consulates in the region to develop their capacity and interest to address LGBTI rights within country level strategies and portfolios?
- Could Sweden do more to include LGBTI organisations in social, cultural and professional events and encourage embassies and consulates to do the same?
- Could Sweden do more to include SOGI issues and LGBTI rights in on-going regional level programmes and in negotiations of new programmes (e.g. in cultural, legal/judiciary capacity building, anti-corruption, police training/correctional services and human rights programmes)?
- Could Sweden do more to bring up anti-discrimination, codes of conduct and labour legislation, with the aim of reducing discrimination against people based on sexual orientation or gender identity in the private sector?

- Could Sweden do more to promote inclusion of LGBTI persons in SRHR, HIV/AIDS and GBV initiatives? Especially gender non-conforming transgender and intersex persons?
- Could Sweden do more to facilitate and support LGBTI reporting in Universal Periodic Reviews (UPR), shadow reports and other UN and African Union instruments?

For further advice on dialogue regarding LGBTI issues, download the [Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). Also refer to the [EU tools](#) and guidelines in the reference list.

References and reports

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EU news, tools and guidelines: http://eeas.europa.eu/human_rights/lgbt/index_en.htm

The EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#)

The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, guidance notes have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.