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General situation of LGBTI people

LGBTI issues remain a taboo topic in Mali. LGBTI persons are completely hidden and often live double lives. Same-sex sexual activity is not explicitly prohibited in Mali, although while technically legal, the prevailing culture, ancestral traditions and religious beliefs of most Mali citizens view same-sex sexual activity and non-traditional gender roles as immoral and evil acts.

In Gao, jihadists enforced sharia rule amputating limbs, flogging and executing criminals, including men who were alleged to have had sexual relations with other men. Two men, who were bound, beaten, interrogated, and due to be executed for homosexuality were saved by French air strikes that drove out the Islamist rebels in January 2013.

Social discrimination is widespread and laws against public indecency may be used against LGBTI people. As many as 98% of Malian residents believe that homosexuality should be rejected by society (Pew Global Attitudes Report 2007), which was the highest rejection rate of homosexuality in the 44 countries surveyed. In 2011, the African LGBTI online magazine, *Behind the Mask*, cited a doctor working with HIV and men who have sex with men (MSM) in Mali, who stated that 95% of the population will not accept MSM in their families.

The strongest voices against LGBTI rights come from fundamentalist religious groups. This is most evident during election cycles. Religious groups attempt to influence politicians to fight homosexuality by portraying it as societal decay and the failure of government. There are no publicly visible LGBTI organisations in the country and the free association and establishment of LGBTI organisations has been impeded by a law prohibiting association “for an immoral purpose”.

In 2010, Mali was removed from the French list of ‘safe countries’. The status of ‘safe countries’ indicates that the country respects the principles of democracy and the rule of law, as well as human rights

and fundamental freedoms. This further compromises the safety and security of LGBTI people in Mali.

Legal and human rights instruments

Constitutional provisions and legal framework

The Malian Constitution guarantees freedom of association, although in practice, this right is not always respected as there is a law prohibiting association “for an immoral purpose”. According to a report by the US State Department, the Governor of the District of Bamako cited this law in 2005 to refuse official recognition of an LGBTI rights association, and from this point, the law can be regarded as violating the freedom of association of LGBTI people. The Police have also violated LGBTI individuals’ right to freedom of assembly, according to the US Human Rights Report.

The legislation in Mali does not explicitly prohibit homosexuality or same-sex acts, however, provisions against sexual offences (for example, indecency and immorality) are regularly cited where individuals’ diverse sexual and/or gender identities are suspected or expressed. There is no anti-discrimination or hate crime legislation that protects LGBTI people from harassment and abuse on the basis of their sexual orientation and/or gender identity. There is also no legislation on gender recognition or other rights for transgender or intersex people who may wish to change their legal documents.

A new family law was adopted in 2012, enforcing that marriage should only be permitted between a man and a woman. The 2012 family law also forbids homosexual persons to adopt children. A formal reference to this group is a (first ever) recognition of their existence. It also of course represents their stigmatisation and moral rejection by the majority of the population.

The law is not considered by civil society organisations to be favourable to children’s and women’s rights, nor in compliance with the Constitution. Its le-

gal standing is unclear as it was never signed by the president.

There is also a National Human Rights Commission, which is about to be reformed. A draft law for a new commission with a stronger mandate is expected to be presented in parliament 2014. The Commission will have the mandate to monitor and report on human rights violations in Mali. The EU delegation is the main donor of the Commission, but the Danish Institute for Human Rights has also supported the reform process of the Commission and the Ministry of justice together with The UN High Commissioner's office for HR and MIUSMA (UN joint program). The Danish Institute for Human Rights also supports program concerning access to justice/paralegals through national legal aid/human rights organisation "*Deme So*" and capacity development for the police. Sweden is lead donor in these human rights efforts.

Regional and international human rights instruments

Mali is a member of the UN and has ratified many of the main international human rights instruments. As such it is bound to fulfil, protect and respect the rights enshrined in these instruments. All Malians may turn to the UN Human Rights Committee through procedure 1503, to the Special Rapporteurs for violations of specific human rights, to ECOSOC for women's rights violations, and use the UNESCO procedure for human rights violations in UNESCO's fields of mandate. Mali is also a member of the African Union and its citizens and NGOs may file complaints to the African Commission on Human and Peoples' Rights. All of these instruments could be used to hold Mali accountable to better ensure LGBTI rights.

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." Additionally, States are urged to no longer tolerate acts of violence and abuse by executing laws to prohibit and punish these forms of violence directed toward people on the basis of their sexual identity. States are advised to investigate and

prosecute perpetrators of violence and have the necessary judicial means to support victims. This resolution is a milestone, but it has yet to be followed up at national level.

In November 2010, a majority of the UN Assembly voted in favour of an amendment that removed the reference to sexual orientation from a resolution that condemned extrajudicial, summary and arbitrary executions and other killings. The UN votes on the resolution every two years and the resolution had contained a reference to sexual orientation since 1999. Mali and Morocco introduced the amendment that called for the words 'sexual orientation' to be replaced with "discriminatory reasons on any basis". Homophobia and transphobia are often the motives for extrajudicial killings, and the removal of the definition will make it even more difficult to ensure that states live up to their legal obligations.

Mali was also one of the countries that voted directly against the UN Declaration on Sexual Orientation and Gender Identity in 2008.

Sexual and Reproductive Health and Rights, HIV/AIDS and Gender-based Violence

The political and social climate does not favour major changes in laws and policies regarding SRHR. The occupation and conflict in Northern Mali resulted in increased sexual violence and cruel sharia punishment and this also affected the LGBTI population. LGBTI persons must hide their sexual orientation because even the least suspicion of same-sex activity can lead to abuse, disgrace, and dishonour.

The fear of discovery often leads MSMs to avoid medical care in the event that they contract an STI or HIV infection, which has resulted in a drastically higher HIV infection rate among this group than the general population. According to ARCAD/SIDA, an organisation in Mali that provides healthcare for MSM and supports people living with HIV/AIDS, in Bamako, the capital of Mali, screening tests carried out in 2008 on a few hundred MSMs revealed that the infection rate was around 37%, compared to official statistics of the national infection rate among the general population at 1.3%. The spread of infection among LGBTI communities is exacerbated by the

fact that 77% of the MSMs questioned admitted to having unprotected sex.

Mali and Senegal are the only countries in French-speaking Africa that have included MSM as a component in their proposals to The Global Fund to fight AIDS, Tuberculosis and Malaria. MSM, transgender people, and other sexual minorities are among the groups and communities most affected by HIV/AIDS around the world.

Mali has also to some extent reported on MSM indicators to the UNGASS survey (Declaration of Commitment on HIV/AIDS). Available statistics show that 53.9 per cent of MSM reported the use of a condom the last time they had anal sex with a male partner (2009) and that 17 per cent of MSM were HIV positive (2007).

A 2008 study on risk factors among MSM who engage in selling sex in Mali recommended that MSM “should be trained to negotiate or propose condom use”, information that can be used when arguing for the inclusion of MSM as a most at risk population in the National Strategic Plan on HIV/AIDS.

Gender-based violence is a major issue for women in Mali, including lesbian and bisexual women. Emotional, physical, and sexual violence is also perpetrated against MSM, transgender and intersex people, and sex workers as a form of humiliation and discrimination against their sexual and gender identities. Such violence increases their risk for HIV; however, healthcare providers have been slow to address violence against LGBTI people, either being unaware of their vulnerability to violence or reluctant to address these health and social issues.

Civil society organisations and institutions active in LGBTI work

In 2005, an initiative was taken to form an LGBT organisation, however, the application for registration was denied, with reference to the ‘illicit purpose’ of the group. Media reported the incident using degrading language and, from an article in *Le Carnard* (27 July 2005), it is understood that the person who made the application, prior to the event, was hospi-

talised after having been severely beaten by his neighbours.

There are no known LGBTI organisations working in Mali, although there are some NGOs providing medical and support programmes focusing specifically on MSM.

What Sweden can do – 6 questions to discuss

Within the broader context of support to democracy, human rights and gender equality in Mali, Sweden has opportunity to include issues related to the rights of LGBTI people and their access to justice. When addressing LGBTI perspectives in a non-supportive government context like Mali, it is very important to consult local HIV/AIDS or Human Rights organisations to make sure not to conflict with their work and cause unnecessary backlashes. Questions to consider:

- Could Sweden do more to stay updated on the legal and security situation and the needs and priorities of the LGBTI population? Could Sweden consider offering protection to activists and attend court cases?
- Could Sweden do more to seek strategic alliances with likeminded donors to discuss a common agenda on LGBTI rights?
- Could Sweden do more to encourage that LGBTI persons’ rights become part of the UN programmes (and other joint donor initiatives) dealing with human rights, reconciliation, peace and security (e.g. United Nations Multidimensional Integrated Stabilisation Mission in Mali - MINUSMA)?
- Could Sweden do more to encourage and support mainstream Human Rights organisations and institutions (e.g. the national Human Rights Commission) to include LGBTI rights in their advocacy and monitoring, both nationally and regionally? Shadow reporting to the UN?
- Could Sweden do more to encourage partners to include LGBTI persons and the MSM group in

supported SRHR initiatives or work with HIV/AIDS?

- Could Sweden do more to encourage partners to include LGBTI persons in gender-based violence initiatives (e.g. UN Women)?

For further advice on dialogue regarding LGBTI issues, download [Sida's Human Rights of Lesbian, Gay, Bisexual and Transgender Persons - Conduct-](#)

[ing a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). Also refer to the [EU tools](#) and guidelines in the reference list. More specific advice and support measures, as well as contact information, can also be provided through ILGA or RFSL, should the Embassy wish for a dialogue.

References

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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.