

# The Rights of LGBTI People in Somalia

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## General situation of LGBTI people

Lesbian, gay, bisexual, transgender and intersex (LGBTI) issues are considered taboo and LGBTI people live under constant threat of violence and harassment. As in many African countries, religion plays a key role in Somali life and family structures, and homosexuality is considered by many to be a moral sin. Homosexuality is illegal and is punishable by up to three years imprisonment. However, individuals are often punished with flogging and in southern Somalia, same-sex acts can result in the death penalty.

LGBTI people in Somalia are silent and invisible, often facing violence and rejection from their families and communities that results in honour killings and suicides. There have been reports of gangs of armed men searching the streets for people suspected of being LGBTI, and many people have had to leave their homes because of their sexual orientation and/or gender identity. Some have fled to neighbouring countries to escape torture or honour killings, but neither Ethiopia nor Kenya look favourably on LGBTI issues – although there are some improvements in Kenya.

The political developments in Somalia since 2012 have been in a positive direction, with a new Government and a new President, however, there are on-going security problems in the country with continuing military and clan-related conflicts, subjecting large parts of the population to a greater risk of violence.

There are very few organisations working on human rights and democracy, and respect for human rights is often neglected. LGBTI people are discriminated against and marginalised in all aspects of Somali society and have little opportunity to exercise their rights.

## Legal and human rights instruments

### Constitutional provisions and legal framework

Somalia has not had a functioning government since 1991 and this has affected the enforcement of the Penal Code, with laws and punishments differing between regions. Somaliland in the north has declared itself independent, but the region still, generally, applies the Somali Penal Code. The southern part of Somalia is ruled by Islamic courts that impose Sharia law and punish same-sex sexual acts with the death penalty or flogging. The north-eastern region of Puntland seeks autonomy, and has its own courts and judiciary enforcing what could be described as a combination of Islamic Sharia law and the Somali Penal Code.

As a country engulfed in corruption, division, and war, the legal structure in Somalia is divided between civil, religious, and customary laws. The judicial system is derived from civil law, which asserts the primacy of Sharia Law or religious law. Even though, Sharia is mainly focused on domestic matters involving marriage, divorce, inheritance, and other civil issues.

Article 409 of the Penal Code criminalises same-sex sexual acts stating, "Whoever has carnal intercourse with a person of the same sex shall be punished, where the act does not constitute a more serious crime, with imprisonment from three months to three years." Carnal intercourse is defined as "penetration by the male sexual organ" (Article 398, para. 4). However, Article 409 also states that "Where the act committed is an act of lust different from carnal intercourse, the punishment imposed shall be reduced by one-third", allowing for the penalising of sexual acts between women. There are also provisions for increased punishments in article 400. Article 410 includes an additional security measure that may accompany sentences for same-sex acts, usually in the form of police surveillance to prevent "re-offending".

Having been ignored for so long, some human rights are now included and guaranteed in the Federal Constitution, adopted in August 2012, with a new

Ministry of Human Rights established in August 2013. However, there is no specific mention of sexual orientation or even "other status" through which LGBTI rights could be protected. Therefore constitutional protection of these rights is very weak if not absent. However, these rights are guaranteed under the ICCPR and other conventions to which Somalia is party.

A Human Rights Task Force was also established in February 2013 to strengthen the protection of individual rights. According to the UN's Independent Human Rights Expert on Somalia, local human rights protection has gradually improved as government institutionalisation and legislative reform have taken root.

Despite this, the rights of LGBTI people are not recognised anywhere in the national or regional penal codes. 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.

### **Regional or international human rights instruments**

Somalia 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 Somalis may turn to the UN Human Rights Committee through procedure 1503, to the Special Rapporteurs for violations of specific human rights, to CEDAW for women's rights violations, and use the UNESCO procedure for human rights violations in UNESCO's fields of mandate. Somalia 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 Somalia 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." It further urges States to recognize 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 at the national level.

In November 2010, Somalia voted on an amendment to remove sexual orientation (later reinstated) from a UN document calling on governments to prevent extrajudicial, summary or arbitrary executions. The amendment was adopted despite objections that homophobia and transphobia are often motives for extrajudicial killings, and that the removal of the definition would make it even more difficult to ensure that states live up to their legal obligations.

Somalia 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**

Due to years of war, conflict and lack of effective government, the health system is fragmented and underperforming with major deficiencies in basic funding and resources. Medical treatment for victims of sexual and gender-based violence and STIs are not universally available, so the sexual and reproductive health and rights of LGBTI people in Somalia are practically non-existent. There are enormous barriers to accessing healthcare and fact-based information, including poverty, lack of knowledge and awareness of the benefits of sexual health, poor quality services, unskilled and hostile staff, and fears of discrimination or arrest.

Somalia has one of the lowest HIV prevalence rates in Sub-Saharan Africa, but the discrimination against

individuals living with the infection is widespread. UNICEF has reported that individuals with HIV/AIDS are subject to physical abuse and rejection by their families, as well as workplace discrimination and dismissal.

Somalia has failed to report to UNGASS on any indicator concerning HIV prevalence and risky behaviour among men having sex with men (MSM). According to a UNAIDS report from 2010, the country has not made any substantial efforts to map out potential Most at Risk Populations (MARP), such as MSM. In all Somali regions, sexual orientation is a serious cultural taboo, which could impact on any MSM programming initiatives. UNAIDS reports that 'hot spot mapping studies' have shown that MSM is a common practice along the Djibouti-Somaliland border and is further associated with cross-border trafficking.

Much of the HIV/AIDS education and care is provided by international organisations where efforts at increasing MSM access to health and social services have largely been driven by community-based organisations, rather than nationally funded HIV/AIDS programmes. Criminalisation of same-sex acts increases the stigmatisation of LGBTI groups and severely hampers their access to healthcare and safer sex information.

Poverty, lack of safety and stability, and a little respect for LGBTI people means rape and other forms of sexual violence are common. Due to the stigma of rape among LGBTI people, rape survivors are often left with no support and perpetrators/rapists are rarely brought to justice. Rape and other forms of sexual and gender-based violence is widespread, as LGBTI people can not rely on the usual means of protection, such as family and community structures, and social and economic support networks.

### **Civil society organisations and institutions active in LGBTI work**

Somalia's lack of a functioning central government has created great difficulties in LGBTI advocacy work and there are no known LGBTI organisations active within Somalia. However, there are groups working to make a difference from the outside. In 2007, a

website called *Somali Gay Community* was established by a small group of Somalis living in the UK in an effort to build a supportive community. This launch led to a flood of threatening messages directed at the group, with attempts made to hack the new site. When local media in Somalia picked up the news, they received death threats with their telephone numbers and addresses published on a news website. The *Somali Gay Community* website is no longer available.

There are currently no specific transgender or intersex activists or advocacy groups in Somalia.

### **What Sweden can do – 8 questions to discuss**

Within the broader context of support to democracy, human rights and gender equality in Somalia, Sweden has a great 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 Somalia, it is very important to consult local HIV/AIDS or Human Rights organisations to make sure not to conflict with their work. Questions to discuss:

- Could Sweden do more to stay updated on the legal and security situation and the needs and priorities of the LGBTI movement? E.g. via regional networks and local human rights defenders.
- Could Sweden do more to offer protection to activists and attend court cases? To organisations at risk? E.g. through the framework of Human Rights Defenders.
- Could Sweden do more to seek alliances to develop appropriate strategies for engagement in LGBTI issues? E.g. how to engage in law reform programmes and how to encouraging mainstream programmes to become LGBTI inclusive (SRHR, human rights defenders).
- Could Sweden do more to promote and support human rights organisations and institutions to include human rights of LGBTI people as part of their agenda?

- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations, both nationally and regionally?
- Could Sweden do more to identify and support emerging LGBTI groups? Could the diaspora in Sweden be of help in this regard? It is important that any action taken is strongly connected with local organisations to avoid accusations of "foreign ideas".

Currently, discrimination in the labour market is a factor that greatly contributes to the marginalisation of LGBTI people, putting them at risk of poverty.

- In dialogues concerning private sector development, could Sweden do more to raise anti-discrimination, codes of conduct, and employment legislation, with the aim of reducing discrimination against people based on sexual orientation or gender identity?

The Swedish Strategy for Somalia also aims to work with health and gender equality. This could be a window of opportunity to start introducing the issues of LGBTI people's human rights and consequences of stigmatisation and discrimination in terms of access to health care and information, but also in other areas and aspects of poverty and marginalisation.

- Could Sweden do more to promote inclusion of gay, lesbian, bisexual, trans and intersex people and the MSM group in the supported health initiatives? In gender based violence initiatives?

For further advice on dialogue regarding LGBTI issues, download [Sida's 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.

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

EU news, tools and guidelines: [http://eeas.europa.eu/human\\_rights/lgbt/index\\_en.htm](http://eeas.europa.eu/human_rights/lgbt/index_en.htm)

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

ILGA Africa: <http://africa.ilga.org>

RFSL, *LGBT in Development, An introduction in how to include LGBT in programming in development* [http://www.rfsl.se/public/LGBT\\_in\\_development.pdf](http://www.rfsl.se/public/LGBT_in_development.pdf)

ILGA, 2014, *State-sponsored Homophobia: A world survey of laws prohibiting same-sex activity between consenting adults* (See updated version at [www.ilga.org](http://www.ilga.org))

[Sida's Human Rights of Lesbian, Gay, Bisexual and Transgender Persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#)

UD *Resultstrategy for Somalia 2013-2017*, <http://www.regeringen.se/content/1/c6/22/13/44/0fbcd4ba.pdf>

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.