

November 2014

General situation of LGBTI people

Same-sex acts are illegal in Sudan and South Sudan and societal discrimination is widespread against lesbian, gay, bisexual, transgender, and intersex (LGBTI) people. In Sudan, the overwhelming majority of the population considers non-conforming sexuality and gender expression socially unacceptable. Few people dare talk about sexual orientation or gender identity publicly, for fear of personal attacks and threats to their safety. There are reports of vigilantes targeting suspected LGBTI people for violent abuse and public demonstrations against homosexuality.

Criminalisation, discrimination and stigmatisation have made LGBTI people invisible; they often lack access to basic rights such as personal security, legal protection, and healthcare, and basic information about sexuality and sexual health. Regardless of the frequency of the implementation of so-called sodomy laws, their mere existence usually results in a more hostile social climate for LGBTI people.

In 2010, the President of South Sudan, Salva Kiir Mayardit, spoke of a nation of equal rights, democracy and justice. However, he asserted that no gay people existed in South Sudan and if homosexuality was brought into the country it would be “condemned by everybody”. Homosexuality, he stated, was not in the character of the people of South Sudan and was not a topic the public could speak about.

Religious influence plays an important role in the rejection and prohibition of homosexuality and same-sex sexual relations have created heated divisions within some religious communities.

In 2012, the Swedish Embassy met with LGBTI groups in Sudan to research the situation and needs of LGBTI people, concluding that sexual orientation and gender identity is a very sensitive issue to work on and requires high levels of discretion from activists. The preferred form of support is capacity-building activities, networking and exchange of information; and that security issues need to be constantly taken into account.

Legal and human rights instruments

Constitutional provisions and legal framework

South Sudan became independent from Sudan in 9 July 2011, but is still subject to its interpretation of Sharia law, under which same-sex acts were illegal, with punishments ranging from lashes to the death penalty. In 2008, the autonomous Government of Southern Sudan adopted its own Penal Code, which prohibits “carnal intercourse against the order of nature” punishable by a fine and sentence of up to ten years’ imprisonment. The 2011 Passports and Immigration Act, Section 15 on Refusal or Cancellation of Visa states: “*Without prejudice to the provisions of Section (14) above, a visa shall not be granted to an alien who - (6) is reasonably suspected to be entering South Sudan for the purposes of prostitution, homosexuality, lesbianism or human trafficking.*”

Sudan applies a judicial system based on Sharia law. Article 148 of the Sudanese Penal Code criminalises the act of ‘sodomy’ (anal sex by men with men and women) with punishment of 100 lashes and liable to five years’ imprisonment. If convicted for the third time, the offender is liable to life imprisonment or the death penalty. Article 151, ‘Indecent Acts’, criminalises anyone who “commits an act of gross indecency upon the person of another person”, where the punishment is 40 lashes and imprisonment of maximum one year, or a fine. Article 152, ‘Obscene and Indecent Acts in Public Space’, criminalises anyone whose conduct or clothing is in violation of public decency and can be punished with 40 lashes, a fine or both. Article 153, ‘Material and Expositions contrary to Public Morals’ and Article 156, ‘Seduction’ are used sometimes against LGBTI people.

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 in Sudan or South Sudan. 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

Sudan 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 Sudanese people 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. Sudan 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 Sudan accountable to better ensure LGBTI rights.

South Sudan is also a member of the United Nations and the African Union.

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, Sudan 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. Sudan 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

Promoting sexual and reproductive health and rights (SRHR) is inextricably linked to the promotion and protection of many other human rights. SRHR derive from the basic right of individuals to make decisions about their sexual lives free from any form of discrimination, coercion, or violence. There are serious shortcomings in both countries with regard to respect for human rights and there are no systems, frameworks or programmes to respond directly to the specific SRHR needs of LGBTI people in Sudan or South Sudan.

In 2014, the Sudanese Government reported to UNGASS that the HIV prevalence among men who have sex with men (MSM) is 2.38%, with only 20% of men using a condom the last time they had anal sex with a male partner, and 4.58% of MSM who received an HIV test in the previous 12 months and knew their results. Studies on HIV prevalence and related risk behaviour among MSM in Khartoum State were published by the International AIDS Society in 2005 (receptive MSM) and 2007 (insertive MSM), with prevalence found to be 9.3% among the first group and 7.8% among the latter. Both are high numbers compared to other at risk populations, with only 27.6% of respondents having used condoms consistently. The study concluded that the lack of preventive interventions directed towards the MSM group is "fuelling the HIV epidemic in Sudan".

In 2010, an estimated 128,000 people in South Sudan were living with HIV, accounting for around 3% of the population. Rates in Western Equatorial and in other southern regions of the country reached as high as 10%. Despite these statistics, activities relating to HIV/AIDS in South Sudan do not account for the needs of vulnerable groups, such as LGBTI people and MSM, and prevention continues to be challenging with existent criminalising laws and associated stigma.

Since its independence in 2011, extensive security problems in South Sudan remain. Armed conflicts and tribal clashes expose large parts of the population to great risk of violence. In recent years, hundreds of thousands of people have been forced to flee from fighting within the country and from conflicts in Sudan. Poverty, lack of safety and stability, and a low regard for LGBTI people means rape and other forms of sexual violence are common, as LGBTI people can no longer rely on the usual means of protection, such as family and community structures, and social and economic support networks.

According to a study from 2013, 70% of lesbian and gay people in Khartoum, Sudan, faced violence from families, society and the authorities, because of their sexual orientation and gender identity.

Civil society organisations and institutions active in LGBTI work

In both Sudan and South Sudan, civil society organisations are harassed, repressed, and freedom of expression is limited. In Sudan there are a few active but unregistered organisations and an online magazine. As of 2014, there are no LGBTI organisations in South Sudan and no specific trans or intersex activism in either country.

What Sweden can do – 7 questions to discuss

Within the broader context of the Swedish cooperation with Sudan and South Sudan with focus on increasing the knowledge of human rights, gender equality, SRHR and increasing the capability of civil society to work for human rights, 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 non-supportive government contexts like Sudan and South Sudan, it is very important to consult local LGBTI 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?
- Could Sweden do more to offer protection to activists and attend court cases? To organisations at risk?
- Could Sweden do more to seek strategic alliances and to raise LGBTI rights in the dialogue with the government? For example, discrimination and violations against LGBTI people could be raised as significant obstacles to democratic reform and human rights.
- 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?

SRHR or HIV/AIDS 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 HIV vulnerability, 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, SRHR and HIV/AIDS 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

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Results strategy for South Sudan 2014-16 <http://www.regeringen.se/sb/d/1390/a/229958>

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.