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General situation of LGBTI people

In Tanzania, social and political attitudes are very hostile towards lesbian, gay, bisexual, transgender and intersex (LGBTI) people, who face widespread discrimination that restricts their access to healthcare, housing, employment and justice. Same-sex sexual acts between men are criminalised and following that, the state cannot offer protection, but rather restricts LGBTI-persons human rights. The State does not recognise the rights of transgender or intersex people regarding change of legal gender or access to gender affirming treatments. Homophobia takes many forms in Tanzania, such as verbal, sexual, psychological, and physical abuse, intimidation; expulsion from school; discrimination at work; rejection and isolation from families, friends and communities and denial of healthcare services. In July 2012, one of the leading LGBTI activists and sexual health advocates, Maurice Mjomba, was murdered. His case was covered internationally, putting focus on the hate crimes against LGBTI persons. The case was never resolved.

In recent years, many LGBTI activists have been singled out and arrested on charges of debauchery, branded 'prostitutes' and 'vagrants' and charged with being commercial sex workers under Section 176(a) of the Penal Code. The activists have been detained for lengthy periods of time in local jails and denied bail as their offences were 'spreading' and should be dealt with without mercy. Following the statement by the UK in 2011 that it may withhold or reduce aid to governments that do not reform statutes criminalising homosexuality, there was a spike in violence against LGBTI people in Tanzania, as in several other African countries. The Minister of Foreign Affairs, and the President of Zanzibar reacted strongly, defending the legislation.

In 2013, Human Rights Watch and the Wake Up and Step Forward Coalition released a report including several detailed allegations of torture and abuse of lesbian, gay, bisexual, and transgender individuals while in police custody. The 98-page report, "Treat

Us Like Human Beings: Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania", documents abuses including torture, rape, assault, arbitrary arrest, and extortion. The organisations found that the fear of abuse is driving sex workers, people who use drugs, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) people away from prevention and treatment services. The two organisations also documented a wide range of abuses against at-risk groups in the health sector, including denial of services, verbal harassment and abuse, and violations of confidentiality.

The Tanzanian Commission for Human Rights and Good Government's prison visits in 2011 revealed that "unnatural offenses" were among the most common reasons for pretrial detention of minors. In the past courts have mostly charged individuals suspected of same-sex sexual conduct with loitering or prostitution (Country report on Human Rights Practices, 2013, US State Department).

Legal and human rights instruments

Constitutional provisions and legal framework

Since 1988, the Tanzania Constitutions contains a "bill of rights", including the right to equality. Article 12 states that all men are born free and are equal while Article 13 stipulated that all persons are equal before the law and are entitled without any discrimination, to protection and equality before the law. The constitution also protects against torture and degrading treatment, arbitrary arrests and guarantees the right to life and freedom of expression. It is likely that these basic human rights would remain in the proposed new constitution that is planned go to referendum in 2015. However, the Parliament seems to be able to adopt laws that violate the constitution. Therefore it does not have the intended weight.

In Tanzania, same-sex sexual acts between men are criminalised under the Penal Code, Sections 154 and 157, and are punishable with up to 30 years in prison. Although sexual relationships between women are not specifically mentioned, the legal situation is repressive for women, like for transgender and intersex people. The autonomous region of Zanzibar revised its criminal law in 2004; making same-sex sexual acts illegal between men (up to 25 years in prison) and women (up to 5 years in prison and a fine). LGBTI activists have reported the law being used and people have been sentenced to lengthy prison terms. The law forces the entire LGBTI movement to work underground and to take precautions in engaging with people outside of their networks, at the risk of being betrayed and convicted.

In March 2014, a Tanzanian Member of Parliament proposed a Bill to strengthen the criminalisation laws, claiming that existing laws are not strong enough and wanting a new law to punish people who “induce others” to become gay or “promote” homosexuality. So far it has not been passed.

There are no laws against discrimination based on sexual orientation or gender identity, nor protection against hate crimes based on sexual 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

Tanzania is a member of the UN and has ratified several of the main international human rights instruments. As such it is bound to fulfil, protect and respect the rights enshrined in these instruments. All Tanzanians 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. Tanzania 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 Tanzania accountable to better ensure LGBTI rights.

In 2009, The Centre for Human Rights Promotion with support from IGLHRC prepared a Shadow Report on human rights for LGBTI persons, in connection with the submission of Tanzania's fourth periodic report to the United Nations Human Rights Committee (UNHRC). The Committee urged Tanzania to decriminalise same-sex sexual relations between consenting adults and implement laws that protect sexual and gender minorities. When the Tanzania Human Rights Commission publicised and media picked it, a considerable backlash was taken against LGBTI people, especially those who had reported human rights violations for the shadow report. Several activists were arrested and harassed. During the Universal Periodic Review (UPR) of Tanzania in 2011, Slovenia, Sweden, and the United Nations Country Team (UNCT) urged Tanzania to decriminalise same-sex sexual activities and adopt legislation against discrimination, with the response that the Government would not accept that recommendation.

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 at (the) national level.

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

There is a marked silence and much work to be done to address the situation of LGBTI people regarding their sexual and reproductive health and rights. Entrenched discrimination and stigma, lack of information and resources, and restrictive attitudes to-

wards diverse sexualities and gender identities have ensured that many people are unable to access appropriate services.

Tanzanian men engage in same-sex sexual relations, despite criminalisation, even on Zanzibar, with stricter legislation. Without proper prevention strategies men who have sex with men (MSM) risk further spreading the HIV virus. Since 2007, the country's strategic framework on HIV/AIDS includes MSM as a vulnerable group. The framework has included efforts to develop services, interventions and studies, but it seems that little or no action has actually been taken regarding MSM. Tanzania has not reported on MSM indicators to UNGASS. HIV in relation to MSM is an under-researched field in Tanzania, as in most other countries in Africa. One of the few accessible studies on rates of HIV amongst MSM in Tanzania, "the Tanzania HIV and Malaria Indicator Survey" (THMIS, 2008) suggests a prevalence rate of 12.4%. This corresponds with other figures from the region that point to disproportionately high rates amongst MSM, compared to the population at large. This has also been confirmed by more recent data.

Gender-based violence targeting LGBTI people is frequently extreme and condoned or even carried out by the Police and other State institutions. Following attacks or forced sexual encounters, LGBTI people often choose not to engage with health services or the Police for fear that they may be arrested or denied treatment. For some LGBTI people, they report the attacks as other crimes instead of sexuality or gender-related violence to get the necessary medical treatment.

Civil society organisations and institutions active in LGBTI work

There are a number of organisations or groups working for the enhancement of LGBTI rights in Tanzania. The movement is still weak and fragmented, but positive signs of empowerment are noted. Most of the LGBT organisations identified are situated in Dar es Salaam and the majority of the donor funding is directed at these LGBT organisations.

In general the organisations face problems in operating openly and cannot be registered properly. The entry point for most of the LGBTI related actors is to work with health rights, which has proved to be the most assessable way to operate, grow and take the issues of concern forward. When the Ugandan anti-gay legislation was discussed in international media also some issues were raised in Tanzania, even though limited. In connection to this event a CSO was banned by the authorities and had to go underground.

What Sweden can do? – 10 questions to discuss

Within the broader context of the Swedish results strategy for Tanzania, with particular focus on strengthening civil society and public sector capacity, enhancing understanding of human rights and increasing access to education, work and sustainable livelihoods, Sweden could include issues related to the rights of LGBTI people. When addressing LGBTI perspectives in a non-supportive government context like Tanzania, it is very important to consult local LGBTI organisations to make sure not to conflict with their work and causing backlashes. Such consultations are already ongoing within the framework of EU and Nordic engagement.

Questions to discuss:

- Given the high sensitivity of the topic, risks involved and the overriding potential backlash – could Sweden do more to assist in coordinated and responsible approaches within the international community?
- Considering the widespread homophobia in Tanzania, which could (intentional or unintentional) spark heated feelings and widespread violence towards LGBTI persons and organisations, could Sweden do more to curb this negative potential in cooperation with Tanzania?
- 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 contribute to the protection of organisations at risk?
- 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 include LGBTI organisations in social and professional events/networks and in programmes focussing on civil society capacity development and/or human rights enhancement?
- Could Sweden do more to encourage inclusion of LGBTI rights in accountability mechanisms (e.g. law reforms and national human rights institutions mandate and monitoring)?
- In dialogues concerning private sector development and job creation, 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?

- In education reform programmes, could Sweden do more to include measures against discrimination of LGBTI persons and practices of expelling students on various discriminatory grounds, including sexual orientation or gender identity?
- Could Sweden do more to encourage SRHR, HIV/AIDS and gender based violence initiatives to include gay, lesbian, bisexual, trans and intersex people and the MSM group?

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.

General References

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

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

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](#).

Tanzania specific references

Centre for Human Rights Promotion, 2009, *Shadow Report on human rights for LGBTI persons in Tanzania*, <http://iglhrc.org/sites/iglhrc.org/files/290-1.pdf>

Human Rights Watch and Wake Up and Step Forward Coalition, 2013, *"Treat Us Like Human Beings: Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania"*, <http://www.hrw.org/reports/2013/06/18/treat-us-human-beings-0>

Immigration and Refugee Board of Canada (IRB) *Report on LGBTI rights in Tanzania* <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=topic&docid=540421f24&skip=0&tocid=50ffbce40&toid=50ffbce454&querysi=Tanzania&searchin=title&sort=date>

Office of the High Commissioner of Human Rights, 2012, *Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law*, <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

Web-page of IGLHRC <http://iglhrc.org/content/tanzania-arbitrary-arrests-and-detentions-gay-and-lesbian-activists>

The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, briefs 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.