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General situation of LGBTI people

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people in Zambia live in constant fear of arbitrary arrests and discrimination in the education system, job and housing markets, and access to services, as well as social attitudes toward LGBTI people are mostly negative. Further, due to discrimination within the Health Service Delivery the health needs of the LGBTI community have not been addressed as well, something that also takes on toll on psychological health. The Penal Code reinforces stigma and homophobia, leading to other forms of human rights abuses, such as violence and hate crimes. In addition, extortion and blackmail of gay men is a problem, and it is not uncommon that it occurs with police participation.

According to activists, the situation for sexually diverse and gender-variant Zambians continues to deteriorate. Those accused of 'practicing' sodomy are arrested and outed in online media blogs with vicious carelessness, beaten, and kicked out of their homes and schools. LGBTI Zambians, their defenders and allies continue to live in constant danger and fear of arrests owing to their real or perceived sexual orientation and gender identities and the work they are involved in – allies of this community are not spared but also continue to face intimidation, arrests and harassment at the hands of the State.

Since early 2014, the social, cultural, legal and political landscape has worsened for LGBTI individuals. For the first time since Independence, sodomy laws targeting consenting same-sex adults have been invoked, precedence has been set in the Zambian Courts through litigation and convictions of various 'sodomy-related cases' and the judiciary continues to use the sodomy laws to mete out stiffer convictions.

Government politicians have repeatedly made homophobic and transphobic statements. Increasingly hostile statements made by political leaders have threatened Zambian LGBTI activists and influential clergy who refuse to address health-related

Issues concerning LGBTI people, stating that they will not promote lifestyles that are outlawed by the country's Constitution, and that sexual orientation and gender identity are not human rights issues.

In June 2014, Zambia reiterated its position of not recognising LGBTI rights that allegedly run counter to the country's culture and are an affront to the Constitution, which acknowledges Zambia as a Christian nation. The Deputy Minister of Foreign Affairs, Gabriel Namulambe, also urged foreign missions accredited to Zambia to respect its Christian values and the views of the country on LGBTI rights.

Legal and human rights instruments

Constitutional provisions and legal framework

The Zambian Penal Code explicitly criminalises same-sex sexual relations between both men and women. In 2005 the Zambian penal code was amended to, clearly outline the penal code for males, females and children separately who engage in homosexual acts i.e. "act of gross indecency with a female child or person" (section 158). Also, section 155a states that it is criminalised for "any person who has carnal knowledge of any person against the order of nature" and this could be interpreted to include women, transgender and intersex people as well. Gay and bisexual men have been arrested and charged under the code, however, most cases do not reach conviction but rather require financial settlements outside of court.

While there is no legislation protecting LGBTI people from discrimination, there is implicit protection against discrimination in the anti-discrimination clause in Article 23 of the 1996 Zambian Constitution. According to Article 23(1), "no law shall make any provision that is discriminatory either of itself or in its effect". Article 23(2) further prohibits discrimination "by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority", and Article 23(3) de-

defines discrimination as extending to differential treatment of people on the basis of “race, tribe, sex, place of origin, marital status, political opinions, color or creed”.

For transgender people trying to access gender-affirming treatment, formally there is no possibility to change legal documentation to reflect their identity. Neither have intersex people no legal recognition in Zambian law.

Since 2011, there has been a process of revising the Constitution. A final draft was released in October 2014 but is still not adopted – and reports indicate that it may still be debated. In the draft it is stated that the constitutional rights do not apply to those “*that are repugnant to the morals and values of the people of Zambia*” and also states that everybody above 19 years has the right to “*choose a spouse of the opposite sex and marry*”.

In 2012, UN Secretary General, Ban Ki-Moon, visited Zambia and spoke about the Constitutional drafting process, including sexual orientation as something to be addressed in the new “people-driven Constitution”. The Government reacted by stating that it had no plans to change the legislation, nor did it concur that LGBTI rights are enshrined in international law. Even human rights institutions like the Human Rights Commission of Zambia (HRC) opposed the draft Constitutional provisions, such as Article 27 that provided protection from discrimination for marginalised groups, arguing “as this Constitution is supposed to be a reflection of the will of the Zambian People, the Human Rights Commission acting in the interests of the Zambian people is bound to raise certain concerns. It must be noted that human rights are universal but their enjoyment is not absolute. It is subject to the cultural, moral, religious, legal, economic and social context of the community/country in which they apply. Limitation of the enjoyment of individual human rights is permissible for the protection of the greater good of society.”

Since Ban Ki-Moon’s visit, debates in the media have been frequent and hostile, and have resulted in continuing violence and harassment of LGBTI people. The Law Association of Zambia (LAZ) has stated that

it is impossible to respect LGBTI rights as long as the current legislation criminalises same-sex acts, and that people who engage in protecting LGBTI rights face penal sanctions. Zambia’s laws concerning homosexuality not only violate international conventions that Zambia has committed to, but reinforce negative social stigma and homophobia against sexual and gender non normative behaviour

Regional or international human rights instruments

Zambia 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 Zambians 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. Zambia 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 Zambia accountable to better ensure LGBTI rights. Of special relevance is that Zambia has committed to uphold the International Covenant on Civil and Political Rights (ICCPR), where

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.

The UN Human Rights Committee has urged Zambia to repeal the relevant provisions in the Penal Code, and the Human Rights Council has also recommended that the Penal Code be amended to decriminalise same-sex activities between consenting adults.

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

The barriers affecting access to Sexual and Reproductive Health and Rights (SRHR) for LGBTI people are multiple and complex, linked to a combination of lack of resources and information, cultural norms, or gender inequality. There is a great need for increased awareness of, and access to, sexual and reproductive health services and rights as there is a reluctance to provide information due to cultural and religious expectations. There is inadequate SRH information, support and resources available in schools and in the community and young women, in particular, are not empowered to make informed decisions about their SRH.

Men who have sex with men (MSM) are twice as likely to be HIV-positive than the general population in Zambia. There are few if any HIV prevention programmes aimed at MSM, who lack accurate prevention strategies and information, engage in unsafe sex practices, and risk further spreading the epidemic through the common misconception that HIV cannot be transmitted through anal intercourse. The National Health and HIV/AIDS Plans for 2011-2015 do not address these risks explicitly. In the report to UNGASS in 2014, the government report stated, "There is limited information and data available due to the legal status" but admits that MSM, together with other groups most at risk are "disproportionately affected". Interestingly, it states that MSM behaviours are currently not a main contributor to annual HIV incidence".

Panos Institute Southern Africa (PSAf), in 2014 undertook a study on the existence of sexual minorities in Zambia, investigating characteristics of LGBTI persons and HIV prevention.

The LGBTI group, Friends of Rainka, has previously attempted to carry out an MSM research/prevalence study but the National AIDS Council refused to endorse such a study. As a result, most at risk populations and hard to reach vulnerable groups, such as MSM and transgender people, will not be included in the National Prevention/Intervention programmes. Some LGBTI health services are provided through a partnership between Friends of Rainka and the Planned Parenthood Association of Zambia,

Gender-based violence continues to be a problem in Zambia with the number of reported cases increasing. Even with the Anti-Gender-based Violence Act (2011), violence against LGBTI people is widespread and often based on non-conforming gender identity or sexuality. The definition of rape in the Zambian Penal Code is limited to "unlawful carnal knowledge of a woman or girl", excluding transgender and male rape victims. Due to the on-going criminalisation of homosexuality, laws and policies do not adequately protect LGBTI communities from the potential gender-based violence that they are exposed to. Many individuals risk coming under further scrutiny from ignorant, hostile or prejudiced healthcare workers as a result of gender-based violence experienced because of their sexuality and/or gender identity.

Civil society organisations and institutions active in LGBTI work

LGBTI organisations cannot legally register as NGOs. The government has repeatedly warned against anyone supporting or attempting to register an LGBTI rights organisation. Due to this persecution, the LGBTI movement was forced to go underground but has reformed in recent years.

What Sweden can do – 9 questions for discussion

Within the broader context of support to democracy, human rights, health, economic empowerment and gender equality in Zambia, 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 Zambia, it is very important to consult local LGBTI organisations to make sure not to conflict with their work.

Questions to consider:

- 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 seek effective strategic alliances and continue to raise LGBTI rights in the dialogue with the government?
- 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 support to accountability mechanisms and rule of law programmes (e.g. law reforms, national human rights institutions and law enforcement staff capacity development)?
- In dialogues concerning private sector development, could Sweden raise anti-discrimination, codes of conduct, and employment legislation, with the aim of reducing discrimination against people based on sexual orientation or gender identity?
- Could Sweden do more to raise issues of discrimination in economic empowerment, education and skills training in order to ensure that LGBTI persons are not excluded or denied access to programmes?
- Could Sweden do more to include gay, lesbian, bisexual, trans and intersex people and the MSM group in supported SRHR and GBV 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](#). 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. Also refer to the [EU tools](#) and guidelines in the reference list.

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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, 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.