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## General situation of LGBTI people

Attitudes among the Congolese public are not friendly towards lesbian, gay, bisexual, transgender, and intersex (LGBTI) people. Several LGBTI activists claim that the society is extremely homophobic and transphobic and that they cannot be open about their sexual orientation or gender identity with their families or at work. In eastern Congo, the experiences of the Swedish organisation, Kvinna till Kvinna, (Woman to Woman) is that LGBTI people experience extreme discrimination, violations, and threats. Even minor deviations from traditional gender roles can cause violence or attempts to erase the existence of LGBTI people, making them silent and invisible.

Diverse sexual and gender identities are taboo, and those who are open about their experience face violence, hostility, widespread discrimination, rejection, social exclusion, and harassment, with LGBTI people lacking real support services. Cross-dressing or challenging gender norms in other ways can result in violence or harassment and Congolese activists have given personal examples of the hardships they encounter being homosexual or transgender in the DRC. They give evidence of widespread discrimination and that their families and communities often reject them and subject them to threats, rejection, and insults. Assault and rape is commonly reported. Respondents suggest that lesbian and transgender people are particularly exposed to sexual violence. Religious institutions play a major role in spreading homophobia. The widespread cultural belief in witchcraft, "La sorcellerie", is a threat to the rights of LGBTI persons, when homosexuality is often linked to witchcraft.

In many parts of the country, LGBTI persons keep a very low profile, often outwardly conforming to the norm (by being married and having children, for example) but keep their same-sex sexual relations outside the marriage. In Kinshasa, like often with larger cities, it is reported that there is more tolerance and it is easier to organise and have social gatherings.

Few organisations work openly to protect the rights of LGBTI persons and members of these organisations are stigmatised and often accused of promoting homosexuality, especially outside Kinshasa. In Bukavu, members of one organisation have reportedly been victims of arbitrary arrest, of sexual violence, and of death threats to the extent that the President of the organisation fled abroad.

There is currently no legislation governing homosexual activity. A draft bill has been prepared that would criminalise same-sex sexual acts. Discussion and passage of the bill would likely increase discrimination against LGBTI persons or persons perceived to be LGBTI, thereby exacerbating the country's poor record on human rights protection particularly in connection with sexual and gender-based violence.

## Legal and human rights instruments

### Constitutional provisions and legal framework

There is no explicit criminalisation of same-sex sexual acts in the DRC and it should be noted that it has never been illegal. However, some sources indicate that same-sex acts can be criminalised under the 'public decency provisions' in the Congolese Penal Code, Article 176. However, in practice, prosecutions are rare.

The DRC's Constitution guarantees equality (Article 12), non-discrimination (Article 13), and the right to privacy (Article 31). All of which is not secured for LGBTI persons.

As in neighbouring countries, the DRC has debated whether homosexuality should be criminalised or not. In November 2010, a proposal for a 'Sexual Practices Against Nature Bill' was discussed in the Parliament, but was not approved and is presently not under consideration. Such a law would, apart from criminalising same-sex sexual acts, violate the freedom of expression, freedom of organisation, and the right to privacy. This must be regarded as a serious back-

lash and threat to democratic progress. It is notable that the language used in the Bill was similar to that of the infamous Anti-Gay Bill in Uganda and it is reported that the Ugandan bill directly inspired MPs in both the DRC and several neighbouring countries, such as Rwanda, Burundi and Kenya.

There is no legal recognition of same-sex couples and the first paragraph of Article 40 of the Congolese Constitution explicitly defines marriage and the family as reserved for straight couples by stating, "Every individual has the right to marry the person of their choice of the opposite sex".

There is no anti-discrimination or hate crime legislation that protects LGBTI people from harassment and violence 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.

Traditions and customary laws can differ in different areas of the DRC, and yet have a very important role in practice. When working with customary law and gender, it is useful to bear in mind that sexuality and gender are perceived differently in different contexts.

The organisations Si Jeunesse Savait and Sexual Rights Initiative (SRI) notes in the shadow report to the 19<sup>th</sup> UPR session 2014 that "the state is committed to investigate and prosecute the military, police, intelligence officers involved in torture, killing, rape and other human rights violations but we find that this was not the case for lesbians gay bisexual, transgender and intersex Congolese"

### **Regional / international human rights instruments**

DRC 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 Congolese people 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. The DRC 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 the DRC accountable to better ensure LGBTI rights.

The UN General Assembly 2010 adopted a declaration of LGBTI rights, which was not supported or opposed by the DRC government. Similarly, they neither supported nor sponsored the Human Rights Councils 2011 resolution on LGBT right.

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**

The DRC has been embroiled in internal conflict for the last two decades with the health infrastructure dismantled during the armed conflict. The sexual and reproductive health of the Congolese people remains unaddressed and basic services were unavailable or inaccessible to the majority of the population with a dire situation in the eastern part of the country. The sexual and reproductive health and rights (SRHR) of LGBTI people face immense challenges, with the country recording some of the poorest SRHR statistics globally.

The 2014 Country report by DRC to UNAIDS presents an HIV prevalence of 17.9% and low access to health services among men who have sex with men

(MSM) in the DRC. The statistics they draw upon come from the non-governmental organisation, Progrès Santé Sans Prix (PSSP, Progress and Health Without a Price) in Kinshasa, an HIV service provision organisation. This follows global figures that show disproportionately higher rates of HIV among MSM compared to the general population, especially in low income countries where poverty and criminalisation lead to lack of information and less service to high risk populations. Without proper prevention strategies, MSM will continue to further spread the epidemic. Increased awareness about MSM and HIV can also be used to put LGBTI rights issues on the agenda, which makes it strategically useful to allocate resources for research on MSM prevention and prevalence.

The feminist organisation *Si Jeunesse Savait* reports that LBT women are at very high risk of family pressure, forced marriage, and sexual violence. It reports that the patriarchal structures require that even heterosexual women need to come with her husband /male partner to access reproductive service. LBT women who are in e.g. sex work can have hardship to access Kit pep or emergency contraception because they don't live with a man

As a result of the conflict, much of the population, including LGBTI people, has been subjected to systematic sexual and gender-based violence, which has been used as a weapon of war basically to humiliate and intimidate the enemy. The widespread sexual violence against women in eastern DRC is well documented and has led to a UN resolution to end it. Less known is the number of men who are also victims of extreme sexual violence and, in some areas, especially in eastern Congo, up to 22% of men are reported to have been raped. Many victims avoid seeking help because of the stigma and shame associated with being raped and it has been reported by hospitals and humanitarian organisations that people have died from untreated injuries after being sexually assaulted. Soldiers are believed to use the general taboo against homosexuality to humiliate LGBTI people by raping them.

## Civil society organisations and institutions active in LGBTI work

Lesbian, gay, bisexual, transgender and intersex people in the DRC often work underground and organisations take the form of loose networks rather than formal ones.

There is an LGBTI-inclusive feminist association based in Kinshasa, *Si Jeunesse Savait*, affiliated with the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). <http://www.mwasi.com/>

There are a number of smaller LGBTI organisations in Kinshasa, where acceptance and visibility of LGBTI people seems to be a bit higher than in the country as a whole. *Rainbow Sunrise Mapambazuko* is an LGBTI non-governmental organisation in Bukavu. Although they do not work openly, they are supportive of LGBTI members.

Another small LGBTI organisation is the *Movement for Promotion of Respect and Equal Sexual Rights (MOPRED, Mouvement pour la Promotion de du Respect et Egalité des Droits Sexuel en RDC)*, located in Goma and extends into the Grand Kivu (South and North Kivu). MOPRED aims to find strategies and means to support and help LGBTI communities in Goma; however, it is challenging as few organisations are willing to include LGBTI issues, even when it comes to HIV/AIDS, and it is difficult to access funding to do outreach.

Other relevant organisations are:

Lesbian Human Rights Commission (IGLHRC): <http://iglhrc.org/> ,

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

Diakonia: <http://www.diakonia.se/Har-finns-vi/Afrika/Kongo-KinshasaDRK/> ,

International Alert: <http://www.international-alert.org/>

## What Sweden could do? – 8 questions

Within the broader context of support to democracy, human rights, and gender equality in the DRC, Sweden has a great opportunity to include issues related to the rights of LGBTI persons. When addressing LGBTI perspectives in a non-supportive government context like the DRC, it is very important to consult local LGBTI organisations to ensure their work is not conflicted.

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 seek effective strategic alliances and continue to raise LGBTI rights in the dialogue with the government?
- Could Sweden do more to offer protection to activists and attend court cases? Could Sweden do more 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 civil society and human rights networking and capacity development support?
- 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?
- Could Sweden do more to include gay, lesbian, bisexual, trans and intersex people and the MSM group in the supported SRHR initiatives or work with HIV/AIDS?
- Could Sweden do more to include the LGBTI population 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.

## References

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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)

[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](http://eeas.europa.eu/human_rights/lgbt/index_en.htm)

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

## Specific references

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The Global Forum on MSM & HIV, 2010-11-03: *MSM Groups Mobilise Against DRC's Anti-Gay Bill*: <http://www.msmsgf.org/index.cfm/id/11/aid/2094>

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.