

Flygtningenævnets baggrundsmateriale

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Titel:	Democratic Republic of the Congo - Treatment of individuals based on their sexual orientation, gender identity and expression, and/or sex characteristics
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IRB – Immigration and Refugee Board of Canada

Democratic Republic of the Congo: Treatment of individuals based on their sexual orientation, gender identity and expression, and/or sex characteristics (SOGIESC) by society and authorities, including legislation, state protection and support services (2020–February 2022) [COD200957.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

According to sources, same-sex sexual acts (ILGA World Dec. 2020, 91; US 3 Dec. 2020) or "homosexuality" (UK 16 Feb. 2022) are not illegal in the Democratic Republic of the Congo (DRC) (ILGA World Dec. 2020, 91; UK 16 Feb. 2022; US 3 Dec. 2020). However, sources report that LGBT+ persons can (UK 16 Feb. 2022) or have been (ILGA World Dec. 2020, 91) charged under DRC's Penal Code (UK 16 Feb. 2022; ILGA World Dec. 2020, 91). A report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) on the human rights situation of LGBTIQ2 persons states that article 176 of the Penal Code "which criminalises activities against public decency" "has been used as the legal basis to criminalise LGBT persons" (ILGA World Dec. 2020, 91). Similarly, Freedom House's 2021 report notes that "LGBT+ people can be prosecuted for same-sex sexual activity under public decency laws" (Freedom House 3 Mar. 2021, Sec. F4). An article by Santesexuelle.cd, a website with information on sexual and reproductive health, reports that while [translation] "homosexuality" is not directly mentioned as a criminal act under DRC's Penal Code, sexual minorities rights defenders "fear" that "homosexuals can be harassed by the justice system" under article 172 which "specifies that all 'unnatural' acts or offenses can be punished with a sentence of three months to five years of imprisonment" (Santesexuelle.cd 2 Mar. 2021). A joint report [1] submitted by a coalition of NGOs for the UN's periodic review of the DRC's human rights record indicates that public decency laws may be applied to same-sex relationships and that [translation] "[t]hey are often used and applied to criminalize private same-sex relationships" (MOPREDS, et al. 1 Oct. 2018, 4).

DRC's Penal Code provides the following:

[translation]

Article 172:

A person who commits a moral crime by exciting, facilitating or promoting to satisfy the passions of others, debauchery or the corruption of persons of either sex under or apparently under the age of twenty-one years shall be punishable by a prison term of three months to five years and a fine of fifty to one thousand zaires [former currency].

The age of the person may be determined by medical examination, in the absence of a civil status.

...

Article 176:

A person who engages in activities against public decency shall be punishable by a prison term of eight days to three years and/or a fine of twenty-five to one thousand zaires. (DRC 1940)

According to the UK's Foreign and Commonwealth Office (FCO), "[t]here is no legal recognition of same-sex couples or same-sex marriage" (UK 16 Feb. 2022). A US Overseas Security Advisory Council (OSAC) report on crime and safety in DRC notes that DRC's law proscribes adoptions by same-sex couples (US 3 Dec. 2020). The ILGA World report indicates that same-sex marriage, civil unions, joint adoption, and second parent adoption are not recognized (ILGA World Dec. 2020, 325).

A report by ILGA World on the legal rights of transgender individuals indicates that the DRC does not permit transgender individuals to change their legal name and gender markers on official documentation (ILGA World Sept. 2020, 29).

A joint report [2] submitted to the UN on the rights of LGBTIQ+ persons in DRC indicates that Law No. 8/011 of 14 July 2008 (*Loi n° 08/011 du 14 juillet 2008 portant protection des droits des personnes vivant avec VIH/SIDA et des personnes affectées*) on the protection of the rights of people living with HIV/AIDS and persons affected is [translation] "currently" the only legislation that protects LGBTIQ+ individuals and it "mainly concerns" men who have sex with men (Oasis RD Congo, et al. [2022], 3). Law No. 8/011 of 14 July 2008 provides the following:

[translation]

Article 2:

...

5. Vulnerable group: a group of people at particular risk of HIV infection, including women, youth, sex workers, substance abusers, homosexuals, persons displaced by war, refugees, children and street adults;

... (DRC 2008)

Sources report that there are no specific laws protecting against discrimination based on sexual orientation (UK 16 Feb. 2022; Representative 11 Mar. 2022). The joint report notes that while [translation] "discrimination persists," "no legal or institutional action has been initiated by the Government of the DRC to protect the rights of LGBTIQ+ persons" (Oasis RD Congo, et al. [2022], 2).

2. Treatment of People of Diverse SOGIESC by Society

Le Monde, a France-based newspaper, reports that [translation] "homosexuality" "remains little accepted by society" (*Le Monde* 21 June 2020). The FCO notes that while not illegal, homosexuality "is frowned upon by many" and LGBT+ individuals "are known to be harassed" (UK 16 Feb. 2022). Similarly, the OSAC report states that "LGBTI individuals may experience harassment, as non-heterosexual relationships and personal identities remain a cultural taboo" (US 3 Dec. 2020). The joint report by the coalition of NGOs notes that LGBT people in DRC face human rights abuses and [translation] "increasing" discrimination and stigma (MOPREDS, et al. 1 Oct. 2018, 4). In correspondence with the Research Directorate, the Secretary Executive of Savie asbl, an association that fights against discrimination related to sex, gender, and sexual orientation (Savie asbl n.d.), indicated that LGBTQ+ activists and communities face "extreme" poverty, "persecution" by family members and state government officials, as well as political parties that sponsor "persecutions" of LGBT activities (Savie asbl 21 Feb. 2022).

In correspondence with the Research Directorate, a representative of Rainbow Sunrise Mapambazuko (RSM), an NGO that promotes the well-being of LGBTQI+ people in Bukavu (RSM n.d.), indicated that during the period from December 2021 to February 2022 six LGBTI youth were [translation] "forced to flee their homes" in the Nyamugo / Soko district of Kadutu commune in Bukavu by the police, two transgender individuals were physically and sexually assaulted, four LGBTI individuals were "abducted and subjected to inhumane treatment," and five cases of "arbitrary arrest due to sexual orientation" were reported (Representative 11 Mar. 2022).

The information in the following paragraph was provided in a report by Oasis RD Congo, an NGO based in Kinshasa that promotes human rights, gender, and sexual and reproductive health (Oasis RD Congo, et al. [2022], 1), covering the period from February 2019 to June 2020:

LGBT individuals experience [translation] "assault, extortion, blackmail, arrest and arbitrary detention." LGBT individuals are "sometimes" subjected to "'corrective rape'." "The majority" of sexual minorities "live with marginalization, stigma and discrimination." From February 2019 to June 2020, Oasis RD Congo recorded 226 cases of violations of human rights based on sexual orientation, identity, and/or gender expression in Kinshasa. Of the 226 cases, 32 percent were cases of physical violence, 22 percent were cases of discrimination, 16 percent were cases of rape, 11 percent were cases of "stigmatization," 9 percent were cases of arbitrary arrest, 9 percent were cases of "disclosure," and 1 percent were "other violations" (Oasis RD Congo [2020], vi, 1).

A report by Si jeunesse savait (SJS), an NGO based in Kinshasa that promotes the leadership of young girls in the areas of sexual and reproductive rights, and Sexual Rights Initiative (SRI), "a coalition of organizations that advocates for the advancement of human rights in relation to gender and sexuality within international law and policy," submitted for the UN's periodic review of DRC states that [translation] "[s]ome" families reject LGBT family members (SJS and SRI [2019], 3, 7). According to a report by Savie asbl on the situation of LGBTI individuals in DRC [3], [translation] "some" families "reject" their children due to their sexual orientation or gender identity and "some" families impose

"punishments aimed at changing their child's sexual orientation or gender identity," for example through deprivation of basic needs such as education, food, or clothing (Savie asbl 2021, 4). The same report also notes that discrimination against transgender persons is [translation] "more" pronounced within families (Savie asbl 2021, 4).

The SJS and SRI report indicates that LGBT individuals are [translation] "ostracized" in churches and religious communities (SJS and SRI [2019], 3). Similarly, the Savie asbl report states that discrimination against LGBT persons is [translation] "often" observed in churches (Savie asbl 2021, 4). The SJS and SRI report also notes that LGBT individuals [translation] "may be sexually abused by certain members of the community (parents, friends, employers, etc.)" (SJS and SRI [2019], 3).

According to the Savie asbl report, LGBT individuals face verbal and physical assault in schools and [translation] "often" without any intervention from educators (Savie asbl 2021, 5). The RSM representative indicated that individuals have been [translation] "kicked out" of university due to their "perceived or actual" sexual orientation (Representative 11 Mar. 2022).

According to the RSM representative, [translation] "homosexual individuals cannot access employment or housing in Bukavu" (Representative 11 Mar. 2022). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Mouvement pour la promotion du respect et égalité des droits et santé (MOPREDS) et al. report, whose authors include RSM, states that LGBT individuals face significant barriers to employment and [translation] "many" face discrimination in the workplace (MOPREDS, et al. 1 Oct. 2018, 9). According to the same source, individuals who identify as LGBT can face [translation] "wrongful termination" based on their gender identity or sexual orientation (MOPREDS, et al. 1 Oct. 2018, 10). The RSM representative further noted that [translation] "many" people have been terminated from their jobs or had their contracts terminated after their employer "discovered" their sexual orientation (Representative 11 Mar. 2022). The Savie asbl report notes that LGBT individuals can face dismissal or demotion at work and transgender individuals can face discrimination in hiring (Savie asbl 2021, 5). However, the same source indicates that there are [translation] "a few" companies that are considered LGBT friendly, particularly in Kinshasa and Lumbumbashi, notably in cases where "the managers are themselves members of the LGBT community" (Savie asbl 2021, 5).

The RSM representative stated that the family members of sexual and gender minorities are not subject to violence or discrimination in DRC (Representative 11 Mar. 2022). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Treatment of People of Diverse SOGIESC by Authorities

Information on treatment of people of diverse SOGIESC by authorities was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the OSAC, "[i]ncidents of harassment at the hands of security forces and judicial officials based on sexual orientation and personal identity have occurred" (US 3 Dec. 2020). The SJS and SRI report states that LGBT individuals [translation] "are regularly tortured by the police, military or intelligence services" who at the same time "extort them" for money (SJS and SRI [2019], 3). The same source reports that [translation] "gays are arbitrarily arrested, particularly for alleged rape, without the presumption of innocence" (SJS and SRI [2019], 4).

4. State Protection

Information on state protection was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

Without providing further details, the RSM representative stated that sexual and gender minorities cannot go to the police for protection (Representative 11 Mar. 2022).

5. Support Services

Information on government support services was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

The RSM representative indicated that there are no support services for members of sexual and gender minorities in DRC (Representative 11 Mar. 2022).

5.1 Examples of Non-Governmental Support Services

According to the RSM representative, RSM provides legal, psychological and health support for LGBTI individuals (Representative 11 Mar. 2022). RSM's website indicates that it also provides round tables on legislation in DRC to educate LGBTQI+ individuals on their rights and what to do if their rights are violated (RSM n.d.). RSM also provides family mediation to LGBTQ+ individuals (RSM n.d.).

Oasis RD Congo provides support services including a health centre, a legal clinic, and psychological support (Oasis RD Congo [2020], 8).

The RSM representative indicated that Jeunialissime provides medical and psychological support to LGBTI individuals and MOPREDS provides legal and social support to LGBTI individuals (Representative 11 Mar. 2022).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The coalition of NGOs included Mouvement pour la promotion du respect et égalité des droits et santé (MOPREDS), Oasis RD Congo, Rainbow Sunrise Mapambazuko (RSM), and Jeunialissime (MOPREDS, et al. 1 Oct. 2018, 2).

[2] The joint report was written by Oasis RD Congo, RSM, Action pour la lutte contre l'injustice sociale (ALCIS), MOPREDS, and the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA World) (Oasis RD Congo, et al. [2022], 1).

[3] The report is based on focus groups conducted in Kinshasa, Kisangani, Lubumbashi, Kalemie, Bukavu, and Goma (two per city); interviews, including with leaders of LGBTI organizations, with international NGOs, with public institutions, with international institutions, and with embassies in these cities; and online survey questionnaires to collect data in other cities and locations (Savie asbl 2021, 1).

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Additional Sources Consulted

Oral sources: Action de solidarité transgenres et intersexes; Commission nationale des droits de l'homme; Groupe de défense et promotion des personnes homosexuelles; Groupe Nyanza; Homme pour les droits et la santé sexuelle; Jeunialissime; Mouvement pour la promotion des respects et égalité des droits des minorités sexuelles (MOPREDS); Mouvement pour les libertés individuelles; Oasis RD Congo; Trans Girls Can DRC.

Internet sites, including: 4pouvoir.cd; 7sur7.cd; Action for Southern Africa; Actualité.cd; Africa Gay Rights; Agence congolaise de presse; Al Jazeera; AllAfrica; Amnesty International; Arc Foundation; Australia – Department of Foreign Affairs and Trade; BBC; Belgium – Cedoca; Bertelsmann Stiftung; Care International; Coalition des familles LGBT+; Congo planète; Danish Refugee Council; Democratic Republic of the Congo – ministère du Genre, Famille et Enfant; Deutsche Welle; *Le Devoir*; Digital Congo; ecoi.net; EU – EU Agency for Asylum; Fédération internationale pour les droits humains; France – Office français de protection des réfugiés et apatrides; France 24; Germany – Federal Office for Migration and Refugees; *Global Encyclopedia of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) History*; GlobalGayz.com; Groupe Nyanza; *The Guardian*; Human Rights Watch; International Center for Not-For-Profit Law; International Lesbian, Gay, Bisexual, Trans and Intersex Association – Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association; International Rescue Committee; *Jeune Afrique*; JournaldeKinshasa.com; Mediacongo.net; National Public Radio; Netherlands – Ministry of Foreign Affairs; *The New York Times*; OutRight Action International; *Le Phare*; Pink News; *Le Potentiel*; *La Presse*; Radio France internationale; Radio Okapi; Radio télévision nationale congolaise; *Le Soft international*; Stonewall; Switzerland – State Secretariat for Migration; Synergia – Initiatives for Human Rights; Trans Girls Can DRC; Transgender Europe; UK – Home Office; UN – Human Rights Council, Refworld; University of Calgary – African Resources Index by Countries; US – Department of State, US Agency for International Development; *The Washington Post*.

ecoi.net summary:



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