

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	730
Land:	Den Demokratiske Republik Congo
Kilde:	ILGA World og WEKA Organisation
Titel:	Shadow report on social, economic and cultural rights of LGBTI people in the Democratic Republic of Congo
Udgivet:	februar 2022
Optaget på baggrundsmaterialet:	20. juni 2022



Shadow report on social, economic and cultural rights of LGBTI people in the Democratic Republic of Congo.

Submitted for the DRC review at the 71st Session of the Committee on Economic, Social and Cultural Rights (CESCR)

February—2022

Submitted to the United Nations CESCR Committee by:

- WEKA Organisation **(WEO)**
- Supported by the International Lesbian, Gay, Bisexual, Trans and Intersex Association **(ILGA World)**

Table of Contents

Organizations introduction	3
Contextual background	3
I. Equality and freedom from discrimination (ICESCR- Articles 2-3)	4
Statistics and examples	5
II. Evictions (ICESCR – Article 11)	6
III. Denial of employment and education (ICESCR- Articles 6 and 13)	7
IV. Discrimination in the health sector (ICESCR – Article 12)	7
V. Recommendations.	8

Organizations introduction

WEKA Organisation – is a voluntary, not for profit, and nonpartisan Non-Governmental Organisation. WEO works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. It was established with a vision of improving the observance of human rights of marginalised persons in Democratic Republic of Congo.

ILGA World – the International Lesbian, Gay, Bisexual, Trans and Intersex Association – is a worldwide federation of more than 1,700 organizations from over 160 countries and territories campaigning for lesbian, gay, bisexual, trans and intersex human rights. Established in 1978, ILGA World has ECOSOC consultative status at the United Nations and its members are based in six regions: Pan Africa ILGA, ILGA Asia, ILGA-Europe, ILGALAC (Latin America and the Caribbean), ILGA North America and ILGA Oceania.

Contextual background

The present alternative report explores incidents involving human rights violations against LGBTI persons in the South-Kivu region through the lens of the International Covenant on Economic Social and Cultural Rights (ICESCR). The cases and numbers are based on documentation of human rights abuses and violations based on SOGI¹ by WEO and other contributing partner organisations. The report, however, does not include all documented LGBTI cases in the DRC but only those violations that could be independently verified.

The Congolese society is deeply homophobic. A survey conducted by the Centre de Recherche pour la Paix et le Développement in 2015 found that 96% of Congolese people do not believe that society should accept homosexuality. Moreover, a 2014's study also found that 95% of Congolese people would not tolerate having a homosexual neighbor². Although the exactness of these estimates might not be 100% accurate, the statistics indicate a societal set-up where it can be expected that violations against LGBTI persons will occur and that the majority of society will furthermore overlook these groups.

In terms of legal protection, the Constitution of the DRC³ establishes that no person or group of people shall be discriminated against in the enjoyment of their rights and freedoms.

¹ Sexual orientation and gender identity

² SIDA (2014) [The Rights of LGBTI People in the DR of Congo](#)

³ Article 11, 12 and 13 of the DRC Constitution

However, discrimination against LGBTI persons is widespread, and people from this group are often rejected by their communities. As a result, discrimination against LGBTI persons paves the way for several types of human rights violations, such as threats, reprisals, insults, arbitrary arrests and / or detentions, ostracism, social exclusion, denial of justice, among others.

In addition, LGBTI people cannot access public services under the same conditions as other citizens and the State does not seem to pay particular attention to their situation. There is a lack of State efforts to ensure a safe environment and access to rights for LGBTI persons. Subsequently, discrimination has had serious consequences for these individuals, who are forced to abandon their studies, their jobs or their communities. Therefore, it is essential to implement support mechanisms to protect LGBTI persons against discrimination, intolerance and violence.

For instance, during 2021, 179 cases were reported to WEO and partner organisations, revealing 226 verified human rights violations against LGBTI persons based on their sexual orientation and/or gender identity. A variety of constitutionally guaranteed human rights were violated, in particular: the right to liberty, the right to privacy, the right to dignity and freedom from torture and cruel, inhuman and degrading treatment or punishment and the right to equality and non-discrimination.

This number is much higher than the total number of violations committed against LGBTI persons in 2020 and 2019, in which only 68 and 75 violations based on SOGI were respectively recorded and verified.

I. Equality and freedom from discrimination (ICESCR- Articles 2-3)

In the DRC, no law criminalizes sexual intercourse between people of the same sex; however, since 2013 there have been attempts to pass an anti-gay bill to criminalize same-sex relations throughout the country⁴. Currently, this bill is still a proposal and it has never been the subject of a debate.

In Bukavu, South Kivu Province in eastern DRC, the environment for LGBTI groups is hostile and discriminatory. LGBTI persons have faced a notable increase in arbitrary arrests, police abuse and extortion, job loss, evictions and homelessness. In addition, many LGBTI victims are denied justice when their rights are violated. .

These human rights violations based on SOGI are not only the consequence of the often-under-informed population, they are mostly orchestrated by law enforcement officers,

⁴ Kab Zam Law Firm, [DRC Looks to Follow in Uganda's Footsteps with Anti-Gay Bill](#)

malicious politicians and conservative evangelists. Many LGBTI persons in Bukavu and Uvira live in fear of arrest and avoid all contact with the authorities.

For instance, many LGBTI persons who are victims of violence and discrimination have exposed their fear of reporting such cases to the police, believing that they in turn will be arrested, or sometimes the same authorities have laughed at them and overlooked their complaints. In addition, homophobia escalated in the last three months of 2020 due to pastors of Protestant churches that provided posters and sermons to incite the community to hatred against LGBTI persons. They also promised to pressure provincial authorities to ban LGBTI persons from entering Bukavu and Uvira main market.⁵

Similarly, in Bukavu and Uvira, lesbian, transgender women and transgender men or those perceived as such are often victims of corrective rape by young people in their neighbourhoods. These attacks are imposed to punish them for their gender expression and sexual orientation.

Finally, acts of torture and degrading treatment against LGBTI individuals are a daily reality in the city of Bukavu. Therefore, most members of the LGBTI community in Bukavu and Uvira hide their sexual orientation and gender identity to protect themselves from acts of cruelty and violence at the hands of provincial authorities.⁶

Statistics and examples

During 2021, there were 25 violations of the right to equality and freedom from discrimination committed against LGBT persons in DRC. Article 11 of the DRC Constitution protects the right of every person to equality before the law. Thus, the fact that same-sex sexual conduct remains criminalised in DRC under vague petty offences such as 'being a common nuisance' makes it nearly impossible for this right to be fulfilled for gay and lesbian persons living in DRC. Moreover, 23 LGBTI persons were arrested after they had sought protection from the Police, leaving this community effectively barred from accessing the security services. For instance, four gay men were arrested while visiting a detainee based on the argument that they 'looked like homos'. Thus, the four men suffered arrest purely because of what the Officer in Charge perceived to be their sexual orientation.

Likewise, in October 2021, a group of 7 men, including LGBTI activists, were trapped in the offices of Weka organisation by a mob of angry community members. The community members were hurling homophobic insults at the men trapped inside the offices and threatened to break in. The Police came to the aid of the men by escorting Weka volunteer lawyers to the premises and dispersing the mob. However, the Police themselves proceeded to insult the men trapped in the house and arrested all 7 of them directly thereafter. The

⁵ Gay Star News (2019) [Anti LGBTI mob torch streets in homophobic protest](#)

⁶ La Prunelle RDC (2019) [Bukavu: «la société nous rejette suite à notre orientation sexuelle» \(Kipinde Mwamba, Transgenre\)](#)

Police searched the premises and confiscated condoms, lubricants and anti-retroviral medicines. The men were charged with the offence of 'having carnal knowledge against the order of nature' and were subjected to anal examinations.

This incident sends an unequivocal message that LGBTI person's risk arrest if they call upon the Police to come to their aid when they have been the victim of a crime. Hence, LGBTI persons are not afforded equal protection of the law since they are viewed as criminals by the Police based solely on their identity. An incident such as the above-mentioned one shows an urgent need for continued sensitization and awareness-raising of LGBTI rights among the Judicial and security services personnel.

II. Evictions (ICESCR – Article 11)

A total of 18 evictions due to discrimination based on SOGI were recorded during 2021. LGBTI persons often face ostracism and rejection from their families when they disclose their sexual orientation and gender identity⁷. In one of these cases, a transgender man was sent away from the family home by his parents because he 'dressed like a man'. In another case, the parents of a gay man found out about his sexual orientation after he was arrested in a bar incident and appeared on the news. They subsequently sent him away from the family home. Lastly, a young lesbian woman was also told to leave the family home after her sexual orientation came to light.

Moreover, five LGBTI persons who were "outed" during a bar incident were evicted by their landlords based on their sexual orientation and / or gender identity. There are two other LGBTI individuals that were also evicted from their homes after their landlords came to know about their sexual orientation and three LGBTI organisations were evicted or forced to abandon their premises after discriminatory acts by their neighbors and community members.

Regarding LGBTI activists, they also face a great risk of eviction from their buildings and areas of work. For instance, during 2021, eight of these cases were committed by landowners who evicted LGBTI persons or organisations basing on the work that they do within the LGBTI community. For instance, members of an organisation offering services to LGBTI persons in Mulongwe were evicted from their premises by their landlord after constant harassment by the neighboring community.

Similarly, an organisation based in Nyamyanda faced continuous attacks on its staff members by the community. Community members also stole organisational property and

⁷ La Prunelle RDC (2018) [Sud-Kivu: Les minorités sexuelles plaident pour plus de protection de la part de l'Etat](#)

continuously taunted the members. Eventually, the organisation was evicted from the premises.

In another case, the offices of an organisation based in Kalundu were closed down due to threatening communications from their neighbors⁸. Lastly, an organisation that operates a shelter for LGBTI persons who had been excommunicated from their families in Kasenga was raided. Community members continuously threatened the organisation, forcing those who were using the shelter as a safe house to seek alternative accommodation.⁹

III. Denial of employment and education (ICESCR- Articles 6 and 13)

One case was recorded concerning the right to employment in which a gay man lost his job after his former partner informed some of his work colleagues that he was gay. The fact that his employment was ended merely based on his rumored sexual orientation amounted to a violation of his human dignity.

This type of discrimination also occurs in the education sector. One case was verified when a gay man was prevented from starting his examinations at a university after his sexual orientation came to light during a bar conflict. Another incident was recorded where a group of teachers of a secondary school confronted a 15-year-old student who was rumored to be gay. The student was interrogated, beaten and locked in a room overnight.

IV. Discrimination in the health sector (ICESCR – Article 12)

In relation to the right to the enjoyment of the highest attainable standard of physical and mental health, one incident was verified where a healthcare provider brutally assaulted a potential patient based on her perceived sexual orientation. The victim was a lesbian woman who had gone to see an eyes specialist at the hospital in order to get a pair of glasses. A case such as this, where a medical professional openly assaults a patient due to her sexual orientation is unprecedented in DRC and very alarming.

⁸ WEO/VR/2-21/007

⁹ WEO/VR/2-21/008

V. Recommendations.

1. The State shall adopt comprehensive anti-discrimination legislation and public policies that specifically address violence and discrimination based on real or perceived sexual orientation and/or gender identity.
2. The State must publicly reject proposed legislation which discriminates on the basis of SOGI, and repeal laws under the offence of 'having carnal interactions against the order of nature', which is interpreted to criminalize LGBTI persons.
3. Repeal sections of the Penal Code Act which create broad and vague petty offences such as 'being a common nuisance', which are used to arbitrarily arrest and punish LGBTI persons.
4. Thoroughly and conclusively investigate cases of violence and discrimination against LGBTI persons
5. Train Police officers on SOGIESC and the human rights of LGBTI persons as well as the limits of the laws which they are mandated to enforce; and revise training programs for health personnel and educators to include the fight against social stereotypes related to LGBTI communities.
6. Develop awareness programs and education campaigns to eliminate discrimination based on SOGIESC.
7. To institute a system of citizen dialogue between institutions, LGBTI organizations and the general population for the sharing of ideas in order to promote the acceptance of diversity and the respect of the rights of LGBTI people.
8. To create educational, socialization and inclusive employment spaces in the DRC; and provide more employment opportunities for LGBTI people, including through 'hiring quotas' for LGBTI people.
9. Promote inclusive public housing (including LGBTI people) in DRC.