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Commission de l'immigration
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Tanzania: Treatment of sexual minorities by society and government authorities; recourse and protection available to those who have been subject to ill treatment (2007 - July 2014)

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1. Legislation

Sources indicate that sexual acts between same-sex couples are illegal in Tanzania (ILGA 30 May 2014, 47; Freedom House 2013; US 19 Apr. 2014, 33). Sections 154, 155, and 138a of the Penal Code state:

Section 154. Unnatural of offences

Any person who -

has carnal knowledge of any person against the order of nature; or

has carnal knowledge of an animal; or

permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years.

Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment."

Section 155. Attempt to commit unnatural offences

"Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years."

Section 138A. Gross indecency

"Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, a pupil of a primary school or a student of a secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person." (ILGA 30 May 2014, 47)

Sources indicate that same-sex sexual acts are also illegal in the semi-autonomous archipelago Zanzibar (Reuters 4 Nov. 2011; US 19 Apr. 2014, 33; Human Rights Watch June 2013, 17). The US Department of State's Country Reports on Human Rights Practices for 2013 explains that Zanzibar has its own government, court system and legislature (US 19 Apr. 2014, 1). Sources indicate that Zanzibar's law establishes a penalty of up to 14 years imprisonment for men engaging in same-sex activity and 5 years for women (US 19 Apr. 2014, 33; Human Rights Watch June 2013 16-17) and also criminalizes "unions" between same-sex couples (ibid., 17).

According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), same-sex acts in Tanzania are illegal for female couples as well as for male couples (ILGA 30 May 2014, 47). However, in correspondence with the Research Directorate, the Chief Operations Officer of Amka Empowerment, a non-profit organization that focuses on health and human rights issues of sexual minorities and sex workers (Amka 28 July 2014), said that in mainland Tanzania, only male-to-male anal sex is viewed as a crime, while female same-sex acts are punishable by law only in Zanzibar (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate.

According to Country Reports 2013, a "significant" amount of proof is required to prosecute same-sex conduct and individuals suspected of engaging in same-sex conduct have sometimes been charged with "loitering or prostitution" instead (US 19 Apr. 2013, 33). In correspondence with the Research Directorate, a representative of LGBT Voice, an organization based in Dar es Salaam that works to "promote, support, defend, and protect the interests and the general well-being of Gay, Lesbians, Bisexual and Transgender people in Tanzania" (LGBT Voice 1 Apr. 2014), explained that there have been several arrests of gay people, but no prosecutions under Sections 154-157 of the Penal Code (LGBT Voice 25 July 2014). Similarly, Human Rights Watch reports that "in recent years" there have been no prosecutions for same-sex conduct in either mainland Tanzania or Zanzibar (June 2013, 5).

2. Treatment of Sexual Minorities by Society

2.1 Discrimination

Several sources indicate that sexual minorities face societal discrimination in Tanzania (Freedom House 2013; US 19 Apr. 2014, 33; Human Rights Watch June 2013, 3, 4, 26). The Amka Chief Operations Officer

explained that Tanzanian society treats LGBT people as a "cursed" or "outlaw" group, and that homosexuality is viewed as sinful, western-influenced, and against Tanzanian culture (28 July 2014). Sources indicate that most LGBT people in Tanzania are not able to be open about their sexual orientation for fear of societal repercussions (ibid.; LGBT Voice 25 July 2014). According to the LGBT Voice representative, LGBT people in Tanzania are also not open about their gender identity due to discrimination (ibid.).

Sources indicate that sexual minorities face discrimination in access to employment (US 19 Apr. 2014, 33; Human Rights Watch June 2013, 25, 26; LGBT Voice 25 July 2014). The LGBT Voice representative said that "most" LGBT people in Tanzania have lost their jobs after revealing their sexual orientation, and that two such cases were reported to his organization (ibid.). Similarly, Amka's Chief Operations Officer said that it is not easy for LGBT people to get jobs "unless they hide or cover their sexual identity" and that LGBT people fear that if their sexual orientation is revealed in the workplace they may lose their jobs or face discrimination from other employees (Amka 28 July 2014). The Human Rights Watch report entitled "Treat Us Like Human Beings": Discrimination Against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania, which is based on research conducted in collaboration with the Dar es Salaam-based Wake Up and Step Forward Coalition (WASO) [1], indicates that at least six LGBT people lost their jobs or were forced to change their residence following an anti-gay backlash to a "Gender Festival" in 2011; some because they were seen on television, while others became targets of "a witch hunt in which suspected gays were publicly accused by family members, neighbors, and employers" (Human Rights Watch June 2013, 24, 25).

Sources report that LGBT people face discrimination with regards to housing (ibid., 26; US 19 Apr. 2014, 33; LGBT Voice 25 July 2014). According to Amra's Chief Operations Officer, "almost all house owners don't accept LGBT people" as tenants and "take it as a curse to their house to rent [to] LGBT" (Amra 28 July 2014). The same source was also aware of cases in which LGBT people were forced to leave the homes that they rented when their sexual orientation was discovered (ibid.). The LGBT Voice representative said that nine cases in which LGBT were evicted from their homes because of their sexual identity were reported to his organization in 2014 (LGBT Voice 25 July 2014). His organization was also aware of 4 cases in which "gay youth" were expelled from their families and left homeless because of their sexual orientation (ibid.). Similarly, Human Rights Watch reports on cases in which gay men were expelled from their family homes because of their sexual orientation (June 2013, 27, 54, 55).

Sources report that LGBT people in Tanzania face discrimination in the field of education (ibid., 26; LGBT Voice 25 July 2014). The LGBT Voice representative said that over 19 cases in which LGBT youths were expelled from school were reported to his organization in 2014 (ibid.). The Amka Chief Operations Officer said that some LGBT people have been expelled from colleges, universities and schools, and that some have also dropped out of school as a result of negative treatment by "homophobic students, teachers, and staff" (28 July 2014).

Sources indicate that LGBT people are subject to discrimination in the field of health care, including being denied treatment (US 19 Apr. 2014, 33; Human Rights Watch June 2013, 69, 71; LGBT Voice 25 July 2014). The representative from LGBT Voice said that LGBT people are "routinely" denied access to health care (ibid.). In its 2013 report, Human Rights Watch documented and provided details about several cases in which LGBT people were denied health care or were subject to verbal abuse and harassment by health care staff because of their sexual orientation (Human Rights Watch June 2013, 71-73). In one case, a gay man was turned away from a government dispensary in Dar es Salaam, while in another, a gay man in Zanzibar was diagnosed with gonorrhea, but was then refused treatment because he was gay (ibid., 71-72). The Amka Chief Operations Officer said that LGBT people face discrimination by health care workers "especially" when seeking treatment for sexually transmitted infections (STIs) or HIV (28 July 2014). This source said that his organization is aware of a number of cases in which LGBT people have been denied treatment for STIs,

"especially gay men with anal STIs" (ibid.). He added that openly gay men and transgender (male to female) people have difficulty accessing ARV (Anti-retroviral drugs used in the treatment of HIV) at ARV centres due to discrimination (ibid.).

2.2 Regional Variations in Treatment of Sexual Minorities

Both the Amka Chief Operations Officer and the LGBT Voice representative said that there are no major differences in the treatment of LGBT people in Zanzibar as compared to mainland Tanzania (ibid.; LGBT Voice 25 July 2014). The Amka Chief Operations Officer said that there were no big differences between the treatment of LGBT people in rural and urban areas (28 July 2014). In contrast, the representative of LGBT Voice expressed the opinion that there is a "big difference" because of the "mixed culture and civilization" in urban areas, which has caused an increase in migration of LGBT people to these areas (25 July 2014). Human Rights Watch reports that men having sex with men (MSM) are "slightly more open" in Dar es Salaam than other areas of Tanzania (June 2013, 44).

2.3 Violence

Sources indicate that LGBT people in Tanzania have been subject to violence because of their sexual orientation or gender identity (ibid., 66, 67; LGBT Voice 25 July 2014; Amka 28 July 2014).

Sources report that LGBT activist Morris (or Maurice) Mjomba was killed (ibid.; Freedom House 2013; Pink News 30 July 2012) in Dar es Salaam in July of 2012 (ibid.; Freedom House 2013). According to Pink News, Mjomba was a founding member of the Stay Awake Network Activities (SANA), a group that educates MSM about sexual health (Pink News 30 July 2012). The same source notes that "it is not known if his death was motivated by homophobia" (ibid.). The Amka Chief Operations Officer said that the police have not provided information about the case (Amka 28 July 2014). This source said that an Australian LGBT person living in Tanzania was also killed "almost [in] the same manner as Morris Mjomba" (ibid.). This information could not be corroborated among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the representative of LGBT Voice, LGBT people are subject to violence on the street, in their homes and by family members; he was aware of approximately 100 cases of "physical attacks causing injuries" to LGBT people between 2010 and 2013 (LGBT Voice 25 July 2014). Human Rights Watch reported on multiple physical attacks against LGBT people, including incidents by family members, neighbours and strangers (Human Rights Watch June 2013, 25, 54, 66-68). The same source reports that in September of 2011, a "Gender Festival" that was organized by two Tanzanian NGOs to bring together gender activists from across Africa, led to a mob attack against LGBT participants; at least one gay participant was beaten by a mob of people who said that "they wanted to kill gays" (ibid., 24-25).

3. Treatment of Sexual Minorities by Police

Sources indicate that LGBT people are sometimes arrested on false charges (IGLHRC 30 Oct. 2009; LGBT Voice 25 July 2014; Human Rights Watch June 2013, 53). Sources report that LGBT people are also sometimes subject to arbitrary detention (ibid.; Amka 28 July 2014). Sources report of a case in which two gay men were arrested and held in police custody because one was "walking like a woman"; they were not released until the next day, after they paid a bribe (ibid.; Human Rights Watch June 2013, 53). The International Gay and Lesbian Human Rights Commission (IGLHRC) reports that in September of 2009, 39 gay and lesbian activists who were having a meeting in Dar es Salaam were arrested, charged with prostitution, and detained for over two weeks because the magistrate denied them bail (IGLHRC 30 Oct. 2009). According to the LGBT Voice representative, the Executive Director of his organization was arrested

in September 2013 for "promoting and recruiting people into homosexuality," but as of July 2014, the case had not been taken to court (LGBT Voice 25 July 2014).

Several sources indicate that LGBT people have been subject to mistreatment by the police, including cases of physical abuse, bribery (ibid.; Amka 28 July 2014; Human Rights Watch June 2013, 44), and rape (ibid., 44, 46; Amka 28 July 2014). Human Rights Watch reported on several cases in which the police subjected LGBT people to violence, including:

In 2009, a transgender man was sexually assaulted and beaten by the police in Dar es Salaam (Human Rights Watch June 2013, 46-47). He was not released until 6 days later (ibid.).

In December 2010, the police arrested a gay man in Dar es Salaam and forced him at gunpoint to call five gay friends to meet at a bar (ibid., 1). The police arrested all of them, stripped them, beat them, and detained them at the central station, where they were raped "repeatedly" by other detainees, while the police refused to help (ibid.). They were released after a parent paid a bribe (ibid.).

A gay man in Tandika was arrested, beaten and detained for two days for trying to organize a seminar on health issues for MSM (ibid., 44).

In 2011, a 19 year-old MSM in Zanzibar was beaten and raped by police officers when coming back from a club at night (ibid., 46).

Human Rights Watch further notes that in all cases of police mistreatment of sexual minorities reported to them, the police acted with impunity and did not face any repercussions (ibid., 3). The same source indicated that LGBT people from the lower socio-economic classes are more vulnerable to police abuse in comparison to those from middle and upper class backgrounds, because wealthier MSM can often avoid the police or pay bribes to "escape detention and violence" (ibid., 37).

Sources report that LGBT people who are subject to threats or violence because of their sexual orientation or gender identity cannot turn to the police for help for fear that they may face arrest or abuse (ibid., 67; LGBT Voice 25 July 2014; Amka 28 July 2014). Sources indicate that the police sometimes refuse to take or act on complaints from LGBT people who are victims of crimes (ibid.; Human Rights Watch June 2013, 3; LGBT Voice 25 July 2014). Human Rights Watch reported on a case in which an MSM was beaten by four neighbours, but the police did not follow up on the incident, even though the man provided the names of the perpetrators (Human Rights Watch June 2013, 66). Similarly, the representative of LGBT Voice said that members of his organization who were "violently attacked" in Dar es Salaam reported the incident to the police, but no action was taken and the perpetrators were not arrested (LGBT Voice 25 July 2014). Corroboration of these incidents could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. State Protection

Both the Amka representative and the LGBT Voice representative indicated that there is no recourse for LGBT people who experience discrimination (LGBT Voice 25 July 2014; Amka 28 July 2014). In 2009, the UN Human Rights Committee expressed concern at "the lack of measures taken to prevent discrimination against them [LGBT people]" (UN 6 Aug. 2009, para. 22). Similarly, Country Reports 2013 states that there were "no known efforts to combat such discrimination [against LGBT people]" in 2013 (US 19 Apr. 2014, 33). The Commission on Human Rights and Good Governance (CHRAGG), Tanzania's national human rights institution, reportedly told Human Rights Watch that the CHRAGG does not address rights abuses against LGBT people because it would go against Tanzania's "legal framework" (Human Rights Watch 2013, 19).

In 2011, Tanzania's Foreign Affairs Minister reportedly said that "[h]omosexuality is not part of our culture and we will never legalise it" (Reuters 4 Nov. 2011). The President of Zanzibar is quoted by Reuters in 2011 as saying, "we have strong Islamic and Zanzibari culture that abhors gay and lesbian activities" (ibid.).

According to the Amka Chief Operations Officer, LGBT organizations maintain a "very low profile" due to safety concerns and a lack of support and empowerment (Amka 28 July 2014). He noted that the LGBT rights movement in Tanzania has "just started and is very young and new" (ibid.).

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.

Note

[1] WASO is a Tanzanian coalition of organizations serving men who have sex with men (MSM) in Dar es Salaam. The report by Human Rights Watch and WASO is based on field research conducted between May 2012 and April 2013 in Dar es Salaam, Zanzibar, Tanga, Arusha and Mwanza, including interviews with over 50 LGBT people, primarily MSM (Human Rights Watch June 2013, 11)

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Additional Sources Consulted

Oral sources: Attempts to contact representatives of the following organizations were unsuccessful within the time constraints of this Response: Community Peer Support Services LGBTI in Tanzania; EASUN; ILGA.

Internet sites, including: Amnesty International; Behind the Mask; Community Peer Support Services LGBTI; East and Horn of Africa Human Rights Defenders Project; EASUN; ecoi.net; Factiva; Global Gayz; Legal and Human Rights Centre; Tanzania - Commission on Human Rights and Good Governance, Tanzania Police Force; UN - Office of the United Nations High Commissioner for Human Rights, Refworld, UNAIDS.

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