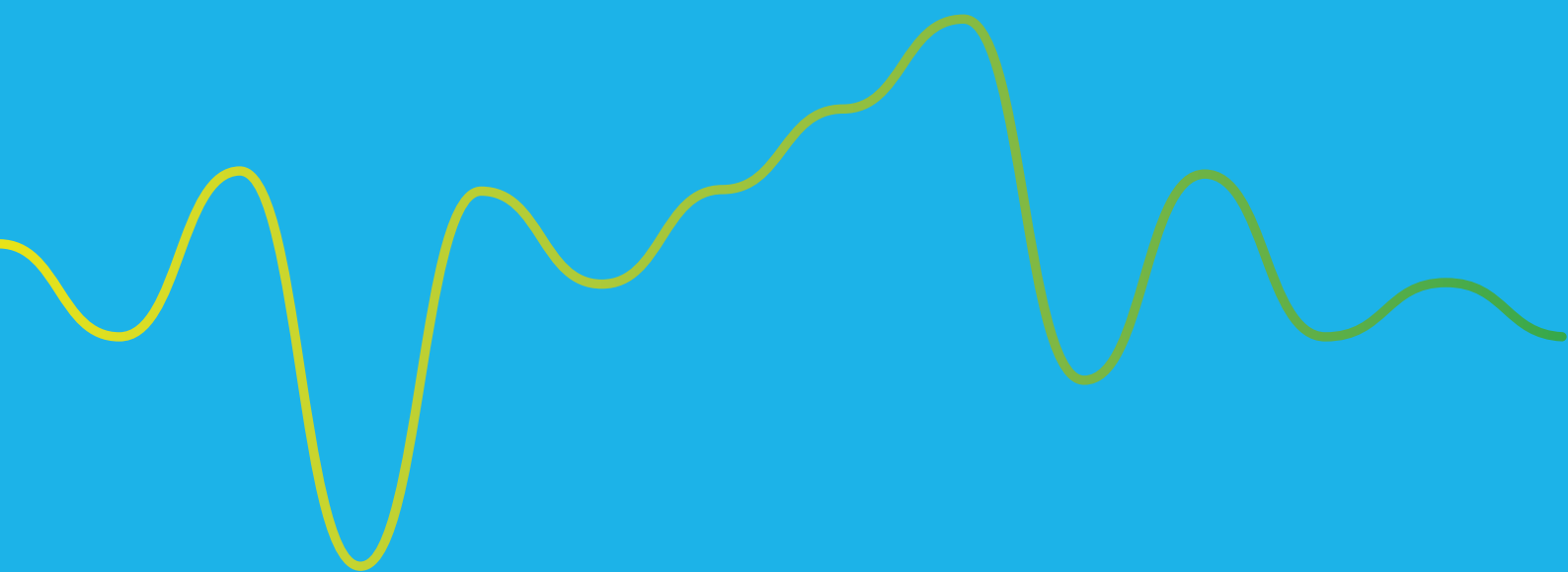


Inclusive Governance Initiative

Democratic Republic of the Congo Baseline Report



#WeBelongAfrica
Inclusive Governance Initiative





#WeBelongAfrica brings together multiple initiatives that enable inclusive, just, affirming, safe, productive and fulfilling lives for all people in Africa, irrespective of sexual orientation, gender identity, gender expression or sex characteristics, and irrespective of HIV status or risk.

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Acronyms and abbreviations

AIDS	Acquired Immunodeficiency Syndrome
CEDHUC	Centre d'Expertise en Droits Humains et Criminologie
DRC	Democratic Republic of the Congo
HIV	Human Immunodeficiency Virus
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MOPREDS	Mouvement pour la promotion du respect et de l'égalité des droits et de la santé
MSM	Men who have sex with men
NGO	Non-governmental organization
SRH	Sexual and reproductive health
TB	Tuberculosis
UNDP	United Nations Development Programme
UPR	Universal Periodic Review

Introduction

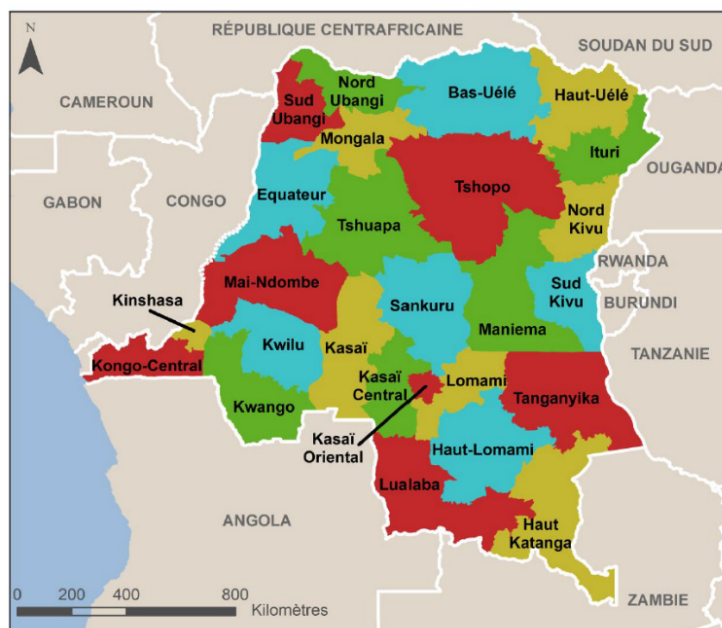
The Inclusive Governance Initiative (IGI) is a regional project that aims to help countries include sexual and gender minorities in national efforts to achieve the Sustainable Development Goals and to promote and protect human rights. The project is led globally by the United Nations Development Programme (UNDP). The overall objective of the project is to ensure that state entities in sub-Saharan Africa are increasingly accountable to their entire population, including lesbian, gay, bisexual, transgender and intersex (LGBTI) people, and include them in all sectors. If this goal is achieved, it is envisaged that countries will see better laws, more responsive public sector services, and social norms that affirm LGBTI rights.

This baseline report provides a high-level analysis of the legal and policy context of the Democratic Republic of the Congo (DRC), and in particular of key indicators relevant

to the IGI's activities at the national level. Through its indicators, this report constitutes a baseline assessment for future project monitoring and evaluation purposes.

The analysis of cross-sectoral and LGBTI-focused legislation, policies and practices, as well as sectoral policies and strategies provides a broader picture of the legal and social environment in relation to human rights and LGBTI integration in the DRC. Among other things, it shows how attitudes and approaches of parliamentarians are manifested in the National Assembly. This report is mainly based on an extensive desk study, complemented by conversations and interviews with key stakeholders. This baseline report will thus inform and support the IGI's strategy and programming in the DRC in the coming years.

Overview of the DRC



Source: DRC HIV National Strategic Plan 2020-2023.

The DRC is located in Central Africa and shares 9,165 kilometres of borders with nine countries: Uganda, Rwanda, Burundi and Tanzania to the east; the Republic of Congo to the west; the Central African Republic and Southern Sudan to the north; and Zambia and Angola to the south. It has a surface area of 2,345,410 km². The population of the DRC was estimated at 91,994,000 inhabitants in 2017, 51 percent of whom were women, and the population growth rate was estimated at 3.3 percent.¹ The DRC has four cultural identities, circumscribed in four national languages. In addition to the four national languages, the population of the DRC speaks about 200–400 dialects, depending on the distinctions between language and dialect, which relate to the values and principles, social norms, social construction, beliefs and way of life of each ethnic and tribal specificity.²

In the DRC, there have not been many studies on the historical and social construction of sexuality and on LGBTI people. One of the reasons for this is that the world of sexuality, since the time of Christianity, has been tied to social norms. The cultural history of LGBTI people is associated by taboos. In the DRC, sex is more often practised than spoken about; even in stories, when it is discussed, it is through metaphors, analogies, ellipses,

rituals, metonymies and songs. At this level, the language surrounding sexuality, especially when it wants to convey knowledge, can only be visualized through blinkers so as never to clarify the thought. Although sex does not always lend itself easily to the game of interpretation, its meaning is not systematically hidden for native speakers. It does not always have to be deciphered. Therefore, within groups, social actors will not necessarily question its meanings, even when to an outsider it may seem ‘unnatural’ or ‘obscene’.³

However, some research dating back to the colonial period traces the existence of LGBTI people in the Congolese community. For example, female homosexuality or lesbianism was practised in the homes of polygamists by Nkundó women. Between Nkundó women in the DRC, sexual relations were evidenced.⁴

Similarly, in Kasai Oriental province, this was called kitesha, referring to women or men in these having sexual relations with individuals of the same sex. In southern Zambia, such individuals were referred to as mwami in the Ila language. They dressed as women, did work attributed to women, and slept with women. They were considered to be prophets, which is the meaning of their name.⁵

1 DRC, ‘National Multisectoral Strategic Plan for AIDS 2020–2023’, p. 12.

2 Louis-Jean Calvet, ‘L’insécurité linguistique et les situations africaines’ in *Une ou des normes? Insécurité linguistique et normes endogènes en Afrique francophone*, edited by Louis-Jean Calvet and Marie-Louise Moreau, Agence de la francophonie, Paris, 1998, pp. 7–38.

3 Charles Gueboguo, ‘L’homosexualité en Afrique: sens et variations d’hier à nos jours’, *Socio-logos* 1, 2006, https://journals.openedition.org/socio-logos/37?hc_location=ufi, accessed 19 November 2021.

4 P. Laburthe-Tolra, ‘Initiations et sociétés secrètes au Cameroun. Essai sur la religion Beti’, Karthala, Paris, 1985, p. 327; P. Laburthe-Tolra, ‘Le Mevungu et les rituels féminins à minlaaba’ in *Femmes du Cameroun Mères pacifiques, Femmes rebelles*, edited by J.-C. Barbier, Orstom/Karthala, Paris, 1985, pp. 233–243 (cit. p. 234).

5 MURRAY, S., O., ROSCOE, W., *Boy-wives and Female Husbands. Studies of African Homosexualities*, New York, St Martin’s Press, 2001

In light of these histories of sexual diversity in the DRC, it is worth noting that the current environmental and cultural contexts of LGBTI people do not conflict with the social and cultural conservatism of people's historical cultural overview. Indeed, the environmental and contextual overview of the DRC for LGBTI persons has two aspects, namely favourable and unfavourable. The favourable aspect is that the DRC's leaders are implicitly obliged to respect the agreements to which the country has subscribed in terms of human rights by reaffirming these commitments in certain national legal instruments. It should also be noted that very few politicians dare to speak openly about LGBTI people.⁶ And rarely do politicians publicly attack LGBTI people. This is manifested more by attitudes of tolerance and/or a lack of debate.⁷ Most leaders recognize the fundamental rights of all Congolese in general, which includes LGBTI people. However, leaders and decision makers do not explicitly recognize human rights related to gender identity and sexual orientation.⁸ It is worth noting that much progress

has been made in the health sector; many health programmes are inclusive of gay and transgender people when it comes to accessing health services.⁹

The unfavourable aspect is that although considerable progress has been made in health programmes in recent years, attitudes and acts of non-acceptance, intolerance, discrimination and violence towards LGBTI people in Congolese communities still persist.¹⁰

In the socio-cultural environment of the DRC there is a high incidence of attitudes of social disapproval of LGBTI people that do not allow for their social inclusion.¹¹ The environment for LGBTI people is one in which certain identity-based organizations, in collaboration with others defending human rights in the health sector (safeguarding the right to health for all),¹² are working on the basis of the principle of 'leave no one out' - i.e. sectoral inclusion in the context of health.

6 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo', East African Sexual Health and Rights Initiative, Nairobi, 2017, <https://globalphilanthropyproject.org/wp-content/uploads/2017/09/UHAI-DRC-baseline-FRE.pdf>, accessed 25 March 2022.

7 Progrès Santé Sans Prix, 'Report on the INDEX Stigma Survey of Key Populations (LGBTI) in DRC', 2017, p. 39.

8 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo'.

9 NMCP, 'National Multisectoral Programme to Combat AIDS 2020–2021', pp. 66–70.

10 Ministry of Planning and Ministry of Public Health, 'Second Demographic and Health Survey 3' (EDS-RDC II 2013-2014), pp. 228–229.

11 Commissariat Général Aux Réfugiés et aux Apatrides, 'COI Focus République Démocratique Du Congo, L'homosexualité', June 2021, p. 8, https://www.cgra.be/sites/default/files/rapporten/coi_focus_rdc_lhomosexualite_20210624.pdf, accessed 25 March 2022.

12 Ministry of Health, 'Health Development Plan of the Ministry of Public Health 2019–2020'.

Analysis of indicators

Outcome 1: Level of sensitivity, inclusiveness and accountability of Congolese leaders towards sexual and gender minorities (indicators 1–8)

To understand and measure the sensitivity and accountability of Congolese leaders and decision makers in relation to LGBTI-inclusive governance, it is important to critically and systemically analyse the eight indicators based on the Congolese political environment and legal framework.

Country indicator 1: Punitive laws

In the DRC, although the laws are silent on the criminalization of sexual relations between two consenting adults of the same sex, there are laws that discriminate against LGBTI people. Some of the provisions remain open to interpretations that lead to prosecutions and various violations of the rights of LGBTI people. Certainly, article 40 of Law No. 11/002 of January 2006, revising certain articles of the Constitution of the DRC of 18 February 2006, defines and limits the right to marriage to persons of the opposite sex and states that persons of the same sex cannot enter into marriage.

In general terms, article 176 of the Congolese Penal Code, as amended in 2004,¹³ provides for prosecution on the basis of the characterization of acts deemed to be acts of outrage against public decency. It should be noted that article 176 does not explicitly mention LGBTI people.

Article 167 of the Congolese Penal Code, as amended by Law No. 06/018 of 20 July 2006, amending and supplementing the Decree of 30 January 1940 on the Congolese Penal Code, defines indecent assault as any act contrary to morality committed intentionally and

“directly against a person without that person’s valid consent”.

However, it has been observed that certain expressions or displays of affection in public between persons of the same sex can lead to prosecution on the basis of the interpretation or application of the provisions relating to indecency and indecent assault. The provision of article 176, for example, can and has been used as a basis by law enforcement officers for, among other things, arbitrary arrests, extortion and blackmail.¹⁴

Similarly, article 7 of the law governing non-profit associations and public¹⁵ utility institutions refers to the illegality of the objectives that an association of LGBTI people may have (objectives pursued in the context of the defence and promotion of the rights of LGBTI people), based on the provisions dealing with acts ‘contrary to morality’ in that law.¹⁶

Article 653 of the Congolese Family Code prohibits the adoption of a child by, among others, “homosexuals or transsexuals”.¹⁷ Also, article 20 of Law No. 09/001 of 10 January 2009 on the protection of the child prohibits the adoption of a child by a homosexual couple in the same way as paedophiles and persons with psychological disorders.¹⁸

In the same vein, it is important to point out that there have already been two initiatives for bills criminalizing homosexuality initiated by two parliamentarians, although they were never included in the calendar of parliamentary sessions during the 2010 and 2013 terms of office for debate in plenary.¹⁹

Critically and systemically, in addition to the social and cultural norms that are obstacles to the social inclusion of LGBTI people, it is worth noting that the legal provisions identified above reinforce and influence attitudes of non-acceptance, intolerance and discrimination at different institutional levels among leaders and decision makers in the DRC. Certainly, as long as the laws remain silent or incomplete, decision makers will not dare to express themselves publicly in favour of inclusive governance, let

13 Congolese Penal Code, Decree of 30 January 1940, as amended and completed on 30 November 2004.

14 Immigration and Refugee Board of Canada, ‘Democratic Republic of Congo: Information on the situation of sexual minorities, including laws and treatment by society and authorities; state protection and support services (2011–February 2014)’, 2014, <https://www.refworld.org/docid/53733bce4.html>, accessed 12 December 2021.

15 Law No. 004/2001 of 20 July 2001 on general provisions applicable to non-profit associations and public utility establishments in the DRC.

16 Christian Rumu, ‘Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo’, p. 12.

17 Law amending and supplementing Law No. 87-010 of 1 August 1987 on the Family Code.

18 Article 20 of Law No. 09/001 of 10 January 2009 on the protection of the child.

19 Initiatives proposing legislation criminalizing consensual same-sex relationships (homophobic bills) put forward by the Honourable MP Ejiba in 2010 and Steve Mbikayi in 2013.

alone commit themselves in a more reactive manner to it.²⁰

Country indicator 2: Protective laws

Title III of the Constitution of the DRC (2013) enshrines and guarantees human rights, fundamental freedoms and the duties of the citizen and the State—for example, the right to equality before the law (art. 12), the protection of privacy (art. 31), the right to non-discrimination (art. 13), the right to equality for all as individuals (art. 11), the promotion and protection of minorities (art. 51), and the protection of vulnerable groups (art. 123, point 16).

Article 66 of the Constitution also enshrines the duty of every Congolese citizen to respect and treat fellow citizens without discrimination and to maintain relations with them that make it possible to safeguard, promote and strengthen national unity, mutual respect and tolerance.

With regard to certain rights contained in specific laws, we should mention the right to non-discrimination linked to gender. This concerns access to health services contained in the framework law which enshrines the fundamental principles of public health in the DRC (art. 16),²¹ and the recognition of the rights of men who have sex with men (MSM) as a vulnerable group in the law on the protection of the rights of people living with HIV²² (art. 2, point 5).

At the international level, the DRC has ratified and subscribed to several international agreements and resolutions on the protection and promotion of individual rights at the subregional, regional and global levels. These commitments are reinforced by article 215 of the Constitution, which gives ratified treaties higher authority than the country's internal laws. This invites the government to respect not only its own obligations but also these legal instruments, representing the fundamental basis for the rights of sexual and gender minorities in the DRC.

While there are some general protective provisions in the DRC that guarantee the fundamental rights of individuals, including those of LGBTI people, some reports show that the rights of LGBTI people are not being respected to the same extent as those of other groups. According to the 2017 INDEX survey on stigma and discrimination of LGBTI people in the DRC, there is a high rate of discrimination, indicating that 75 percent of LGBTI people do not have access to education, employment, housing, health or social security services, even though there is no provision

in the Penal Code to punish sexual relations between two consenting adults. The law recognizes the prohibition of bullying and discriminatory behaviour in health services on the basis of gender, because, as mentioned above, the 2008 HIV law recognizes MSM as among those vulnerable to HIV infection. It should also be noted that there is no specific protection instrument for sexual and gender minorities as a marginalized group in the DRC.²³

Country indicator 3: Official policies/plans/technical guidance on sexual and reproductive health

The DRC has a National Reproductive Health Programme. To this end, a National Reproductive Health Policy is in place. This policy document aims, among other things, to contribute to the improvement of the quality of life of individuals, couples, families and communities with regard to all aspects of reproductive health.

Specifically, the plan aims to:

- reduce maternal, neonatal and infant morbidity and mortality;
- promote good sexual and reproductive health (SRH), based on gender equity and equality, the rights approach, the gender approach and gender sensitivity; and
- eliminate practices that undermine the human body in the area of sexuality and reproduction, including poverty, sexual violence and HIV/AIDS.²⁴

The targets selected in this policy document include 'future spawners' (0–20 years), comprising children, boys and girls who are going through particular periods of their growth, notably adolescence, who make up 55 percent of the overall population; 'current progenitors' (20–55 years), who are the adult women and men currently of reproductive age, making up about 40 percent of the population; and 'older progenitors', also known as third-age people, constituting about 5 percent of the population. Although LGBTI people are in these different categories, the plan makes no special mention of them.

However, it should also be noted that significant progress has been made in the DRC in taking MSM and transgender people into account and integrating them into national health programmes. The provisions of article 123, point 16 of the Constitution, establish the recognition

20 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo'.

21 Framework Law No. 18/035 of 13 December 2018, establishing the fundamental principles relating to the organization of public health in the DRC.

22 Law 08/011 of 14 July 2008 on the protection of the rights of people living with HIV and those affected in the DRC, art. 2, point 5.

23 Progrès Santé Sans Prix, 'Report on the Stigma and Discrimination Index of LGBTI persons in DRC', 2017, <https://cansfe.ca/project/promotion-de-la-sante-et-des-droits-sexuels-et-reproductifs-des-adolescents-et-adolescentes-en-rdc/>.

24 Ministry of Health, 'National Reproductive Health Policy', 2008, p. 19, http://familyplanning-drc.net/docs/5_PolitiqueNationaleDeSanteDeLaReproduction_Juillet_2008.pdf, accessed 25 March 2022.

of vulnerable groups based on the principle of ‘leaving no one behind’ and for the achievement of the Sustainable Development Goals, including the eradication of HIV by 2030. This recognition is supported by certain laws (on the fundamental principles of health and on the protection of the rights of people living with HIV) mentioned under country indicator 2. Similarly, the National Multisectoral Strategic Plan to Combat AIDS, 2021–2023 has two axes aimed at reducing discrimination against groups vulnerable to HIV infection and promoting an environment conducive to the national response by making clear mention of MSM and transgender people. These two pillars take into account MSM and transgender people’s access to health and other basic social services to prevent HIV transmission.²⁵ Similarly, the fifth pillar of the Strategic Plan of the National Programme to Combat HIV/AIDS and Sexually Transmitted Infections, which concerns human rights and gender, takes LGBTI people into account.²⁶ The National Tuberculosis (TB) Control Programme also takes MSM and transgender people into account in the prevention of barriers related to human rights and gender for access to health services.

Country indicator 4: Official policies/plans on sexuality education

With regards to SRH and the health of adolescents, the country has a policy in which the educational field is included. This policy provides for collaboration between the Ministry of Health and the Ministry of Primary, Secondary and Initiation to the New Citizenship and Vocational Education. The collaboration is based on the curriculum for the integration of life education, sex education and the new citizenship in the respective programmes. The training curriculum for the training of trainers is developed with the technical support of the Ministry of Health for this purpose. This policy also provides for the involvement of parent–teacher committees to promote intergenerational dialogue on SRH issues at the family level.²⁷

However, to date, not only is this plan not harmonized by taking into account the educational level of adolescents, it makes no reference to sexual orientation and gender identity. Therefore, in the DRC, the major challenge for the social inclusion of LGBTI people requires effective support on the content of this programme in the national education curriculum to enable educational institutions, teachers and decision makers to understand and

overcome prejudices with a view to destroying harmful social and cultural norms, and to promote living together and acceptance of others in diversity for more inclusive education in the country.

Country indicator 5: Parliamentary speeches

In the DRC, speeches by some parliamentarians on LGBTI people are unwelcoming and incongruous. They are used by politicians either to create negative perceptions or as political capital to galvanize and build support.²⁸ There is a view that discourses of acceptance or what is referred to as ‘institutionalization of homosexuality’ would be a serious attack on the values and mores of Congolese society.²⁹ Thus, decision makers and leaders do not publicly address the subject, viewed as persistent taboos, in proposing or initiating debates without linking that to public health (eg. HIV).

Often progressive and tolerant discourses are directly oriented towards the health sector in relation to human rights. Several commitments at a higher level of government have been made to universal health coverage without gender discrimination. It is speeches by some of the HIV activist parliamentarians that have moved the debate forward over the last 10 years in the process of integrating LGBTI people into universal health care.³⁰ However, in the DRC, the highlights of parliamentarians’ speeches concern the two initiatives of proposed laws on ‘unnatural practices’ of 2010 and 2013.

In 2010, a Member of Parliament, Ejiba Yamapia, tried to gather support in the Kinshasa Parliament for a bill entitled ‘Sexual Practices Against Nature’, which classified same-sex sexuality as an ‘unnatural’ and ‘immoral’³¹ offence.

In 2013, another Member of the National Parliament and President of the Labour Party (an opposition party), Mr Steve Mbikayi, initiated another bill similar to the first one, aimed at criminalizing consensual same-sex relations between adults as well as any action to promote the rights of LGBTI people in DRC. On 13 December 2013, he proposed a bill to the Congolese National Assembly containing 38 articles penalizing homosexual practices.

“I wanted to prevent the spread of homosexuality,” he told Jeune Afrique. “I believe that there is a real danger for the Democratic Republic of Congo, and I have the support of the vast majority of the population,” he said, recalling that this ‘personal initiative’ is a campaign

25 DRC, ‘National Multisectoral Strategic Plan to Combat AIDS, 2020–2021’.

26 NMCP, ‘HIV/AIDS Sector Plans 2018–2023’, p. 39.

27 Ministry of Health, ‘National Strategic Plan for Sexual and Reproductive Health and Well-being of Adolescents and Youth 2016–2020’.

28 Wikipedia, ‘Droits LGBT en République Démocratique du Congo’, https://fr.wikipedia.org/wiki/Droits_LGBT_en_r%C3%A9publique_d%C3%A9mocratique_du_Congo, accessed 27 December 2021.

29 Reports of the Justice Sector Support Project on Promoting an Enabling Environment for the National Response to HIV and AIDS, 2012–2020.

30 Christian Rumu, ‘Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo’.

31 Ibid.

promise made to his base, to fight against ‘anti-values’ coming from outside. “The promotion of homosexuality, by all means, is prohibited,” he stated.

The penalties provided for in his proposed law were far from symbolic:³² committing a homosexual act would result in 3–5 years in prison and a fine of 1 million Congolese francs (about \$500); choosing a gender other than the one assigned at birth would meet with 3–12 years in prison and a fine; same-sex marriage “contracted by deception” would lead to 5–15 years’ imprisonment and a fine; any parent who “gives up their child” to a homosexual or homosexual couple would face 5–10 years in prison, and similarly for “subjecting his or her child or the child under his or her care to homosexual practices”.

According to Steve Mbikayi, it was a question of “preserving African values, which have never tolerated same-sex relationships”. He considered this law important to protect Congolese youth from Western morals: “In view of the wind blowing in the world, and given that most African countries prohibit homosexuality, there was a glaring legal vacuum in our country, and the saying ‘he who says nothing, consents’ could be applied to this. And to protect Congolese youth and our population from these practices, I initiated a bill after consulting social pressure groups, churches, youth, women, to prohibit this practice in our country,” he explained. Mr Mbikayi said he recognized that individual freedom must be respected and guaranteed. However, he maintained that this individual freedom must not “shock the collective conscience”.³³

For example, in 2017, during the celebration of International AIDS Day, in front of the Minister of Justice and Human Rights, judicial authorities, leaders of religious denominations, community leaders and representatives of United Nations agencies, three people living with HIV, including one transgender person, gave testimonies on the discrimination they suffered. The Minister, touched by these testimonies, gave US\$5,000 to each of the women living with HIV, but not to the transgender person, without saying a word.³⁴ This is a discriminatory gesture rejecting the transgender person. In the DRC, leaders and decision makers are wary of making any kind of statement under the threat of being labelled homophobic or discriminatory, and services are not equitable for LGBTI people.³⁵

Country indicator 6: Court judgements

As one of the key principles of criminal law, the interpretation and application of laws are based on the principle of ‘nullum crimen, nulla poena sine lege’, which is otherwise known as the principle of legality of offences and penalties. It should not be forgotten that this principle is required to provide a guarantee to the litigants against the arbitrariness of the judiciary, and it is a principle which requires the legislator to express itself in clear terms, the contrary constituting an attack on the principle and the interest protected. In the case of vague and imprecise definitions of the offence, and the judge not being able to determine the punishable act or the applicable penalty on his/her own, the correct interpretation will be to acquit the accused. However, despite this requirement, sometimes a flexible or unclear law, drafted in flexible or ambivalent terms, is the only instrument available.³⁶ Often in the prosecution of LGBTI people based on gender identity and sexual orientation, the judge is confronted with these realities.

The Penal Code contains 16 articles relating to “offences against the family order”, but none of these refers to any form of criminalization of gender identity and sexual orientation. There is a legal vacuum on the explicit criminalization of homosexuality in the DRC. There is a lack of three constituent elements of the offence to qualify acts and behaviour related to sexual orientation (homosexuality) and gender identity. However, it was reported under country indicator 1 that laws often include a vague reference to ‘decency’, such as regarding ‘acts contrary to public decency’. As a result, both state and non-state actors tend to apply their own moral judgement in their treatment of LGBTI people.³⁷

In the major cities of the DRC, at the level of the courts and tribunals and the prosecutors’ offices attached to them, magistrates and judges use their moral judgements, and members of the LGBTI community are subjected to abuses of power in violation of human rights in the form of arbitrary searches and arrests, extortion, blackmail and harassment.³⁸

In Kisangani a few years ago, a gay man named Zika reported that a friend of his who was accused of being

32 Mathieu Olivier, ‘RD Congo: la grosse colère de Steve Mbikayi, le député qui voulait interdire l’homosexualité’, *Jeune Afrique*, 23 March 2016, <https://www.jeuneafrique.com/312643/politique/rd-congo-grosse-colere-de-steve-mbikayi-depute-voulait-interdire-lhomosexualite/>, accessed 27 December 2021.

33 Christian Rumu, ‘Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo’.

34 Ministry of Justice, ‘Rapport d’activités du projet d’appui au secteur justice et droits humains sur la promotion d’un environnement favorable’, 2017.

35 Christian Rumu, ‘Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo’.

36 Parquet Général de la République, ‘Interprétation, cassation et annulation en droit congolais’, 2013, p. 17.

37 Christian Rumu, ‘Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo’, p. 12.

38 Immigration and Refugee Board of Canada, ‘Democratic Republic of Congo: Information on the situation of sexual minorities, including laws and treatment by society and authorities; state protection and support services (2011–February 2014)’, 2014, <https://www.refworld.org/docid/53733bce4.html>, accessed 12 December 2021.

gay was arrested and brought to court, and the judge used article 176 of the Penal Code as the reason for his judgement. The judge did not seem to care that homosexuality was not penalized.³⁹

To date, no judge's decision has been made with regard to the acts and behaviour of gender identity and sexual orientation as an offence.

As noted above under country indicator 5 relating to speeches by parliamentarians, the initiative for a proposed homophobic law on unnatural practices by National Deputy Steve Mbikay in 2013 included penalties, although to this day no one has referred to this proposal. And so, if such a law had to come into existence in the DRC, LGBTI people would be prosecuted, and it would be a serious violation of their human rights.⁴⁰

Country indicator 7: Official reports

In the DRC, the various reports of the health sector programmes (TB, reproductive health, adolescent health, HIV) mention gay and transgender people. These official documents report on the health and human rights situation of MSM and transgender people in terms of their access to basic social services. The report on the LGBTI stigmatization and discrimination survey published in 2017 covers the level of discrimination against LGBTI populations in their access to health services, education, employment, housing and social security.⁴¹ In addition, the UNDP-funded report on the activities of the Ministry of Justice's AIDS Unit reports on the human rights and HIV issues of transgender people and MSM.⁴² However, in the reform of the Estates General of Justice, no mention is made of the issue of rights and protections of LGBTI populations in the country. The report by the Cliniques Juridiques Centre d'Expertise en Droits Humains et Criminologie (CEDHUC) in 2018 documenting pre-trial and trial cases concerning LGBTI people brought to and accompanied in court states that LGBTI people are victims of arbitrary arrests, extortion and various forms of violence perpetrated by law enforcement officers.⁴³

The gender and human rights assessment report states that gender-based violence in the DRC is a significant barrier to accessing HIV and TB care and treatment services.⁴⁴

The alternative report for the third cycle of the Universal Periodic Review (UPR) for the DRC, presented on 1 October 2018 by a consortium of LGBTI organizations

based in three cities,⁴⁵ reported on the situation of LGBTI people. In this document the authors recalled the legal instruments that the Congolese government has ratified, the monitoring of cases of violations against LGBTI people, and the recommendations made to this effect.⁴⁶ Following this report, and in response to some questions about human rights asked by the Working Group of the United Nations Human Rights Council during the 42nd session of the United Nations General Assembly held on 9–27 September 2019 under item 6 of the UPR agenda, the Congolese Minister for Human Rights concluded by stressing that the DRC had taken due note of the remarks and considered it a privilege to sit on the Human Rights Council. The country undertook to behave in an exemplary manner, in particular with regard to respect for the highest human rights standards—for example, by allocating a budget for the implementation of action plans by its armed forces and police to combat sexual violence in all its forms.

Country indicator 8: Political parties/platforms

The DRC has a multiplicity of political parties (more than 500), with opposition tendencies that are often hybrid (conservative and progressive), and this is reflected in their social projects. Often the political platforms are electoral. In most cases, sexual and gender minority issues are not explicitly included or addressed in their social plans. The aspects of minorities that they often refer to are notably ethnic minorities and certain vulnerable groups with reference to articles 51 and 123 of the Constitution of the DRC.

Apart from the then opposition Labour Party of National Deputy Steve Mbikay, who initiated the proposed law on unnatural practices, no other political party leader has taken a public position on LGBTI issues. Similarly, no leader of the parties allied to the ruling Political Party for Reconstruction and Development (PPRD) platform, including the Parti Lumumbiste (PALU), has made any official public statement on sexual and gender minorities in the DRC.

During interviews with the CASH platform of the government and the opposition Front Commun Congolais, some of the leaders discussed sexual and gender minorities, stating that although they are present in the country, the subject is taboo because Congolese culture is not accepting. The members of these platforms interviewed also stated that, as human beings, LGBTI

39 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo'.

40 Ibid.

41 INDEX, 'Report on LGBTI Stigma Survey in DRC', 2017.

42 Report on activities in support of the justice sector on the promotion of an enabling environment for the response to HIV in the DRC 2012–2020.

43 CEDHUC, 'Activity Report', 2018.

44 Report on gender assessment in relation to HIV and TB in DRC, 2019.

45 MOPREDS (Goma), OASIS (Kinshasa), Rainbow Sunrise Mapambazuko (South Kivu) and Jeunialissime (Kinshasa).

46 Alternative report on the situation of LGBTI people in the DRC, Universal Periodic Contribution, 3rd cycle, October 2018, Goma.

people have the same rights as all other Congolese citizens. It should also be noted that none of the political parties' plans for society include any mention of the rights of LGBTI people. Some political party leaders did not want to voice an opinion despite being members of the LGBTI community. They fear that it would be used for political purposes by the opposing political parties, whether in opposition or in government.

Outcome 2: A situational analysis and data on the capacity of LGBTI activists and allies to sensitize and influence relevant decision makers and hold authorities to account

Indicators 9, 10 and 11 of outcome 2 aim for joint initiatives by LGBTI associations and allies to influence and/or hold state authorities to account. These indicators also target the involvement of LGBTI activists and other civil society allies involved in processes related to the promotion and defence of broader rights, development and gender equality issues, including the inclusion of LGBTI people as presented in each of the indicators below.

Country indicator 9: Joint initiatives between movements to influence authorities and/or hold them accountable

To better present the joint initiatives between the LGBTI community and its allies that hold authorities accountable for their statutory obligations (to respect, protect and promote the rights of all individuals, including LGBTI people), it is necessary to understand the genesis of the LGBTI movement in the DRC. The LGBTI movement started to organize in two towns in eastern DRC, and the group *Hirondelles* was the pioneer organization.⁴⁷ This group later split into two groups due to internal conflicts between the leaders, which led to the creation of *Rainbow Sunrise Mapambazuko*. Between 2010 and 2012, through projects funded by Heartland Alliance, *Mouvement pour les libertés individuelles* (an LGBT organization based in Burundi) identified LGBTI people in the cities of Bukavu and Goma in eastern DRC and trained them on human rights and LGBTI issues. At

the same time, other organizations such as *Colo* and *Mouvement pour la promotion du respect et de l'égalité des droits et de la santé (MOPREDS)* were also trained.⁴⁸ The LGBTI movement began to develop in the capital, Kinshasa, towards the end of 2013 with the creation of a bloc and an online group, the MF. Previously, a feminist organization called *Si Jeunesse Savait* had been working on LGBT issues in Kinshasa. In 2013, in partnership with the Heartland Alliance's African Men for Sexual and Human Rights programme, *Si Jeunesse Savait* facilitated the identification and capacity-building of LGBTI activists in Kinshasa and Goma. According to some members of the LGBTI community in Kinshasa, it is this process that led to the creation of several other LGBTI organizations, although they are still at an embryonic stage of learning and setting up structures that would enable them to achieve their goals and missions. In the city of Lubumbashi there are only informal LGBTI groups that meet regularly for social events. These groups are divided according to social status and are reluctant to form associations. During an exchange in Lubumbashi, when the group discussed the possibility of creating a formal LGBTI organization, some were reluctant to associate with other LGBTI people beyond their core group.⁴⁹ However, other members of the LGBTI community expressed a strong interest in organizing within formal LGBTI organizations. As for transgender people, there is still very little organizing on transgender-specific issues despite the existence of a significant transgender community. In addition, transgender women are more visible than transgender men.⁵⁰

In the DRC, although health programmes emphasize access to services for LGBTI people, it must be said that initiatives related to human rights and gender have developed over the last 10 years in the areas of health, SRH and gender-based violence. LGBTI associations and allies (human rights organizations, parliamentarians and health programmes) are working on reducing stigma and discrimination against vulnerable groups, including MSM, transgender people, victims of gender-based violence, and sex workers, to facilitate their access to health services in terms of prevention and care, as well as access to good information. As far as initiatives related to HIV, SRH and adolescent health are concerned, the associations are more effective and visible. They are very active and official at all levels.

Initiatives for the defence and promotion of the rights of LGBTI people are carried out on the themes of gender equality, parity, and sexual and gender-based violence at public, private and community levels. Broad programmes/projects have been developed, such as: a living together and placement project for LGBTI youth

47 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo', p. 45.

48 Ibid. Interview with the managers.

49 Interview with leaders very committed to the defence of LGBTI rights in DRC (OASIS and Jeunialissime), May 2021.

50 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo', p. 45.

with Jeunialissime in a very broad media capacity; advocacy for the revision of provisions 175 and 176 of the Penal Code on acts against morality; tolobela yango⁵¹ projects; risk reduction for safe abortion for young girls; the fight against stigmatization of young girls regarding medical abortion; empowerment of LGBTI people; health and inclusion of sexual minorities with Si Jeunesse Savait; the LIZIBA project and participatory dialogue for living together with LGBTI people (run by OASIS); and a mapping of LGBTI people, which is an estimation of the size of the LGBTI community in the country conducted by the organization Progrès Santé Sans Prix.

The most prominent initiative in the DRC to influence the authorities and hold them to account is the report on the situation of LGBTI people in the country, a joint written contribution to the third cycle of the UPR, submitted by an LGBTI⁵² consortium in October 2018. While the DRC's 2017 report did not mention any issues related to LGBTI people in the compilation of information for the United Nations, the Human Rights Committee expressed concern about allegations that some people had been discriminated against and abused because of their sexual orientation or gender identity and had been prosecuted because of their sexual orientation. The Human Rights Committee was also concerned about the lack of measures to address reported cases of discrimination and violence against persons with albinism and the absence of comprehensive anti-discrimination legislation. It recommended that the State take effective measures to prevent discrimination and acts of violence based on discrimination and to ensure that victims are fully compensated.

With regards to the recommendations for the third cycle (2019), some States made certain remarks. For example, Uruguay recommended that the DRC guarantee equal rights by adopting legislation that criminalizes discrimination on the basis of sexual orientation or gender identity, and provide access to justice for those affected. Argentina recommended that the DRC adopt the necessary measures to prevent and punish all acts of discrimination and violence, in particular against LGBTIQ people and those with albinism, ensuring their protection and providing them with adequate compensation. Chile and Iceland recommended the repeal of the provisions of article 176 of the Penal Code that lead to discrimination against LGBTI people on the basis of their sexual orientation, gender identity or expression. Rejection of legislative proposals that criminalize consensual same-sex relationships between adults was also recommended by Chile.⁵³

The commitment of the Government of the DRC to respond to the countries' comments on the issue of LGBTI people provides a key opportunity to hold state authorities to account for their obligations. The follow-up to the remarks and the commitment of the Minister for Human Rights during this session suggests the State's accountability for respecting and protecting the rights of LGBTI people in the country.

Country indicator 10: LGBTI activists involved in processes related to broader rights, development and gender issues

In the DRC, LGBTI rights activists are involved in wider rights processes, development and gender issues, but there are limitations in some areas due to the somewhat hostile social context for LGBTI people. However, there are activists in the country who are involved in the process at different social and institutional levels (parliament, government, community) but working in a hidden and anonymous way. There are potential allies on gender equality issues such as:

1. Si Jeunesse Savait, involved in SRH, the use of information and communication technologies, and entrepreneurship with projects led by the Francophone LGBTI Advocates Initiative (FLAI);
2. the organization Progrès Santé Sans Prix, which plans, in its development scope, to cover activities in favour of LGBTI people to positively impact on their financial empowerment through the establishment of a drinking water business;
3. Parlons Sida aux communautés (PASCO), which has programmes that address the basic social needs of LGBTI people in some provinces;
4. Le Forum Sida (FOSI), a platform of non-governmental organizations (NGOs) or community-based organizations fighting HIV and sexual and gender-based violence, whose programme facilitates LGBTI groups and sex workers to meet on its premises;
5. the Matongé Health Centre, which provides care for LGBTI people; and
6. the CEDHUC legal clinics,⁵⁴ supported by UNDP, which offers psychosocial, legal and judicial services

51 An expression in the Lingala language that means 'Let's talk about it'.

52 Comprising the organizations OASIS, MOPREDS, Rainbow Sunrise Mapambazuko and Jeunialissime.

53 MONPDES, 'Report on the recommendations of the 33rd session of the UPR Working Group', 2018. The DRC received four recommendations regarding sexual orientation and gender identity. It will provide a response by the 42nd session of the Human Rights Council.

54 UCOP+, 'Clinique Juridique', <https://ucopplus.org/portfolio/clinique-juridique/>, accessed 25 March 2022.

to LGBTI people to ensure their access to justice and basic social services.

Among the United Nations agencies, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and UNDP have played an important role in advocating against MP Steve Mbikayi's bill criminalizing consensual same-sex sexual activity. Both agencies are also identified as allies for the LGBTI community. The embassies of South Africa, Canada, Belgium, the Netherlands, the United Kingdom and Sweden were also instrumental in the process of advocating against the bill at parliamentary level.⁵⁵ Parastatals such as the Country Coordination Mechanism, the National Multisectoral Strategic Plan to Combat AIDS, 2021–2023 and the National Human Rights Commission take LGBTI people into account in their programmes. It should be noted that despite the efforts that LGBTI activists involved in the wider rights, development and gender processes can contribute, they face major constraints that require a great deal of individual and organizational commitment, but also a constantly positive and open attitude from allies. For example, the media are very negative and unsupportive, and are not involved in the process of coordinating on processes related to broader rights, development, gender equality and sexual and gender identity issues. Only the Network of Journalists and Communicators for Population and Development is very much involved in this process in a supportive way. The Network of Journalists for Sexual and Reproductive Health accompanies LGBTI organizations in advocating on specific issues, including access to health services free from bullying and discrimination, access to information and other basic social services.

Country indicator 11: Allies from other movements involved in the process of inclusion of LGBTI people

In the DRC, allies of other movements involved in the inclusion process operate in a complex social climate. Initiatives working towards inclusion and respect for the rights of LGBTI people are taking place in the health sector and involve other sectors. The National Multisectoral Strategic Plan to Combat AIDS opens up space for inclusion in all 10 sectors (health, defence and security, social and humanitarian action, transport and communication, agriculture and rural development, education, finance and budget, mining and energy, justice and human rights, and culture and media). The Journalists and Communicators for Population and

Development movement not only works on health issues but also collaborates positively with LGBTI associations in the process of advocating for the rights of sexual minorities and SRH.⁵⁶ The parliamentary group on the Southern African Development Community's sexual and reproductive health and rights governance project in the DRC involves LGBTI people. Apart from the CEDHUC legal clinics, allies working in the defence of human rights have limited visibility in the community. Most organizations are restricted to urban areas. Networking between organizations in the country is almost non-existent. However, there are some efforts by allied movements on lesbian, bisexual and transgender women's issues.⁵⁷

Outcome 3: Inclusion, participation, representation and influence of diverse African LGBTI populations and their allies in relevant policies and decisions

Country indicator 12: Participation of LGBTI people in policymaking processes

The participation of LGBTI people in the policy development process in the DRC is carried out at the level of health programmes (HIV, SRH, COVID-19 etc.). For example, during the development of the National Multisectoral Strategic Plan to Combat AIDS, 2021–2023, LGBTI people were involved in an inclusive manner. It must be said that this involvement of LGBTI people is justified by the recognized heightened vulnerability of some members of these groups to HIV. In particular, under the New Funding Model of the Global Fund to Fight AIDS, TB and Malaria, the establishment of the Country Coordinating Mechanism involves LGBTI people through an MSM representative, although this participation is not limited to MSM. This participation enables LGBTI people to scrutinize public, private and community aspects of the needs of key populations, including MSM and transgender people. LGBTI people participate at all levels of the national response to develop HIV programmes, from the concept note for the Global Fund grant application on the three diseases (HIV, TB and malaria). Apart from the participation of LGBTI people in the health policy/ programme development process, no other sector

55 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo', p. 57.

56 Gisèle Tshijuka, 'Onu/Sida and RCP/Media determined to further strengthen their partnership', Digital Congo, 31 October 2020, <https://www.digitalcongo.net/article/5f9d5ca854267e0017c012b5>, accessed 25 March 2022.

57 Radio Okapi, 'L'ONG SJS et la lutte contre les violences faite à la femme à Kinshasa', Press Release, Radio Okapi, 12 March 2012, <https://reliefweb.int/report/democratic-republic-congo/l%E2%80%99ong-sjs-et-la-lutte-contre-les-violences-faite-%C3%A0-la-femme-%C3%A0>, accessed 25 March 2022.

(education, employment) involves LGBTI people in its policy or programme development process. For gender policy initiatives in the university curriculum in the DRC there is no mention of marking out the pathways for the inclusion of sexual and gender minorities, and to ensure equality between girls and boys, women and men in research. They argue that the missions of education, training, research and teaching should strengthen the participation and promote the role of women. With regard to gender policy,⁵⁸ it remains at the centre of the government's support activities. The promotion of gender equality in various sectors of social life does not necessarily take into account the issues of sexual and gender minorities. These include the integration of gender into development policies, the introduction of gender into the university curriculum and the validation of gender monographs in six provinces of the country.

In 2017, the members of the government's Socio-Cultural Commission, in the presence of the Prime Minister, opted to mainstream gender into the country's national programmes and ongoing development policy dialogues. This approach aims to accelerate women's empowerment in the home and community, in health and education, at work and in political participation and leadership. These ministers believe that gender equality and women's empowerment in the DRC are focused on the political economy.⁵⁹ It must be said that this whole process has made no mention of the participation of LGBTI people.

Country indicator 13: Coordination of advocacy and policy messages among LGBTI groups (to influence law, policy or programmes)

The coordination of advocacy and political messages among LGBTI groups to influence law, policy or programmes in the DRC is carried out in the health sector for the inclusion of LGBTI people and the removal of human rights barriers to accessing health services. LGBTI associations agree and take action to influence health policies and programmes. As an example, advocacy against the restriction of LGBTI rights to health services (by reducing discrimination against key populations and creating an enabling environment) can be cited. The most notable and important coordination on advocacy was in 2017,⁶⁰ when a number of LGBTI associations—MOPREDS, Jeunialissime, Oasis Club Kinshasa, Mouvement pour

les libertés individuelles, Rainbow Sunrise Mapambazuk, African Men for Sexual Health and Rights (AMSHeR) and Synergía – Initiatives for Human Rights—came together to produce the joint report for the promotion of respect and equal rights and health for LGBTI people to the African Commission on Human and Peoples' Rights for its review of the implementation of the African Charter on Human and Peoples' Rights at the 61st session of the African Commission.⁶¹ The aim of this joint report was to draw the Commission's attention to the serious violations of the Charter against LGBTI people in the DRC, and violations based on real or imputed sexual orientation and gender identity (advocacy aimed at reminding the Congolese government to respect, protect and promote the rights of LGBTI people).

The second example of coordination of LGBTI associations is that of a coalition in October 2018 on the alternative report on the situation of LGBTI people in the DRC.⁶² In relation to the third cycle of the UPR in April 2019 concerning the issue of human rights violations based on sexual orientation, gender identity and expression, four NGOs—namely, MOPREDS Congo, OASIS-RDC, Rainbow Sunrise Mapambazuko and Jeunialissime—proposed to submit a joint report offering an opportunity to mobilize activists, remind and inform the government about LGBTI issues, establish a link for formal dialogue with the government and hold the country accountable for its international obligations while ensuring broad community participation in the process and proposing recommendations for improving the situation of LGBTI people in the country. The feedback from United Nations Member States to the DRC has led, among other things, to advocacy initiatives on the revision of certain laws such as the above-mentioned provisions on morality.

Country indicator 14: Coordination of advocacy and policy messages between LGBTI groups and other development actors (to influence law, policy or programming)

In the DRC, there are actors working with LGBTI groups to influence discriminatory laws related to sex and gender. Specifically, there has been clear coordination in terms of a partnership between Jeunialissime, an LGBTI movement, and the CEDHUC on a number of actions to be taken on laws and policies based on remarks made by

58 See DRC, 'Politique nationale genre', https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_241465.pdf, accessed 25 March 2022.

59 Marc Ngwanza, 'Des avancées dans l'intégration du Genre dans les politiques de développement national', UNDP DRC, 5 December 2017, <https://www.cd.undp.org/content/rdc/fr/home/presscenter/articles/2017/12/05/la-rdc-opte-pour-d-int-grer-le-genre-dans-les-politiques-de-d-veloppement-national.html>, accessed 25 March 2022.

60 'An alternative report on the implementation by the DRC of the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)'.
 61 African Commission on Human and Peoples' Rights, 61st session, <http://archived2021.ishr.ch/news/commission-africaine-bilan-de-la-61eme-session>, accessed 25 March 2022.

62 Office of the High Commissioner for Human Rights, 'Alternative report on the situation of LGBTI in the DRC, joint written contribution to the 3rd Cycle Universal Periodic Review', Goma, 2018.

States for the UPR in 2019. The recommendations were mainly about: (1) guaranteeing equal rights by adopting legislation that criminalizes discrimination on the basis of sexual orientation or gender identity, and providing access to justice for those affected; (2) adopting the necessary measures to prevent and punish all acts of discrimination and violence, in particular against LGBTI people and those with albinism, ensuring their protection and compensation in case of violation of their rights; (3) the repeal of provisions that are confusing in their interpretation, such as article 176 of the Penal Code, which discriminates against LGBTI people on the basis of their sexual orientation, gender identity or expression; and (4) advocating for the rejection of legislative proposals that criminalize consensual same-sex relationships between adults.

As a result, CEDHUC and Jeunialissime have entered into a partnership for the interpretation of the above-mentioned provisions by the States. The partnership aims to coordinate actions to bring about inclusive and sustainable improvement in the quality of life of young people, including LGBTI people. The coordination of advocacy actions is based on the development of an action plan for advocacy for the improvement of the legal environment (e.g. the Penal Code) in its provisions related to good life and morals, the collection of relevant evidence for the improvement of laws, the development of arguments for advocacy, and participation in the advocacy process itself through a strategic partnership plan that will result from the agreement.⁶³

Country indicator 15: Official policies/strategies by sector (poverty, gender, health, justice, education)

The economic capacity of LGBTI people in the DRC is very low. There are no official policies or strategies that specifically address LGBTI people because of the discrimination that sexual and gender minorities face in the country. LGBTI people face significant barriers in accessing employment, and many suffer discrimination from their employers.⁶⁴ Sexual minorities in the DRC do not reveal their sexual orientation in the workplace. Often LGBTI people are accused of being witches. The consequences for individuals who identify as LGBTI in the workplace include unfair dismissal simply based on their gender identity or sexual orientation.⁶⁵ For these reasons, LGBTI people working in the formal sector live with a real fear of dismissal, humiliation and isolation if

their sexual orientation or gender identity is discovered. The economic power of LGBTI people in the DRC is often directed towards the informal sector,⁶⁶ and this is tolerated by society in general.

In relation to gender equality, the official policy on gender equality is based on a male–female binary view. The Ministry of Gender, Family and Children has a policy which, unfortunately, makes no reference to sexual and gender minorities or to diversity and is limited to gender parity. The DRC's gender policy is centred around four major pillars, namely: equality and equity within the family; participatory equality in the household and market economy; equality in law and in fact; and the impact of gender in all interventions by multiple actors. It is based on the government's document identifying gender mainstreaming in development policies, programmes and projects as a key factor towards poverty reduction in the country. Furthermore, it integrates long-standing sectoral strategies and action plans and is guided by the fact that the involvement of men and boys is essential if equality between women and men, girls and boys is to become a reality in law and in fact. It is based on the need to change behaviours and mentalities as well as degrading cultural traditions so that equality in rights and the enjoyment of and equal access to opportunities for women and girls are sustainable and well anchored in public and private life as well as in national mores. This policy is, therefore, a road map for the government, civil society, the judiciary, the private sector, information and communication professionals, artists, academic actors, and partners and donors.⁶⁷

However, it is important to mention that the 2018 gender assessments in relation to HIV and TB include LGBTI people in the health sector. Significant progress has been made in the health sector, and most of the programmes, including HIV, SRH, adolescent health and TB, have LGBTI intervention areas. The interventions are aimed at providing LGBTI people with access to prevention and care services, on the one hand, and removing barriers or obstacles to accessing HIV services, on the other. The various programmes and strategies are supported by certain laws. The DRC has adopted a law on the protection of people living with HIV. Article 2 of the law defines 'vulnerable groups' as including MSM among those particularly at risk of HIV infection. Apart from the above-mentioned provisions on the prohibition of discrimination, this law is currently the only law in force that provides protection for LGBTI people, although it primarily concerns MSM. In the national HIV reporting framework, only MSM and transgender people are considered key populations. This means that LGBTI people have to be labelled as one of the groups identified

63 Partnership agreement between the CEDHUC and the Jeunialissime movement, 2021.

64 Christian Rumu, 'Analyse de la situation des droits humains des personnes lesbiennes, gay, bi-sexuelles, transgenres, et intersexuées et des professionnels du sexe dans la république démocratique du Congo', p. 34.

65 Ibid.

66 Tolerated sectors include restaurants, hair salons, bars, health programmes, nightclubs etc.

67 Ministry of Gender, Children and Family, 'National Action Plan for the Implementation of the National Gender Policy', 2019, <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/95095/111833/F1922363659/COD-95095.pdf>, accessed 25 March 2022.

as key populations to access care, and this does not take into account the specific needs of each group.

With regard to education, although there are life education courses in the curriculum, aspects of SRH are not included. Some projects are being implemented to improve access to health information and services for adolescents and young people of all categories. However, the National Family Life Education Programme⁶⁸ includes the following areas of intervention: institutional and technical capacity-building, communication and advocacy, awareness-raising, support for the programme and capitalization, and data management on adolescents and young people.

LGBTI people are subject to verbal and physical abuse in some educational institutions. Staff in these institutions often turn a blind eye and do not intervene. Homophobia against high school and university students tends to be based on the strong religious and traditional beliefs of their families and society in general. There are no specific guidelines or policies in place in the DRC to create a safe and inclusive space for LGBTI people in educational institutions.⁶⁹ This situation is contrary to the country's commitments on the protection of the rights of the child, the right to education and the Universal Declaration of Human Rights, thus constituting a real regression on the impact of access to education for all children despite their sexual orientation and gender identity/expression and a real threat to the collective development of the whole nation.⁷⁰

With regard to the justice sector, the DRC's National Policy for Judicial Reform 2017–2026 (PNRJ)⁷¹ provides for innovations and aims to create a State governed by the rule of law, and a quality justice system for all, which is independent, efficient and protective of human rights and, therefore, reassuring. This need constitutes the vision of the PNRJ, which covers the period 2017–2026.⁷² Quality justice for all requires organizing access to law and justice for the benefit of the population as a whole, and particularly for vulnerable people.⁷³

With regard to gender balance, the PNRJ provides for the respect of gender balance in the recruitment and promotion of magistrates and judicial and penitentiary staff to various positions of responsibility. In the criminal field, taking into account the increased vulnerability of women and children in detention, particular attention will be paid to the prosecution and repression of gender-

based violence and to the conditions of detention of these categories of people.⁷⁴ In fact, although both policies provide for the repression of gender-based violence, this reform does not include issues specifically related to sexual and gender minorities.

Outcome 4: Use of African ideas, evidence and innovations that support LGBTI-inclusive governance and related work

Country indicator 16: Country-specific knowledge products on LGBTI inclusion

In the DRC, there are many specific knowledge products that cover the inclusion of LGBTI people. These documents are mainly in the form of surveys, reports, articles and various research publications on sexual minority issues. Often produced by identity-based NGOs and those working in the health sector, such as: the INDEX survey of LGBTI stigma in the DRC in 2017, produced by an organization promoting the health and rights of key populations, Progrès Santé Sans Prix, funded by the UNDP country office; the shadow report on LGBTI rights in the DRC for the UPR in 2019, produced by a coalition of LGBTI associations (MOPREDS, OASIS, Rainbow Sunrise Mapambazuko and Jeunialissime); the gender survey; the technical argument against the criminalization of certain key populations, including LGBTI people; the review of the Congolese legal framework on HIV; and the training manual on rights and HIV.

Other documents to be cited include an analysis of the human rights situation of LGBTI people and sex workers in the DRC published in 2017 by the East African Sexual Health & Rights Initiative (UHAI EASHRI), and a report on the situation of the rights of LGBTI people to the African Commission on Human and Peoples' Rights for its review of the implementation of the African Charter on Human and Peoples' Rights at the Commission's 61st session in November 2017. This report was written by the following six associations: MOPREDS, Jeunialissime, Oasis Club

68 Camille Bulabula, 'Teacher training on the new family life education curriculum', CONFEMEN, 2013, <https://www.confemen.org/formation-des-enseignants-sur-le-nouveau-programme-deducation-a-la-vie-familiale/>, accessed 7 January 2022.

69 Commissariat Général Aux Réfugiés et aux Apatrides, 'COI Focus République Démocratique Du Congo, L'homosexualité', June 2021, p. 15, https://www.cgra.be/sites/default/files/rapporten/coi_focus_rdc_homosexualite_20210624.pdf, accessed 25 March 2022.

70 Progrès Santé Sans Prix, 'Report on the stigma index survey of LGBTI people in the DRC', 2017.

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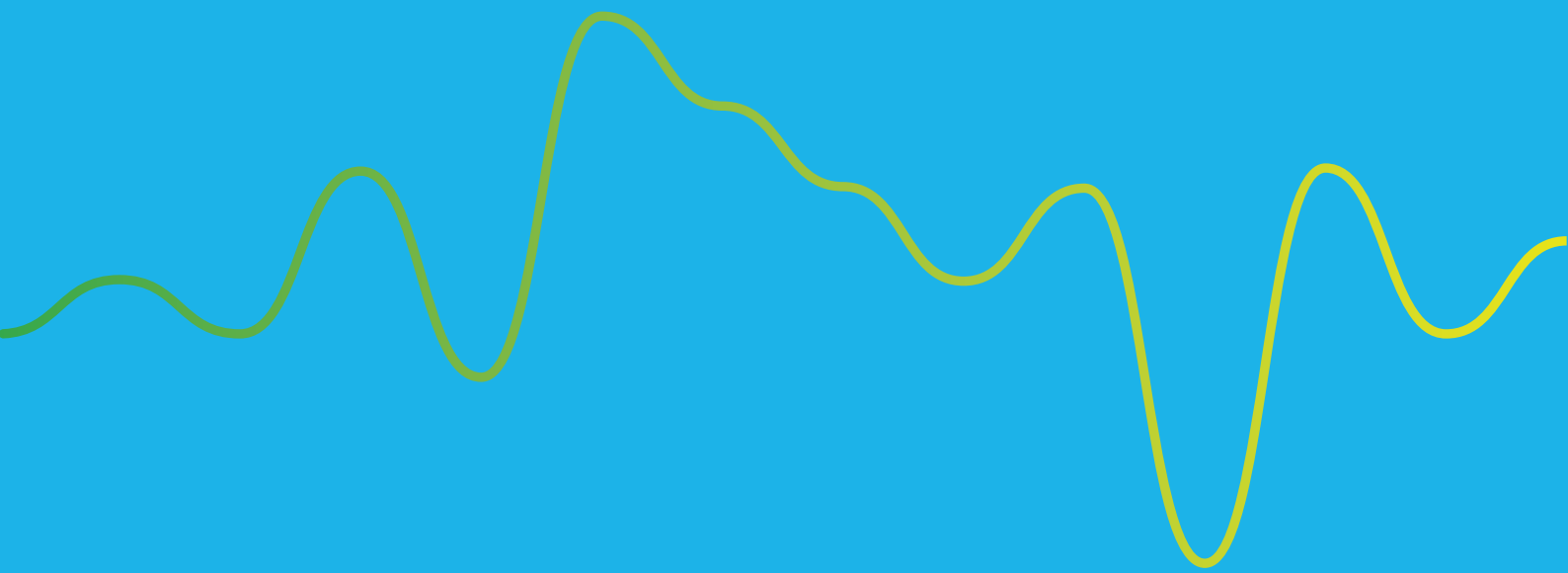
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