


Criminalisation of Homosexuality

Updated 25 October 2015

Tanzania		
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<p>National Law:</p> <p><i>Penal Code Act 1945, Chapter XV (“Offences Against Morality”) (as amended by the <i>Sexual Offences Special Provisions Act, 1998</i>)¹</i></p> <ul style="list-style-type: none"> - S138A: Acts of Gross Indecency between Persons² - S154: Unnatural Offences³ - S155: Attempt to Commit Unnatural Offences⁴ - S157: Indecent practices between males⁵ <p><i>Zanzibar’s Penal Decree Act No.6 of 2004 (as amended by The Penal Decree (Amendment) Act No.6 of 2004)</i>⁶</p> <ul style="list-style-type: none"> - S150: Unnatural Offences⁷ - S151: Attempt to Commit Unnatural Offences⁸ - S153: Acts of Lesbianism⁹ - S154: Acts of Gross Indecency between Persons¹⁰ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 1-5 years’ imprisonment or fine of 100,000-300,000 shillings - 30 years’ imprisonment - 20 years’ imprisonment - 1-5 years’ imprisonment or fine not less than 100,000-300,000 shillings - 14 years’ imprisonment - 7 years’ imprisonment - 5 years’ imprisonment or a fine not exceeding 500,000 shillings - 5 years’ imprisonment or to a fine not exceeding 200,000 shillings 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
<p>Both male and female same-sex sexual acts are criminalised</p>		

<p>Enforcement</p>	<ul style="list-style-type: none"> - A number of reports suggest that the law has not been used to prosecute in recent years. However, there have been reported instances of arrests. - January 2015: Police in Tanzania arrested a trans man and his female partner on suspicion of violating the Tanzanian law against same-sex intimacy.¹¹ - 2014: The US Human Rights Country Report noted that in the past courts charged individuals suspected of same-sex sexual conduct with loitering or prostitution.¹² - 2013: According to a 2013 Human Rights Watch report, arrests of LGBT persons rarely led to prosecutions; usually they were a pretext for police to collect bribes or coerce sex from vulnerable individuals.¹³ - 2011: Prison visits by the Commission for Human Rights and Good Governance (Tanzania) (CHRAGG) from 2011 revealed that “unnatural offenses” were among the most common reasons for pretrial detention of minors.¹⁴ - 2009: In 2009 the International Gay and Lesbian Human Rights Commission reported one case involving 39 arrests of LGBTI activists under section 176(a) of the Penal Code for “<i>operating as commercial sex workers</i>”. According to the report they were detained for two weeks.¹⁵
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - April 2015: The LGBT Voice has urged the Tanzanian Government to withdraw the proposed anti-LGBTI bill (The Bill to Prohibit and Control any form of Sexual Relations between Persons of the Same Sex, 2014) from the parliament immediately.¹⁶ - 17 March 2014: Bernard Mbembe, the Foreign Minister for Tanzania, spoke to the Commonwealth about gay rights in Africa. He was quoted as saying: <i>‘I think the Commonwealth will be hearing me say that any imposed Western cultural norm on the African continent or elsewhere is more likely to lack legitimacy and acceptance. Unless this matter is taken carefully and people become so sensitive when imposing such cultural differences and norms, we may not end up well in the continent when it comes to the debate on LGBTI.’</i>¹⁷ - 29 March 2014: (See the statements of one MP’s plans to introduce a further anti-gay law below) - February 2014: When asked whether it’s time to stop criminalising people who are in consensual relationships, President Kikwete told Amanpour from CNN it will <i>‘take time for our people to accept the norms that the west is accepting.’</i> And when pressed on whether he wants to see that happen, he told Amanpour <i>‘I cannot say that now.’</i>¹⁸

	<ul style="list-style-type: none"> - 11 Nov 2011: Tanzanian Prime Minister Mizengo Pinda, when pressed on the issue of gay rights, said: <i>'You are not being fair to me as the government has already made its stand clear on the matter... but since you want to get my opinion, I would like to say that homosexuality is unacceptable to our society.'</i>¹⁹
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - October 2014: A report by LGBT Voice, a Tanzanian LGBT advocacy organisation established in 2009, found that <i>'LGBT persons in Tanzania continually face stigma and discrimination, harassment and arbitrary arrests, alienation from family and faith, lack of access to social services including health, justice, housing, education and dignified livelihoods.'</i>²⁰ - Reports of persecution and discrimination are widespread in Tanzania. A 2013 Human Rights Watch report noted a number of instances of persecution in a number of different areas: <i>'arrests, violence, and harassment of LGBTI people are common, particularly for MSM. Examples of discrimination in housing, education and employment have been reported and affect lesbians and bisexual women as well as gay and bisexual men.'</i> Access to medical aid also proved a problem. The report details the case of one man in 2012 who was refused medical treatment from a doctor in Zanzibar on the basis of his sexuality.²¹ - 2010: One man reported being raped by police. The gay man, who occasionally was forced to work as a sex worker, was looking for clients on the street when he was arrested by a police officer. He was forced at gunpoint to ring and invite 5 of his gay friends to join him and upon arriving they were also arrested. The man's mother paid his bail by taking out money from a money-lender. Speaking on the incident, the man recalled: <i>'When I remember that situation, I want to cry.'</i>²²
<p>Legislative News</p>	<ul style="list-style-type: none"> - April 2015: Tanzania postponed a referendum on the new constitution after delays in registering voters.²³ Tanzania embarked on a constitutional review process in 2011. The Constitutional Review Act of 2011 was enacted to provide a regulatory framework for the process.²⁴ As part of that process, a referendum was due to held in April 2015 to approve the new Constitution. There had been much tension surrounding the new constitution, with the main opposition parties rejecting it. The new draft Constitution improves the coverage of human rights but makes no specific reference to sexual orientation as prohibited ground of discrimination.²⁵ - 29 March 2014: Tanzanian MP Exekiel Wenje gave notice to Parliament of his intention to draft a Bill similar to those enacted in Nigeria and Uganda to criminalise further consensual same-sex sexual conduct. In an interview with <i>The East African</i>, Wenje said <i>'we should not care about aid, we should care about our values and the future of the country.'</i>²⁶ - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General

	<p>Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.²⁷</p> <p>- (UPR 2012) Tanzania rejected recommendations to remove penal provisions which criminalise consensual same-sex sexual conduct. Similarly the country rejected recommendations to take active measures to protect LGBTI people from discrimination.²⁸ The Tanzanian delegation noted that the practice of homosexuality went against the country's traditional, cultural and religious rights.²⁹</p>
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¹ The law is : www.lrct.go.tz/download/updated-acts-tanzania/PENAL.pdf

² Penal Code Act 1945, s138A: '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.'

³ Penal Code Act 1945, s154: '(1) Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) 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. (2) 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.'

⁴ Penal Code Act 1945, s155: '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.'

⁵ Penal Code Act 1945, s157: 'Any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private, commits an offence and is liable to imprisonment for five years.'

⁶ As a semi-autonomous legal system within Tanzania, Zanzibar has its own penal code. The Penal Decree Act and Amendment are :

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Tanzania/zanzibar_penal_2004_en.pdf; and

[http://www.judiciaryzanzibar.go.tz/essential%20_satutes/The%20Penal%20Decree\(Amendment\)%20ACT%20%20NO.6%20%202004%20%20.pdf](http://www.judiciaryzanzibar.go.tz/essential%20_satutes/The%20Penal%20Decree(Amendment)%20ACT%20%20NO.6%20%202004%20%20.pdf)

⁷ Penal Decree Act No.6 of 2004, s.150: 'Any person who: (a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for a term not exceeding fourteen years.'

⁸ Penal Decree Act No.6 of 2004, s.151: 'Any person who attempts to commit any of the offences specified in sections 150 is guilty of a felony, and is liable to imprisonment for a term not exceeding seven years.'

⁹ Penal Decree Act No.6 of 2004, s.153: 'Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand shillings.'

¹⁰ Penal Decree Act No.6 of 2004, s.154: 'Any person who, in public or private commits, or is a 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, is guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding two 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, 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 physical or psychological caused to that person.’

¹¹ Colin Stewart, *Tanzania: Trans man, wife arrested on gay-sex charges* (Erasing 76 Crimes 30 January 2015) <<http://76crimes.com/2015/01/30/tanzania-trans-man-wife-arrested-on-gay-sex-charges/>> accessed on 25 September 2015

¹² [Bureau of Democracy, Human Rights and Labor](#), *Country Reports on Human Rights Practices for 2014: Tanzania* (US State Department, 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236414>> accessed on 8 September 2015

¹³ [Bureau of Democracy, Human Rights and Labor](#), *Country Reports on Human Rights Practices for 2014: Tanzania*, (US State Department, 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236414>> accessed on 8 September 2015

¹⁴ [Bureau of Democracy, Human Rights and Labor](#), *Country Reports on Human Rights Practices for 2014: Tanzania* (US State Department, 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236414>> accessed on 8 September 2015

¹⁵ IGLHRC, *Tanzania: Arbitrary Arrests and Detentions of Gay and Lesbian Activists* (30 October 2009) <<https://iglhrc.org/content/tanzania-arbitrary-arrests-and-detentions-gay-and-lesbian-activists>> accessed on 19 July 2014

¹⁶ LGBT Voice Tanzania, *LGBT Voice urges the government to withdraw the proposed bill* (1 April 2015) <<http://lgbtvoicetz.org/blog/>> accessed on 8 September 2015

¹⁷ Andrew Potts, *Tanzania Foreign Minister advises Commonwealth to move slow on gay rights in Africa* (Gay Star News 17 March 2014) <<http://www.gaystarnews.com/article/tanzania-foreign-minister-advises-commonwealth-move-slow-gay-rights-africa170314>> accessed on 19 July 2014

¹⁸ Amanpour, *Tanzania's Blood Ivory: "This is madness now"* (CNN, 13 February 2014) <<http://amanpour.blogs.cnn.com/2014/02/13/tanzanias-blood-ivory-this-is-madness-now/>> accessed on 8 September 2015

¹⁹ Pinda says homosexuality not human, *Felister Peter* (IPP Media 11 November 2011) <<http://www.ippmedia.com/frontend/index.php?i=35293>> accessed on 19 July 2014

²⁰ James Wandera, *The Real Situation of Lesbian, Gay, Bisexual and Transgender Individuals and Activists in Tanzania* (LGBT Voice, 5 October 2014) <<http://lgbtvoicetz.org/the-real-situation-of-lesbian-gay-bisexual-and-transgender-individuals-and-activists-in-tanzania/>> accessed on 25 September 2015

²¹ Human Rights Watch, *'Treat Us Like Human Beings': Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania* (Human Rights Watch June 2013) <<http://www.hrw.org/sites/default/files/reports/tanzania0613webwcover.pdf>> accessed on 19 July 2014 at 26

²² Neela Ghoshal, *Africa's Small Steps Toward LGBTI Equality* (Human Rights Watch 17 July 2013) <<http://www.hrw.org/news/2013/07/17/africas-small-steps-toward-lgbti-equality>> accessed on 19 July 2014

²³ Reuters, *Tanzania postpones referendum on constitution*, (2 April 2015) <<http://www.reuters.com/article/2015/04/02/us-tanzania-politics-idUSKBN0MT21U20150402>> accessed on 9 April 2015

²⁴ For more information on the constitution review process please see: <http://www.constitutionnet.org/news/making-new-constitution-tanzania-challenges-and-opportunities>

²⁵ A copy and translation of the draft Constitution from September 2014 is : http://www.constitutionnet.org/files/the_proposed_constitution_of_tanzania_sept_2014.pdf

²⁶ Emmanuel Muga, *Dar plans to introduce tougher anti-gay Bill* (The East African, 29 March 2014) <<http://www.theeastafrican.co.ke/news/Dar-plans-to-introduce-tougher-anti-gay-Bill--/-/2558/2262374/-/iq7xix/-/index.html>>

²⁷ Michael K. Lavers, *Bid to block spousal benefits for gay U.N. employees fails* (Washington Blade 24 March 2015) <<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015

²⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (8 December 2011) UN Doc A/HRC/19/4, para. 87

²⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (8 December 2011) UN Doc A/HRC/19/4, para. 84