



Human Rights Violations Based on Imputed or Actual Sexual Orientation and Gender Identity in the Democratic Republic of the Congo (DRC)

A Shadow Report on DRC's Compliance with the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)

Submitted for consideration at the 61st Session of the African Commission on Human and Peoples' Rights

November 1-15, 2017

Submitted to the African Commission on Human and Peoples' Rights by:

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- *Jeunialissime*
- Oasis Club Kinshasa
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I. EXECUTIVE SUMMARY

This report is a joint submission by *Mouvement pour la promotion du respect et égalité des droits et santé (MOPREDS)*,¹ *Jeunialissime*,² *Oasis Club Kinshasa*,³ *Rainbow Sunrise Mapambazuko*,⁴ *Mouvement pour les libertés individuelles (MOLI)*,⁵ and *Synergía - Initiatives for Human Rights*,⁶ to the African Commission on Human and Peoples' Rights ("African Commission" or "Commission") for its consideration of DRC's implementation of the African Charter on Human and Peoples' Rights ("African Charter" or "Charter") at the 61st Session of the African Commission, taking place on November 1-15, 2017.

These organizations have worked together to produce this report on the human rights situation of lesbian, gay, bisexual, and transgender people (LGBT) in the Democratic Republic of Congo (DRC). The purpose of this collaborative report is to direct the Commission's attention to serious violations of the Charter against people in DRC, on the basis of actual or imputed sexual orientation and gender identity.

DRC deposited the ratification instrument of the African Charter on July 28, 1987. DRC submitted its 11th, 12th, 13th state reports on the implementation of the African Charter covering between 2008 and 2015.⁷ DRC deposited the instrument of ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") on February 9, 2009.

The State affirms in its report to the African Commission, "the enjoyment of fundamental rights and freedoms stipulated in the Charter is guaranteed to all Congolese citizens and foreigners living in the DRC without any distinction whatsoever."⁸

Although DRC does not directly criminalize same-sex sexual conducts in its Penal Code, civil society organizations report that LGBT people are routinely arrested and charged under Article 176 of the Penal Code, which penalizes activities against "public decency." Also, in the

¹ *MOPREDS* is a community-based organization established in 2012. It was established after a bill was introduced to criminalize same-sex sexual conduct. This organization focuses on addressing human rights violations against LGBTI people, through documentation, surveys and advocacy.

² *Jeunialissime* is a non-profit organization based in Kinshasa, and established on December 2, 2012. This organization seeks to change peoples' minds around sexuality and to advocate for young people and LGBTI+ people.

³ *Oasis Club Kinshasa* is a non-profit organization, established on November 16, 2014, in Kinshasa. It works on the rights of lesbian, bisexual and trans people and men who have sex with men. The organization's vision is to promote the human rights and leadership of sexual minorities.

⁴ *Rainbow Sunrise Mapambazuko* is a non-profit organization working to promote the rights and respect of sexual minorities (LGBTI people). It was established in October 2010 in Bukavu in a social context marked by violence and discrimination against LGBTI people.

⁵ *MOLI* was established in 2010 with the aim of promoting human rights through documentation and research on cases of abuse and violence based on actual or imputed sexual orientation and gender identity. *MOLI*'s vision is to ensure African communities are free from discrimination.

⁶ *Synergía - Initiatives for Human Rights* is a non-profit organization established in 2017, working to promote and protect human rights across several countries and regions in the world, with an emphasis on the human rights of marginalized groups, such as LGBTI people. *Synergía* focuses on institutional strengthening, security and protections, and rights and advocacy at domestic, regional and international levels.

⁷ DRC, Report to the ACHPR on the implementation of the African Charter on Human and Peoples' Rights, from 2008 to 2015 (11th, 12th, and 13th Periodic Reports), and of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, from 2005 to 2015 (initial report and 1st, 2nd and 3rd Periodic Reports), available at www.achpr.org.

⁸ *Ibid*, p. 18.

past seven years there have been several attempts by members of Parliament to pass legislation to criminalize consensual sexual relations between adults of the same-sex.

Violations of the human rights of LGBT people

The civil and political rights of LGBT people, or people perceived to be LGBT are systematically violated in DRC. Between July 2016 and July 2017, civil society organizations in DRC documented 93 cases of human rights violations of LGBT people in the Nord-Kivu Province (city of Goma and the two communes of Goma and Karisimbi), which include: arbitrary detentions, repetitive acts of physical violence and verbal attacks, false accusations, dead threats, blackmail and extortion, sexual violence, and discrimination within the family and the health sector, among others. Another civil society organization documented 108 human rights violations of LGBT people in South Kivu, Bukavu (Municipalities of Ibanda, Bagira and Kadutu) during 2016.

Arbitrary arrests and extortion by police officers

In the Democratic Republic of Congo, LGBT people and especially transgender and effeminate gay men are victims of **arbitrary arrests** or detentions because of their real or imputed sexual orientation and/or gender identity, on the basis of Article 176 of the Penal Code. Police often extort people, asking them for money in exchange of not presenting criminal charges.

In 2013, the LGBT activist Joseph S. was arrested in Bukavu on charges of promoting homosexuality. It was reported that “he was detained for four days, and during that time he was tortured and beaten by the police, and then beaten and raped by fellow inmates.” He was then released after paying the arresting officer US\$400, but then his partner was also detained and tortured. In 2014, two women were arrested because they were perceived as lesbians. One of them owned a bar, and she was told the arrest was due to a violation to business regulations. But the press immediately exposed them as lesbians. Local organizations linked the arrest to the public campaign for support to the “anti-homosexuality bill” proposed by member of parliament Steve Mbikayi.

Gender-based Violence and “corrective” rape

The sexual violence against lesbian and bisexual women or those perceived as such in DRC is a violation of rights enshrined in both the African Charter and the Maputo Protocol.

Reports indicate that lesbian and bisexual women, or women perceived as lesbians, and transgender men, are systematically subjected to so-called “**corrective rape**” -with the purpose of punishing them for their gender expression- in DRC. Between July 2016 and July 2017, 10 cases of “corrective” rape were documented in Goma and East DRC by a local organization.

S., a female journalist, declared that “in 2007, I was surrounded by a group of men, they threatened they were going to rape me, to give me the taste of men, that whatever I did I was still a woman. They beat me and raped me, but I was able to defend myself and run.” Another testimony comes from an activist: “last June, an openly homosexual girl was drugged and raped by people she knew in a peripheral neighborhood of Kinshasa.” Filmed, the images of the aggression were sent to all the neighborhood.

Human Rights Defenders

Between July 2016 and July 2017, a local organization registered 9 cases of serious death threats and blackmail by telephone and in person. Some of these cases concern members of the organization MOPREDS, who were the victims of death threats by phone calls and text messages. The Executive Director of MOPREDS has been personally threatened and harassed by members of the police and the ANR, questioning him at his home about his work. The Coordinator of another organization Rainbow Sunrise Mapambazuko, has also been harassed by members of the police.

Further, in DRC, human rights defenders and activists who defend the rights of LGBT people face challenges in exercising their right to freely associate without undue interference from the State. As reported by activists in DRC most organizations are not legally registered because of registrars do not approve of organization's bylaws which refer to working with LGBT people or sex workers. As such, organizations that are successfully registered reported citing a focus on youth development in order to gain access to registration.

The lack of a legal framework protecting the rights of LGBT people has a negative impact on the exercise of their rights. As such, LGBT people face continuous situations of violence and discrimination, and there is high impunity regarding attacks against persons because of their real or imputed sexual orientation and/or gender identity. Discrimination against LGBT people is deeply ingrained in society, and is largely invisible, as many people fear reporting crimes committed against them for fear of stigma and further discrimination.

The purpose of this report is to highlight the widespread human rights violations by the Democratic Republic of the Congo against individuals based on their real or imputed sexual orientation and/or gender identity. This report draws the attention of the Committee to the following human rights violations of LGBT people, or those perceived to be LGBT in DRC: [REDACTED]

As will be shown in this report, individuals in DRC frequently suffer serious violations of rights protected under the African Charter based on their real or imputed sexual orientation and gender identity, including:

- Arbitrary arrests, in violation of the right to liberty (Art. 6); and extortion by State agents against people in DRC based on real or imputed sexual orientation or gender identity, including on the basis of legislation criminalizing activities against "public decency" (Article 176 Penal Code);
- Violent attacks based on the victims' actual or perceived sexual orientation or gender identity, including gender-based violence and "corrective" rape of LGBT people (Art. 4 of the Maputo Protocol), as well as the State's failure to effectively investigate and prosecute those crimes, violating the rights to bodily integrity (Art. 4), freedom from torture and cruel, inhuman or degrading punishment and treatment (Art. 5), security of the person (Art. 6), and, in the most extreme case, the right to life (Art. 4);
- Violations of the rights to non-discrimination (Art. 2), equality (Art. 3), and equal protection of the law (Art. 3);

- Violations by State and private individuals of the duties of respect, tolerance and nondiscrimination (Art. 28), and of the corresponding State duty “to promote and ensure through teaching, education and publication” public understanding of these important duties (Art. 25);
- Threats and arrests against human rights defenders, including by State agents, and violations of the right to freedom of association (Art. 10);
- Violations of the rights to health (Art. 16), education (Art. 17), and work (Art. 15).

DRC makes no mention of issues faced by LGBT individuals in its report to the African Commission. We respectfully ask the Commission to take into account the human rights violations committed against LGBT people which are included in this report, when reviewing DRC’s compliance with its obligations under the African Charter and the Maputo Protocol, even if these have not been referred in the government’s report.

II. BACKGROUND, CONSTITUTIONAL AND LEGAL FRAMEWORK

DRC “is a monist State, and as such recognizes the primacy of international law over domestic law.”⁹ DRC deposited the ratification instrument of the African Charter on July 28, 1987. DRC deposited the instrument of ratification of the Maputo Protocol on February 9, 2009.

Constitutional and Legal Framework

The Constitution of DRC guarantees that “all human beings are born free and equal in dignity and in rights,” and the right to equality before the law and equal protection from the law.¹⁰

In DRC there is no law criminalizing homosexuality or sexual contact between people of the same sex or gender, or specifically targeting transgender people. However, as explained below, for the past seven years, there have been many attempts by members of Parliament of criminalizing sexual relations between adults of the same-sex. In this context, the government has failed to acknowledge the blatant discrimination towards LGBT people and the human rights violations suffered because of their real or imputed sexual orientation and/or gender identity.

Further, as explained below, civil society organizations report that LGBT people are routinely arrested and charged under Article 176 of the Penal Code, which penalizes activities against “public decency”.

Moreover, DRC does not have a constitutional or legal framework to protect LGBT people from violations of their rights, as there is no specific law that condemns violence against LGBT people or which protects them from violence and discrimination. The only law that makes specific reference to homosexuals is the law protecting people living with HIV/AIDS of 2008, which establishes that gay people and sex workers are groups of high risk for being

⁹ UN, “Core Document forming part of the reports of States parties: Democratic Republic of Congo,” HRI/CORE/COD/2013, 9 October 2013.

¹⁰ See Constitution of DR, approved by referendum in 2005, which entered into force in 2006. Article 11 (“Tous les êtres humains naissent libres et égaux en dignité et en droits») and Article 12 (« Tous les Congolais sont égaux devant la loi et ont droit à une égale protection des lois »).

exposed to HIV.¹¹ As such, even if the Constitution establishes the right to non-discrimination, there is no specific mention of sexual orientation and/or gender identity in the Constitution or in DRC's legal framework. This contributes to a hostile environment for LGBT people.¹²

Further, this situation perpetuates human rights violations against individuals on the basis of real or imputed sexual orientation and/or gender identity, including violations of civil and political rights, such as the right to protection from non-discrimination, life, freedom from torture, cruel, inhuman, and degrading treatment, liberty, and security of the person. Discrimination against LGBT people, or people perceived to be LGBT is prevalent in DRC, affecting all aspects of their lives, including right to health, education, work and non-discrimination within their communities and their families.

The African Commission and the human rights of people at the intersection with actual or imputed sexual orientation and gender identity

In its most recent concluding observations published (Sierra Leone), the Commission affirmed:

The lack of concrete measures to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.¹³

If further recommended the State of Sierra Leone to adopt measures to “end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.”¹⁴

Human rights violations of LGBT people and their invisibility

Between July 2016 and July 2017, civil society organizations in DRC documented 93 cases of human rights violations of LGBT people in the Nord-Kivu Province (city of Goma and the two communes of Goma and Karisimbi), which include: arbitrary detentions, repetitive acts of

¹¹ Loi N° 08/011 du 14 juillet 2008 portant protection des droits des personnes vivant avec le VIH/Sida et des personnes touchées par le VIH/Sida.

¹² Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 11.

¹³ ACHPR, Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights: Sierra Leone. Adopted at the 19th Extra-Ordinary Session of the ACHPR, held from 16 to 25 February 2016, in Banjul, The Gambia. Available at: http://www.achpr.org/files/sessions/19th-eo/conc-obs/1st-1983-2013/concluding_observations_sierra_leone_eng.pdf, para. 85.

¹⁴ ACHPR, Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights: Sierra Leone. Adopted at the 19th Extra-Ordinary Session of the ACHPR, held from 16 to 25 February 2016, in Banjul, The Gambia. Available at: http://www.achpr.org/files/sessions/19th-eo/conc-obs/1st-1983-2013/concluding_observations_sierra_leone_eng.pdf, para. xxxviii.

physical violence and verbal attacks, false accusations, dead threats, blackmail and extortion, sexual violence and “corrective” rape, and discrimination within the family and the health sector, among others.¹⁵ Another civil society organization documented 108 human rights violations of LGBT people in the South-Kivu Province, in Bukavu (Municipality of Ibanda, Bagira and Kadutu) during 2016.¹⁶

Human rights abuses and violations affecting LGBT people in DRC are generally invisible. LGBT people who face violations and abuses do not report the crimes to the police out of fear of further stigmatization at the hands of law enforcement agents, and fear of being denounced to their families. Further, civil society organizations report that few politicians speak openly about LGBT issues in DRC.¹⁷

Investigation of human rights violations

In 2006, the Human Rights Committee recommended that the State of DRC “should take all appropriate steps to ensure that all human rights violations brought to its attention are investigated, and that those responsible for such violations are prosecuted and punished.”¹⁸ However, there is no official data or statistics about crimes committed against LGBT people. As noted above, the DRC government did not address the rights of LGBT people in its State report to the African Commission.

According to a local organization, “often when a homosexual person files a complaint, during the first hearing when the officer of the judiciary police or the magistrate realize the victim is a homosexual, they neglect the file and several files are classified without further action.”¹⁹

III. HUMAN RIGHTS VIOLATIONS

A. State-led violence, arbitrary detentions, sexual violence and other attacks

Discrimination against LGBT people is engrained in DRC’s society. Many LGBT people in DRC have been subjected to torture or cruel, inhuman and degrading treatment or arbitrary arrests based on their real or imputed sexual orientation and/or gender identity, at the hands of State actors, in violation of DRC’s human rights obligations under Article 4 (Life and Bodily Integrity), Article 5 (Freedom from torture and cruel, inhuman or degrading punishment and treatment), and Article 6 (Security of the Person).

1. Torture and Cruel, Inhuman or Degrading Treatment or Punishment

¹⁵ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

¹⁶ Information provided by Rainbow Sunrise Mapambazuko. September 2017.

¹⁷ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 9.

¹⁸ Human Rights Committee, Consideration of reports by States parties under Article 40 of the Covenant, Fourth periodic reports of State parties due in 2009, Democratic Republic of Congo, CCPR/C/COD/4, 2 August 2016.

¹⁹ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

Article 4 of the African Charter proclaims that “human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”²⁰ Article 5 recognizes the right to “the respect of the dignity inherent in a human being” and prohibits “[a]ll forms of degradation” including torture and cruel, inhuman or degrading punishment and treatment.²¹ Article 6 protects the right to security of person.²²

For LGBT people in DRC, suffering acts of violence and degrading treatment is a daily reality and a source of constant fear. The degrading treatment and violence against their members constitute both physical and psychological harm that is prohibited by the African Charter. Most LGBT people in DRC hide their sexual orientation and gender identity to protect themselves from acts of cruelty and violence at the hands of state authorities.

In May 2014, the African Commission condemned violations of these rights on the basis of real or imputed sexual orientation and/or gender identity, through the adoption of Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.²³ In adopting this Resolution, this Commission noted that it was “[a]larmed that acts of violence . . . continue to be committed on individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity.”²⁴

Jeff, a gay man in Goma affirms: “Not so long ago, I was walking back home from an evening with some friends when a group of policemen stopped me and asked me what I was doing walking around at night. One of them recognised me. I told them that I was going home. They asked me for all the money I had on me and also took my phone. Afterwards they had a discussion as I stood there about what they should do with me. One of them even suggested that they should kill me. Finally, they decided to let me go with a warning and said that if they came across me again they would kill me. I fled as quickly as I could.”²⁵

2. Arbitrary detentions (Article 6) and extortion by State officials

²⁰ African Charter, Article 4.

²¹ African Charter, Article 5.

²² African Charter, Article 6.

²³ 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, African Commission on Human and Peoples’ Rights, May 2014, available at <http://www.achpr.org/sessions/55th/resolutions/275/>.

²⁴ Ibid.

²⁵ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 14.

Article 6 of the African Charter affirms that “[e]very individual shall have the right to liberty” and declares that “no one may be arbitrarily arrested or detained.”²⁶ The U.N. Working Group on Arbitrary Detention has held that arrests for consensual same-sex conduct are per se human rights violations.²⁷ The same applies for arbitrary arrests on the basis of imputed sexual orientation.

In the Democratic Republic of Congo, LGBT people and especially transgender and effeminate gay men are victims of arbitrary arrests and detentions because of their real or imputed sexual orientation and/or gender identity.²⁸ They are arrested and charged under Article 176 of the Penal Code, which penalizes activities against “public decency.”²⁹ Although government officials affirm that the “prosecution for homosexuality is very rare,”³⁰ local organizations report that LGBT people are often subject to illegal detentions by the police, and acts to intimidation and extortion.³¹

For example, a group of organizations documented that 8 transgender people were arbitrarily arrested during the course of six months in Goma and in East DRC.³² In the case of three transgender people in Goma who were arrested by the police near Majengo, they were accused of being a threat to public order and “bonnes mœurs.” (“public decency”). They spent 36 hours detained, and were freed after local civil society organizations intervened.³³ Another case, that of David, who on April 10, 2016 was arrested without any legal procedure, after being accused of having sexually assaulted a minor, without any proof. He spent several hours detained, and was only released after paying the police.³⁴

In 2012, a woman called S. was arrested at her home by members of the intelligence services. They had received a report from a Congolese woman living in Europe, complaining that she had been forced to have sex with S. The officers searched S.’s room and found women’s underwear and suggested that this was evidence that she received different girls in her room, and confirmed she was a lesbian. S. also reported the intelligence officials extorted \$ 5,000 from her.³⁵

²⁶ Article 6. African Charter.

²⁷ Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 15 December 2003, para. 73.

²⁸ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

²⁹ Article 176 of the Penal Code establishes : “Anyone who affronts public decency by actions which injure modesty, shall be punished with a penal servitude of eight days to three years, and a fine of twenty-five to one thousand zaires, or one of these penalties only.” (not official translation). Original in French : Article 176 “Quiconque aura publiquement outragé les mœurs par des actions qui blessent la pudeur, sera puni d’une servitude pénale de huit jours à trois ans et d’une amende de vingt-cinq à mille zaires ou d’une de ces peines seulement», available at http://www.wipo.int/wipolex/en/text.jsp?file_id=194348.

³⁰ Canada: Immigration and Refugee Board of Canada, Democratic Republic of the Congo: Situation of homosexuals, including legislation and support services; treatment of homosexuals by society and government authorities (2008 - February 2011), 3 March 2011. Available at <http://www.refworld.org/docid/4db7c4272.html>.

³¹ Agir Ensemble pour les Droits de l’Homme, about the DRC organization Rainbow Sunrise Mapambazuko (RSM). <https://www.aedh.org/fr/accueil/nos-actions/soutien-aux-acteurs-locaux/partenaires/93-afrique/republique-democratique-du-congo/335-rainbow-sunrise-mapambazuko-rsm>.

³² Between January and July 2016. MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

³³ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

³⁴ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

³⁵ UPR Joint Submission 17, Examen périodique universel de la République Démocratique du Congo, 19^{ième} Session, Avril/Mai 2014.

In 2013, the LGBT activist Joseph S. was arrested in Bukavu on charges of promoting homosexuality. The LGBT blog “Erasing 76 Crimes” reported that “he was detained for four days, and during that time he was tortured and beaten by the police, and then beaten and raped by fellow inmates. He was also accused of rape, but police did not pursue that charge for lack of evidence.”³⁶ Joseph was released after paying the arresting officer US\$400, but then his partner was also detained and tortured. They denounced the police took revenge against his partner because he publicly claimed for the release of S.³⁷

In 2014, two women were arrested because they were perceived as lesbians. One of them owned a bar, and she was told the arrest was due to a violation to business regulations. But the press immediately exposed them as lesbians. Local organizations linked the arrest to the public campaign for support to the “anti-homosexuality bill” proposed by member of parliament Steve Mbikayi.³⁸

Other reports indicate that in 2014, in a district of the City of Kinshasa, a gay couple was handed over to the police because they were kissing in the locker rooms of a public swimming pool. The manager of the place handed them over to the police. Police officers persuaded the couple to pay \$ 100 to ease the situation. They were threatened with being humiliated and publicly exposed.³⁹

In 2016, in Kinshasa, during the funeral of a gay boy, some members of the community were arrested on the grounds of inciting and promoting homosexual practices in public.⁴⁰ Also in 2016 in Kinshasa, the manager of a bar was arbitrarily arrested when one of his employees complained due to a work-related dispute. When he got to the police station, it was revealed that his sexual orientation was the motivation behind the arrest. He was questioned by police officers, and only released after paying a large sum of money to the police.⁴¹

The Human Rights Committee calls on States to “ensure that anyone held solely on account of freely and mutually agreed sexual activities or sexual orientation should be released immediately and unconditionally.”⁴² DRC’s failure to prevent, investigate, and adequately punish incidents of arbitrary detention based on real or imputed sexual orientation and gender identity violates the African Charter.

3. *Gender-based violence, Sexual Violence and so-called “Corrective” Rape*

³⁶ Erasing 76 Crimes, *Congo report: LGBT activists arrested, tortured*, 05/14/2013. Available at <https://76crimes.com/2013/05/14/congo-report-lgbt-activists-arrested-tortured/>.

³⁷ Erasing 76 Crimes, *Congo report: LGBT activists arrested, tortured*, 05/14/2013. Available at <https://76crimes.com/2013/05/14/congo-report-lgbt-activists-arrested-tortured/>.

³⁸ Erasing 76 Crimes, *Anti-gay push in Congo ensnares 2 alleged lesbians*, 05/31/2014. Available at <https://76crimes.com/2014/05/31/anti-gay-push-in-congo-ensnares-2-alleged-lesbians/>.

³⁹ Témoignage enregistré par MOPREDS, document envoyé par Junior Basosila, Directeur Exécutif MOPREDS, basé à Goma, DRC, le 4 Août 2017.

⁴⁰ Témoignage enregistré par MOPREDS, document envoyé par Junior Basosila, Directeur Exécutif MOPREDS, basé à Goma, DRC, le 4 Août 2017.

⁴¹ Témoignage enregistré par MOPREDS, document envoyé par Junior Basosila, Directeur Exécutif MOPREDS, basé à Goma, DRC, le 4 Août 2017.

⁴² UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender identity in International Human Rights Law*, page 15, HR/PUB/12/06/2012. See generally UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Islamic Republic of Iran*, para. 10, CCPR/C/IRN/CO/3/2011, available at http://iranhrdc.org/files/pdf_en/UN_Reports/CCPR.C.IRN.CO.3.pdf.

The Maputo Protocol guarantees in its Article 3 the right to dignity, establishing that “[s]tates Parties shall adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.”

“Corrective” rape has been described as a “hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to ‘correct’ the individual’s orientation or make them ‘act’ more like their gender.”⁴³ Former UN High Commissioner for Human Rights, Navi Pillay, stated that “corrective” rape commonly combines “a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia.”⁴⁴

According to a recent report by civil society organizations “sexual violence is a continued reality particularly for female sex workers, lesbians and trans men.”⁴⁵ L., a lesbian sex worker from Bukavu affirms “[i]n Bukavu trans men are targets of sexual violence because of their gender expression. People perceive them to be lesbians and so subject them to rape for example which the offenders perceive to be a ‘corrective’ measure.”⁴⁶

Reports indicate that women perceived as lesbians are systematically raped in DRC. This was the case of S., a female journalist. She declared that “almost every day in the city, people look at you, insult you and stigmatize you. One day, in 2007, I was surrounded by a group of men, they threatened they were going to rape me, to give me the taste of men, that whatever I did I was still a woman. They beat me and raped me, but I was able to defend myself and run.”⁴⁷ Another testimony comes from an activist in DRC: “last June, an openly homosexual girl was drugged and raped by people she knew in a peripheral neighborhood of Kinshasa.” Filmed, the images of the aggression were sent to all the neighborhood.⁴⁸

Sometimes rape is committed by young men who live in the same neighborhood as the victim, who generally cannot stand to see a man with a “feminine” gender expression or a young girl with “masculine” gender expression. Between July 2016 and July 2017, 10 cases of “corrective” rape were documented in Goma and East DRC by a local organization.⁴⁹

A transgender man, A., was raped by four young men from his neighborhood the night of June 24, 2017. In his own words: “it started with insults every time I walked by. They had already attacked twice in the past, trying to rape me. They told me all the time: we are going to rape you and you are going to become a normal man.” That night, when he was arriving home, he saw four people behind him, who got him when he was trying to escape. He further

⁴³ Keren Lehavot and Tracy L. Simpson, Incorporating Lesbian and Bisexual Women into Women Veterans’ Health Priorities, June 27, 2013.

⁴⁴ Pillay, Navi “*The shocking reality of homophobic rape*” in *The Asian Age*, June 20, 2011.

⁴⁵ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 14.

⁴⁶ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 14.

⁴⁷ L’OBS, RDC: la vie des homosexuels entre ombre et lumière, 5/16/2014. <http://tempsreel.nouvelobs.com/societe/20140516.AFP7367/rdc-la-vie-des-homosexuels-entre-ombre-et-lumiere.html>.

⁴⁸ RFI, RDC: les homosexuels à cœur ouvert, 05/17/2014. Available at <http://www.rfi.fr/afrique/20140516-rdc-homosexuels-coeurs-ouverts-journee-mondiale-contre-homophobie>.

⁴⁹ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

affirms: “they threw themselves on me, while hitting me. They showed me two knives while telling me that they would kill me if I cried. They ripped my pants and the four of them raped me. I bled and when they had finished they told me we just turned you into a normal man.”⁵⁰

“Corrective” rape is an extreme crime that causes irreparable physical and psychological harm. DRC does not adequately protect victims against these extreme violations and does not hold perpetrators accountable, in a clear violation to the African Charter.

4. Other forms of verbal and physical violence and threats, including against human rights defenders

LGBT people in DRC are also subjected to other forms of violence, such as attempted homicides,⁵¹ harassment, death threats and extortion, as well as continuous verbal attacks. It is frequent that in the streets and neighborhood in Goma, crowds often become aggressive, insult and exert violence against LGBT people, particularly transgender people. LGBT people are also often the victims of false accusations from their neighbors who accuse them of witchcraft or of being “anti-Christ.” Between July 2016 and July 2017, local organizations registered 41 cases of verbal aggressions, physical violence and false accusations in Goma and East DRC.⁵²

Between July 2016 and July 2017, a local organization registered 9 cases of serious death threats and blackmail by telephone, and one death threat in person at the victim’s home. Some of these cases concern members of the organization MOPREDS, who were the victims of death threats by phone calls and text messages. Further, “agents of ANR stop by their homes because of their work.”⁵³ The Executive Director of MOPREDS has been personally threatened and harassed by members of the police and the ANR, questioning him at his home about his work.⁵⁴ The Coordinator of another organization, Rainbow Sunrise Mapambazuko, based in South-Kivu, has also been harassed by members of the police.⁵⁵

Regarding violations of the rights of human rights defenders, in May 2014, the African Commission on Human and Peoples’ Rights adopted Resolution 275, calling “State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities,

⁵⁰ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

⁵¹ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

⁵² MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

⁵³ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

⁵⁴ MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

⁵⁵ Jérémie Safari’s original testimony reads: “I was arrested by the police [because I was denounced by a gentleman who considered my work to be an unnatural act], so I had more than two successive summonses to be sent to prison. This happened on 02 January 2016 at 2:30 pm.” Further “the threats are still on me. Since people in my neighborhood have learned that I am [a human rights defender for LGBT people], they have begun to refuse to shake my hand for fear of catching a curse by saying that homosexuality is a form of aggression against religion and that ‘they will do everything to eliminate me one day in order to end homosexuality in the province of South Kivu.’” (original in French). Information provided by Jérémie Safari, Coordinator of Rainbow Sunrise Mapambazuko. September 2017.

including the rights of sexual minorities.”⁵⁶

Local organizations indicate that due to the general silence and lack of investigations, it is very difficult to assess the level of violence against LGBT people in the country. The low level of reporting of hate crimes by LGBT people may indicate the extreme stigmatization they suffer.

In its Resolution 275, this Commission strongly condemned acts of violence targeting people on the basis of actual or imputed sexual orientation and gender identity, “strongly urg[ing]” States to:

end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.

We respectfully urge this Commission to ask DRC what concrete steps it will take to comply with the mandate of Resolution 275.

B. Rights to Non-Discrimination, Equality and Equal Protection of the Law (Articles 2, 3), and obligation of respect, tolerance and non-discrimination (Article 28), together with Article 1 (obligation to adopt legislative measures to give effect to Charter rights and Article 25 (obligation to promote and ensure respect for rights and understanding of duties through teaching, education and publication))

Article 2 of the African Charter provides that all individuals “shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter,”⁵⁷ without discrimination of any kind, including on the basis of sex or any other status. Article 3 of the African Charter guarantees that every individual “shall be equal before the law” and “shall be entitled to equal protection of the law.”⁵⁸ Article 28 of the Charter further provides that “[e]very individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”⁵⁹

Regarding the interpretation of the principle of non-discrimination established under the

⁵⁶ This resolution also condemns increasing incidence of violence and other human rights violations and persecution of persons on the basis of their imputed or real sexual orientation or gender identity and strongly urges States to end violence and abuse by State and non-State actors, among others. ACHPR, 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples’ Rights in Luanda, Angola, 28 April to 12 May 2014, available at: <http://www.achpr.org/sessions/55th/resolutions/275/>.

⁵⁷ African Charter, Article 2.

⁵⁸ African Charter. Article 3.

⁵⁹ African Charter, Article 28.

African Charter, the Commission stated in *Zimbabwe Human Rights NGO Forum v. Zimbabwe* that “together with equality before the law and equal protection of the law [as provided for by article 3 of the Charter], the principle of non-discrimination provided under article 2 of the Charter provides the foundation for the enjoyment of all human rights... [E]quality and non-discrimination “are central to the human rights movement.” The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation.”⁶⁰

Further, as indicated, the African Commission adopted Resolution 275 on violence based on actual or imputed sexual orientation and gender identity, which in its preamble recalls Articles 2 and 3 of the African Charter, further reaffirming the incorporation of “actual or imputed sexual orientation and gender identity,” in the interpretation of the African Charter.

Article 60 of the African Charter establishes that “[t]he Commission shall draw inspiration from international law on human and peoples’ rights” and “various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members.” Thus, international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), can provide further guidance on the interpretation of Articles 2 and 3 of the African Charter. In *Toonen v. Australia*, the Human Rights Committee interpreted “sex” in Articles 2(1) and 26 of the ICCPR⁶¹ to include sexual orientation, and thus concluded that a domestic law criminalizing private, same-sex sexual relations between consenting adults was discriminatory and in violation of these articles.⁶²

Under Articles 1 and 25, States have the obligation to ensure respect for the rights non-discrimination, equality and equal protection of the law. Article 1 established the obligations of State Parties to “adopt legislative or other measures to give effect” to the “rights, duties and freedoms enshrined in”⁶³ the Charter, which includes the rights to non-discrimination, equality and equal protection of the law. Article 25 enshrines the obligations of State parties: “to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.”⁶⁴

C. Attempts to criminalize same-sex sexuality

⁶⁰ *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (2006), para 169, AHRLR 128 (ACHPR 2006) available at http://www.achpr.org/files/sessions/39th/comunications/245.02/achpr39_245_02_eng.pdf (emphasis added).

⁶¹ Article 2(1) of the ICCPR establishes that: “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind,” including on the basis of sex or other status.

Article 26 of the ICCPR guarantees that: “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”

⁶² *Toonen v. Australia*, Communication No. 488/1992, par. 8.7, U.N Doc CCPR/C/50/D/488/1992 (1994).

⁶³ African Charter, Article 1.

⁶⁴ African Charter, Article 25.

Since 2010, some members of Parliament have tried to pass legislation to criminalize sexual conducts between consenting adults of the same sex. In 2010, a member of Parliament, Ejiba Yamapia, attempted to gather support in Parliament for a bill on ‘Sexual Practices against Nature’ which sanctioned same sex sexual acts as ‘unnatural’ and ‘immoral’ offences.⁶⁵ In 2013, Steve Mbikayi, a member of the Labor Party (Parti travailliste) proposed a similar bill that sought to criminalise same sex sexuality.⁶⁶ It also sanctioned "the promotion of homosexuality," including any "homosexual public demonstrations" such as pride parades and meetings. The bill established a jail sentences between three to five years for gay people, and three to twelve years for transgender people.⁶⁷ Fortunately, the bill was rejected. But this fact did not prevent Mr. Mbikayi from presenting a similar bill in 2015 and then again in 2016.⁶⁸ It is worth noting that in May 2016, the Senate passed a law prohibiting the adoption of children by same-sex couples and transgender people.⁶⁹

According to civil society organizations, although the proposed bills criminalizing same-sex sexuality have not yet been successful, there is uncertainty as to whether similar bills can pass and become law in the future. Further, there is a concern that LGBT issues are used as political capital by politicians to galvanize and build popular support.⁷⁰

Passing legislation that criminalizes same-sex acts between consenting adults would entail violations of the right to non-discrimination and would certainly exacerbate the situation of violence and discrimination based on real or imputed sexual orientation and/or gender identity.

D. Hate Speech by Religious Institutions, Public Servants, and the Press

Discrimination against LGBT people in DRC is very common, and religious leaders, public servants, and the press play a key role in perpetuating discrimination against them. LGBT organizations report that religious groups and the media publicly express their rejection to “homosexuality,” and associate same-sex sexual behaviors with Satan.⁷¹ These groups,

⁶⁵ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017.

⁶⁶ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, citing Mathieu Olivier. 2016. RD Congo: la grosse colère de Steve Mbikayi, le député qui voulait interdire l’homosexualité. Jeune Afrique Retrieved from <http://www.jeuneafrique.com/312643/politique/rd-congo-grosse-colere-de-steve-mbikayi-depute-voulait-interdire-lhomosexualite/>, and Alessia Valenza (2013) A look at Africa’s anti gay laws-African Countries ‘dealing’ with gays the best way they know how-further criminalization. Retrieved from <http://ilga.org/a-look-at-africa-s-anti-gay-laws-african-countries-dealing-with-gays-the-best-way-they-know-how-further-criminalization/>.

⁶⁷ 360 Le Magazine LGBT Suisse, Au Congo, Une Communauté LGBT dans l’ombre, 10/12/2015. Available at <http://360.ch/blog/magazine/2015/08/au-congo-une-communaute-lgbt-dans-lombre/>.

⁶⁸ Yagg, “Homophobie et transphobie: l’autre guerre en République démocratique du Congo,” 09/04/2015. <http://yagg.com/2015/04/09/homophobie-et-transphobie-lautre-guerre-en-republique-democratique-du-congo-par-regis-samba-kounzi/>. Jeune Afrique, RD Congo: la grosse colère de Steve Mbikayi, le député qui voulait interdire l’homosexualité, 03/23/2016. Available at <http://www.jeuneafrique.com/312643/politique/rd-congo-grosse-colere-de-steve-mbikayi-depute-voulait-interdire-lhomosexualite/>.

⁶⁹ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, citing Radio Okapi, (2016) RDC : le Sénat adopte une loi interdisant aux couples homosexuels d’adopter les enfants retrieved from <http://www.radiookapi.net/2016/06/02/actualite/politique/rdc-le-senat-adopte-une-loi-interdisant-aux-couples-homosexuels>.

⁷⁰ Document envoyé par Junior Basosila, Directeur Exécutif MOPREDS, basé à Goma, DRC, le 10 Aout 2017, p. 17.

⁷¹ « A Kinshasa, les médias continuent à traité les informations en rapport avec la communauté [LGBT] de façon insolide pour se faire de l’audience. Toute info liée aux personnes issue de la minorité sexuelle est traité de façon irresponsable. Cela est à la base d’une homophobie

which are strong and influential within the Congolese community, do not hesitate to associate homosexuality to pedophilia. Pastors use television to spread the message that gay people will “burn in the flames of hell.” For example, after the approval of same-sex marriage in France, religious leaders reinforced the idea that “homosexuality is the Western evil,” and therefore contrary to African traditions.⁷² LGBT persons are accused of being sorcerers or demons, and homosexuality is associated with mental illness, or with the Western culture.⁷³

Civil society groups report that the media deliberately produces misleading information in order to make sensational representations of LGBT people.⁷⁴ In Bukavu, a radio station of the Catholic Church runs a program every Saturday from 10 am until 12 pm, inciting the community to hate LGBT people.⁷⁵ Marto, a gay man in Goma declares: “according to me, there is no such thing as favourable media attention. Most of it is homophobic.”⁷⁶

E. Violations to the Right to Freedom of Association (Article 10)

In DRC, human rights defenders and activists who defend the rights of LGBT people face challenges in exercising their right to freely associate without undue interference from the State. As reported by activists in DRC “most organisations are not legally registered because of the denial by registrars of objectives and constitutions, which form part of the registration process, that make reference to the LGBT or sex worker communities. The organisations that are successfully registered reported citing a focus on youth development in order to gain access to registration.”⁷⁷ A gay man affirms “In Bukavu, we were told that they couldn’t register an organisation that promotes sexual activity. When we tried to clarify that we work with sexual minorities, they still turned us down.”⁷⁸ Other challenges include the high fees that are charged for registration. Organizations reported that the registration process can cost up to USD \$ 300, which most organizations cannot afford.⁷⁹

F. VIOLATIONS OF ECONOMIC AND SOCIAL RIGHTS

1. Violations of the Right to Health (Article 16)

galopante au sein de la société. Tout comme les chaînes de télé ne rate aucune occasion pour associer les [LGBT] au satanisme». Témoignage enregistré par MOPREDS, document envoyé par Junior Basosila, Directeur Exécutif MOPREDS, basé à Goma, DRC, le 4 Août 2017.

⁷² 360 Le Magazine LGBT Suisse, Au Congo, Une Communauté LGBT dans l’ombre, 10/12/2015. Available at <http://360.ch/blog/magazine/2015/08/au-congo-une-communautelgbt-dans-lombre/>.

⁷³ L’Obs, RDC: la vie des homosexuels entre ombre et lumière, 5/16/2014. <http://tempsreel.nouvelobs.com/societe/20140516.AFP7367/rdc-la-vie-des-homosexuels-entre-ombre-et-lumiere.html>. See also 360 Le Magazine LGBT Suisse, Au Congo, Une Communauté LGBT dans l’ombre, 10/12/2015. Available at <http://360.ch/blog/magazine/2015/08/au-congo-une-communautelgbt-dans-lombre/>.

⁷⁴ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 40.

⁷⁵ Information provided by Rainbow Sunrise Mapambazuko. September 2017.

⁷⁶ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 40.

⁷⁷ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 43.

⁷⁸ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 43.

⁷⁹ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017.

Article 16 of the Charter affirms that “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”⁸⁰

There are several factors limiting access to health care for LGBT people in DRC. Some of these include: “the lack of adequate infrastructure (particularly in Eastern DRC), reluctance of medical staff to treat LGBT people professionally and without prejudice or discrimination; fear of prejudice and exposure of one’s sexual orientation; the geographical distance to most facilities and a generally unfriendly healthcare environment facilitated by ignorance of the issues faced by LGBT people.”⁸¹

Further, a local organization documented ten cases of discrimination against LGBT people regarding access to health care services during one year in Goma and East DRC, because of their sexual orientation and/or gender identity. For example, during the month of January 2017, a local organization reported that a doctor at a hospital refused to provide care to a transgender person who was the victim of a physical assault, while affirming “I can’t touch a homosexual, because he brings misfortune. He deserves to die, he doesn’t have the right to live.”⁸²

2. Violations of the Right to Education (Article 17.1)

Article 17(1) of the Charter states that “[e]very individual shall have the right to education.”

The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 13 highlights that “[t]he prohibition against discrimination enshrined in article 2(2) of the [International] Covenant [on Economic, Social and Cultural Rights] is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”

As reported by a civil society organization “some LGBT individuals reported being the subjects of verbal and physical abuse in learning institutions. Further it was reported that in these instances, institution staff often turn a blind eye and do not intervene. Homophobia against high school and university students tends to be premised on religious and traditional beliefs derived from their families and society in general.”⁸³

Sometimes discrimination against LGBT people by their families, has an impact on their education. For example, a local organization reports that in 2016 a young man living in

⁸⁰ African Charter, Article 16.

⁸¹ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 20.

⁸² MOPREDS, Rapport 2017: (Juillet 2016-Juillet 2017) sur les violations des droits de personnes LGBTI à Goma, et à l’est de la République Démocratique du Congo, juillet 2017.

⁸³ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 35.

Kinshasa was kicked out of the family home by his parents after his cousin revealed that he was gay. He then went on to live with one of his friends and had to quit school because of lack of financial means.⁸⁴

3. Violations of the Right to Work (Article 15)

Article 15 establishes that “[e]very individual shall have the right to work under equitable and satisfactory conditions.”⁸⁵

In DRC, as reported by a civil society organization “the consequences for people who identify as LGBT in the workplace include unfair dismissal or unwarranted demotion simply on the basis of their perceived and/or real gender identity and sexual orientation.” Further, that “trans identifying individuals are particularly affected because despite having ample qualifications, they tend to often times be rejected for various positions in the formal sector. Further, job interviews stray into discussions on ethics and perceived morality instead of focusing on the person’s qualifications.”⁸⁶

LGBT persons face significant barriers in their access to employment, and many of them suffer discrimination by their employees. For example, Maguy, a lesbian woman, declared that she hid her sexual orientation from her boss for two years. When her boss and coworkers found it, they accused Maguy of being a witch, and to try to seduce her female colleagues. She was removed from her office and sent to work at a corridor.⁸⁷

G. Other human rights violations

In DRC “most people live their sexuality in secret because of the fear of facing stigmatization and discrimination. This fear has been reported as resulting in stigma within the LGBT community.”⁸⁸ Discrimination against LGBT people, or people perceived to be LGBT is prevalent in DRC, affecting all aspects of their lives, including within communities and their families.⁸⁹

Parents in DRC who find out their child is gay or lesbian often react very negatively.⁹⁰ In many cases young LGBT persons become homeless, as they are also rejected by their

⁸⁴ Témoignage enregistré par MOPREDS, document envoyé par Junior Basosila, Directeur Executif MOPREDS, basé à Goma, DRC, le 4 Août 2017.

⁸⁵ African Charter, Article 15.

⁸⁶ Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, p. 32.

⁸⁷ 360 Le Magazine LGBT Suisse, Au Congo, Une Communauté LGBT dans l’ombre, 10/12/2015. Available at <http://360.ch/blog/magazine/2015/08/au-congo-une-communaute-lgbt-dans-lombre/>.

⁸⁸ Document envoyé par Junior Basosila, Directeur Executif MOPREDS, basé à Goma, DRC, le 10 Aout 2017, p. 17.

⁸⁹ As reported by a civil society organization “religion and attachment to traditions influence the perceptions of families on issues of sexuality... To fight against what they describe as ‘unnatural’, some families were reported to resort to punishments aimed at changing the sexual orientation or gender identity of their child. Some respondents pointed out the fact that family would deprive their children basic needs such as education, food or clothing as punishment because of their sexual orientation or gender identity.” Christian Rumu, “Landscape Analysis of the Human Rights Situation of Lesbian, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo,” published by UHAI EASHRI – The East African Sexual Health and Rights Initiative, 2017, pp. 33-34.

⁹⁰ Yagg, “Homophobie et transphobie: l’autre guerre en République démocratique du Congo,” 09/04/2015. <http://yagg.com/2015/04/09/homophobie-et-transphobie-lautre-guerre-en-republique-democratique-du-congo-par-regis-samba-kounzi/>.

communities, and subject to threats, insults, and social exclusion.⁹¹ Many others live in the shadows, to avoid the rejection of their families and friends, and opt to marry to someone of the opposite sex to be in conformity with the society.⁹²

Finally, DRC does not allow trans people to change their legal name and gender markers on official documents. Trans persons must use official documents that do not reflect their identity and are therefore exposed to great discrimination and obstacles to their ability to access services essential to the realization of fundamental rights (for example, arbitrary detention, discrimination in access to health care, employment, among others).

IV. RECOMMENDED QUESTIONS FOR THE GOVERNMENT OF DRC

We encourage the State to consider the following questions with regard to its obligation to protect and ensure the human rights of LGBT people in DRC:

- What concrete steps is the State taking to protect LGBT people, and human rights defenders of LGBT people, from violence and discrimination?
- What concrete actions is the State undertaking to end arbitrary detentions of LGBT people on the basis of Article 176 of the Penal Code, and to prevent instances of torture, or cruel and degrading treatment or extortion?
- What efforts is the State undertaking to effectively prevent, investigate and punish gender-based violence including sexual violence and “corrective” rape of LGBT people, and, in particular, lesbian and bisexual women, in light of the obligations established under the African Charter and the Maputo Protocol?
- What efforts is the State undertaking to combat social prejudice and stigma against LGBT people and promote acceptance and respect for their human rights in the education sector, healthcare facilities, and in society in general? [SÉPISÉP]
- What is the status of bills in Parliament regarding criminalization of same sex sexuality and what actions is the State undertaking to ensure that the legal framework in DRC does not violate the African Charter, regarding the prohibition of non-discrimination based on sexual orientation and/or gender identity?

V. SUGGESTED RECOMMENDATIONS

⁹¹ Canada: Immigration and Refugee Board of Canada, Democratic Republic of the Congo: Situation of homosexuals, including legislation and support services; treatment of homosexuals by society and government authorities (2008 - February 2011), 3 March 2011. <http://www.refworld.org/docid/4db7c4272.html>.

⁹² Malebo Force, *RDC: Une étude scientifique sur les gays de Kinshasa et de Kisangani*, 02/24/2016. Available at <http://maleboforce.blogspot.com/2016/02/rdc-une-etude-scientifique-sur-les-gays.html>.

Considering the information presented in this report, we respectfully present the following recommendations to assist the State of DRC to fulfill its obligations to respect and protect human rights of LGBT people in DRC.

The Democratic Republic of Congo should:

- Enact comprehensive anti-discrimination legislation and adopt public policy that specifically addresses violence and discrimination on the basis of real or imputed sexual orientation and/or gender identity.
- Enforce the non-discrimination and equal protection provisions of the African Charter.
- Adopt measures to prevent, investigate and punish arbitrary arrests and extortion on the basis of their real or imputed sexual orientation and/or gender identity and expression, in compliance with Resolution 275 adopted by the African Commission in 2014.
 - These measures can include: issuing guidance on how Article 176 of the Penal Code on activities against “public decency” (*outrage aux moeurs*) cannot be interpreted to punish people based on their real or imputed sexual orientation and/or gender identity. Also, conduct trainings with the police and law enforcement on human rights and the need to respect the rights of LGBT people.
- Adopt comprehensive measures to prevent, investigate and punish gender-based violence, including sexual violence and “corrective” rape of LGBT people, particularly lesbian, bisexual or women considered “masculine,” and transgender men.
- Ensure proper investigation and diligent prosecution of perpetrators of acts of violence and discrimination against LGBT people, including when committed by State agents, and establish judicial procedures that are responsive to the needs of the victims.
- Adopt measures to ensure that human rights defenders of LGBT people work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities. Ensure that they exercise their right to freedom of association without undue interference by the State.
- Adopt measures to combat hate speech by public officials, religious leaders and the media.
- Promote acceptance of sexual diversity and the respect for the rights of LGBT people. Conduct public awareness campaigns geared towards youth, in schools and health care facilities, and towards society in general, to promote respect for the human rights

of people with diverse sexual orientations, gender identities and expressions, including the right to be free from discrimination.