

# THE APPLICATION OF **RESOLUTION 275** BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

AND THE ADOPTION OF STANDARDS ON SEXUAL  
ORIENTATION, GENDER IDENTITY AND EXPRESSION,  
SEX CHARACTERISTICS:

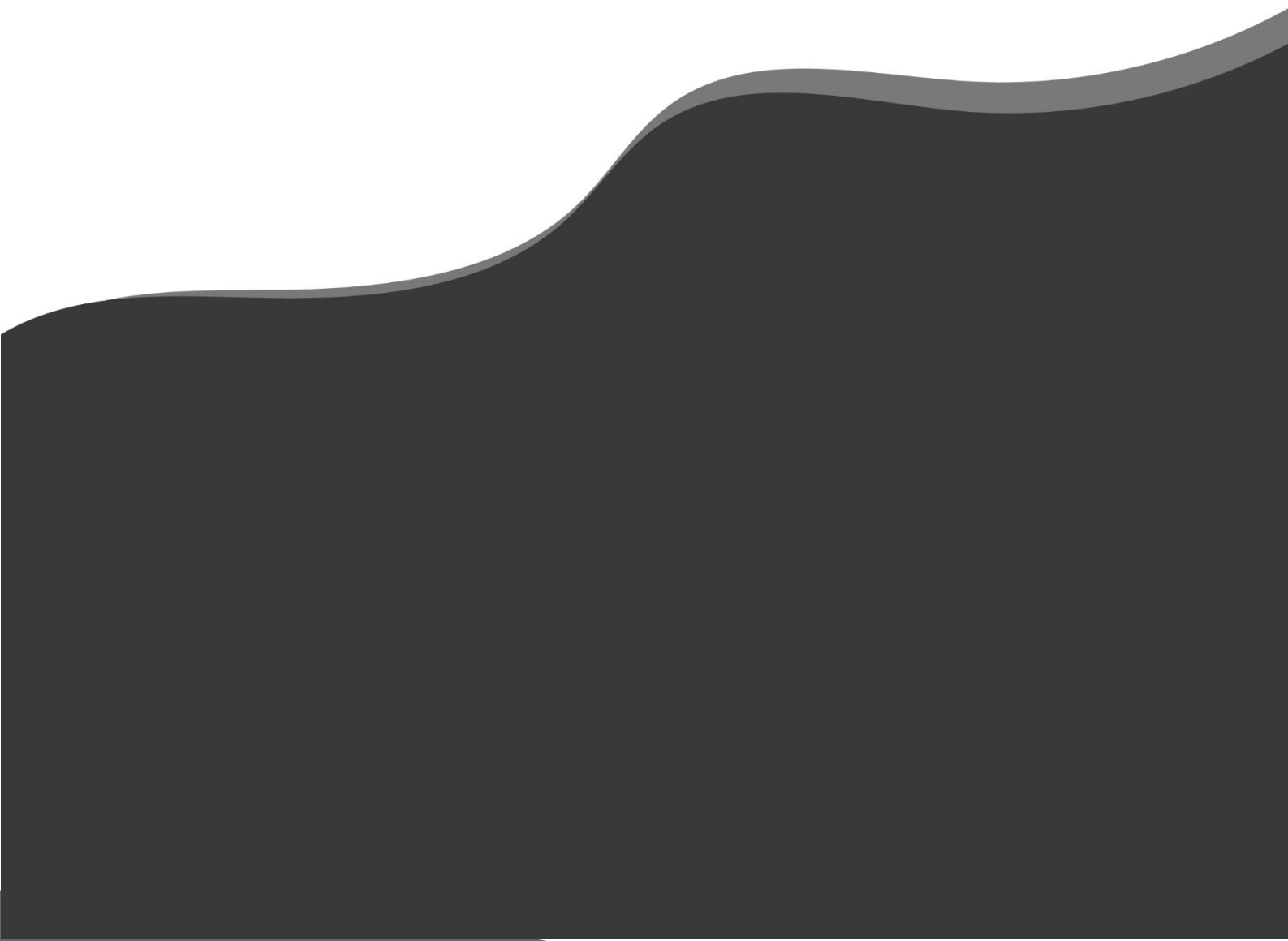
A 10-YEAR REVIEW  
**2024**



**The Application of Resolution 275 by the African Commission on Human and  
Peoples' Rights and the Adoption of Standards on Sexual Orientation, Gender  
Identity and Expression, Sex Characteristics:  
A 10-Year Review**

**2024**

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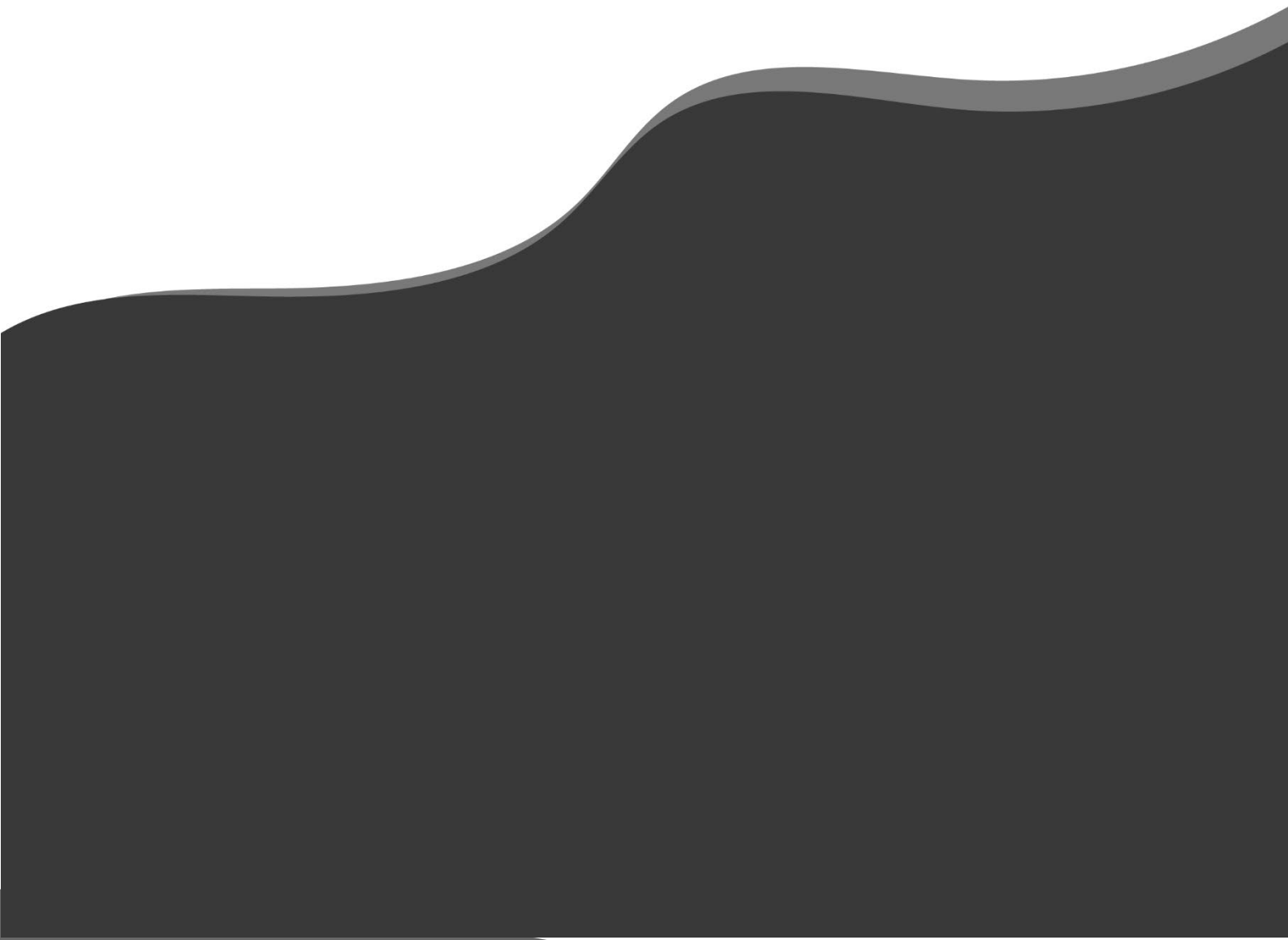
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# INTRODUCTION





## Background: What is Resolution 275?

During its 55th ordinary session, which took place in Luanda, Angola, between April 28th and May 12th, 2014, the African Commission on Human and Peoples' Rights (ACHPR), hereafter the 'African Commission', adopted Resolution 275 "*Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*".<sup>1</sup> For the first time in its history, the African Commission endorsed a resolution condemning violence on the basis of real or imputed sexual orientation or gender identity, admonishing African states—that are parties to the African Charter on Human and Peoples' Rights, (the 'African Charter')— to prevent, investigate, and remedy acts of violence stemming from real or imputed sexual orientation or gender identity by both state and non-state actors.

Ten years since its adoption, Resolution 275 continues to be the landmark document by the African Commission outlining the scope of the African Charter on the issue of violence and discrimination against persons in Africa on the basis of their real or imputed sexual orientation or gender identity.

In its four paragraphs, the Resolution "[c]ondemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity". The Resolution "urges 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."

## Purpose of this report

The principles enshrined in the African Charter are 'alive' only to the extent that they are explained and constantly applied by the African Commission, through its statements, decisions, and other soft law standards. This report aims to monitor and analyse the standards developed by the African Commission concerning sexual orientation, gender identity, gender expression, and sex characteristics, particularly following the adoption of Resolution 275, given its relevance in defining how the Charter applies to every human being, irrespective of the grounds mentioned above. This report focuses predominantly on

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<sup>1</sup>African Commission on Human and Peoples' Rights, "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 - ACHPR/Res.275(LV)2014," African Commission on Human and Peoples' Rights, November 2022, <https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations>.

the period between May 2014 and May 2024. It summarises concluding observations, general comments, guidelines and principles, resolutions, decisions on communications, activity reports, and press releases<sup>2</sup> that refer to the protection of human rights of LGBTQI+ individuals and that have been adopted within this period. This report also aims to serve as a resource tool for activists and academics working with the African human rights system, particularly those focused on human rights issues pertaining to sexual orientation, gender identity, gender expression, or sex characteristics (SOGIESC).

This report builds upon a previous report published in 2020 by Synergía - Initiatives for Human Rights and African Men for Sexual Health and Rights (AMShER). This report is part of the '275/275 One Africa, One Resolution',<sup>3</sup> a joint project launched in 2019. The focus of this project is the use of Resolution 275 by the African Commission in discharging its mandate; translating the resolution into as many African languages as possible; tracking and assessing the policy impact of Resolution 275 at the domestic and regional levels, and documenting the use of Resolution 275 by LGBTQI+ communities and civil societies.

## Structure and Terminology

In addition to this introductory section, the report consists of eight sections, each organised by the type of document or activity of the African Commission under review. In each section, the relevant documents or activities related to the implementation of Resolution 275 are listed and then discussed chronologically.

Although an effort was made to list all relevant documents, there are instances where the most recent documents by the African Commission are not easily accessible, either because they have not been adopted or have not been uploaded to the African Commission's website.

Throughout this report, the terms 'LGBTQI+' and 'SOGIESC' broadly refer to the range of circumstances protected by or covered under the content and aims of Resolution 275, even if these communities and circumstances may not specifically be identified as such in the resolution. In the documents or activities by the African Commission, other terms such as 'sexual minorities', 'LGBT', or 'SOGI' are used. In these instances, the original usage has been retained in the analysis of that specific activity or document.

Although the focus of Resolution 275 is on violence and human rights violations based on sexual orientation and gender identity, its reach surpasses this matter and has had an impact on the human rights of LGBTQI+ communities in Africa.

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<sup>2</sup>Press releases are included in the updated report as discussed in the analysis of section 8 in this report.

<sup>3</sup>Project Website can be found at <https://resolution275.org/>

## Methodology

This report is based primarily on a desk review of documents and activities initially conducted between January and May 2019.<sup>4</sup> An additional desk review was conducted in early 2020. The report was updated by reviewing documents between January 2020 and December 2023, making it an assessment of the past ten years of the application of Resolution 275.<sup>5</sup> The analysis and principal drafting of the report was completed by external consultant Dr Ayodele Sogunro, a human rights lawyer consulted for this project, and updated by Varyanne Sika, Associate Director of Policy and Advocacy at Synergía Initiatives for Human Rights. The Centre for Human Rights, University of Pretoria, and staff from Synergía and AMSHeR reviewed the report at different stages.

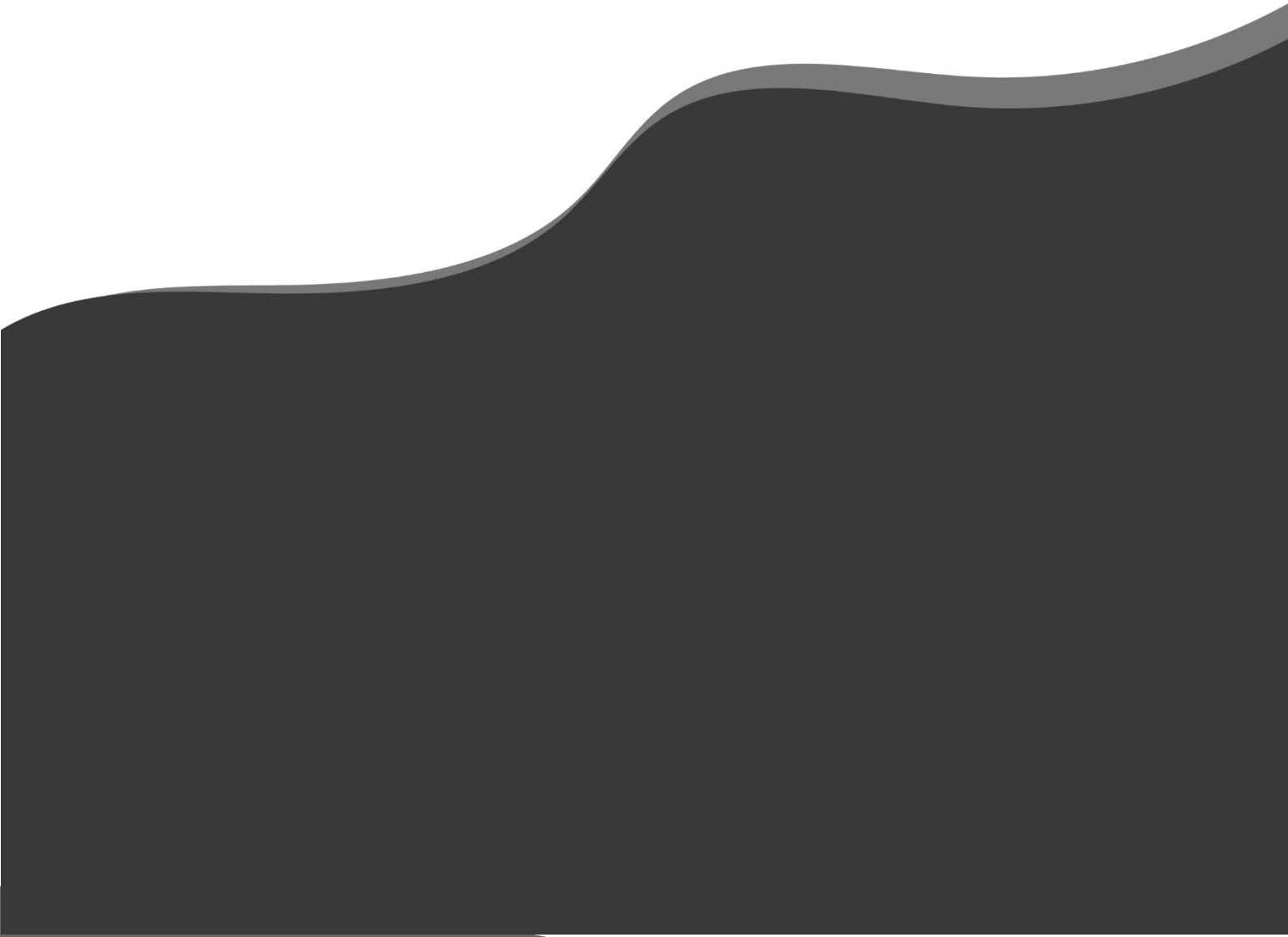
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<sup>4</sup>The organisations would like to acknowledge the research and drafting support provided by Caroline Howard, a student in the course “Sexual Orientation, Gender Identity and Expression, Sex Characteristics and International Human Rights Law” taught by Fanny Gómez Lugo at the Georgetown University Law Center, Spring 2019. Additional research support was also provided by Louisa Ntaji, a legal assistant with the secretariat of the African Commission on Human and Peoples’ Rights, Banjul. The final review of the six-year assessment report was provided by Berry Didier Nibogora and Tapiwa Mamhare, with the African Men for Sexual Health and Rights (AMSHer), and Dr. Stefano Fabeni with Synergía - Initiatives for Human Rights. The final review of the updated ten-year assessment report was provided by Dr. Stefano Fabeni and Michi Moragas, both with Synergía - Initiatives for Human Rights.

<sup>5</sup>The search terms used in the assessment of documents from the African Commission’s website were: Resolution 275, LGBT, LGBTQ, LGBTQI, LGBTQI+, LGBTQIA+, sexual orientation, SOGI, and SOGIESC.

# SECTION 1:

## RESOLUTIONS



**Title:** Resolution 376 on the Situation of Human Rights Defenders in Africa (2017)<sup>6</sup>

## Analysis

Resolutions are ‘important normative tools’ adopted by the African Commission to ‘inform the obligations of states and the promotional and protective mandate of the Commission’.<sup>7</sup> As such, they can be used to reaffirm or expand on human rights principles, address general or state-specific human rights violations, or reinforce global calls on human rights issues. Resolution 376 is an example of a resolution that reaffirms and builds on existing human rights principles, in this case, the protection of human rights defenders in Africa.

By specifically including the categories of sexual orientation and gender identity, the resolution complements and reinforces paragraph 3 of Resolution 275, which requires African states to ‘ensure that human rights defenders work in an enabling environment free of stigma, reprisals, or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.’

Human rights defenders in Africa working on the protection of LGBTQI+ persons continue to face widespread discrimination and fear of violence in Africa. In several African countries, there is continued criminalization of sexual and gender minorities.<sup>8</sup> Thereby, it creates a hostile environment for advocates working on the rights of these communities. Human rights defenders are also refused registration and thus denied the right to association in some African countries.<sup>9</sup> Considering the existing situation of human rights defenders in Africa, it is important that states adhere to this resolution and that the African Commission monitors its observance in state reports.

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<sup>6</sup>African Commission on Human and Peoples’ Rights, “Resolution on the Situation of Human Rights Defenders in Africa - ACHPR/Res.376(LX)2017,” African Commission on Human and Peoples’ Rights, May 22, 2017, <https://achpr.au.int/en/adopted-resolutions/376-resolution-situation-human-rights-defenders-africa-achpres376>.

<sup>7</sup>Frans Viljoen, *International Human Rights Law in Africa* (Oxford: Oxford University Press, 2013).

<sup>8</sup>For example, Nigeria’s Same Sex Marriage (Prohibition) Act 2013 sec 5(3); Sudan’s Penal Code 1991 secs 148 and 151; Uganda’s Penal Code 1950 sec 145; Zambia’s Penal Code 1931 sec155; Tanzania’s Sexual Offences Special Provisions Act 1998 sec 3; and Zimbabwe’s Criminal Law (Codification and Reform) Act 2004 sec 73. Prominent cases of violence against human rights defenders in Africa include the Ugandan cases of Kasha Jacqueline, Pepe Onziema & David Kato v. Giles Muhame and the Rolling Stone Publication Ltd., (Misc. Cause No. 163 of 2010), and Victor Juliet Mukasa & Yvonne Oyo v. Attorney General, (Misc. Cause No. 247 of 2006); and the Nigerian case of Ifeanyi Orazulike v Inspector General of Police & Abuja Environmental Protection Board (2014) Suit No. FHC/ABJ/CS/799/2014.

<sup>9</sup>For instance, in Kenya (*Eric Gitari v. Nongovernmental Organizations Coordination Board and 4 Others* (2015) eKLR); in Nigeria (*Pamela Adie v Corporate Affairs Commission* (2018) Suit No FHC/ABJ/CS/827/2018)); and in Botswana (*Letsweletse Motshidiemang v Attorney General* (2019) MAHGB-000591-16).

**Title:** Resolution 449 on Human and Peoples' Rights as a central pillar of successful response to COVID-19 and Recovery from Its socio-political Impacts (2020)<sup>10</sup>

## Analysis

Following the adoption of Resolution 376 in 2017 discussed above, which acknowledged sexual orientation and gender identity, Resolution 449 also includes sexual orientation and builds on existing human rights principles concerning the response to the COVID-19 pandemic.

Resolution 449 emphasises a human rights-centred approach to COVID-19 response and recovery. It recalls, among other existing resolutions, Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity. Recalling Resolution 275 in the preamble of Resolution 449 serves several functions. It recognises that the resolution (449) is situated within a broader context of commitments at the African Commission and reaffirms the commitments made in Resolution 275. Reaffirming Resolution 275 is a crucial signal to member states and stakeholders at the African Commission that earlier resolutions remain relevant and continue to guide future efforts.

This resolution goes further to express concern about the severe socio-economic and humanitarian consequences of COVID-19, the COVID-19 response measures, and the “disproportionate impact on other marginalised sections of society, including (...) LGBTI people”. The explicit inclusion of LGBTIQ+ persons in the recognition of the impacts of COVID-19 supports paragraph 1 of Resolution 275, which “condemns the increasing incidence of violence and other human rights violations (...) on the basis of their imputed or real sexual orientation or gender identity.”

LGBTIQ+ people in Africa, already a vulnerable group, were disproportionately affected by the COVID-19 pandemic. Due to social distancing regulations, they had less access to shelters and community centres.<sup>11</sup> Access to healthcare was also a significant challenge, even though the WHO indicated that LGBTIQ+ persons were vulnerable to COVID-19.<sup>12</sup> It is

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<sup>10</sup> African Commission on Human and Peoples' Rights, “Resolution on Human and Peoples' Rights as Central Pillar of Successful Response to COVID-19 and Recovery from Its Socio-Political Impacts - ACHPR/Res. 449 (LXVI) 2020,” African Commission on Human and Peoples' Rights, September 18, 2020, <https://achpr.au.int/en/adopted-resolutions/449-resolution-human-and-peoples-rights-central-pillar-successful-response>.

<sup>11</sup> Frans Viljoen and Ayodele Sogunro, “Understanding the Disproportionate Impact of COVID-19 on LGBTIQ+ Persons in Africa” (South Africa : Centre for Human Rights University of Pretoria, May 14, 2020), [https://www.chr.up.ac.za/images/researchunits/sogie/documents/sogiesc\\_covid19\\_pamphlet.pdf](https://www.chr.up.ac.za/images/researchunits/sogie/documents/sogiesc_covid19_pamphlet.pdf).

<sup>12</sup> James Stannah et al., “Trends in HIV Testing, the Treatment Cascade, and HIV Incidence among Men Who Have Sex with Men in Africa: A Systematic Review and Meta-Regression Analysis,” *The Lancet HIV* 10, no. 8 (August 2023), <https://doi.org/10.1016/2022.11.14.22282329>, <https://www.thelancet.com/journals/lanhiv/article/>. There continues to be a high prevalence of HIV infections of LGBTIQ persons in Africa. For instance, in 2023 Stannah J et al stated that HIV incidence rates are not decreasing for gay and bisexual men living in Africa, and are estimated at 27 times higher than for other men in East and Southern Africa and 199 times higher than for other men in Western and Central Africa.

crucial to recognise the LGBTQI+ population in the development of COVID-19 response and recovery plans, as indicated in Resolution 449.

**Title:** Resolution 552 on the Promotion and Protection of the Rights of Intersex Persons in Africa (2023)<sup>13</sup>

### Analysis

Resolution 552, on the protection and promotion of human rights of intersex persons in Africa, marks a significant milestone in recognizing and protecting the rights of intersex persons in Africa. This groundbreaking resolution explicitly acknowledges the specific vulnerabilities faced by intersex persons, an important step towards visibility and comprehensive measures to safeguard their human rights.

Resolution 552 condemns harmful practices against intersex persons, specifically non-consensual, medically unnecessary surgeries and other harmful practices on intersex children. These practices are justified as ‘normalising’ an intersex child’s body. They often lead to physical and psychological harm.<sup>14</sup> The resolution also calls for member States to implement legal and policy reforms to ensure the protection of the rights of intersex persons, including the development of anti-discrimination laws and inclusive healthcare policies that respect the bodily integrity and autonomy of intersex individuals.

The resolution explicitly condemns non-consensual and medically unnecessary surgeries and other harmful practices on intersex children and advocates for taking strict account of the best interest of children. In addition, the resolution highlights the bodily autonomy and integrity of intersex persons, calling for an end to ‘non-consensual genital normalisation practices on intersex persons’ and ‘ensure respect for their rights to make their own decisions’. It proceeds to urge member states to implement legal and policy reforms to protect intersex persons’ rights, including anti-discrimination laws and inclusive healthcare policies while expressing concern about the “invisibility and lack of awareness and sensitivity to the plight and situation of intersex persons in African communities.”

In addition to medical violence, intersex persons in Africa face discrimination and violence in society, as well as exclusion from education and employment, forced marriage, and infanticide. In its study, the Centre for Human Rights<sup>15</sup> highlights cases in several African countries where intersex infants were abandoned or killed due to societal

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<sup>13</sup>African Commission on Human and Peoples' Rights, “Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa - ACHPR/Res.552 (LXXIV) 2023,” African Commission on Human and Peoples’ Rights, March 21, 2023, <https://achpr.au.int/en/adopted-resolutions/resolution-promotion-and-protection-rights-intersex-persons>.

<sup>14</sup>Centre for Human Rights (CHR), “Study on the Human Rights Situation of Intersex Persons in Africa,” September 2022, [https://www.chr.up.ac.za/images/researchunits/sogie/documents/Intersex\\_Report/Intersex\\_report\\_Oct\\_Sept\\_2022.pdf](https://www.chr.up.ac.za/images/researchunits/sogie/documents/Intersex_Report/Intersex_report_Oct_Sept_2022.pdf).

<sup>15</sup>Centre for Human Rights (CHR), “Study on the Human Rights Situation of Intersex Persons in Africa,” September 2022, [https://www.chr.up.ac.za/images/researchunits/sogie/documents/Intersex\\_Report/Intersex\\_report\\_Oct\\_Sept\\_2022.pdf](https://www.chr.up.ac.za/images/researchunits/sogie/documents/Intersex_Report/Intersex_report_Oct_Sept_2022.pdf).

pressure and deeply entrenched beliefs. The stigma associated with intersex traits often leads to severe mental health issues and social ostracization, which further exacerbates the challenges faced by intersex persons.

Expressing deep concern over the invisibility, lack of awareness and insensitivity towards the rights violation of intersex persons in Africa, the resolution calls for public awareness and education in society to reduce stigma and discrimination against intersex persons.

Another crucial provision of Resolution 552 is that it urges States to undertake research and collect data on the experiences of intersex persons to inform policy and advocacy for intersex persons' rights. Despite research and data on intersex persons in Africa being critical in understanding the extent of violence and discrimination faced by intersex persons, the data remains scarce.<sup>16</sup>

Resolution 552 significantly advances SOGIESC advocacy in Africa by addressing the critical issues highlighted in this analysis. The resolution brings much-needed attention to a group historically marginalised within broader advocacy efforts.

Resolution 275 laid the foundation for broader SOGIESC protections. Resolution 552 builds on this, addressing the specific needs of intersex persons, which strengthens SOGIESC advocacy in Africa.

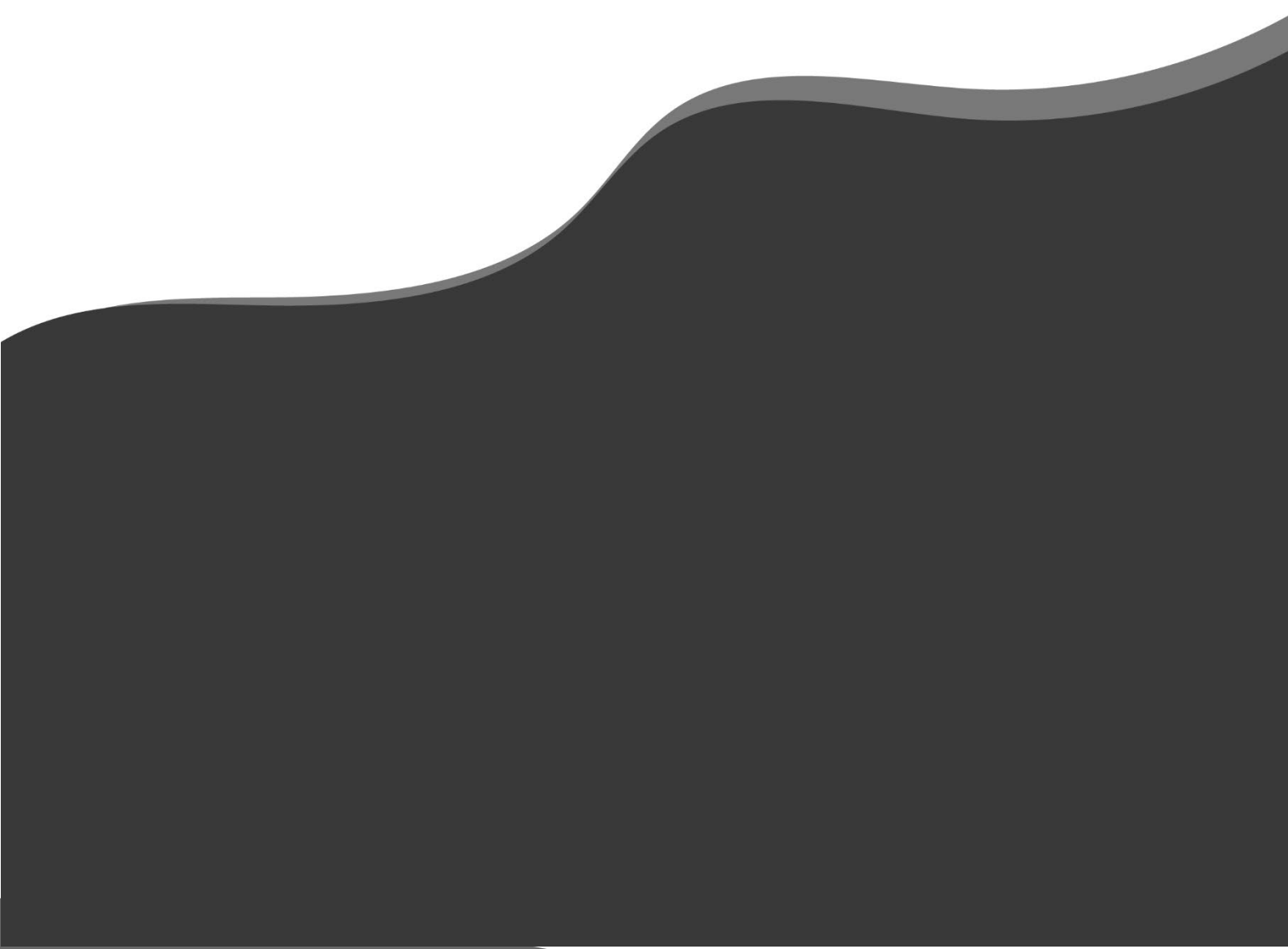
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<sup>16</sup>AIDS Rights Alliance for Southern Africa (ARASA), "Regional Scan on the Level of Access to SRHR & Broader Health Rights for Intersex People in Botswana, Lesotho, Malawi, Namibia and Zimbabwe". Arasa Website, 2024, <https://arasa.info/wp-content/uploads/2024/07/INTERSEX-REGIONAL-SCAN-Report.pdf>.



# **SECTION 2:**

## **DECISIONS ON COMMUNICATIONS**



**Title:** Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006)

### Analysis

Article 45(2) of the African Charter provides for the protective mandate of the African Commission. This protective ambit comprises two main procedures: an inter-State and other (individual) Communications procedures.<sup>17</sup>

The individual Communication procedure allows the African Commission to receive and consider allegations of human rights violations from individuals, non-governmental organisations (NGOs), and other non-state entities against state parties to the African Charter. The African Commission can hold states accountable for their human rights obligations via this procedure.

Once a complaint is received, the African Commission considers the communication in stages: seizure, admissibility, and merits, after which it makes a studied recommendation.<sup>18</sup> Hence, the African Commission fulfils its protective mandate when it considers complaints and issues recommendations to state parties to remedy violations. In this way, its jurisprudence forms part of international law and contributes to standard setting in international human rights law.<sup>19</sup>

In the Zimbabwe communication, the facts showed that the respondent State held a Constitutional referendum in February 2000, in which Zimbabweans voted against the new government-drafted Constitution. The complainant alleged that, following the Constitutional referendum, there was political violence. It alleged that during the period between February and June 2000, Zimbabwe held its fifth parliamentary elections, and supporters of ZANU (PF) —the ruling party— engaged in a systematic campaign of intimidation aimed at crushing support for opposition parties. The complainant alleged that, in the run-up to the parliamentary elections, the party deployed violence as a systematic political strategy.

Although this case did not directly deal with human rights violations linked to sexual orientation or gender identity, and it precedes the adoption of Resolution 275, the African Commission, in discussing breaches of Article 2 of the African Charter, highlighted the importance of non-discrimination and equality. It stated, “[t]he aim of this principle is to ensure equality of treatment for individuals irrespective of (...) sexual orientation.”<sup>20</sup> The decision of the African Commission stressed the significance of Article 2 and served as a precursor to Resolution 275 by identifying the principles of equal protection and anti-discrimination as a principal objective of the African Charter. By specifically listing “sexual orientation” as a category of discrimination, the African Commission expanded the interpretation of the non-exhaustive reference to “other status” under Article 2 of the African Charter.<sup>21</sup> By implication, this inclusion of “sexual orientation” in the decision of

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<sup>17</sup>Organization of African Unity, “African Charter on Human and Peoples’ Rights,” 47 and 55, (1981), <https://au.int/en/treaties/african-charter-human-and-peoples-rights>.

<sup>18</sup><https://achpr.au.int/en/communications-procedure>

<sup>19</sup>Anselm Chidi Odinkalu and Camilla Christensen, “The African Commission on Human and Peoples’ Rights: The Development of Its Non-State Communication Procedures,” *Human Rights Quarterly* 20, no. 2 (1998): 235–46, <https://doi.org/10.1353/hrq.1998.0017>.

<sup>20</sup>*Zimbabwe Human Rights NGO Forum v Zimbabwe* (Communication No. 245/02) [2006], 169.

<sup>21</sup>Dimitrina Petrova, “The use of equality and anti-discrimination law in advancing LGBT rights”, in Corinne Lennox and Matthew Waites, *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for*

the African Commission also covers other similar categories of discrimination, such as “gender identity,” “gender expression”, or “sex characteristics”, even though these are not specifically referred to in this particular decision. Subsequent statements by the African Commission and the Commissioners —as discussed in the other sections of this report— which make use of terms such as “intersex” and “transgender”, indicate the evolving understanding of the categories of discrimination, as included in the notion of “other status”.

This decision also stressed the importance of sexual orientation and, by implication, gender identity, gender expression, and sex characteristics as protected categories in the African human rights system. It also emphasises the vulnerability of minorities, including sexual and gender minorities, during periods of conflict and political violence.

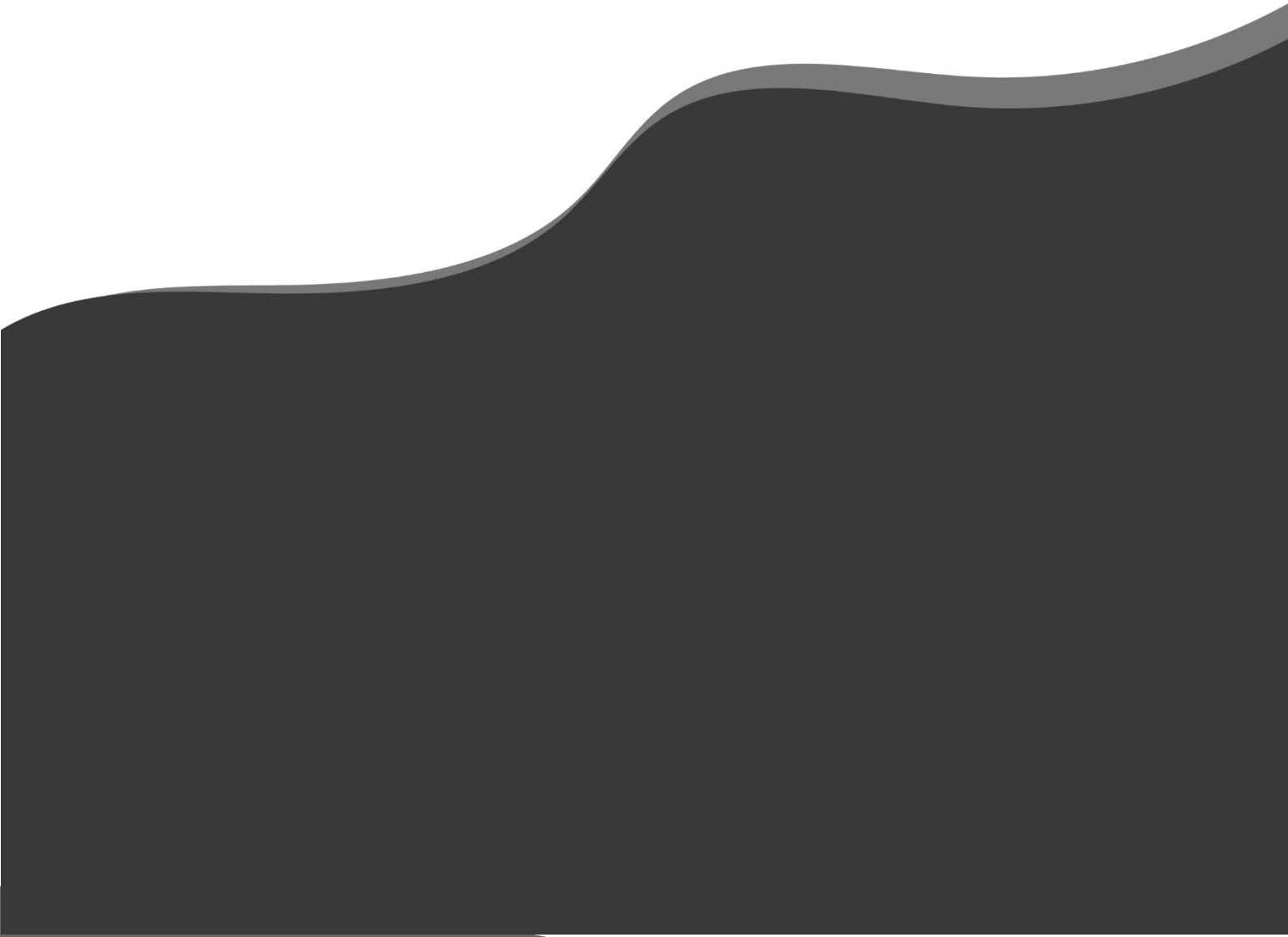
It should also be understood that while the decisions of the African Commission are more akin to recommendations than to judicial orders, they are also soft law tools that can be considered binding on the relevant states, especially when adopted by the African Union’s Assembly of Heads of State and Government or Executive Council in the Activity Report of the African Commission. Over time, state parties have also accepted the African Commission’s competence to interpret the African Charter and to make decisions on communications. Consequently, a state, such as Zimbabwe, that has been handed a decision by the African Commission around the protection of sexual minorities is obligated to follow that decision.

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Decriminalisation and Change (London: Institute of Community Studies, 2013), 484. Article 2 of the African Charter adopts the “common” language in Articles 2 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, all of which express the universality of human rights as applicable ‘without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Accordingly, the UN Committee on Economic, Social and Cultural Rights in General Comment 20, 2009, para. 32 has emphasised that “other status” as used in Article 2 of the treaties includes sexual orientation.

# SECTION 3:

## GENERAL COMMENTS



**Title:**

- General Comment No. 2 on Article 14 of the Protocol to the African Charter on the Rights of Women in Africa (2014)
- General Comment No. 4 on the African Charter: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (2017)

**Analysis**

Article 45 (1) (b) of the African Charter authorises the African Commission to “formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights”. As such, “General Comments” are used by the African Commission to authoritatively interpret relevant treaty provisions to assist States in complying with their obligations under these instruments.<sup>22</sup> In this way, the African Commission fulfils its promotional mandate by providing essential guidelines for States to follow in the implementation of treaty provisions. General Comments deal with a wide range of subjects, from the interpretation of substantive treaty provisions to general guidance on treaty reporting and the role of National Human Rights Institutions (NHRIs). Although General Comments are not law per se, they can serve as a means through which the implementation of treaties can evolve over time because of their authoritative interpretations of the treaty provisions.

**1. General Comment No. 2 on Article 14 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)**

In this General Comment, the African Commission addresses the provisions of Article 4 of the Maputo Protocol, which guarantees women’s right to health, including sexual and reproductive health.

Article 14 of the Maputo Protocol deals with the health and reproductive rights of women and, amongst other issues, requires, as stated in Article 14(2), that states take appropriate measures to ‘provide adequate, affordable, and accessible health services, including information, education and communication programmes to women’. In its commentary, the African Commission notes that many states have not been compliant with the Protocol and expressed the importance of changing this situation.

While the General Comment does not explicitly refer to sexual orientation, gender identity or sex characteristics, it states that “State parties must ensure the provision of comprehensive information and education on human sexuality.”<sup>23</sup> Through this interpretation of Article 14, the African Commission recognizes the role that the lack of

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<sup>22</sup>General Comment No 1 on Article 14(1) (d) and (e) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa para 1.

<sup>23</sup>General Comment No 2 on Article 14(1)(a), (b), (c) and (f) and Article 14(2) (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa para 51.

access to comprehensive and medically accurate sexuality education plays in the perpetuation of violence, stigma, prejudice, and discrimination in society against lesbians, bisexual women, and trans persons.

The right to access comprehensive education on human sexuality requires state parties to create supportive legislative and regulatory frameworks for the dissemination of information and remove unnecessary restrictions likely to hinder access.<sup>24</sup> This is also in line with paragraph 3 of Resolution 275, which requires states to provide a stigma-free and enabling environment for human rights defenders, including those working on the protection of sexual minorities.

In Africa, efforts to implement comprehensive education on sexuality in schools have been hindered by several factors, the most principal of which are socio-cultural and political factors. Socio-cultural norms are reinforced by laws and policies that consider information surrounding topics on sexuality as being contrary to public norms.<sup>25</sup> Human rights defenders and community-based organizations that play a key role in education and awareness campaigns are therefore at a high risk of social and legal reprisals. Therefore, it is important that General Comment No. 2 is implemented and addressed by states in their periodic reports, and for the African Commission to make recommendations on compliance with General Comment No. 2 by states.

## **2. General Comment No. 4 on the African Charter: The Right to Redress for Victims of Torture and Other Cruel, Inhuman, or Degrading Punishment or Treatment**

The African Commission's General Comment No. 4, which addresses the issue of torture, notes that anyone, regardless of their gender, can be a victim of sexual and gender-based violence that amounts to torture or ill-treatment. And, in this regard, "lesbian, gay, bisexual, transgender and intersex persons are of equal concern."<sup>26</sup> By this interpretation, states are required to ensure, both in law and practice, that victims of torture and other ill-treatment are able to access and obtain redress irrespective of their sexual orientation, gender identity or sex characteristics. States are therefore required to adopt specific measures to address the barriers that prevent access to redress for sexual and gender-based violence, particularly where it concerns the victimization of LGBTQI+ persons.<sup>27</sup>

This General Comment reinforces paragraph 4 of Resolution 275, which urges African states to enact appropriate laws prohibiting all forms of violence and abuse targeted at persons on the basis of their sexual orientation or gender identity and to ensure "proper investigation and diligent prosecution of perpetrators and establish judicial procedures responsive to the needs of victims".

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<sup>24</sup>World Health Organization, "Sexual Health, Human Rights and the Law," 2015, [https://iris.who.int/bitstream/handle/10665/175556/9789241564984\\_eng.pdf](https://iris.who.int/bitstream/handle/10665/175556/9789241564984_eng.pdf). 14.

<sup>25</sup>Frederick Murunga Wekesah et al., "Comprehensive Sexuality Education in Sub-Saharan Africa," African Population and Health Research Center (APHRC), 2019, <https://aphrc.org/wp-content/uploads/2019/12/COMPREHENSIVE-SEXUALITY-EDUCATION-IN-SUB-SAHARAN-AFRICA-1.pdf>. 8.

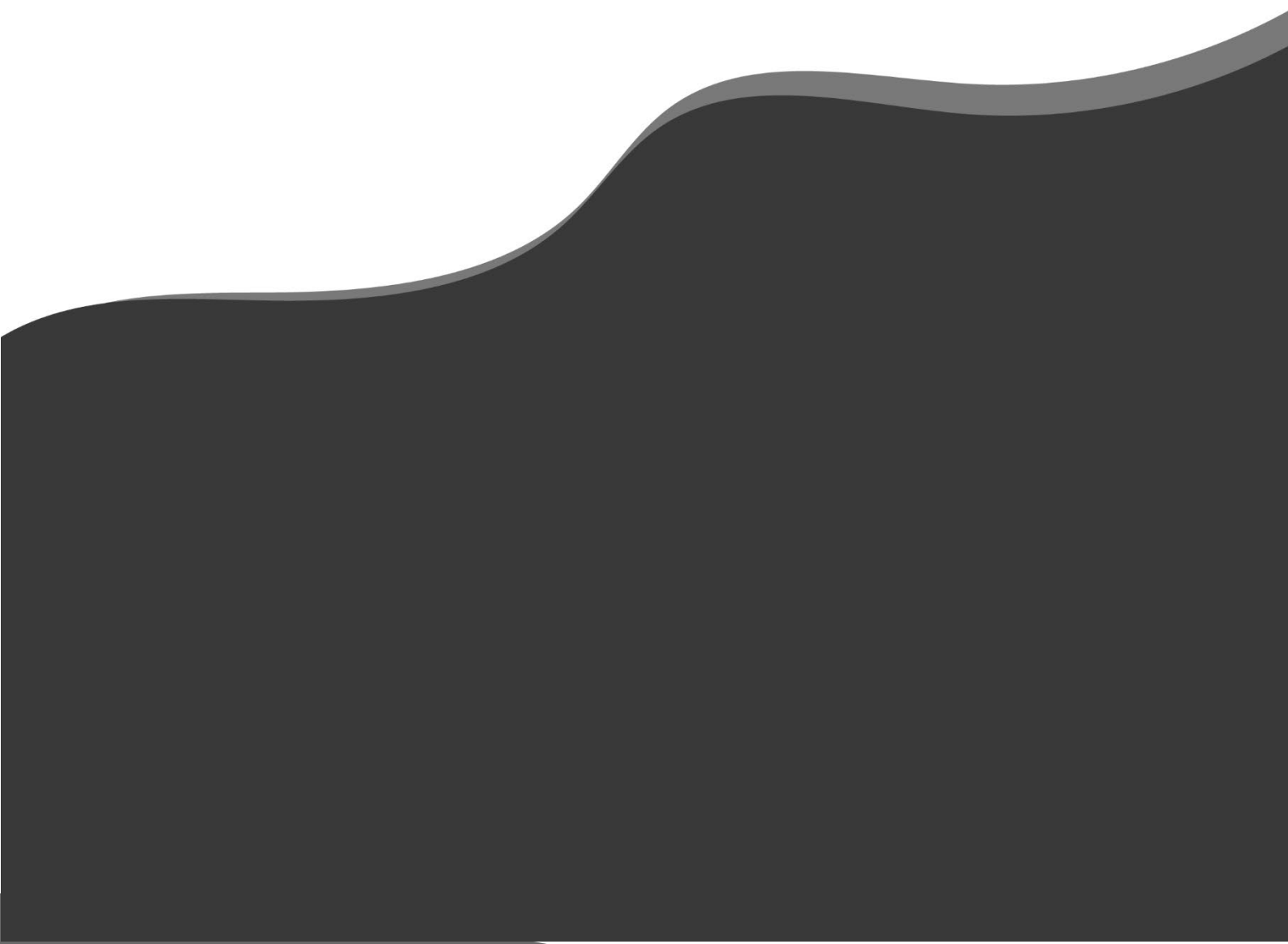
<sup>26</sup>General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), para 59.

<sup>27</sup>Idem. Para 60.

Torture and other acts of violence and discrimination continue to be committed against individuals on the basis of their sexual orientation, gender identity or sex characteristics with little or no redress. LGBTQI+ persons continue to experience violence in the form of physical and sexual assault, murder, and the so-called “corrective” rape. In police custody, LGBTQI+ persons are significantly more likely to be targeted for torture and harassment than the general population. Therefore, it is important for states to report on the measures adopted to fulfil their Charter obligations, as indicated in this General Comment, and for the African Commission to make recommendations on model laws and good practices.

# **SECTION 4:**

## CONCLUDING OBSERVATIONS





## **Title:**

### **Adopted and published**

- Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon (2013)
- Concluding Observations on the 1st Periodic Report of the Republic of Liberia (2015)
- Concluding Observations on the Initial and Combined Reports of the Republic of Malawi (2015)
- Concluding Observations on the 5th Periodic Report of the Federal Republic of Nigeria (2015)
- Concluding Observations on the 2nd Periodic Report of the Republic of South Africa (2016)
- Concluding Observations on the Initial and Combined Reports of the Republic of Sierra Leone (2016)
- Concluding Observations on the 6th Periodic Report of the Republic of Namibia (2016)
- Concluding Observations on the 6th to 8th Combined Reports of the Republic of Mauritius (2017)
- Concluding Observations on the 14th Periodic Report of the Republic of the Niger (2018)
- Concluding Observations on the 2nd and 3rd Combined Periodic Report of the Republic of Botswana (July 2019)

### **Adopted but unpublished:<sup>28</sup>**

- Concluding Observations on the 6th and 7th Combined Periodic Report of the Republic of Angola; Initial Report under the Protocol to the African Charter on the Rights of Women in Africa (July 2019)
- Concluding Observations on the Periodic Report of the Democratic Republic of the Congo (October 2019)
- Concluding Observations on the Periodic Report of the Republic of Rwanda (April 2020)

## **Analysis**

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<sup>28</sup> At the time of updating this report in 2024, the listed concluding observations had been adopted but not yet published.

Article 62 of the African Charter places an obligation on each State party to submit a report every two years on the legislative and other measures adopted to give effect to the rights and freedoms contained in the African Charter. Once a periodic report has been submitted, the State is invited to send a delegation to attend the public session of the African Commission, where the report is examined, and the Commissioners pose questions.<sup>29</sup> The delay of the African Commission in adopting concluding observations affects the current status of the report and sends a wrong message to States that are behind in submitting their reports.

Concluding observations are the recommendations and observations made by the African Commission after examining the state's periodic report. This is one of the primary mechanisms the African Commission uses to monitor the State parties' compliance with their obligations under the African Charter. Concluding observations also allow a process of continued dialogue between the African Commission and states on relevant human rights issues and concerns in that state. As such, they are not "one-off" recommendations. Instead, they involve constant follow-up and evaluation of their implementation in subsequent reports and observations. As with other documents of the African Commission adopted by the Executive Council of the African Union, an adopted Concluding observation submitted by the African Commission and adopted by the Executive Council has a strong claim as a "binding authority" on the relevant member state. Nevertheless, Concluding Observations are not fully effective without state implementation of their recommendations. Therefore, it is critical to the effective utilisation of the process that the relevant states take steps to address the concerns and recommendations of the African Commission.<sup>30</sup>

### **1. Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon (2013)**

In the **concluding observations on the 3rd periodic report of the Republic of Cameroon**, the African Commission expressed discontent regarding Cameroon's treatment of human rights defenders working on sexual orientation issues. In the Areas of Concern section, the African Commission condemned "[t]he judicial harassment, offences against life and other violations of the rights of human rights defenders, in particular the rights of defenders working in the area of sexual orientation." The African Commission goes on to further criticise the country's "discrimination, stigma and violation of the right to life and physical and mental integrity of individuals based on their sexual orientation." The African Commission recommended Cameroon to "[t]ake appropriate measures to ensure the safety and physical integrity of all persons irrespective of their sexual orientation and maintain an atmosphere of tolerance towards sexual minorities in the country."

By identifying the issues of sexual orientation, this Concluding Observation reinforces, even before its adoption, paragraph 1 of Resolution 275, which condemns the increasing incidence of violence and other forms of persecution of persons on the basis of their sexual orientation. The continuing persecution of persons based on their sexual orientation,

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<sup>29</sup>Evans, Malcolm, and Rachel Murray, eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006*. 2nd ed. Cambridge: Cambridge University Press, 2008. 53.

<sup>30</sup>*Idem.* 7.

gender identity or sex characteristics is a violation of their right to life, physical and mental integrity and freedom from discrimination.<sup>31</sup>

A 2017 report submitted by several Cameroonian organizations (in conjunction with Synergía - Initiatives for Human Rights) to the United Nations Human Rights Committee on the violations of the rights of LGBTQI+ persons in Cameroon, stated that many organizations in the country working on LGBTQI+ issues have found obstacles in the process of obtaining legal recognition for their organizations.<sup>32</sup> The report noted, for example, that two organizations —Cameroonian Foundation for Aids (CAMFAIDS) and Association for the Defense of Homosexuals (Association pour la Défense des Homosexuelles ADEFHO)— were denied registration until they reframed their organizational goals in broad terms or eliminated any reference to LGBTQI+ persons. The report also documented that human rights defenders on SOGIESC issues in Cameroon have been victims of threats, burglaries, blackmail, arbitrary arrests, and detentions.<sup>33</sup>

It is important to note that the African Commission's attitude on SOGIESC issues in Concluding observations evolved over time. For instance, in the 2006 Concluding observations on Cameroon's initial report, the African Commission implicitly commended Cameroon for its discriminatory laws. In its section "Legal Mechanism Protecting the Family and Mother" the African Commission applauded Chapter V, Part III of Book II of the country's Penal Code, which included punishments for offences against the child and the family such as "abortion (S. 337), assault on woman with child (S.338), infanticide (S. 340), cloud on parentage (S. 341), prostitution (S. 343), [and] homosexuality (S. 347 (a))." It is highly commendable that the African Commission has begun to engage the broader human rights issues impacted by these kinds of "offences".

## **2. Concluding Observations on the 1st Periodic Report of the Republic of Liberia (2015)**

About a year after the adoption of Resolution 275, the African Commission directly referenced the resolution in its Concluding Observations on Liberia's report. In its recommendations, the African Commission directed Liberia to "[e]nsure the equal rights of all Liberians without discrimination including on the basis of sexual orientation or gender identity. It should, in particular, take account of Resolution 275 of the African Commission, which urged all States to enact and apply 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 identity." By directly invoking Resolution 275, the African Commission indicated its commitment to the enforcement of the resolution, rebuked Liberia for continuing to enforce discriminatory laws against sexual and gender minorities, and set a precedent for the review of state and non-state violence on the basis of sexual orientation and gender identity.

Notably, in July 2012, the Liberian Senate passed a bill on the amendment to the Domestic Relations Law of Liberia, commonly known as the "Anti-Same-Sex Marriage" bill. The bill

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<sup>31</sup>Dan Kuwali, "Battle for Sex?: Protecting Sexual(ity) Rights in Africa," *Human Rights Quarterly* 36, no. 1 (2014): 30-31, <https://doi.org/10.1353/hrq.2014.0001>.

<sup>32</sup> "The Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in Cameroon," October 2017, [https://ccprcentre.org/files/documents/INT\\_CCPR\\_CSS\\_CMR\\_29079\\_E-2.pdf](https://ccprcentre.org/files/documents/INT_CCPR_CSS_CMR_29079_E-2.pdf).

<sup>33</sup>Idem.

provides: “No marriage should be contracted between persons (...) of the same sex” and further states: “No one shall give effect to any public act, record, or judicial proceeding of anyone which represents a relationship between persons of the same sex that is treated as a marriage under the laws of the Republic”.<sup>34</sup> Among other provisions, the bill proposes up to five years’ imprisonment for same-sex marriage. Although the bill is currently dormant because it has not been passed by Liberia’s House of Representatives, it may be revived in the future. This possibility makes the implementation of the recommendations of the African Commission in the country even more urgent.

### **3. Concluding Observations on the Initial and Combined Reports of the Republic of Malawi (2015)**

In its Concluding Observations on Malawi’s report, the African Commission implicitly acknowledged the health challenges faced by the LGBTQI+ community and, accordingly, commended Malawi’s “efforts to investigate claims of violation of access to health rights by sexual minorities.” While there is no direct reference to Resolution 275, this recommendation upholds the requirement in paragraph 4 of Resolution 275 that calls on states to investigate violations based on sexual orientation and gender identity. It is also an indicator of the African Commission’s recognition of healthcare violations as a way in which people are targeted on the basis of their sexual orientation and gender identity and, therefore, necessitating that victims of such violations have access to reparation.<sup>35</sup>

Discrimination remains a barrier to access to healthcare for LGBTQI+ persons in Malawi. For instance, in a 2008 study of healthcare discrimination against men who have sex with men (MSM) in Malawi, 30% reported fear of discrimination and stigma if they were to disclose their sexuality to health workers, despite that the majority of participants felt comfortable with their sexual orientation.<sup>36</sup> The impact of healthcare discrimination on the LGBTQI+ population is very significant, such that even in South Africa, where discrimination on the basis of sexual orientation is constitutionally prohibited, MSM have avoided disclosing sexual practices to healthcare workers after witnessing and/or learning of verbal abuse experienced by gay men in STI clinics. Discriminatory practices in healthcare constitute a type of violence against LGBTQI+ persons. It is important to also apply the requirements of Resolution 275 to the issue of access to healthcare.

### **4. Concluding Observations on the 5th Periodic Report of the Federal Republic of Nigeria (2015)**

In 2006, Nigeria introduced a Same-Sex Marriage (Prohibition) Bill and eventually passed it into law in 2013 as the Same-Sex Marriage (Prohibition) Act (SSMPA), even though other

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<sup>34</sup> African Men for Sexual Health and Rights (AMSHer) and Synergía – Initiatives for Human Rights, “‘It’s Nature, Not a Crime’ Discriminatory Laws and LGBT People in Liberia,” September 2020, 23 [https://www.hrw.org/sites/default/files/reports/liberia1113\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/liberia1113_ForUpload.pdf).

<sup>35</sup> Alexandra Müller, “Health for All? Sexual Orientation, Gender Identity, and the Implementation of the Right to Access to Health Care in South Africa,” *PubMed* 18, no. 2 (December 1, 2016): 204.

<sup>36</sup> Fay, Heather, Stefan D. Baral, Gift Trapence, Felistus Motimedi, Eric Umar, Scholastika Ipinge, Friedel Dausab, Andrea Wirtz, and Chris Beyrer. “Stigma, health care access, and HIV knowledge among men who have sex with men in Malawi, Namibia, and Botswana.” *AIDS and Behavior* 15 (2011): 1088-1097.

legacy colonial laws that criminalise same-sex acts were already in existence. In its Concluding Observations on Nigeria's 5th periodic report, the African Commission directly confronted the enactment of this 'anti-gay law'. The African Commission directed the state to "[r]eview the Same-Sex Marriage Prohibition Act to prohibit violence and discrimination in access to HIV prevention, treatment, and care services, as well as to ensure the protection of other human rights of sexual minorities guaranteed under the African Charter and other international instruments to which Nigeria is a party."

The African Commission further expatiated on its concerns by noting that the "enactment of a law criminalising homosexuality has the potential to engender violence against persons on grounds of their actual or imputed sexual orientation, and also to drive this group of persons vulnerable to HIV/AIDS underground, thereby creating an environment which makes it impossible to effectively address the HIV pandemic in the State." As with the case of Malawi, the African Commission highlighted the connection between public healthcare and discrimination against LGBTQI+ persons. This recommendation recognized how criminalization of same-sex relationships reinforces stigma and social exclusion, which, in turn, affects access to healthcare and other human rights of LGBTQI+ persons.

Following the enactment of the SSMPA, media reports documented high levels of violence, including mob attacks, lynching, and extortion, against LGBTQI+ people in Nigeria.<sup>37</sup> Human rights groups and officials have also expressed grave concerns about the scope of the law, its vague provisions, and the severity of punishments, with the African Commission's Special Rapporteur on Human Rights Defenders in Africa noting that "the increase in cases of physical violence, aggression, arbitrary detention and harassment of human rights defenders working on sexual minority issues."<sup>38</sup> With these levels of domestic and international concern, it is only appropriate that the African Commission weighed into the issue and recommended the repeal of the law. Unfortunately, this recommendation is yet to be implemented by Nigeria.

## **5. Concluding Observations on the 2nd Periodic Report of the Republic of South Africa (2016)**

In its 2016 Concluding Observations on South Africa's periodic report, the African Commission commended South Africa for the "enactment of legislations to rule out discrimination and ensure equality in a variety of areas such as race, colour, ethnic origin, gender, sex, sexual orientation, religion, disability etc." However, in its section on Areas of Concern, the African Commission condemned the state's widespread "discrimination, homophobia, and prejudice against homosexuals resulting in murder and violence against homosexuals despite the existence of legal frameworks." South Africa continues to have the contradictory situation of having protective legal frameworks but discriminatory social attitudes against LGBTQI+ persons. This situation reinforces the need to go beyond legal enactments and actually implement these, not just by punishing perpetrators of violence

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<sup>37</sup> Human Rights Watch, "'Tell Me Where I Can Be Safe': The Impact of Nigeria's Same Sex Marriage (Prohibition) Act," Human Rights Watch, June 6, 2017, <https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act>.

<sup>38</sup> Press Release on the implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria <https://achpr.au.int/index.php/sw/node/1748>

and discrimination but also by educating the public and actively promoting an enabling environment for inclusion, as envisaged in paragraphs 3 and 4 of Resolution 275.

## **6. Concluding Observations on the Initial and Combined Reports of the Republic of Sierra Leone (2016)**

In these Concluding Observations, the African Commission directed Sierra Leone to take “effective and 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.” This recommendation is almost a direct reproduction of paragraph 4 of Resolution 275 and is one of the African Commission’s most comprehensive recommendations in its Concluding Observations on the intersection of human rights and SOGIESC issues.

In Sierra Leone, physical and psychological violence against LGBTQI+ persons continues to be a serious issue.<sup>39</sup> As such, as with similar recommendations in other Concluding Observations, the African Commission has used this recommendation to reaffirm the increasing importance of SOGIESC issues in its work, as well as its growing recognition of the extent to which LGBTQI+ persons in Africa have suffered violence and discrimination over the decades and the need to protect them under the African Charter.

## **7. Concluding Observations on the 6th Periodic Report of the Republic of Namibia (2016)**

In its Concluding Observations on Namibia 6<sup>th</sup> Periodic Report, the African Commission expresses its concern about the “discrimination and stigmatisation practices that limit health care access for vulnerable groups in particular the Lesbian, Gay Bi-sexual and Transgender (LGBT) community, commercial sex workers and other vulnerable groups.”<sup>40</sup> While this Concluding Observation, like others focusing on access to services, and particularly access to healthcare, is not immediately related to the provisions of Resolution 275, it clearly highlights how discrimination, whether performed by state or non-state actors, carries a detrimental impact on the enjoyment of economic, social, and cultural rights by individuals on grounds of their sexual orientation, gender identity, gender expression, or sexual characteristics.

As with similar provisions, the African Commission shows, through this Concluding Observation, its concern regarding the impact that violence, discrimination and abuses based on real and perceived sexual orientation, gender identity, and expression have on the right to health and particularly on prevention and treatment strategies of HIV/AIDS on the African continent.

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<sup>39</sup> Discrimination on the basis of sexual orientation and gender identity in access to health care and violence/bias [https://www.academia.edu/4090978/First\\_LGBTI\\_Violation\\_Report\\_in\\_Sierra\\_Leone](https://www.academia.edu/4090978/First_LGBTI_Violation_Report_in_Sierra_Leone)

<sup>40</sup> Concluding Observations and Recommendations on 6<sup>th</sup> Periodic Report of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples’ Rights, para 32.

## **8. Concluding Observations on the 6th to 8th Combined Reports of the Republic of Mauritius (2017)**

According to a 2018 report on the legal environment on access to healthcare for HIV/AIDS in Mauritius, LGBTQI+ persons in the country continue to lack adequate access to health information and services relating to their sexual orientation and gender identity.<sup>41</sup> According to the report, healthcare providers in Mauritius also “fail to understand gender identity and expression and display outdated approaches” in their interactions with LGBTQI+ persons,<sup>42</sup> a situation exacerbated by the continuing existence of laws penalising “the crime of sodomy” and the erasure of LGBTQI+ persons in Mauritius.

As such, appropriately, the African Commission, in its Concluding Observations on Mauritius 6th to 8th reports, noted that the state had inadequate protections for the rights of persons living with HIV/AIDS. However, the African Commission conceded that the State had provided for the “free distribution of condoms to female sex workers.”<sup>43</sup>

With this recommendation, the African Commission identified that protective legislation plays an important role in advancing response to the HIV/AIDS epidemic in states. It is, therefore, not enough for a state to merely distribute condoms. Instead, states must also take relevant policy and legislative steps to ensure that issues such as HIV/AIDS education, testing, counselling, research, treatment, care, and support are available and accessible in non-discriminatory environments.<sup>44</sup>

## **9. Concluding Observations on the 14th Periodic Report of the Republic of the Niger (2018)**

In its Concluding Observations on Niger’s 14<sup>th</sup> periodic report, the African Commission noted that it: “[a]ppreciates the educational and sensitization programmes aimed at promoting equality, non-discrimination and respect for human dignity in order to facilitate access by the people to HIV-related health services, particularly the programme to combat HIV/AIDS among sex workers and men who have sex with other men as well as programmes aimed at removing the legal obstacles linked to HIV-related health services.”<sup>45</sup> Here, it is clear that the African Commission’s language has further evolved. Unlike previous Concluding Observations, this recommendation specifically highlights the category of ‘men who have sex with other men’ instead of the broader use of ‘sexual orientation and gender identity’. Using specific language ensures that the recommendation focuses on specific community

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<sup>41</sup> AIDS and Rights Alliance for Southern Africa & B Glover “Legal environment assessment of HIV and AIDS in the Republic of Mauritius” (2018)

<sup>42</sup> *ibid*

<sup>43</sup> “Concluding Observations and Recommendations - Mauritius: 6th to 8th Combined Periodic Report, 2009-2015,” African Commission on Human and Peoples’ Rights, May 22, 2017, <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-mauritius-6th-8th-combined>.

<sup>44</sup> Patrick Michael Eba, “Towards Smarter HIV Laws,” *Reproductive Health Matters* 24, no. 47 (May 2016):178.

<sup>45</sup> “Concluding Observations and Recommendations - Niger: Periodic Report, 2014 - 2016,” African Commission on Human and Peoples’ Rights, February 22, 2018, <https://achpr.au.int/index.php/en/state-reports/concluding-observations-and-recommendations-nigerperiodic-report-2014-20>.

needs. The hope is this trend will continue in future such that the specific needs of, for example, lesbians or trans persons will also be highlighted in documents and statements by the African Commission.

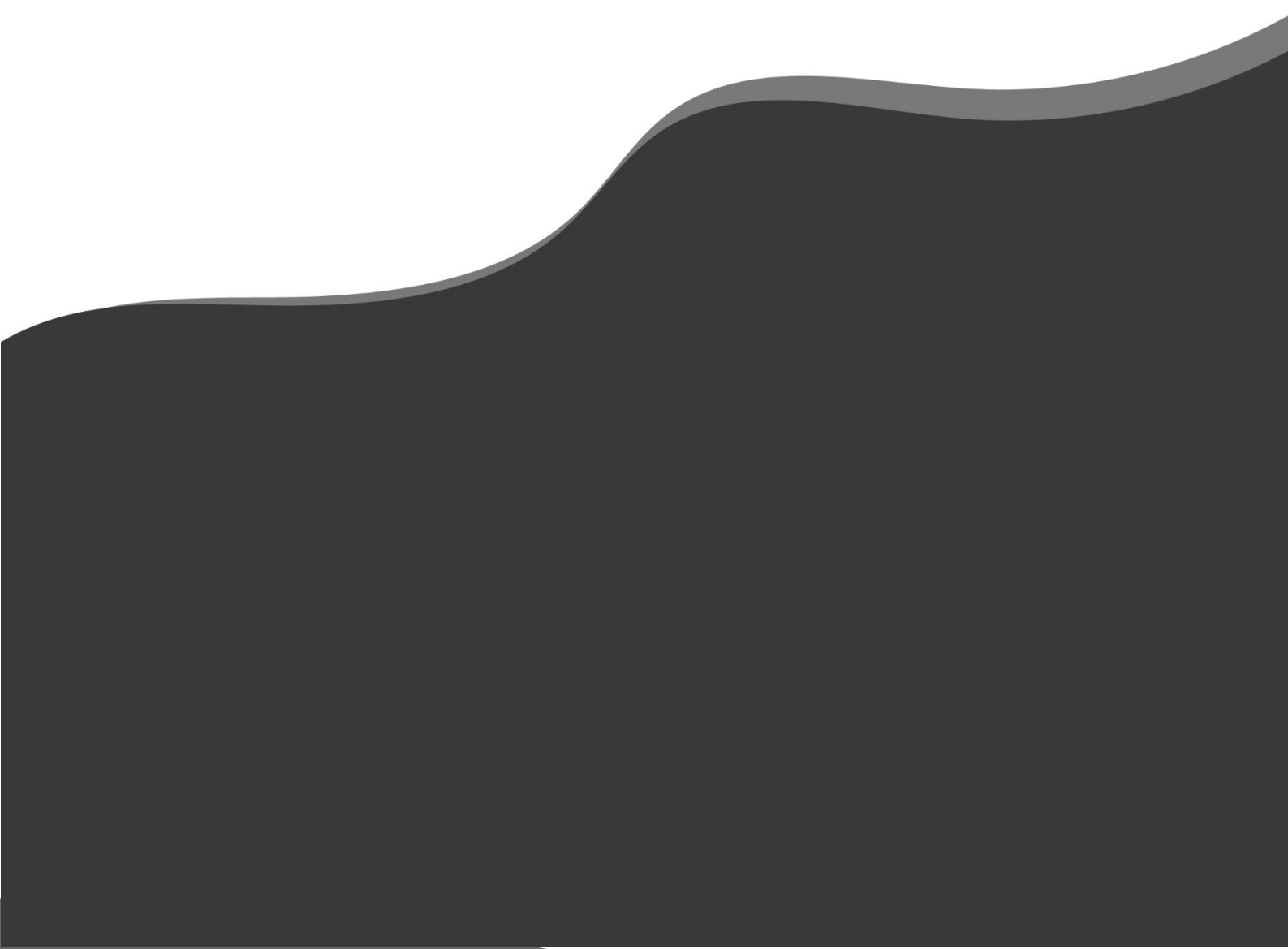
**10. Concluding Observations on the 2nd and 3rd Combined Periodic Report of the Republic of Botswana (July 2019)**

In its Concluding Observations on Botswana's 2nd and 3rd combined periodic report, the African Commission called for Botswana to "enact legislation and policies that will ensure the implementation of the Commission's Resolution ACHPR/Res.275 (LV) 2014 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity."



# **SECTION 5:**

## **GUIDELINES AND PRINCIPLES**



## Title

- Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention in Africa (Luanda Guidelines) (2015)
- Guidelines on Freedom of Association and Assembly in Africa (2017)
- Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa (2017)
- Guidelines on Combating Sexual Violence and its Consequences in Africa (2017)
- Principles on the Declassification and Decriminalization of Petty Offences in Africa (2018)
- Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)
- Guidelines on Adhering to Human and Peoples' Rights under the African Charter in the context of states of emergency or disaster (2023)

## Analysis

The African Commission is mandated under Article 45 of the Charter to issue rules and principles aimed at solving legal problems relating to the rights contained in the African Charter. In accordance with this procedure, the African Commission often adopts Principles and Guidelines which define the scope of state obligations or serve as resources to collate international standards that can enhance the implementation of state obligations.<sup>46</sup> In the years following the adoption of Resolution 275, the African Commission has adopted some of these Guidelines and Principles that have expanded the understanding of sexual and gender minorities' rights within the African human rights system.

### **1. Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) (2015)**

The African Commission adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) in May 2014 to set out applicable human rights principles on the use and conditions of police custody and pre-trial detention in Africa. Under clause 30(a), the Guideline provides that “Measures designed to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, *on the basis of gender identity*, refugees and asylum seekers, non-citizens,

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<sup>46</sup>Centre for Human Rights, Faculty of Law, ed., *Guide to the African Human Rights System: Celebrating 40 Years since the Adoption of the African Charter on Human and Peoples' Rights 1981 - 2021* (South Africa: Pretoria University Law Press (PULP), 2021). 36.

stateless persons, racial or religious minorities, or other categories of persons with special needs shall not be considered discriminatory or applied in a manner that is discriminatory.”<sup>47</sup> In essence, the African Commission identifies with the particular challenges often faced by intersex, trans, and other gender-nonconforming persons in society in police custody.

Any measures taken to safeguard the rights of such persons will not be considered discriminatory measures.

## 2. Guidelines on Freedom of Association and Assembly in Africa (2017)

Following the mandated work of a Study Group on Freedom of Association and Assembly under the supervision of the Special Rapporteur on Human Rights Defenders in Africa, the African Commission adopted the *Guidelines on Freedom of Association and Assembly in Africa* in May 2017. Clause 80 of the Guideline mandates that “The state shall not discriminate against assemblies on the basis of other illegitimate grounds, including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, migration status, property, socioeconomic status, birth, disability, age, *sexual orientation or gender identity*.”

This Guideline effectively speaks to the practice of denying registration to groups of LGBTQI+ persons or criminalising their association in public and private. For instance, in Nigeria, LGBTQI+ persons are denied freedom of association and assembly based on their sexual orientation, gender identity, or gender expression.<sup>48</sup> Under the Same Sex Marriage (Prohibition) Act, “[t]he registration of gay clubs, societies and organizations, their sustenance, processions and meetings is prohibited.”<sup>49</sup> Participation in such organisations is criminalised: “A person who registers, operates, or participates in gay clubs, societies, and organisations (...) commits an offence and is liable on conviction to a term of 10 years imprisonment.”<sup>50</sup> Additionally, “[a] person or group of persons who (...) supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.”<sup>51</sup> These provisions criminalise and impose severe penalties for activists working on human rights of LGBTQI+ persons.

## 3. Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa (2017)

The African Commission issued these Guidelines for training law enforcement officials on the policing of assemblies. In the Preamble, the African Commission states that it recognizes “that particular individuals and groups are especially vulnerable to experiencing limitations on their right to freedom of assembly and to other human rights violations in the context of policing assemblies due to their (...) *sexual orientation and gender identity*.”<sup>52</sup>

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<sup>47</sup> Emphasis added.

<sup>48</sup> “Human Rights Situation for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Sexual Rights in Nigeria Report Presented to the UN Human Rights Committee 126th Session,” 2019, [https://ccprcentre.org/files/documents/INT\\_CCPR\\_CSS\\_NGA\\_35448\\_E.pdf](https://ccprcentre.org/files/documents/INT_CCPR_CSS_NGA_35448_E.pdf). 15.

<sup>49</sup> Same Sex Marriage (Prohibition) Act 2013 sec 4 (1).

<sup>50</sup> Ibid. Sec 5 (2).

<sup>51</sup> Ibid. Sec 5 (3).

<sup>52</sup> Emphasis added.

This makes it clear that African governments need to protect people and groups who are particularly vulnerable to limitations on their right to assemble freely, including because of their sexual orientation and gender identity.

The Guidelines also note that training for all law enforcement officials must include training regarding the safety and protection of vulnerable groups like people discriminated against because of their sexual orientation or gender identity. By specifically identifying sexual and gender minorities, the African Commission recognizes the universality of the right to freedom of assembly as a right held by everyone irrespective of their sex, gender, sexual orientation, and gender identity. In this context, states have an obligation to protect and respect the right of peaceful assembly to individuals and organisations and ensure that restrictions on this right are not discriminatory.<sup>53</sup>

These Guidelines provide legal interpretation and serve as a guide for the implementation of the right to peaceful assembly. NGOs can use this to prepare shadow reports and as an advocacy tool for the abrogation or amendment of laws that limit the exercise of the right.

#### **4. Guidelines on Combating Sexual Violence and its Consequences in Africa (2017)**

The African Commission adopted the Guidelines on Combating Sexual Violence and its Consequences in Africa in 2017 with the intent of guiding and supporting states in the effective implementation of their commitments and obligations to combat sexual violence and its consequences.<sup>54</sup> To this end, the Guidelines identified that “Factors other than a person’s sex can increase the vulnerability of individuals or groups of individuals to sexual violence. These include race, colour, national origin (...) *sexual orientation, identity or gender expression*”.<sup>55</sup> Additionally it states: “States must take the necessary measures to prevent all forms of sexual violence and its consequences, particularly by eliminating the root causes of that violence, including *sexist and homophobic discrimination*, patriarchal preconceptions and stereotypes about women and girls, and/or preconceptions and stereotypes *based on gender identity, real or perceived sexual orientation, and/or certain preconceptions of masculinity and virility*, irrespective of their source.”<sup>56</sup> The Guidelines also define “sexual violence” to include “corrective” rape, which is a crime that targets women on the basis of their real or perceived homosexuality.

#### **5. Principles on the Declassification and Decriminalization of Petty Offences in Africa (2018)**

The Principles on the Decriminalization of Petty Offences guides states on the negative impacts of petty offences in Africa and the need to decriminalise them. These Principles establish standards against which petty offences should be assessed. They promote

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<sup>53</sup>United Nations Human Rights Office of the High Commissioner, “Born Free and Equal. Sexual Orientation and Gender Identity in International Human Rights Law,” 2012, <https://www.ohchr.org/sites/default/files/Documents/Publications/BornFreeAndEqualLowRes.pdf>. 59.

<sup>54</sup>African Commission on Human and Peoples’ Rights (ACHPR), “The Guidelines on Combating Sexual Violence and Its Consequences in Africa,” African Commission on Human and Peoples’ Rights (ACHPR), November 5, 2017, <https://achpr.au.int/en/node/848>.

<sup>55</sup>Ibid. Art 3.2 (e).

<sup>56</sup>Ibid. Art 7.

measures that can be taken by states to ensure that laws criminalising petty offences do not target persons based on their social origin, social status, or fortune, noting that petty offences “can threaten the fundamental rights and freedoms of poor and other marginalised persons.” The African Commission states that key populations include “men who have sex with men, transgender persons, sex workers, and prisoners.” Further, vulnerable persons include “persons marginalised on the basis of sexual orientation or gender identity.”

The African Commission recognizes that in many African countries, petty offences such as “idle and disorderly offences” are utilised to intimidate and violate the rights of marginalised groups, including the use of such laws by the elite to enforce hegemonic notions of ‘socially appropriate’ behaviour on lower classes.<sup>57</sup> By promoting the decriminalisation of such offences, thereby reducing the risks of state violence against sexual and gender minorities, the African Commission further enhances the principles of Resolution 275.

## **6. Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)**

The Principles on Freedom of Expression and Access to Information in Africa recognizes “the need to protect and promote the right to freedom of expression and access to information of marginalised groups that face multiple discrimination, including women, children, persons with disabilities, older persons, sexual and gender minorities (...)” and states that “everyone shall have the rights to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including race ethnic group, colour, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, sexual orientation, gender identity or any other status.”

By including SOGIESC in its definition of discrimination and calling for non-discrimination in exercising freedom of expression and access to information, the African Commission upholds and reinforces the principles of Resolution 275.

## **7. Guidelines on adhering to human and peoples’ rights under the African Charter in the context of states of emergency or disaster (2023)**

The Guidelines on adhering to human rights under the African Charter in the context of states of emergency or disaster defines non-discrimination as including “equal enjoyment or rights and freedoms, equal treatment, equality before the law and equal protection of the law as guaranteed by Articles 2 and 3 of the African Charter, without distinction of any kind relation to race, colour, sex, religion, political opinion, national extraction or social origin, disability, sexual orientation or gender identity or any other status”. The guidelines later state that “emergency and disaster plans, including mitigation measures that are consistent with the rights to non-discrimination (...) should be put in place for sectors of society who are particularly vulnerable to the effects of states of emergency and disaster.”

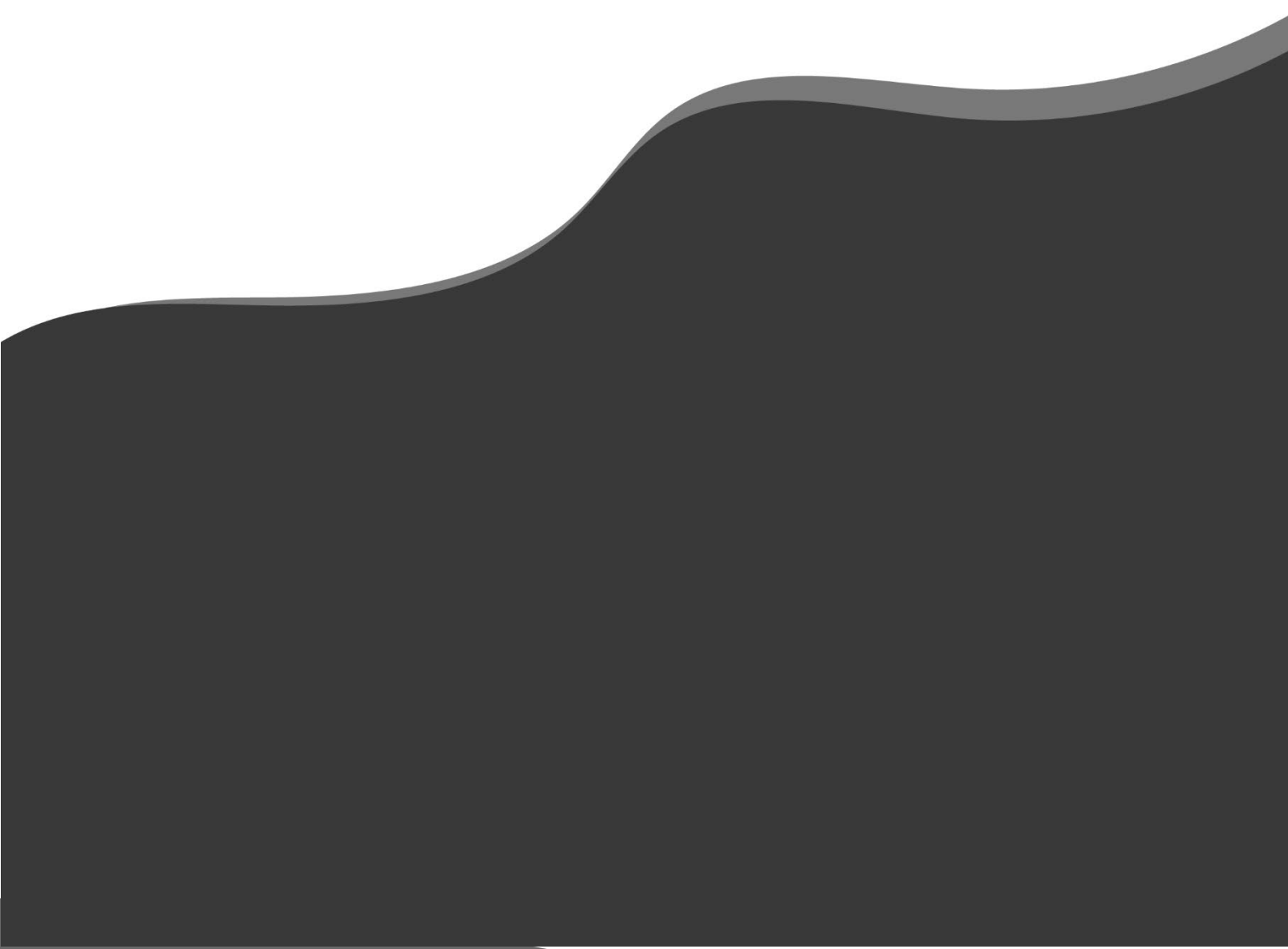
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<sup>57</sup> Human Rights Awareness and Promotion Forum (HRAPF), “HRAPF Releases Research Report on the Use of ‘Idle and Disorderly’ Laws in Uganda – Human Rights Uganda,” Hrapf.org, 2016, <https://hrapf.org/hrapf-releases-research-report-on-the-use-of-idle-and-disorderly-laws-in-uganda/>. 24.

The consequences of the COVID-19 pandemic illustrated the importance of emergency and disaster preparedness strategies and non-discriminatory plans since marginalized communities are often the worst hit in such cases. The definition of non-discrimination in these guidelines is aligned with and enhances the principles of Resolution 275.

# SECTION 6:

## STATE REPORTS



## **Title**

- Republic of South Africa 2<sup>nd</sup> Periodic Report (2015)
- Republic of Angola 6<sup>th</sup> and 7<sup>th</sup> Combined Periodic Report (2018)
- Republic of Botswana 2<sup>nd</sup> and 3<sup>rd</sup> Periodic Report (2018)
- Republic of Mauritius 9<sup>th</sup> to 10<sup>th</sup> Combined Periodic Report (2019)

## **Analysis**

The state reporting process is the primary medium through which the African Commission carries out its task of implementing and giving effect to the African Charter. Through this process, states can be held accountable for their treaty obligations and engage in a dialogue with the African Commission, especially on areas of human rights that are not well understood, such as sexuality and gender issues.

As discussed earlier under section 4 (Concluding Observations) of this report, Article 62 of the African Charter obligates state parties to submit, every two years, a report on the measures taken with the view of giving effect to the rights and freedoms contained in the Charter. The African Commission has not yet issued the Concluding Observations for the state reports included in this section but should be in the near future. However, because the State reports include references to issues of sexual orientation and gender identity, they have been included here as relevant documents as we expect that the Concluding Observation by the African Commission will also address these points. Thus, these reports are potential elaborations on the use of Resolution 275 by the African Commission.

Despite resistance from some African states to implement Resolution 275, it is important to highlight that a small yet increasing number of states are including SOGIESC issues in their reports, acknowledging that the protection of human rights of all people regardless of their sexual orientation, gender identity, gender expression, and sex characteristics is a principle recognized by the African system of protection of human rights.

### **1. Republic of South Africa 2nd Periodic Report (2015)**

The Republic of South Africa reported in its second periodic report development of a strategy to address gender-based and sexual orientation-based violence against LGBTQI+ persons through a National Task Team in 2013. This team was reported to have been developed to “strengthen [the] government’s ability to respond to LGBTI needs”.<sup>58</sup> In its report, South Africa stated that its legislative framework provides for the equality and rights of LGBTQI+ persons and their protection under the law. Further, “The Constitution guarantees equality for all and prohibits discrimination based on, amongst others, gender, sex, race and sexual orientation.” Despite the legal framework, the report states that homophobia, discrimination, and prejudice still exist and that “there were 20 documented cases of murder of lesbians in South Africa. Since then, there has been an increase in the number of murders of lesbians due to hate crimes and ‘corrective rape’”. South Africa also reported

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<sup>58</sup> Second Combined Periodic Report of the Republic of South Africa and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa (2015)



the successful prosecution of four men for this crime. Each was sentenced to a jail term of 18 years. The report notes that black lesbians, in particular, are subjected to violence in townships and some urban settings and that this marginalization is partially due to the “misperception that homosexuality is ‘un-African’ or that lesbians and gays cannot be afforded the same constitutional protections and rights provided to the rest of society.” Another reason for the marginalisation stated in the report is the “misperception that homosexuality should be criminalised and religious and cultural intolerance resulting from what is ‘correct behaviour’ or not.” The report stated that the South African courts were beginning to address hate crimes even in the absence of specific hate crimes legislation.

## **2. Republic of Angola 6th and 7th Combined Periodic Report (2018)**

In its ‘Measures for the Implementation of the Protocol on Women’s Rights in Africa’ section, Angola reported that “[t]here are no codes in Angola, which punish the consensual same-sex relations between adults. There is no record of conviction of people for being lesbian, gay, bisexual, transgender and intersex (LGBTI). The draft law that approves the Criminal Code contains rules dealing with discrimination on the grounds of sexual orientation. Recently an information network for members of the LGBTI Community of Angola was established on the Internet-based System and Services (IRIS).”<sup>59</sup>

The African Commission will certainly commend this aspect of the Angolan report as it is in line with the objectives of Resolution 275. Nevertheless, even though Angola’s Criminal Code has been revised, LGBTQI+ persons in the country still face discrimination and stigma in both public and private spaces.<sup>60</sup> As such, the government’s seriousness in combating discrimination must go beyond the repeal of criminalising provisions and include positive steps to ensure actual inclusion. For instance, the state needs to undertake programs that sensitise, train, and educate law enforcement officers, health workers, and the general public.

## **3. Republic of Botswana 2nd and 3rd Periodic Report (2018)**

In its state report, Botswana reported: “[w]here persons are of the opinion that their right to enjoy freedom of association is being infringed upon, they can take the matter to the courts. The Lesbians, Gays, & Bisexuals of Botswana (LEGABIBO) recently sued the Government for refusing to register it as an association of homosexuals.”<sup>61</sup> Here, the state acknowledges the significance of access to court in protecting the right to associate, irrespective of sexual orientation or gender identity. This stance complies with paragraph 3 of Resolution 275, which enjoins states to ensure the protection of human rights defenders working with LGBTQI+ communities. Just as importantly, this report offers the African Commission an opportunity to consider whether the measures adopted by Botswana are sufficient to eliminate discrimination on the basis of sexual orientation and gender identity.

## **4. Republic of Mauritius 9th to 10th Combined Periodic Report (2019)**

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<sup>59</sup> Sixth and Seventh Combined Periodic Reports of the Republic of Angola on the African Charter of Human Rights and Peoples and the Initial Report of the Protocol on Women’s Rights (2018).

<sup>60</sup> AMSHeR ‘Angola New Penal Code Brings Hope for LGBT Communities in Africa’ (2019).

<sup>61</sup> The Republic of Botswana Second and Third Report to the African Commission on Human and People’s Rights Implementation of the African Charter on Human and People’s Rights.

In its state report, Mauritius notes that the state has enacted an Equal Opportunities Act that prohibits “discrimination in employment, education, qualifications for a profession, trade or occupation, the provision of goods, services, facilities or accommodation, the disposal of property, companies, partnerships, “sociétés”, registered associations, sports, clubs, and access to premises which the public may enter or use. The grounds of discrimination extend beyond those provided in the Constitution, notably age, ethnic origin, sexual orientation, impairment, and marital status”.<sup>62</sup> The report further notes that the Ministry of Justice has obtained technical assistance to 'assist in advancing the rights of LGBT people', including through 'sensitization activities, engaging with international networks of experts and champions, and receiving support to develop resources, knowledge and capacity to draft and amend legislation to enhance the protection of the LGBT people in Mauritius.'<sup>63</sup> The report also notes the existence of government hospitals that provide free hormone treatments for trans persons.<sup>64</sup> However, medical sex change and ID sex change are not legally permitted. The positive steps highlighted by Mauritius are in accordance with the aims of Resolution 275. Although the state has not yet achieved full equality and inclusion, the African Commission is likely to commend these steps and encourage the state to further ensure more protections for the LGBTQI+ community.

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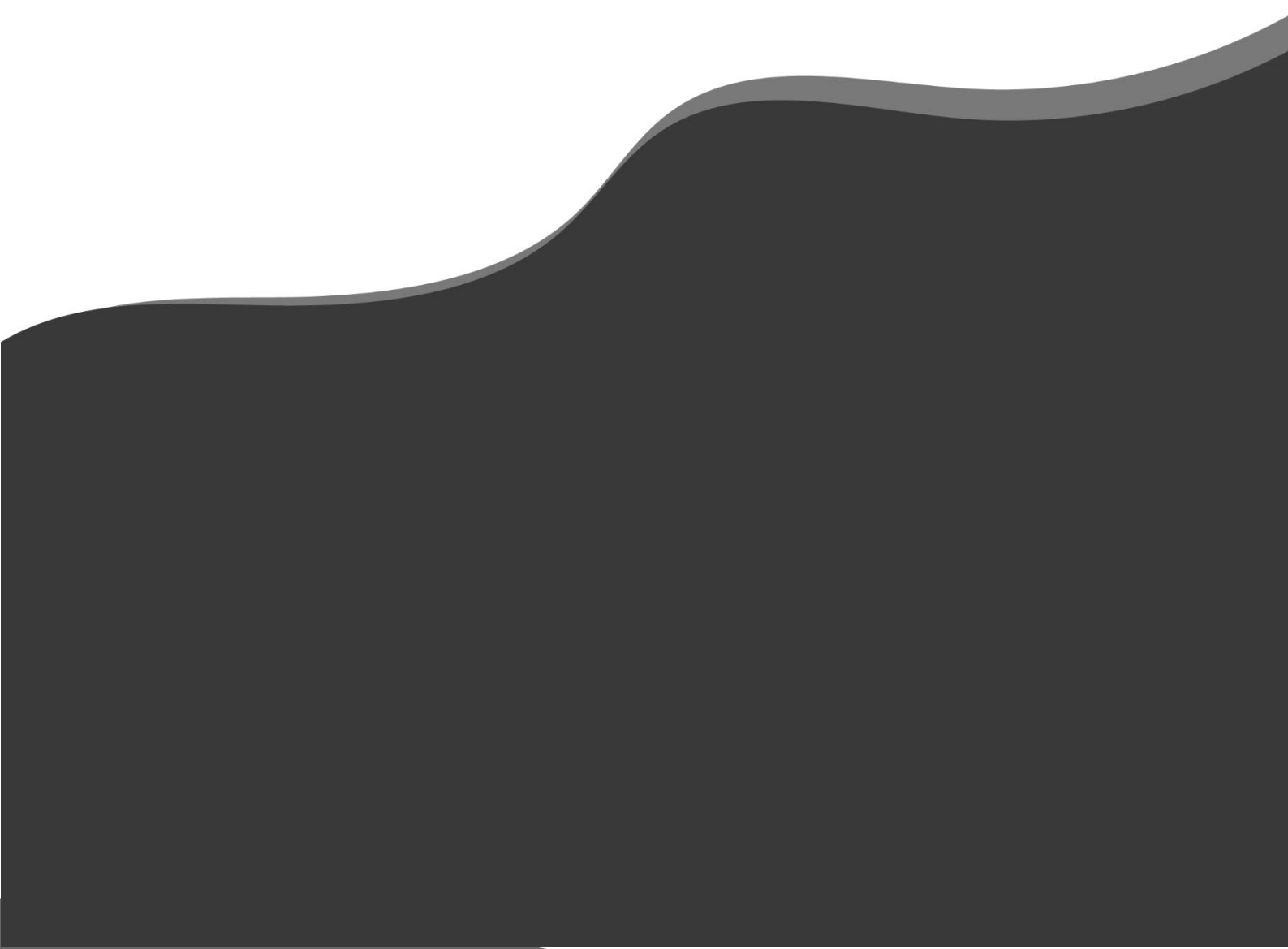
<sup>62</sup> The Republic of Mauritius 9<sup>th</sup> to 10<sup>th</sup> Combined Report to the African Commission on Human and People's Rights Implementation of the African Charter on Human and People's Rights.

<sup>63</sup>Note 53 above, para 296.

<sup>64</sup>Note 53 above, para 299.

# SECTION 7:

## OTHER COMMISSION REPORTS



**Title:****Activity Reports**

- 39th Activity Report of the African Commission (2015)
- 40th Activity Report of the African Commission (2016)
- 41st Activity Report of the African Commission (2016)
- 42nd Activity Report of the African Commission (2017)
- 44th Activity Report of the African Commission (2018)
- 48th & 49th Combined Activity Report of the African Commission (2020)
- 50th & 51st Combined Activity Report of the African Commission (2021)
- 52nd & 53rd Combined Activity Report of the African Commission (2023)

**Intersession Reports**

- 56th Ordinary Session Intersession Activity Report, Commissioner Reine Alapini-Gansou (2015)
- 56th Ordinary Session Intersession Activity Report, Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report (2015)
- 60th Ordinary Session Intersession Activity Report, Commissioner Reine Alapini-Gansou (2017)
- 60th Ordinary Session Intersession Activity Report, Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report (2017)
- 66th Ordinary Session Intersession Activity Report, Commissioner Hatem Essaiem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2020)
- 71st Ordinary Session Intersession Activity Report, Commissioner Hatem Essaiem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2022)
- 73rd Ordinary Session Intersession Activity Report, Commissioner Hatem Essaiem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2022)
- 75th Ordinary Session Intersession Activity Report, Commissioner Solomon Ayele Dersso and Annual Report on the Situation of Extractive Industries, Environment and Human Rights Violations (2023)
- 75th Ordinary Session Intersession Activity Report, Commissioner Hatem Essaiem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2023)
- 77th Ordinary Session Intersession Activity Report, Commissioner Hatem Essaiem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2023)

**Other Reports**

- Ending Violence and other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and United Nations (2016)
- HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses (2018)
- Study on the Use of Force by Law Enforcement Officials in Africa HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses (2018)

## Analysis

Generally, other than its state reporting, communication decisions, and resolution measures, the African Commission also undertakes other activities, including on-site missions and promotional visits, to obtain first-hand information on an issue or directly interface with domestic policymakers and local civil society.

The African Commission also utilises 'special mechanisms', such as special rapporteurs, working groups and committees to engage different human rights issues and geographical and thematic areas across the continent.

Considering all these activities, the African Commission often issues relevant reports for the general public and the Executive Council of the African Union. While the general and intersessional reports do not have normative force in the African human rights system, they can provide insight into the workings of the African Commission and the values reflected in its normative documents. As such, these general and intersessional reports of the African Commission are documented here for their descriptive relevance.

Nevertheless, Article 54 of the African Charter obligates the African Commission to submit a report on its activities to the Assembly of the Heads of States and Government of the African Union. The report highlights the activities undertaken by the African Commission in executing its mandate to protect and promote human and peoples' rights on the continent. It also highlights, among others, the statutory and other institutional meetings of the Commission; the status of state reporting; the resolutions adopted by the African Commission; the human rights complaints before the African Commission; the various interventions on human rights issues; the human rights situation on the continent; the financial, staffing and operational matters of the African Commission; and the implementation of the recommendations of the Executive Council. Because these "Activity Reports" are formally adopted by the political body of the African Union they can serve as a process through which the norms set by the African Commission can influence the political bodies of the African Union and be accepted as binding on all relevant state parties.

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### **39<sup>th</sup> Activity Report of the African Commission (2015)**

In this Activity Report, the African Commission commended South Africa on "the law on non-discrimination on the grounds of sexual orientation" in its Positive Developments section

dealing with human rights in Africa. This appears to be the only annual activity report that touches on sexual orientation or gender identity. The implications of South Africa's report have been discussed under the section on 'Concluding Observations' above.

#### **40<sup>th</sup>, 41<sup>st</sup>, 42<sup>nd</sup> and 44<sup>th</sup> Activity Reports of the African Commission (2016 - 2018)**

These Activity Reports include statements by the African Commission on its several Concluding Observations on the state reports submitted by Liberia, Malawi, Nigeria, South Africa, Sierra Leone, Mauritius, and Niger. The content of these Concluding Observations is discussed under the section on 'Concluding Observations' above.

#### **48<sup>th</sup> and 49<sup>th</sup> Activity Reports of the African Commission (2020)**

In this Activity Report, the Commission noted with appreciation some positive human rights developments observed during the reporting period, including the decriminalisation of same-sex relations in Gabon following a vote by the Gabon senate on 29<sup>th</sup> June 2020, which was then assented to the President, and the repeal of the death penalty for certain crimes including apostasy and homosexuality in Sudan.

#### **50<sup>th</sup> and 51<sup>st</sup> Activity Reports of the African Commission (2021)**

In this Activity Report, the African Commission lists "the arbitrary arrest, detention and discrimination against LGBTQI persons who are excluded from all policies including universal healthcare in some countries" as one of the areas of concern. The Commission calls on states to "respect and protect the rights of persons or groups exposed to a high risk of acts of torture and other ill-treatment, in particular, persons with albinism, persons with disabilities, lesbians, gays, bisexuals, transsexuals, and inter-sexuals (LGBTI)(...)and ensure that the perpetrators of these acts are held responsible."

#### **52<sup>nd</sup> & 53<sup>rd</sup> Combined Activity Report of the African Commission (2023)**

During the reporting period, the African Commission sent 23 letters of concern and urgent appeals to state parties regarding various allegations of human rights violations. Out of the 23 letters, two letters highlighted LGBTQI+ rights violations. An urgent appeal letter was sent to Zambia "pertaining to the allegations of discrimination against the LGBTQI populations in the Zambian health facilities". A similar letter was sent to the Kingdom of Eswatini "concerning the public attacks against LGBTQI+ persons in Mbabane, in Eswatini". Both letters were yet to receive a response at the time of the activity report's publication.

#### **54<sup>th</sup> & 55<sup>th</sup> Combined Activity Report of the African Commission (2023)**

In this Activity Report, the African Commission notes that a joint letter of "concern about the adoption of a bill imposing the death penalty in cases of so-called 'aggravated homosexuality'" was sent to Uganda, with no response by the time of the activity report's publication.

### **Intersession Reports**

#### **56<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Reine Alapini-Gansou (2015)**

This is a non-normative report documenting the Commissioner's participation in a Global Donors' Conference in Washington on the Rights of LGBT Persons. At this conference, he shared the position of the African Commission as elucidated in Resolution 275. He stated that “[i]t is up to us to inform the partners about the actions taken by the ACHPR to ensure the protection of people in Africa, irrespective of their sexuality or gender identity, real or supposed”.

**56<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report (2015)**

In this non-normative intersession activity report, Commissioner Lawrence Mute condemned The Gambia for its treatment of sexual and gender minorities, noting that the “African Commission has received allegations of attacks on the lesbian, gay, bisexual and transgender community in The Gambia, including ill-treatment, arrests and detentions of individuals based on their real or perceived gender identity or sexual orientation.”

**60<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Reine Alapini-Gansou (2017)**

In this non-normative intersession activity report, the Commissioner—in his capacity as Special Rapporteur on human rights defenders in Africa—highlighted the continuing harassment of human rights defenders working on sexual orientation, gender identity and expression, and sexual and reproductive health rights. The report recommends that countries “remove punitive and restrictive laws, policies and practices that undermine the rights to freedom of association and assembly”, including those based on “sexual orientation, identity and expression of gender”. This is especially significant, considering laws passed in Nigeria (and passed but later nullified in Uganda) that criminalise work on sexual orientation and gender identity issues by human rights defenders.

**60<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report (2017)**

In this non-normative intersession activity report, Commissioner Lawrence Mute, as chairperson of the Committee for the Prevention of Torture in Africa, notes that the use of forced anal examinations to prove homosexuality may amount to torture under the African Charter. He urges states to “respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including (...) lesbian, gay, bisexual, transgender and intersex persons”.

**66<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2020)**

This is also a non-normative report in which Commissioner Hatem Essaïem, as chairperson of the Committee for the Prevention of Torture in Africa, notes that LGBTQI+ persons continue to face “killings, torture, threats, harassment, arbitrary detention and widespread discrimination in access to health care, education, employment and housing” and also notes

the continued use of forced anal examinations to obtain physical evidence of homosexuality—an act that “amounts to torture and ill-treatment, and has been found ‘medically worthless’”. The report then recommends that states should “respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including (...) lesbian, gay, bisexual, transgender and intersex (LGBTI) persons”.

**71<sup>st</sup> Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2022)**

This report highlights cases of violence, arbitrary arrest, discrimination and anti-LGBTQI+ legislation that constitute human rights issues faced by LGBTQI+ groups. The report states that LGBTQI+ groups in Africa “are constantly faced with human rights issues as well as institutional violence”. Same-sex relations are legal in only 22 African States. Four states apply the death penalty in response to LGBTQI+ relationships—Mauritania, Nigeria, Somalia and South Sudan. The report states that LGBTQI+ people are “exposed to the risk of being arrested and falling victim to blackmail, extortion, stigmatisation, discrimination and violence” and that “as Africa accounts for nearly half of the countries worldwide where homosexuality is outlawed, LGBT+ people are at constant risk of abuse in their homes”.

The report highlights specific issues, including in Ghana, where the anti-LGBTQI+ bill was the subject of hearings in Parliament in 2021. “An increasing number of attacks on LGBTQ persons have been reported since the draft law was introduced.”

In Cameroon, the report states that, despite an arrest on 15th November 2021 in connection to an attack on an intersex person “it did not prompt Cameroonian authorities to take any immediate action” and that the attack on the intersex person “follows an increase in police action against LGBT people in Cameroon in 2021”.

In South Africa, the report notes that “at least 24 LGBTI+ people were assaulted and killed because of their gender identity or sexuality.” Furthermore, during the COVID-19 pandemic, “aid workers said that fewer shelters were being provided for LGBTQI+ people and that officials had overlooked the additional dangers faced by people from vulnerable groups, such as transgender people and lesbians.”

In Egypt, “LGBT+ people have been arbitrarily detained and ill-treated in police custody because of their sexual orientation or gender identity.”

The report recommends that states should “respect and protect the rights of persons or groups at heightened risks to acts of torture and other ill-treatment, including (...) lesbian, gay, bisexual, transgender and intersex persons (...) and ensure that perpetrators of such acts are held accountable”.

**73<sup>rd</sup> Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and Other Ill-**



## **Treatment in Africa (2022)**

In this report, Commissioner Hatem Essaïem states that “LGBTI+ groups in Africa are constantly faced with human rights issues as well as institutional violence.” The report reiterates the general status of the African states' same-sex legislation, “only twenty-two (22) African States have legalised same-sex relationships. Four (4) States apply the death penalty in response to LGBTI+ relationships (Mauritania, Nigeria, Somalia and South Sudan).” The report recommends that “states should respect and protect the rights of persons or groups most vulnerable to torture and other ill-treatment, including (...) the LGBTQI+ community (...) and ensure that perpetrators are held accountable.”

## **75<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Solomon Ayele Dersso and Annual Report on the Situation of Extractive Industries, Environment and Human Rights Violations (2023)**

In this non-normative report by Commissioner Solomon Ayele Dersso, he calls attention to the press statement he issued in his capacity as Kenya's Country Rapporteur on 6 January 2023 to condemn the tragic murder of Edwin Chiloba, a queer-identifying activist, fashion designer, and model. The press release indicates that Edwin Chiloba's death had the appearance of being a hate crime and that he was killed on account of [his] sexual orientation. The report recalled Resolution 275, which condemns violations of human rights, including murder, rape, assault, arbitrary imprisonment, and other forms of persecution of persons based on their imputed or real sexual orientation or gender identity. The report states that the press release called on the Kenyan Government to initiate transparent, thorough, and prompt investigations into the tragic death of Edwin Chiloba and to grant remedies, including reparations to the families, in fulfilment of the obligations that it freely subscribed to as a state party to the African Charter.

## **75<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and other Ill-Treatment in Africa (2023)**

This non-normative report by Commissioner Hatem Essaïem notes that in Resolution 275, “the Commission condemned the increasing incidence of violence and other human rights violations, including murders, rapes, assaults, arbitrary imprisonments and other forms of persecution of persons based on their assumed or (real) actual sexual orientation or gender identity.” The Commissioner further notes that the resolution further called for states to “end all acts of violence and abuse, whether committed by state or non-state actors”. The report proceeds to extensively document that at the time of writing, 32 African states still criminalised homosexuality, and three states had applied the death penalty in response to same-sex relationships.<sup>65</sup> The report highlights “a range of issues faced by LGBTQIA+ people in Sudan, where there are barriers to effectively investigating torture”, “in Egypt and Tunisia, at least 20 LGBTQIA+ activists have been arbitrarily arrested in the past year”, “in Kenya, Edwin Chiloba, a prominent LGBTQIA+ activist, was suffocated to death in his home”, “in

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<sup>65</sup> Mauritania, Nigeria, Somalia. Since the writing of Commissioner Hatem Essaïem's report, Uganda's anti-homosexuality law with death penalty for ‘aggravated homosexuality’ has been added as the fourth country in Africa with capital punishment for homosexuality.

Ghana (...) it was reported that attacks against LGBTQIA+ people persisted”, and in the DRC, “violence and discrimination against LGBTQIA+ people are commonplace and notes that trans and lesbian people have been arbitrarily arrested, beaten and sexually assaulted in police custody”. The report reveals that despite the Commission’s commitment to Resolution 275 and despite calling on states to end violence and abuse [against LGBTQIA+] people, gross violation of rights persists. The report calls on states to respect and protect the “rights of individuals or groups most at risk of torture and other ill-treatment, including (...) the LGBTQIA+ community (...)and ensure that the perpetrators of these acts are held accountable.”

### **77<sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and other Ill-Treatment in Africa (2023)**

This non-normative report by Commissioner Hatem Essaïem states that LGBTQI+ people in Africa “face ongoing human rights challenges and institutional violence. In its Resolution 275, the Commission condemned the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment, and other forms of persecution of people on the basis of their sexual orientation or their assumed or real gender identity.” The report calls on States to put an end to all acts of violence and abuse, whether committed by State and non-State actors, in particular by enacting and effectively enforcing appropriate laws prohibiting and punishing all forms of violence, including those directed against persons on the basis of their sexual orientation or gender identity, whether assumed or real, by ensuring perpetrators are properly investigated and promptly prosecuted, and by establishing judicial procedures that meet the needs of victims.” The report also mentions the Zimbabwe Human Rights NGO Forum v Zimbabwe, where the Commission “reaffirmed that the objective of Article 2 of the African Charter is to ‘guarantee equal treatment of individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation’.” The report highlights that States “have an obligation to protect LGBTQIA+ people from harm and discrimination and to provide to victims.”

In addition, the report calls to attention Uganda’s Anti-Homosexuality Bill 2023, which criminalises sexual acts between consenting adults of the same sex, and the violence, rape, and other abuses against LGBTQ+ refugees and asylum seekers in the Kakuma camp in Kenya. The report calls on states to “respect and protect the rights of persons or groups that are most at risk of torture and other ill-treatment, including (...) the LGBTQIA+ community (...) and ensure that perpetrators are held accountable.”

### **Other Reports**

#### **Ending Violence and other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights and United Nations (2016)**

This is a report on a joint dialogue between the African Commission, the Inter-American Commission on Human Rights, and the United Nations. The report describes and reflects on

the regional and global norms that set out protections for the rights of sexual minorities and emphasises the need to end acts of violence against persons on the basis of their sexual orientation and gender identity. The report concludes that "Laws that criminalise adult consensual same-sex sexual relations and other punitive laws used against LGBT people infringe on human rights, undermine the effectiveness of HIV programmes, and limit the ability of members of these populations to seek and benefit from HIV programmes." On the contrary, a legal environment that protects human rights and ensures access to HIV/AIDS programmes without discrimination, including for transgender people, gay men, and other MSM, helps to achieve an effective and rights-based response.<sup>66</sup>

### **HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses (2018)**

This is a report on a study on the state of the HIV/AIDS epidemic in Africa. It sets out international, regional, and national HIV-related norms and standards, and their interpretation by regional and global normative bodies. The report emphasises that "Criminalization, violence, discrimination and other human rights violations based on sexual orientation are contrary to international human rights law. They also have significant negative consequences on the HIV epidemic and public health, contributing to an environment of fear that drives LGBTI people away from HIV services."<sup>67</sup> In its recommendations, the report urges states to "Also remove the punitive and restrictive laws, policies and practices that stigmatise and discriminate against particular categories of human rights defenders on the basis of sex, health status, sexual orientation, gender identity and expression, or other status".<sup>68</sup>

### **Study on the Use of Force by Law Enforcement Officials in Africa HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses (2018)**

This study was conducted in line with the decisions made by Resolution 437 on the need to prepare a study on the use of force by law enforcement officials in Africa. Concerns were raised regarding the use of excessive or disproportionate use of force by police forces, which violates human rights. The study was conducted by three mechanisms, including the Death Penalty, Extrajudicial Summary or Arbitrary Executions and Enforced Disappearances, the Defenders of Human Rights Defenders and Focal Point on Reprisals in Africa as well as Prisons, and Conditions of Detention and Policing in Africa. The Committee for the Prevention of Torture and Ill-Treatment also supported the study. The study highlights various cases where there is use of excessive force and notes that "Other groups of persons may also be especially vulnerable to the use of force by law enforcement officials,(...)

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<sup>66</sup> African Commission On Human And Peoples' Rights et al., *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity : A Joint Dialogue of the African Commission on Human and People's Rights, Inter-American Commission on Human Rights and United Nations*. (Pretoria, South Africa: Pretoria University Law Press (Pulp, 2016). 85.

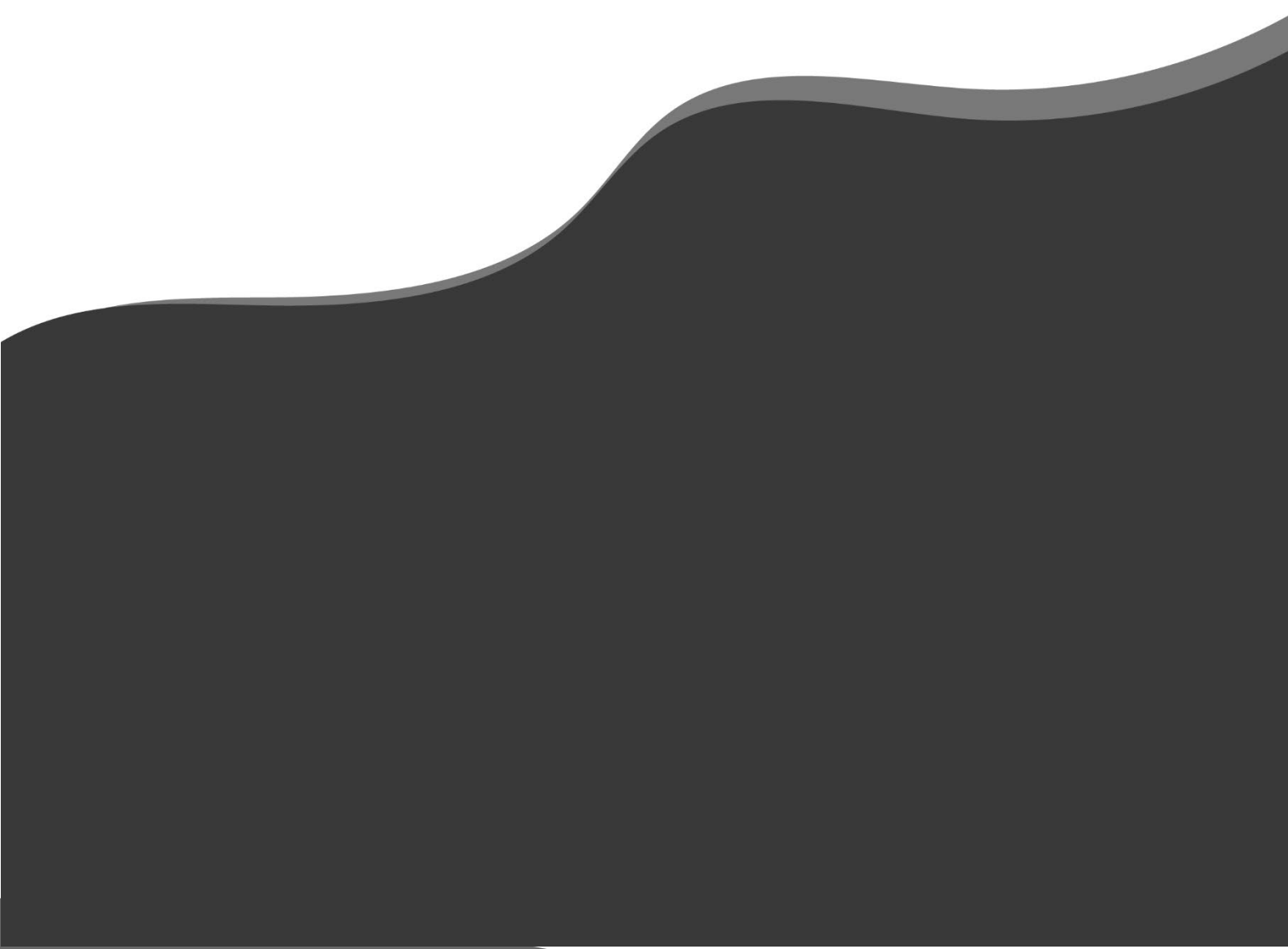
<sup>67</sup> African Commission on Human and Peoples' Rights (ACHPR), "HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses – Report on the Study of the African Commission on Human and Peoples' Rights," UNAIDS, January 31, 2018, [https://www.unaids.org/en/resources/documents/2018/HIV\\_Law\\_AfricanHumanRightsSystem](https://www.unaids.org/en/resources/documents/2018/HIV_Law_AfricanHumanRightsSystem). 88.

<sup>68</sup> Idem. 12.

including (...) LGBTI persons." Recognizing the vulnerability of LGBTI persons is critical in this report, which delves into a perpetual problem in Africa.

# **SECTION 8:**

## **PRESS RELEASES & OTHER STATEMENTS**



## Title

### Press Releases

- Press Release on the Arbitrary Arrest and Detention of 21 LGBT + Human Rights Defenders in Ghana (2021)
- Statement on the Occasion of the International Day in Support of Victims of Torture (2021)
- Joint Statement: World Day Against Trafficking in Persons: The international community must strengthen prevention and accountability for trafficking in persons in conflict situations (2022)
- Ordinary Session of the African Commission on Human and Peoples' Rights kicks off (2022)
- Press release on the human rights promotion mission of the African Commission on Human and Peoples' Rights in the Togolese Republic (2022)
- Press Statement on the tragic murder of Edwin Chiloba in Kenya (2023)

## Analysis

In this ten-year report, the scope of documents reviewed is expanded to include press releases issued by the African Commission. This addition enhances the comprehensiveness of this assessment report by ensuring that both formal and more dynamic communications reflecting the African commission's priorities and actions are captured.

The African Commission uses press releases to communicate significant human rights news, developments, and outcomes of its sessions and decisions. This aligns with the Commission's broader objectives of promoting human rights and ensuring relevant information reaches a wider audience. Unlike the case of African Commission activity reports—which are required in fulfilment of the obligation in Article 54 of the African Charter—press releases are not explicitly mentioned in the African Charter. However, Article 45 of the Charter, which outlines the functions of the African Commission, mentions the use of press releases as a way to contribute to fulfilling the Commission's mandate to disseminate information. In addition, the African Commission Rules of Procedure states in Rule 107(2) that the Commission can issue press releases or use other decisions to publicize its decisions, especially in cases of significant public interest.

The Commission's press releases are vital to include in monitoring Resolution 275 and SOGIESC issues at the African Commission. They contribute to norm-setting and/or norm reinforcement in various ways, including publicizing standards and expectations by reinforcing expectations for states regarding human rights, promoting consistency in human rights standards, and asserting the Commission's authority.

### **Press Release on the Arbitrary Arrest and Detention of 21 LGBT + Human Rights Defenders in Ghana (2021)**

This press release was made by the African Commission Chair Hon. Prof. Rémy Ngoy Lumbu in his capacity as the Special Rapporteur on human rights defenders and focal point on reprisals in Africa. The press release was in response to the arrest of 21 human rights defenders by Ghanaian police while they were in paralegal training for the protection of the human rights of sexual minorities in Ho, Ghana. The Special Rapporteur stated that he "strongly condemns these arrests that undermine the freedom of expression, assembly and association enshrined in the African Charter of Human and Peoples' Rights in its Articles 9, 10 and 11 and whose Article 2 guarantees everyone the enjoyment of these rights and freedoms '*without any discrimination*'." The Special Rapporteur reminded the Republic of Ghana of its commitments under the African Charter and "urged Ghana to comply with resolution 275 of 2014 on the protection against violence and other human rights violations on the basis of their real or imputed sexual orientation or gender identity." In the statement, the Special Rapporteur "requests that the rights of arrested persons be respected and that they be released on bail pending their trial under the principle of the presumption of innocence."

### **Statement on the Occasion of the International Day in Support of Victims of Torture (2021)**

The African Commission and its Committee for the Prevention of Torture in Africa (CPTA) made a statement to observe the International Day in Support of Victims of Torture. In the statement, the African Commission and CPTA note acts of torture based on discrimination, "individuals have been subjected to cruel, inhuman and degrading treatment because of their sexual orientation."

### **Joint Statement: World Day Against Trafficking in Persons: The international community must strengthen prevention and accountability for trafficking in persons in conflict situations (2022)**

The African Commission released a statement on the occasion of the World Day Against Trafficking in Persons stating, "We must recognize that discriminatory attitudes and violence, based on sexual orientation and gender identity including by law enforcement bodies, may result in lesbian, gay, bisexual, trans (LGBT) and gender diverse persons (...) being at increased risk of exploitation and not receiving effective assistance or protections."

### **Ordinary Session of the African Commission on Human and Peoples' Rights kicks off (2022)**

At the opening ceremony for the 73rd Ordinary session of the African Commission, Hon. Commissioner Rémy Ngoy Lumbu stated in his speech, "I also take this opportunity to denounce all forms of discrimination based on race, ethnicity, colour, gender, language, religion, political opinion, real or assumed sexual orientation (...) and call on all stakeholders to provide answers and solutions to remedy".

### **Press release on the human rights promotion mission of the African Commission on Human and Peoples' Rights in the Togolese Republic (2022)**

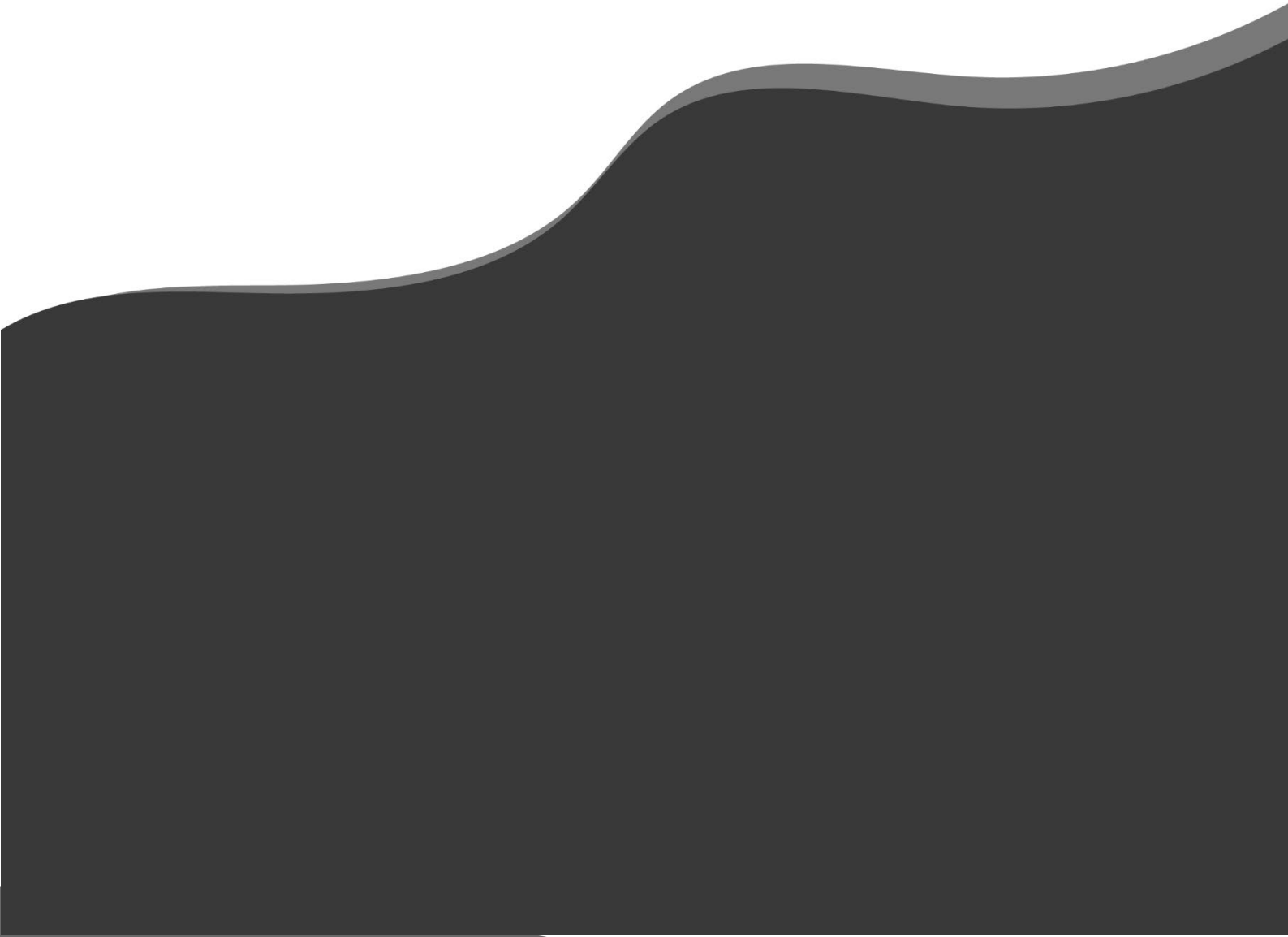
An African Commission delegation comprising Honourable Commissioners Rémy Ngoy Lumbu, Marie-Louise Abomo, and Idrissa Sow carried out a promotion mission to Togo in October 2022. The commission noted under areas of concern that “stigma and discrimination against certain vulnerable groups including LGBTI people (...) groups among whom the prevalence rate of HIV/AIDS is high in the country.”

### **Press Statement on the tragic murder of Edwin Chiloba in Kenya (2023)**

The Country Rapporteur for Kenya, Commissioner Solomon Ayele Dersso, made a statement upon the death of a Kenyan Queer activist, Edwin Chiloba, who was brutally murdered. “The African Commission expresses in the strongest terms possible its condemnation of the brutal murder of Edwin Chiloba and affirms following its Resolution 275 that everyone is entitled to the protection of their lives and the integrity of their persons irrespective of their real or perceived sexual or gender identity, and by the mere fact of their being human.” The statement continues, “The African Commission accordingly calls on the Republic of Kenya and other member states to take legislative or other measures, in accordance with Article 1 of the African Charter, to ensure that all vulnerable members of society, including those who are or are perceived to be different from the mainstream members of society including on account of their sexual or gender identity, are guaranteed to live a life free from the threat of violent attacks(...)”.



# CONCLUSIONS



Over the last ten years, the African Commission has strengthened the aims of Resolution 275 by referring to it in its resolutions, concluding observations, guidelines and principles, activity reports, press releases, and other documents. However, despite progress, recent developments indicate a regression in the commitment by the African Commission to upholding principles enshrined in Resolution 275 and other related standards.

On the positive side, the Commission has effectively and successfully incorporated Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC) issues into its standards and within the scope of its mechanism, therefore complying with the implementation of its promotional mandate. This progress is reflected in the inclusion of SOGIESC considerations across all aspects of soft law, notably, in the adoption of Resolution 552 on the rights of intersex persons, which underscores the commitment by the African Commission to addressing vulnerabilities faced by intersex persons. Furthermore, the African Commission's intersession reports, activity reports, and press releases have also frequently addressed the ongoing challenges and violations faced by sexual and gender minorities. These efforts demonstrate that SOGIESC rights are integral to the work of the ACHPR.

From the review, the most significant engagements with Resolution 275 have been through the African Commission's Concluding Observations on state periodic reports under Article 62 of the Charter and —to a lesser extent— through the guidelines and principles. Via concluding observations, the African Commission has consistently called on states to reform discriminatory laws and protect the human rights of LGBTQI+ individuals and their human rights defenders. While most states still make no reference to these issues in their reports, it is a positive sign that a limited yet increasing number of states, such as South Africa, Angola, Botswana, and Mauritius, are beginning to acknowledge sexual orientation, gender identity, and sex characteristics as an aspect of human rights protected by the African Charter that should be reported on.

However, more remains to be done by the Commission to engage member states in implementing the resolution. To date, SOGIESC-based violence and discrimination continue in most parts of the African continent with little or no remedies. In the near future, the African Commission should take more proactive steps towards promoting Resolution 275 by directly engaging states through on-site visits and other special mechanisms. The African Commission must uphold the standards set and ensure its actions reflect the commitment to protecting human rights for all. Only by doing so can the Commission maintain its credibility and uphold its mandate of promoting and protecting human rights for all in Africa.

Particularly concerning is the decision by the Commission to deny observer status to three organisations on the grounds of their work on the protection of the human rights of LGBTQI+ individuals and their defenders. This action is in stark contrast to the spirit and the letter of Resolution 275. The denial questions the progress made and signals a retreat from the African Commission's commitment to ensure a safe and enabling environment for all human rights defenders in Africa.

Furthermore, it contradicts the broader framework of human rights standards that the African Commission is mandated to uphold. Alarmingly, these actions highlight a fundamental misconception that appears to persist within the African Commission that LGBTQI+ rights are a category separate from the human rights protected by regional and international human rights instruments—including the African Charter—and that, therefore, should be "special rights" outside the scope of the Charter. Not only is this inaccurate, but such a misconception may, in the long term, have a negative impact on the work done by the Commission in the past decade.

This decision raises critical questions about the Commission's current stance on the human rights of LGBTQI+ individuals and its commitment to inclusivity and equality as reflected in Resolution 275 and related standards. While the African Commission's promotion mandate has been effective, there remains a gap in the Commission's protection mandate that might not be effectively addressed if the decision mentioned above is not reversed.

The contradictory message sent by the African Commission's decision on the rejection of observer status published in the final communique of the 73rd ordinary session has had a chilling effect on CSOs engaging in the Commission. It is crucial for the ACHPR not only to uphold the standards set and ensure that its actions reflect the commitment to the protection of human rights for all but also to send an unequivocal message that CSOs working on the human rights of LGBTQI+ individuals should use every opportunity to inform the Commission about human rights violations, this includes ensuring its decisions are not in contravention of the standards it has set and that all rights are protected.

Civil Society Organizations have contributed significantly to the African Commission's issuing of concluding observations, mainly through their preparation and submission of shadow reports. In addition to state reports, shadow reports remain one of the most relevant sources of information for the Commission. It is encouraging that in its Rules of Procedures adopted in March 2020, the African Commission has reviewed the states' reporting procedure under Article 62 of the African Charter in a way that should allow for more substantive and meaningful participation of civil society organisations,<sup>69</sup> which will enable the African Commission to hear other perspectives that may complement the state reports. These shadow reports will also be useful in developing and providing context-specific recommendations to the different states.

While the African Commission has been effective in including Resolution 275 in its promotional mandate, to move forward, the Commission must aim to ensure that the provisions set forth by Resolution 275 are fully embraced within its protective mandate and beyond the state periodic report mechanism. This requires a more proactive engagement of other stakeholders, including civil society, particularly regarding strategic litigation; it also requires a more intentional use of any other protection mechanism available to the African Commission.

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<sup>69</sup> African Commission on Human and Peoples' Rights (ACHPR), "Rules of Procedure of the African Commission on Human and Peoples' Rights of 2020," African Commission on Human and Peoples' Rights (ACHPR), April 13, 2021, <https://achpr.au.int/en/rules-procedure>. 31-35.

Despite recent and related setbacks affecting the independence of the African Commission from the Executive Council of the African Union, it is clear that the norms expressed in Resolution 275 have become a fundamental aspect of the African human rights system. Although there are still contradictory actions by the African Commission that need to be addressed to continue to strengthen protection towards LGBTQI+ groups, Resolution 275 remains a pivotal document that calls for states to take definitive action against violence and human rights violations on the basis of real or imputed sexual orientation or gender identity.

## ANNEX A: Text of Resolution 275

### **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**

*The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 55th Ordinary Session held in Luanda, Angola, from April 28th to May 12th, 2014:*

**Recalling** that Article 2 of the African Charter on Human and Peoples' Rights (the African Charter) prohibits discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or any status;

**Further recalling** that Article 3 of the African Charter entitles every individual to equal protection of the law;

**Noting** that Articles 4 and 5 of the African Charter entitle every individual to respect of their life and the integrity of their person and prohibit torture and other cruel, inhuman, and degrading treatment or punishment;

**Alarmed** that acts of violence, discrimination, and other human rights violations against individuals continue in many parts of Africa because of their actual or imputed sexual orientation or gender identity;

**Noting** that such violence includes 'corrective' rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion, and blackmail;

**Further alarmed** at the incidence of violence and human rights violations and abuses by state and non-state actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa;

**Deeply disturbed** by the failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity;

1. **Condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment, and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;
2. **Specifically condemns** the situation of systematic attacks by state and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity;

3. **Calls on** 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, including the rights of sexual minorities; and
4. **Strongly urges** 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.

**Adopted at the 55<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, April 28th to May 12th**

## ANNEX B: Table of findings

Resolutions				
Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
2014	NA	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	"Condemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity" and "urges 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."	<a href="https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations">https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations</a>
2017	NA	376: Resolution on the Situation of Human Rights Defenders in Africa	"[c]oncerned about new challenges, in particular the increased threats against defenders working on issues including (...) sexual orientation and gender." "[a]dopt specific legislative measures to recognise the status of human rights defenders, and protect their rights and the rights of their colleagues and family members, including women human rights defenders and those working on issues such as (...) sexual orientation and gender identity."	<a href="https://achpr.au.int/en/adopted-resolutions/376-resolution-situation-human-rights-defenders-africa-achpres376">https://achpr.au.int/en/adopted-resolutions/376-resolution-situation-human-rights-defenders-africa-achpres376</a>

2023	N/A	552: Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa	[c]oncerned about human rights violations against intersex persons which include, but are not limited to, rejection in society; infanticide and abandonment of children; lack of proper legal recognition and administrative processes that prevent intersex persons from acquiring or altering identity documents; unfair discrimination in schools, health facilities, competitive sports, work; access to public services; and detention;	<a href="https://achpr.au.int/en/adopted-resolutions/resolution-promotion-and-protection-rights-intersex-persons">https://achpr.au.int/en/adopted-resolutions/resolution-promotion-and-protection-rights-intersex-persons</a>
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#### Decisions on Communication

Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
2006	Zimbabwe	Zimbabwe Human Rights NGO Forum v Zimbabwe	"[t]he 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."	<a href="https://achpr.au.int/en/decisions-communications/zimbabwe-human-rights-ngo-forum-v-zimbabwe-24502">https://achpr.au.int/en/decisions-communications/zimbabwe-human-rights-ngo-forum-v-zimbabwe-24502</a>

#### General Comments

Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
2014	NA	General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on	"State parties must ensure provision of comprehensive information and education on human sexuality"	<a href="https://achpr.au.int/index.php/en/node/854">https://achpr.au.int/index.php/en/node/854</a>



		the Rights of Women in Africa		
2017	NA	General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)	"lesbian, gay, bisexual, transgender and intersex persons are of equal concern."	<a href="https://achpr.au.int/index.php/en/node/893#:~:text=The%20African%20Commission%20on%20Human%20and%20Peoples'%20Rights%20(the%20Commission,on%20Human%20and%20Peoples'%20Rights">https://achpr.au.int/index.php/en/node/893#:~:text=The%20African%20Commission%20on%20Human%20and%20Peoples'%20Rights%20(the%20Commission,on%20Human%20and%20Peoples'%20Rights</a>

#### Concluding Observations

Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
2006	Cameroon	Concluding Observations on the 1st Periodic Report of the Republic Cameroon	The Commission disapproved of the "upsurge of intolerance against sexual minorities"	<a href="https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-cameroon-1st-periodic-report-200#:~:text=The%20present%20Concluding%20Observations%20highlight,8.">https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-cameroon-1st-periodic-report-200#:~:text=The%20present%20Concluding%20Observations%20highlight,8.</a>

2013	Cameroon	Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon	the Commission condemned “[t]he judicial harassment, offences against life and other violations of the rights of human rights defenders, in particular the rights of defenders working in the area of sexual orientation.” Also the “discrimination, stigma and violation of the right to life and physical and mental integrity of individuals based on their sexual orientation.” The Commission implored Cameroon to “[t]ake appropriate measures to ensure the safety and physical integrity of all persons irrespective of their sexual orientation and maintain an atmosphere of tolerance towards sexual minorities in the country.”	<a href="https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-cameroon-third-periodic-report">https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-cameroon-third-periodic-report</a>
2015	Liberia	Concluding Observations on the Initial Periodic Report of the Republic of Liberia	“[e]nsure the equal rights of all Liberians without discrimination including on the basis of sexual orientation or gender identity. It should in particular take account of Resolution 275 of the Commission, which urged all states to enact and apply 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 identity.”	<a href="https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-liberia-initial-and-combined-pe">https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-liberia-initial-and-combined-pe</a>
2015	Malawi	Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi	Commended Malawi’s “efforts to investigate claims of violation of access to health rights by sexual minorities.”	<a href="https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-malawi-initial-combined-periodi">https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-malawi-initial-combined-periodi</a>
2015	Nigeria	Concluding Observations on the 5th Periodic Report of the Federal Republic of Nigeria	“enactment of a law criminalising homosexuality has the potential to engender violence against persons on grounds of their actual or imputed sexual orientation, and also to drive this group of persons vulnerable to HIV/AIDS underground, thereby creating an environment which makes it impossible to effectively address the HIV pandemic in the state.” “[r]eview the Same-Sex Marriage Prohibition Act in order to prohibit violence and	<a href="https://achpr.au.int/en/concludin-g-observation/concluding-observations-and-recommendations-nigeria-5th-periodic-report-2011">https://achpr.au.int/en/concludin-g-observation/concluding-observations-and-recommendations-nigeria-5th-periodic-report-2011</a>

			discrimination in access to HIV prevention, treatment and care services, as well as to ensure the protection of other human rights of sexual minorities guaranteed under the African Charter and other international instruments to which Nigeria is a party.”	
2016	South Africa	Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa	“enactment of legislations to rule out discrimination and ensure equality in a variety of areas such as race, colour, ethnic origin, gender, sex, sexual orientation, religion, disability etc.” “discrimination, homophobia, and prejudice against homosexuals resulting in murder and violence against homosexuals despite the existence of legal frameworks.”	<a href="https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-south-africa-2nd-periodic-repor">https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-south-africa-2nd-periodic-repor</a>
2016	Sierra Leone	Concluding Observations on the Initial and Combined Periodic Report of the Republic of Sierra Leone	The Commission instructed the country to take “effective and 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.”	<a href="https://achpr.au.int/index.php/en/concluding-observation/concluding-observations-and-recommendations-sierra-leone-initial-and-combine">https://achpr.au.int/index.php/en/concluding-observation/concluding-observations-and-recommendations-sierra-leone-initial-and-combine</a>

2017	Namibia	Concluding Observations and Recommendations on 6th Periodic Report of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples' Rights	The Commission is concerned about (...) "discrimination and stigmatisation practices that limit health care access for vulnerable groups in particular the Lesbian, Gay Bi-sexual and Transgender (LGBT) community, commercial sex workers and other vulnerable groups."	<a href="https://achpr.au.int/en/concluding-observation/concluding-observations-and-recommendations-namibia-6th-periodic-report-20">https://achpr.au.int/en/concluding-observation/concluding-observations-and-recommendations-namibia-6th-periodic-report-20</a>
2017	Mauritius	Concluding Observations and Recommendations on 6th to 8th Combined Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples' Rights	"free distribution of condoms to female sex workers."	<a href="https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-mauritius-6th-8th-combined">https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-mauritius-6th-8th-combined</a>

2018	Niger	Concluding Observations relating to the 14th Periodic Report of Niger (2014-2016) on the Implementation of the African Charter of Human and Peoples' Rights	"[a]ppreciates the educational and sensitization programmes aimed at promoting equality, non-discrimination and respect for human dignity in order to facilitate access by the people to HIV-related health services, particularly the programme to combat HIV/AIDS among sex workers and men who have sex with other men as well as programmes aimed at removing the legal obstacles linked to HIV-related health services."	<a href="https://achpr.au.int/index.php/en/state-reports/concluding-observations-and-recommendations-nigerperiodic-report-2014-20">https://achpr.au.int/index.php/en/state-reports/concluding-observations-and-recommendations-nigerperiodic-report-2014-20</a>
2019	Botswana	Concluding Observations on the 2nd and 3rd Combined Periodic Report of the Republic of Botswana	"enact legislation and policies that will ensure the implementation of the Commission's Resolution ACHPR/Res.275 (LV) 2014 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity."	<a href="https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-botswana-2nd-3rd-periodic-rep">https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-botswana-2nd-3rd-periodic-rep</a>

#### Guidelines and Principles

Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
2015	NA	Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa	"Measures designed to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, <i>on the basis of</i>	<a href="https://www.refworld.org/docid/5799fac04.html">https://www.refworld.org/docid/5799fac04.html</a>

			<i>gender identity</i> , refugees and asylum seekers, non-citizens, stateless persons, racial or religious minorities, or other categories of persons with special needs shall not be considered discriminatory or applied in a manner that is discriminatory.”	
2017	NA	Guidelines on Freedom of Association and Assembly in Africa	“The state shall not discriminate against assemblies on the basis of other illegitimate grounds, including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, migration status, property, socio-economic status, birth, disability, age, <i>sexual orientation or gender identity</i> .”	<a href="https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa">https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa</a>
2017	NA	Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa	"Recognising that particular individuals and groups are especially vulnerable to experiencing limitations on their right to freedom of assembly and to other human rights violations in the context of policing assemblies due to their status or to an intersection of one or more statuses, such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability, sexual orientation and gender identity, or being journalists or human rights defenders". "Training for all law enforcement officials should include, at a minimum, the following: (...) The safety and protection of persons and groups who are particularly vulnerable to limitations on their right to assemble freely with others and/or other human rights violations in the context of assemblies, due to their status or an intersection of one or more statuses. This includes, but is not limited to, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, economic status, fortune, birth, disability, sexual	<a href="https://achpr.au.int/en/soft-law/guidelines-policing-assemblies-law-enforcement-officials-africa">https://achpr.au.int/en/soft-law/guidelines-policing-assemblies-law-enforcement-officials-africa</a>

			orientation and gender identity, or being journalists or human rights defenders"	
2017	NA	Guidelines on Combating Sexual Violence and its Consequences in Africa	"States must take the necessary measures to prevent all forms of sexual violence and its consequences, particularly by eliminating the root causes of that violence, including sexist and homophobic discrimination, patriarchal preconceptions and stereotypes about women and girls, and/or preconceptions and stereotypes based on gender identity, real or perceived sexual orientation, and/or certain preconceptions of masculinity and virility, irrespective of their source."	<a href="https://achpr.au.int/en/node/848">https://achpr.au.int/en/node/848</a>
2018	NA	Principles on the Declassification and Decriminalization of Petty Offences in Africa	Key populations include "men who have sex with men, transgender persons, sex workers, and prisoners." Further, vulnerable persons include "persons marginalised on the basis of sexual orientation or gender identity."	<a href="https://acjr.org.za/resource-centre/decriminalisation-of-petty-offences-web.pdf/view">https://acjr.org.za/resource-centre/decriminalisation-of-petty-offences-web.pdf/view</a>
2019	NA	Declaration of Principles of Freedom of Expression and Access to Information in Africa	1. "[r]ecognizing the need to protect and promote the right to freedom of expression and access to information of marginalised groups that face multiple discrimination including women, children, persons with disabilities, older persons, sexual and gender minorities."	<a href="https://achpr.au.int/en/node/902">https://achpr.au.int/en/node/902</a>

			2. “Everyone shall have the rights to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including race, ethnic group, colour, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, <i>sexual orientation, gender identity</i> or any other status.”	
2023	NA	Guidelines on adhering to human and peoples’ rights under the African Charter in the context of states of emergency or disaster	<p>1. “Non-discrimination includes equal enjoyment of rights and freedoms, equal treatment, equality before the law and equal protection of the law as guaranteed by Articles 2 and 3 of the African Charter, without distinction of any kind relating to race, colour, sex, religion, political opinion, national extraction or social origin, disability, sexual orientation or gender identity or any other status.”</p> <p>2. “Status includes, but is not limited to, race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, economic status, fortune, birth, disability, sexual orientation and gender identity.</p>	<a href="https://achpr.au.int/en/documents/2023-05-11/guidelines-adhering-human-and-peoples-rights-under-african-charter">https://achpr.au.int/en/documents/2023-05-11/guidelines-adhering-human-and-peoples-rights-under-african-charter</a>



Other Commission Reports				
Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
2015	South Africa	39th Activity Report of the African Commission on Human and Peoples' Rights	"the law on non-discrimination on grounds of sexual orientation in South Africa"	Not Available
2015	NA	56th Ordinary Session Intersession Activity Report Presented by Commissioner Reine Alapini-Gansou	"[i]t is up to us to inform the partners about the actions taken by the ACHPR to ensure the protection of people in Africa, irrespective of their sexuality or gender identity, real or supposed."	<a href="https://achpr.au.int/en/sessions/56th-ordinary">https://achpr.au.int/en/sessions/56th-ordinary</a>
2020	Gabon	48 <sup>th</sup> and 49 <sup>th</sup> Activity Reports of the African Commission	<p>"Decriminalization of same-sex sexual relations in Gabon following a vote by the Gabon Senate on 29 June 2020, which was then assented to the President;"</p> <p>"Repeal of the death penalty for certain crimes, including apostasy and homosexuality in Sudan, with the death penalty also being abolished for children and people over the age of 70 years, in this country;"</p>	<a href="https://achpr.au.int/en/documents/2021-04-21/48th-and-49th-activity-reports-combined">https://achpr.au.int/en/documents/2021-04-21/48th-and-49th-activity-reports-combined</a>
2021	NA	50 <sup>th</sup> and 51 <sup>st</sup> Activity Reports of the African Commission	<p>"the arbitrary arrest, detention and discrimination against LGBTQI persons who are excluded from all policies including universal healthcare in some countries."</p> <p>"respect and protect the rights of persons or groups exposed to a high risk of acts of torture and other ill-treatment, in particular, persons with albinism,</p>	<a href="https://achpr.au.int/en/documents/2022-03-29/50th-and-51st-combined-activity-reports">https://achpr.au.int/en/documents/2022-03-29/50th-and-51st-combined-activity-reports</a>

			persons with disabilities, lesbians, gays, bisexuals, trans-sexuals and inter-sexuals (LGBTI) (...) and ensure that the perpetrators of these acts are held responsible.”	
2023	Zambia Eswatini	52nd & 53rd Combined Activity Report of the African Commission	<p>“pertaining to the allegations of discrimination against the LGBTIQ populations in the Zambian health facilities”</p> <p>“concerning the public attacks against LGBTIQ+ persons in Mbabane, in Eswatini.”</p> <p>Both letters were yet to receive a response at the time of the activity report’s publication.</p>	<a href="https://achpr.au.int/en/documents/2023-06-08/52nd-and-53rd-combined-activity-reports">https://achpr.au.int/en/documents/2023-06-08/52nd-and-53rd-combined-activity-reports</a>
2023	Uganda	54th & 55th Combined Activity Report of the African Commission	“concern about the adoption of a bill imposing the death penalty in cases of so-called ‘aggravated homosexuality’”	<a href="https://achpr.au.int/en/documents/2024-03-08/54th-55th-combined-activity-reports">https://achpr.au.int/en/documents/2024-03-08/54th-55th-combined-activity-reports</a>
2015	Gambia	56th Ordinary Session Inter-session Activity Report Presented by Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report	“African Commission has received allegations of attacks on the lesbian, gay, bisexual and transgender community in The Gambia, including ill-treatment, arrests and detentions of individuals based on their real or perceived gender identity or sexual orientation.”	<a href="https://achpr.au.int/en/inter-session-activity-reports/committee-prevention-torture-africa-56os">https://achpr.au.int/en/inter-session-activity-reports/committee-prevention-torture-africa-56os</a>
2016	NA	Ending Violence and other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples’ Rights, Inter-American Commission on Human	“Laws that criminalise adult consensual same-sex sexual relations and other punitive laws used against LGBT people infringe on human rights, undermine the effectiveness of HIV programmes, and limit the ability of members of these populations to seek and benefit from HIV programmes. On the contrary, a legal environment that protects human rights and ensures access to HIV programmes without discrimination, including for transgender people, gay men and other MSM helps to achieve an effective and rights-based response.”	<a href="https://www.refworld.org/reference/tahemreport/achpr/2016/en/109665">https://www.refworld.org/reference/tahemreport/achpr/2016/en/109665</a>

		Rights and United Nations		
2017	NA	60th Ordinary Session Intersession Activity Report Presented by Commissioner Reine Alapini-Gansou	“remove punitive and restrictive laws, policies and practices that undermine the rights to freedom of association and assembly,” including those based on “sexual orientation, identity and expression of gender.”	Not Available
2017	NA	60th Ordinary Session Intersession Activity Report Presented by Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report	“respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including (...) lesbian, gay, bisexual, transgender and intersex persons.”	Not Available
2018		HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses	<p>“Criminalization, violence, discrimination and other human rights violations based on sexual orientation are contrary to international human rights law. They also have significant negative consequences on the HIV epidemic and public health, contributing to an environment of fear that drives LGBTI people away from HIV services.”</p> <p>“Also remove the punitive and restrictive laws, policies and practices that stigmatise and discriminate against particular categories of human rights defenders on the basis of sex, health status, sexual orientation, gender identity and expression, or other status.”</p>	<a href="https://achpr.au.int/index.php/en/special-mechanisms-reports/hiv-law-human-rights-key-challenges-opportunities-rights-based-responses">https://achpr.au.int/index.php/en/special-mechanisms-reports/hiv-law-human-rights-key-challenges-opportunities-rights-based-responses</a>
2018		Study on the Use of Force by Law Enforcement Officials in	“Other groups of persons may also be especially vulnerable to the use of force by law enforcement officials”, including “(...)LGBTI persons.	<a href="https://achpr.au.int/en/soft-law/study-use-force-law-enforcement-officials-africa">https://achpr.au.int/en/soft-law/study-use-force-law-enforcement-officials-africa</a>

		Africa HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses		
2020		66th Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa	<p>“LGBTI persons continue to face killings, torture, threats, harassment, arbitrary detention and widespread discrimination in access to health care, education, employment and housing” and also notes the continued use of forced anal examinations to obtain physical evidence of homosexuality – an act that “amounts to torture and ill-treatment, and has been found ‘medically worthless.’”</p> <p>“States should respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including (...) lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.”</p>	<a href="https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-2">https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-2</a>
2022		71st Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa	<p>“LGBT+ groups in Africa are constantly faced with human rights issues as well as institutional violence.”</p> <p>“LGBT+ people are exposed to the risk of being arrested and falling victim to blackmail, extortion, stigmatisation, discrimination and violence”.</p> <p>“Africa accounts for nearly half of the countries worldwide where homosexuality is outlawed, LGBT+ people are at constant risk of abuse in their homes.”</p>	<a href="https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-cpta">https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-cpta</a>

			“States should respect and protect the rights of persons or groups at heightened risks to acts of torture and other ill-treatment, including (...) lesbian, gay, bisexual, transgender and intersex persons (...) and ensure that perpetrators of such acts are held accountable”.	
2022		73rd Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa	“States should respect and protect the rights of persons or groups most vulnerable to torture and other ill-treatment, including (...) the LGBTQI+ community (...) and ensure that perpetrators are held accountable.”	<a href="https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-3">https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-3</a>
2023		75 <sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Solomon Ayele Dersso and Annual Report on the Situation of Extractive Industries, Environment and Human Rights Violations	“I recalled ACHPR Resolution 275, which condemned violations of human rights including murder, rape, assault, arbitrary imprisonment, and other forms of persecution of persons based on their imputed or real sexual orientation or gender identity, as acts contrary to the core tenets of the African Charter. I also called on the Kenyan Government to initiate transparent, thorough, and prompt investigation into the tragic death of Edwin Chiloba, bring those responsible to justice and grant effective remedies including reparation to the families, in fulfilment of the obligations that it freely subscribed to as a state party to the African Charter.”	<a href="https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-environment-and-human-rights-11">https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-environment-and-human-rights-11</a>
2023		75 <sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and	“the Commission condemned the increasing incidence of violence and other human rights violations, including murders, rapes, assaults, arbitrary imprisonments and other forms of persecution of persons based on their assumed or (real) actual sexual orientation or gender identity.”	<a href="https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-10">https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-10</a>

		Other Ill-Treatment in Africa		
2023		77 <sup>th</sup> Ordinary Session Intersession Activity Report, Commissioner Hatem Essaïem and Annual Report on the Situation of Torture and Other Ill-Treatment in Africa	“States to respect and protect the rights of individuals or groups most at risk of torture and other ill-treatment, including (...) the LGBTQIA+ community (...) and ensure that the perpetrators of these acts are held accountable.”	<a href="https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-77os">https://achpr.au.int/en/intersession-activity-reports/committee-prevention-torture-africa-77os</a>

State Reports				
Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
2015	South Africa	Second Combined Periodic Report of the Republic of South Africa and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa	<p>1. “The Constitution guarantees equality for all and prohibits discrimination based on, amongst others, gender, sex, race and sexual orientation.”</p> <p>2. There is a “misperception that homosexuality is ‘un-African’ or that lesbians and gays cannot be afforded the same constitutional protections and rights provided to the rest of society.”</p>	<a href="https://achpr.au.int/en/state-reports/south-africa-2nd-periodic-report-2003-2014">https://achpr.au.int/en/state-reports/south-africa-2nd-periodic-report-2003-2014</a>
2018	Angola	Sixth and Seventh Combined Periodic Reports of the Republic of Angola on the African Charter of Human Rights and Peoples and the Initial Report of the Protocol on Women's Rights	“[t]here are no codes in Angola, which punish consensual same-sex relations between adults. There is no record of conviction of people for being lesbian, gay, bisexual, transgender and intersex (LGBTI). The draft Law that approves the Criminal Code contains rules dealing with discrimination on the ground of sexual orientation. Recently an information network for members of the LGBTI Community of Angola was established on the Internet-based System and Services (IRIS).”	<a href="https://achpr.au.int/index.php/en/state-reports/republic-angola-6th-periodic-report-2011-2016">https://achpr.au.int/index.php/en/state-reports/republic-angola-6th-periodic-report-2011-2016</a>

2018	Botswana	The Republic of Botswana Second and Third Report to the African Commission on Human and People's Rights Implementation of the African Charter on Human and People's Rights	"[w]here persons are of the opinion that their right to enjoy freedom of association is being infringed upon, they can take the matter to the courts. The Lesbians Gays Bisexuals of Botswana Association (LEGABIBO) recently sued the Government for refusing to register it as an association of homosexuals."	<a href="https://achpr.au.int/en/state-reports/botswana-2nd-3rd-periodic-report-2011-2015">https://achpr.au.int/en/state-reports/botswana-2nd-3rd-periodic-report-2011-2015</a>
2018	Mauritius	The Republic of Mauritius 9th to 10th Combined Periodic Report to the African Commission on Human and People's Rights Implementation of the African Charter on Human and People's Rights	<p>"The grounds of discrimination extend beyond those provided in the Constitution, notably age, ethnic origin, sexual orientation, impairment, and marital status"</p> <p>"[s]ensitization activities, engaging with international networks of experts and champions, and receiving support to develop resources, knowledge and capacity to draft and amend legislation with a view to enhancing protection of the LGBT people in Mauritius."</p>	<a href="https://achpr.au.int/index.php/en/state-reports/mauritius-9th-10th-combined-periodic-report-2016-2019">https://achpr.au.int/index.php/en/state-reports/mauritius-9th-10th-combined-periodic-report-2016-2019</a>

#### Press Releases

Year	Country Involved/ Discussed	Document Name	Quote(s)	Link

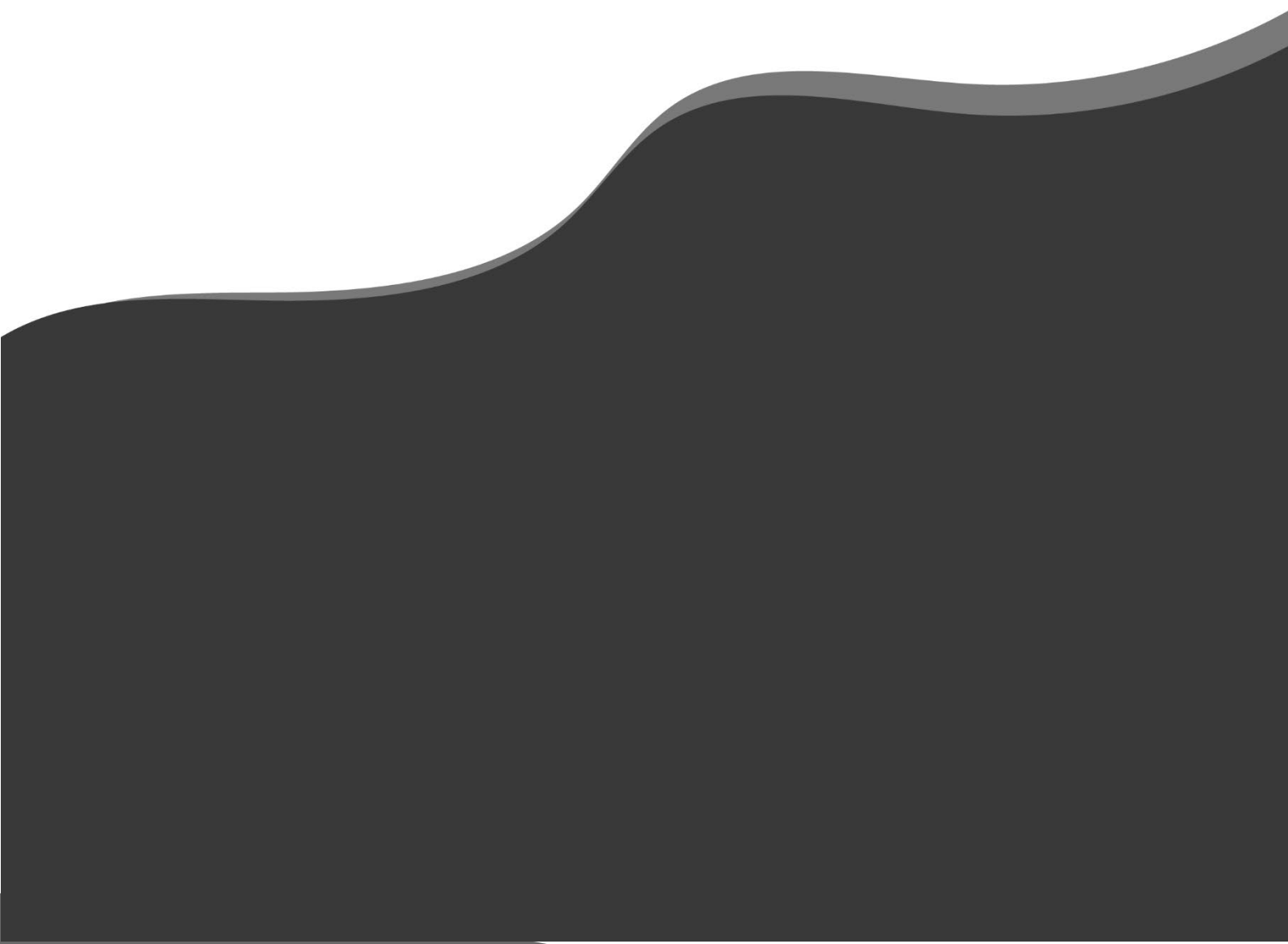
2021	Ghana	Press Release on the Arbitrary Arrest and Detention of 21 LGBT + Human Rights Defenders in Ghana	“The Special Rapporteur reminds the Republic of Ghana of its commitments under the African Charter on Human and Peoples' Rights. He also urges it to comply with Resolution No. ACHPR/Res. 275 (LV) of 2014 on protection against violence and other violations of the human rights of persons based on their real or perceived sexual identity or orientation.”	<a href="https://achpr.au.int/index.php/en/news/press-releases/2021-06-15/press-release-arbitrary-arrest-and-detention-21-lgbt-human-rights-de">https://achpr.au.int/index.php/en/news/press-releases/2021-06-15/press-release-arbitrary-arrest-and-detention-21-lgbt-human-rights-de</a>
2022	NA	Joint Statement on World Day Against Trafficking in Persons	“Intersectional discrimination hinders access to protection, particularly in conflict situations (...) We must recognise that discriminatory attitudes and violence, based on sexual orientation and gender identity including by law enforcement bodies, may result in lesbian, gay, bisexual, trans (LGBT) and gender diverse persons, Africans, and people of African descent, being at increased risk of exploitation and not receiving effective assistance or protection.”	<a href="https://achpr.au.int/en/news/press-releases/2022-08-02/joint-statement-world-day-against-trafficking-persons-international">https://achpr.au.int/en/news/press-releases/2022-08-02/joint-statement-world-day-against-trafficking-persons-international</a>
2022	NA	Ordinary Session of the African Commission on Human and Peoples' Rights kicks off	“I also take this opportunity to denounce all forms of discrimination based on race, ethnicity, color, gender, language, religion, political opinion, real or assumed sexual orientation and any other situation and to call on all stakeholders to provide answers and solutions to remedy them.”	<a href="https://achpr.au.int/en/news/press-releases/2022-10-25/ordinary-session">https://achpr.au.int/en/news/press-releases/2022-10-25/ordinary-session</a>



2021	NA	Statement on the Occasion of the International Day in support of victims of torture	“Acts of torture based on discrimination were also noted. Individuals have been subjected to cruel, inhuman and degrading treatment because of their sexual orientation. Furthermore, some people have been subjected to torture because of their disability; some have had parts of their bodies removed. This is particularly the case for people with albinism.”	<a href="https://achpr.au.int/index.php/en/news/press-releases/2021-06-26/statement-occasion-international-day-support-victims-tort">https://achpr.au.int/index.php/en/news/press-releases/2021-06-26/statement-occasion-international-day-support-victims-tort</a>
2022	Togo	Press release on the human rights promotion mission of the African Commission on Human and Peoples' Rights in the Togolese Republic	“Stigma and discrimination against certain vulnerable groups, including LGBTI people and sex workers, groups among whom the prevalence rate of HIV/AIDS is high in the country.”	<a href="https://achpr.au.int/en/news/updates/2022-10-11/human-rights-promotion-mission-togolese-republic">https://achpr.au.int/en/news/updates/2022-10-11/human-rights-promotion-mission-togolese-republic</a>
2023	Kenya	Press Statement on the tragic murder of Edwin Chiloba in Kenya	<p>1. “The African Commission learned that Chiloba was a Queer activist and a celebrated designer and model. It is to be recalled that the African Commission through its Resolution 275 condemned violations of human rights including murder, rape, assault, arbitrary imprisonment, and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity, as acts contrary to the core tenets of the African Charter on Human and Peoples' Rights (African Charter).”</p> <p>2. “The African Commission expresses in the strongest terms possible its condemnation of the brutal murder of Edwin Chiloba and affirms following its Resolution 275 that everyone is entitled to the protection of their lives and the</p>	<a href="https://achpr.au.int/en/news/press-releases/2023-01-07/press-statement-tragic-murder-edwin-chiloba-kenya#:~:text=The%20African%20Commission%20expresses%20in,perceived%20sexual%20or%20gender%20identity">https://achpr.au.int/en/news/press-releases/2023-01-07/press-statement-tragic-murder-edwin-chiloba-kenya#:~:text=The%20African%20Commission%20expresses%20in,perceived%20sexual%20or%20gender%20identity</a>

			<p>integrity of their persons irrespective of their real or perceived sexual or gender identity, and by the mere fact of their being human.”</p> <p>3. “The African Commission reaffirms its fidelity to the sanctity of human life without distinction on any basis and reiterates following its Resolution 275 its rejection of any form of attack or violence against any one on account of their real or perceived sexual orientation or gender identity.”</p> <p>4. “The African Commission accordingly calls on the Republic of Kenya and other member States to take legislative or other (institutional, administrative, policy, public awareness etc.) measures, in accordance with Article 1 of the African Charter, to ensure that all vulnerable members of society, including those who are or are perceived to be different from the mainstream members of society including on account of their sexual or gender identity, are guaranteed to live a life free from the threat of violent attacks that fundamentally negates the right to life under Article 4 and the right to protection of bodily integrity under Article 5 of the African Charter.”</p>	
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