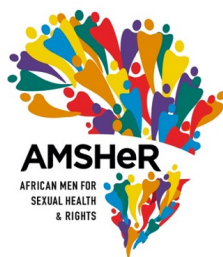


# **Application of Resolution 275 by the African Commission on Human and People's Rights: A six-year assessment**



initiatives for  
human rights

*This report was published in September 2020 by the African Men for Sexual Health and Rights (AMSHer) and Synergía – Initiatives for Human Rights in the context of the project “275/275. One Africa, One Resolution.”*

*The report was drafted by Ayodele Sogunro, doctoral scholar at the Centre for Human Rights, University of Pretoria. Research and drafting support was provided by Caroline Howard, under the supervision of prof. Fanny Gómez Lugo at the Georgetown University Law Center. Additional research support was provided by Louisa Ntaji, legal assistant with the secretariat of the African Commission on Human and Peoples’ Rights. Final review was provided by Berry Didier Nibogora and Tapiwa Mamhare, with the African Men for Sexual Health and Rights (AMSHer), and Stefano Fabeni, with Synergía – Initiatives for Human Rights*

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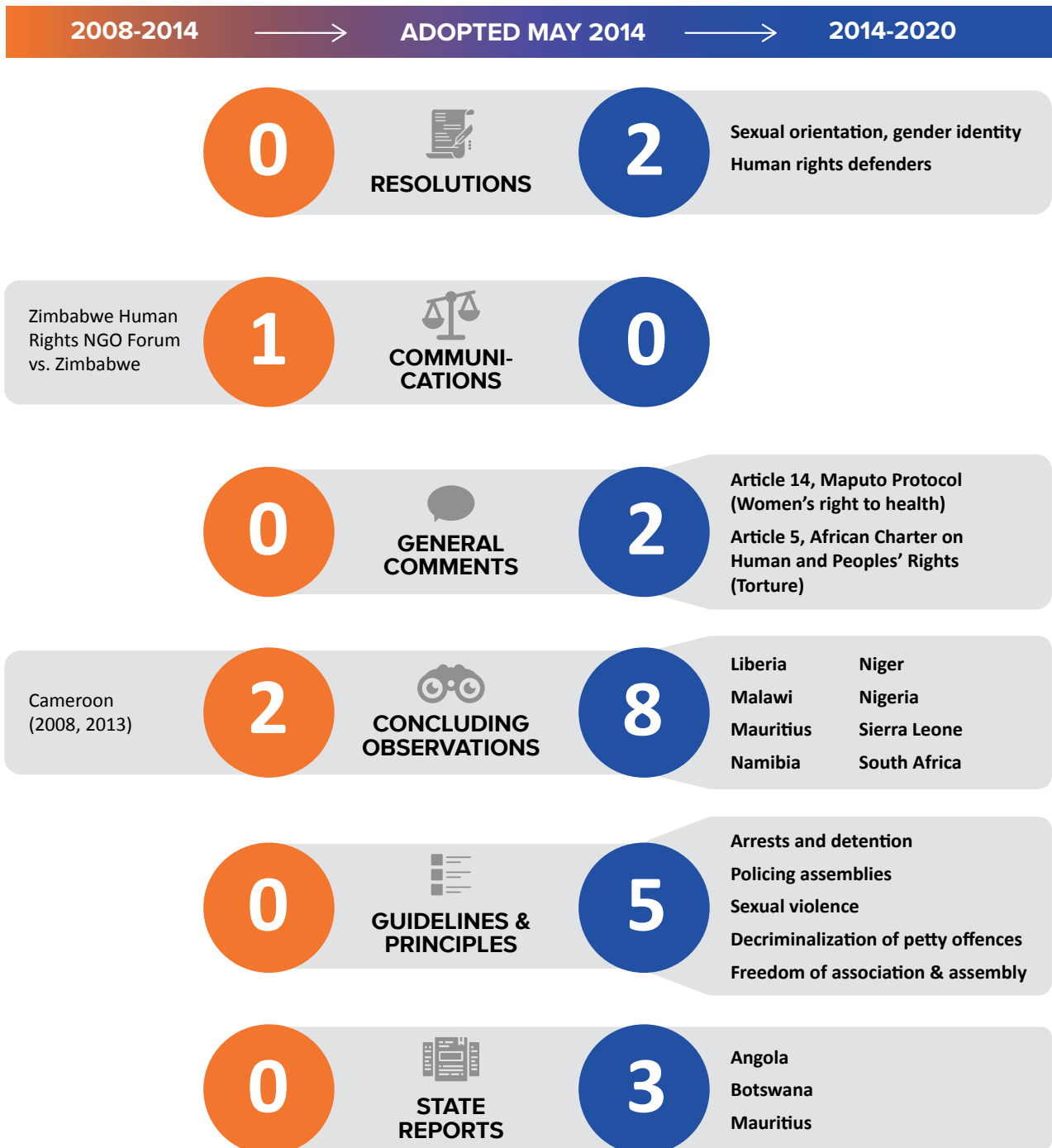
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# Resolution 275

## Effects on the African System for the Protection of Human Rights

SOGIESC references in the African Commission's soft law and documents following the adoption of Resolution 275/2014  
(September 2020)



## INTRODUCTION

### Background: What is Resolution 275?

During its 55<sup>th</sup> ordinary session which took place in Luanda, Angola, between 28 April to 12 May 2014, the African Commission on Human and Peoples' Rights (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> Resolution 275 condemns violence on the basis of real or imputed sexual orientation or gender identity and admonishes African states – that are parties to the African Charter on Human and Peoples' Rights ('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.

Resolution 275 continues to be the most significant 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 Resolution 275, the African Commission "[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

As part of the goal of giving effect to the principles of the African Charter and the directives, statements, and decisions of the African Commission, this report aims to summarise and document the different standards that have been developed by the African Commission in relation to Resolution 275, particularly since its adoption. In essence, this report focuses on the period between May 2014 and July 2020, and summarises the relevant concluding observations, general comments, guidelines and principles, resolutions, decisions on communications and activity reports 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 who are working on human rights issues pertaining to sexual orientation, gender identity, gender expression, or sex characteristics (SOGIESC).

This report is a result of a collaboration between Synergía – Initiatives for Human Rights and African Men for Sexual Health and Rights (AMShER). Synergía and AMShER have been collaborating in advocacy around the African Commission on SOGIESC issues for more than a decade. In 2019, both organizations launched

<sup>1</sup> ACHPR/Res.275 (LV) 2014: 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 - <https://www.achpr.org/adoptedresolution>.

a joint initiative around Resolution 275. This joint project has three main components. These are: (i) developing a report accounting for the use of Resolution 275 by the African Commission in discharging its promotional and protective mandate; (ii) translating Resolution 275 into as many African languages as possible with the purpose of ensuring community-based dissemination and ownership of the document; and (iii) documenting the use of Resolution 275 by lesbian, gay, bisexual, trans, intersex, queer and allied (LGBTIQ+) communities and civil society. This report is a fulfilment of the first component.

## **Structure and terminology**

In addition to this introductory section, the report is divided into seven sections, organised by the type of document or activity of the African Commission under review. In each of these sections, the relevant documents or activity that relate to the implementation of Resolution 275 are listed and then discussed in chronological order.

Although an effort has been made in this report to list out 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 'LGBTIQ+' and 'SOGIESC' are used to broadly refer to all affected communities and the range of circumstances protected by or covered under the content and aims of Resolution 275, even though these communities and circumstances may not specifically be identified as such in the resolution. However, in the several 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.

## **Methodology**

This report is based primarily on a desk review of documents and activities that was initially conducted between January and May 2019.<sup>2</sup> Additional desk review was conducted in early 2020. The analysis and principal drafting of the report was completed by an external consultant, Ayodele Sogunro, a doctoral scholar at the Centre for Human Rights, University of Pretoria, and reviewed by staff from Synergía and AMSHeR.

<sup>2</sup> *The organizations 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. Final review of the report was provided by Berry Didier Nibogora and Tapiwa Mamhare, with the African Men for Sexual Health and Rights (AMSHer), and Stefano Fabeni, with Synergía – Initiatives for Human Rights.*



## SECTION 1: RESOLUTIONS

**Title:** Resolution 376 on the Situation of Human Rights Defenders in Africa (2017)<sup>3</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>4</sup> As such, they can be used to reaffirm or expatiate on human rights principles, to 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.

Since the adoption of Resolution 275 in 2014, Resolution 376 is the only resolution of the African Commission that has acknowledged sexual orientation and gender identity. In Resolution 376, the African Commission calls for the protection of human rights defenders in Africa and specifically mentions protecting human rights defenders working on sexual orientation and gender identity. The African Commission states that it is “[c]oncerned about new challenges, in particular the increased threats against defenders working on issues including. . . sexual orientation and gender.” Further, it calls states to “[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.”

By specifically including the categories of sexual orientation and gender identity, the resolution complements and reinforces paragraph 3 of Resolution 275 which requires African state 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’.

Human rights defenders in Africa working on the protection of LGBTIQ+ persons continue to face widespread discrimination and fear of violence in Africa. In several African countries, there is continuing criminalization of sexual and gender minorities<sup>5</sup>, thereby creating a hostile environment for advocates working on the rights of these communities. Human rights defenders are also refused registration and thereby denied the right to association in some African countries.<sup>6</sup> Considering the existing situation of human rights defenders in Africa, it is important that states adhere to this resolution, and for the African Commission to monitor its observance in state reports.

<sup>3</sup> ACHPR/Res.376(LX) 2017.

<sup>4</sup> F Viljoen *International Human Rights Law in Africa* (2012) 379-380.

<sup>5</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>6</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).

## SECTION 2: DECISIONS ON COMMUNICATIONS

**Title:** Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006)<sup>7</sup>

### Analysis

Article 45 (2) of the African Charter provides for the protective mandate of the African Commission. This protective ambit comprises of two main procedures: an inter-State and other (individual) Communications procedures.<sup>8</sup>

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

Once a complaint has been received, the African Commission considers the communication in stages: seizure, admissibility and merits, after which it then makes a considered recommendation.<sup>9</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>10</sup>

In the Zimbabwe communication, the facts showed that the respondent State held a Constitutional referendum in February 2000, in which majority of 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 violence was deployed by the party as a systematic political strategy in the run up to the parliamentary elections.

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 violations of Article 2 of the African Charter, highlighted the importance of non-discrimination and equality, stating “[t]he aim of this principle is to ensure equality of treatment for individuals irrespective of. . . sexual orientation.”<sup>11</sup>

The decision of the African Commission emphasized the significance of Article 2 to 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

<sup>7</sup> (Communication No. 245/02) [2006].

<sup>8</sup> African Charter on Human and Peoples’ Rights, Articles 47 and 55.

<sup>9</sup> <https://www.achpr.org/procedure>.

<sup>10</sup> C Odinkalu and C Christensen “The African Commission on Human and Peoples’ Rights: The development of its non-State Communication Procedures” (1998) 20 Human Rights Quarterly 235 at 246.

<sup>11</sup> Zimbabwe Human Rights NGO Forum v Zimbabwe (Communication No. 245/02) [2006] para 169.

status” under Article 2 of the African Charter.<sup>12</sup> By implication, this inclusion of “sexual orientation” in the decision of 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 emphasized the importance of sexual orientation and, by implication, gender identity, gender expression and sex characteristics as protected categories in the African human rights system, as well as highlighting 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 AU’s Assembly of Heads and 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 has an obligation to follow that decision.

<sup>12</sup> 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. D Petrova “The use of equality and anti-discrimination law in advancing LGBT rights” in C Lennox and M Waites Human rights, sexual orientation and gender identity in the Commonwealth (2013) 484.

## 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 with the purpose of assisting States to comply with their obligations under these instruments.<sup>13</sup> In this way, the African Commission fulfils its promotional mandate by providing essential guidelines for States to follow in their 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 (NHRI’s). 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 in Article 14(2) that states should take appropriate measure 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 provision of comprehensive information and education on human sexuality.”<sup>14</sup> Through this interpretation of Article 14, the African Commission recognizes the role that the lack of 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.

<sup>13</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>14</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.

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>15</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 sexuality education 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>16</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. It is, therefore, 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, may 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>17</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 LGBTIQ+ persons.<sup>18</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 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".

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. LGBTIQ+ persons continue to experience violence in the form of: physical and sexual assault, murder and the so-called "corrective" rape. In police custody, LGBTIQ+ persons are significantly more likely to be targeted for torture and harassment than the general population. It is therefore important for states to report on the measures adopted in fulfilment of their Charter obligations as indicated in this General Comment, and for the African Commission to make recommendations on model laws and good practices.

<sup>15</sup> World Health Organization "Sexual health, human rights and the law" 2015

[https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984\\_eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf) (accessed 20 May 2020) at 14.

<sup>16</sup> F Wekesah, V Nyakangi, M Onguss, J Njagi & M Bangha "Comprehensive sexuality education in sub-Saharan Africa" (2019) African Population and Health Research Centre 8.

<sup>17</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>18</sup> (As above) para 60.

## 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 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 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 Niger (2018)

#### Adopted but unpublished:

- 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 2nd and 3rd Combined Periodic Report of the Republic of Botswana (July 2019)
- Concluding Observations on the Periodic Report of the Federal Republic of Nigeria (October 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

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 questions posed by the Commissioners.<sup>19</sup> The delay of the African Commission in adopting concluding observations affects the current status of the report and send a wrong message to States who 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 main mechanisms used by the African Commission to monitor the compliance of State parties with their obligations under the African Charter. Concluding observations also allow a process of continuing 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, but instead involve constant follow up and evaluation of their implementation in subsequent reports and observations.

<sup>19</sup> M Evans & R Murray *The African Charter on Human and Peoples' Rights: The system in practice (2008)* 53

As with other documents of the African Commission that are adopted by the Executive Council of the African Union, an adopted Concluding observation that has been submitted by the African Commission and adopted by the Executive Council has a strong claim to have a 'binding authority' on the relevant member state. Nevertheless, Concluding Observations are not fully effective without state implementation of their recommendations. It is, therefore, 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>20</sup>

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

In the concluding observations on Cameroon's 3rd periodic report, 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 criticize 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, gender identity or sex characteristics is a violation of their right to life, physical and mental integrity and freedom from discrimination.<sup>21</sup>

In 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 LGBT persons in Cameroon, it was stated that many organizations the country working on LGBT issues have found obstacles in the process of obtaining legal recognition for their organizations.<sup>22</sup> The report noted, for example, that two organizations Cameroonian Foundation for Aids (CAMFAIDS) and CAMEF were denied registration until they reframed their organizational goals in broad terms or eliminated any reference to LGBT persons. The report also documented the fact that human rights defenders on SOGI issues in Cameroon have been victims of threats, burglaries, blackmail, arbitrary arrests and detentions.<sup>23</sup>

It is important to note that the African Commission's attitude on SOGI issues in Concluding observations have 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

<sup>20</sup> Evans & Murray (note 21 above) 7.

<sup>21</sup> D Kuwali "Battle for sex?: protecting sexual(ity) rights in Africa" (2014) 36 *Human Rights Quarterly* 22, 30-31.

<sup>22</sup> Report on 'The Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in Cameroon' (2017) [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CMR/INT\\_CCPR\\_CSS\\_CMCR\\_29079\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CMR/INT_CCPR_CSS_CMCR_29079_E.pdf) (accessed 21 May 2020).

<sup>23</sup> As above.

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 that are impacted by these kinds of “offences”.

## **2. Concluding Observations on the 1st Periodic Report 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 and rebuked Liberia for continuing to enforce discriminatory laws against sexual and gender minorities, and set a precedence for the review of state and non-state violence on the basis of sexual orientation and gender identity.

It is of note that, in July 2012, the Liberian Senate had passed a bill on the amendment to the Domestic Relations Law of Liberia, commonly known as the “Anti- Same-Sex Marriage” bill. The bill 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 any one which represents a relationship between persons of the same sex that is treated as a marriage under the laws of the Republic”.<sup>24</sup> Among other provisions, the bill proposes up to five years’ imprisonment for same-sex marriage. Although the bill is currently dormant as it has not been passed by Liberia’s House of Representatives, it could be revived in the future.<sup>25</sup> The possibility of this makes it even more urgent that the recommendations of the African Commission are implemented in the country.

## **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 LGBTIQ+ community and, accordingly, it 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 one of the ways 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>26</sup>

Discrimination remains a barrier to access to healthcare for LGBTIQ+ persons in Malawi.

<sup>24</sup> Human Rights Watch “Its nature, not a crime: Discriminatory laws and LGBT people in Liberia” (2013) 23 [https://www.hrw.org/sites/default/files/reports/liberia1113\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/liberia1113_ForUpload.pdf) (accessed 21 May 2020).

<sup>25</sup> Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT\\_CCPR\\_CSS\\_LBR\\_30237\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT_CCPR_CSS_LBR_30237_E.pdf) (accessed 21 May 2020).

<sup>26</sup> A Muller “Health for All?: Sexual orientation, gender identity, and the implementation of the right to access healthcare in South Africa” (2016) 18 *Health and Human Rights* 195, 204.



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>27</sup> The impact of healthcare discrimination on the LGBTIQ+ 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 LGBTIQ+ persons, and it is important that the requirements of Resolution 275 are applied to the issue of access to healthcare also.

#### **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). This was despite the fact that other legacy colonial laws criminalising 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 in order 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 criminalizing 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 LGBTIQ+ persons. This recommendation recognized that the criminalization of same-sex relationships reinforces stigma and social exclusion which, in turn affects access to healthcare and other human rights of LGBTIQ+ persons.

Following the enactment of the SSMPA, media reports documented high levels of violence, including mob attacks, lynching, and extortion, against LGBTIQ+ people in Nigeria.<sup>28</sup> Human rights groups and officials have also expressed grave concerns about the scope 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>29</sup>

With these levels of domestic and international concern, it is only appropriate that the African

<sup>27</sup> H Fay, S Baral, G Trapence, F Motimedi, E Umar, S Iipinge, F Dausab, A Wirtz & C Beyrer "Stigma, healthcare access and HIV knowledge among men who have sex with men in Malawi, Namibia and Botswana" (2010) 2

[https://www.researchgate.net/publication/49679057\\_Stigma\\_Health\\_Care\\_Access\\_and\\_HIV\\_Knowledge\\_among\\_Men\\_Who\\_Have\\_Sex\\_with\\_Men\\_in\\_Malawi\\_Namibia\\_and\\_Botswana/link/56c2921508aeeedba0567f851/download](https://www.researchgate.net/publication/49679057_Stigma_Health_Care_Access_and_HIV_Knowledge_among_Men_Who_Have_Sex_with_Men_in_Malawi_Namibia_and_Botswana/link/56c2921508aeeedba0567f851/download).

<sup>28</sup> Human Rights Watch "Tell me where I can be safe: The impact of Nigeria's Same Sex Marriage (Prohibition) Act" 20 October 2016 <https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act> (accessed 21 May 2020).

<sup>29</sup> Press Release on the Implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria at <https://www.achpr.org/pressrelease/detail?id=232> (accessed 21 May 2020).

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 for but discriminatory social attitudes against LGBTIQ+ persons. This situation reinforces the need to go beyond legal enactments and actually implement these, not just by punishing perpetrators of violence 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 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 SOGI issues.

In Sierra Leone, physical and psychological violence against LGBTIQ+ persons continues to be a serious issue.<sup>30</sup> As such, as with similar recommendations in other Concluding Observations, the African Commission has used this recommendation to reaffirm the increasing importance of SOGI issues in its work, as well as its growing recognition of the extent to which LGBTIQ+ 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 Reports of the Republic of Namibia (2016)**

In its Concluding Observations on Namibia 6th 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>31</sup>

<sup>30</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\\_LGBT\\_Violation\\_Report\\_in\\_Sierra\\_Leone](https://www.academia.edu/4090978/First_LGBT_Violation_Report_in_Sierra_Leone) (accessed 21 May 2020) 18.

<sup>31</sup> *Concluding Observation Observations and Recommendations on 6th Periodic Report of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples' Rights, para 32.*

While this Concluding Observation, like other focusing on access to services, and particularly access to healthcare, is not immediately related to the provisions of Resolution 275, yet 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, by means of this Concluding Observation, its concern regarding the impact that violence, discrimination and abuses based on real and perceived sexual orientation, gender identity and expression has on the right to health and particularly on prevention and treatment strategies of HIV/AIDS on the African continent.

### **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, LGBTIQ+ persons in the country continue to lack adequate access to health information and services relating to their sexual orientation and gender identity.<sup>32</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 LGBTIQ+ persons,<sup>33</sup> a situation that has been exacerbated by the continuing existence of laws penalizing “the crime of sodomy” and the erasure of LGBTIQ+ persons in Mauritius.

As such, it is appropriate that 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>34</sup>

With this recommendation, the African Commission identified that protective legislation play an important role in advancing response to HIV 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 education, testing, counselling, research, treatment, care and support are available and accessible in non-discriminatory environments.<sup>35</sup>

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

In its Concluding Observations on Niger’s 14th 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

<sup>32</sup> AIDS and Rights Alliance for Southern Africa & B Glover “Legal environment assessment of HIV and AIDS in the Republic of Mauritius” (2018) <http://pils.mu/wp-content/uploads/2018/09/Mauritius-LEA-Report-F.pdf> (accessed 21 May 2020) 59.

<sup>33</sup> AIDS and Rights Alliance for Southern Africa & B Glover “Legal environment assessment of HIV and AIDS in the Republic of Mauritius” (2018) <http://pils.mu/wp-content/uploads/2018/09/Mauritius-LEA-Report-F.pdf> (accessed 21 May 2020) 59.

<sup>34</sup> Concluding Observation 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, para 77.

<sup>35</sup> P Eba “Towards smarter HIV laws” (2016) 24 *Reproductive Health Matters* 178.

services.”<sup>36</sup> Here, it is clear that the African Commission’s language has further evolved, and unlike previous Concluding Observations, this recommendation specifically highlights the category of ‘and men who have sex with other men’, instead of the broader use of ‘sexual orientation and gender identity’. The use of specific language ensures that the recommendation focuses on specific community needs. It is hoped 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.

<sup>36</sup> *Concluding Observation Observations and Recommendations on 14th Periodic Report of Niger (2014 -2016) on the Implementation of the African Charter on Human and Peoples’ Rights, para 45.*

## 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)

### 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>37</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 Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) were adopted by the African Commission 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, 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>38</sup> In essence, the African Commission identifies with the challenges often faced by intersex, trans, and other gender-nonconforming persons in society and particularly in police custody. Any measures that are taken to safeguard the rights of such person will not be considered as 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.

<sup>37</sup> Centre for Human Rights, University of Pretoria, *A guide to the African Human Rights System* (2016) 36.

<sup>38</sup> *Emphasis added.*

Clause 80 of the Guideline mandates that “The state shall not discriminate against assemblies on the basis of other illegitimate grounds, including sex, race, color, 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, sexual orientation or gender identity.”

This Guideline effectively speaks to the practice of denying registration to groups of LGBTIQ+ persons or criminalising their association in public and private. For instance, in Nigeria, LGBTIQ+ persons are denied freedom of association and assembly based on their sexual orientation, gender identity, or gender expression.<sup>39</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>40</sup> Participation in such organizations is criminalized: “A person who registers, operates or participates in gay clubs, societies and organization . . . commits an offence and is liable on conviction to a term of 10 years imprisonment.”<sup>41</sup> Additionally, “[a] person or group of persons who . . . supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.”<sup>42</sup> These provisions criminalize and impose severe penalties for activists working on human rights of LGBTIQ+ 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>43</sup> 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 who are 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 are obliged to protect and respect the right of peaceful assembly to individuals and organizations, and ensure that restrictions on this right are not discriminatory.<sup>44</sup>

These Guidelines provide legal interpretation and serves as a guide for the implementation of the right to peaceful assembly.

<sup>39</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://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NGA/INT\\_CCPR\\_CSS\\_NGA\\_35448\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NGA/INT_CCPR_CSS_NGA_35448_E.pdf) (accessed 22 May 2020) 15.

<sup>40</sup> *Same Sex Marriage (Prohibition) Act 2013 sec 4 (1)*.

<sup>41</sup> *(As above) sec 5 (2)*.

<sup>42</sup> *(As above) sec 5 (3)*.

<sup>43</sup> *Emphasis added*.

<sup>44</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/Documents/Publications/BornFreeAndEqualLowRes.pdf> (accessed 22 May 2020) 59.

This can be utilized by NGOs in the preparation of 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 Guidelines on Combating Sexual Violence and its Consequences in Africa were adopted by the African Commission 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>45</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, color, national origin... sexual orientation, identity or gender expression”.<sup>46</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>47</sup> The Guidelines also define “sexual violence” to include “corrective” rape which is a crime that is targeted against 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 and the need to decriminalize petty offences in Africa. These Principles establish standards against which petty offences should be assessed and promote measures that can be taken by States to ensure that laws criminalizing 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 utilized to intimidate and violate the rights of marginalized groups, including the use of such laws by the elite to enforce hegemonic notions of ‘socially appropriate’ behaviour on lower classes.<sup>48</sup> By promoting the decriminalization of such offences, and thereby reducing the risks of state violence against sexual and gender minorities the African Commission further enhances the principles of Resolution 275.

<sup>45</sup> *The Guidelines on Combating Sexual Violence and its Consequences in Africa 2017 Forward*. 46 (As above) art 3.2 (e).

<sup>47</sup> (As above) art 7.

<sup>48</sup> *Human Rights Awareness and Promotion Forum (HRAPF) “The implications of the enforcement of ‘Idle and disorderly’ laws on the human rights of marginalized groups in Uganda (2016)*

<https://hrapf.org/images/researchpapers/160929idleanddisorderlyresearchfinalreport.pdf> (accessed 22 May 2020) 24.

## SECTION 6: STATE REPORTS

### Title

- Angola 6th and 7th Combined Periodic Report (2018)
- Botswana 2nd and 3rd Periodic Report (2018)
- Mauritius 9th to 10th 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 to also engage in a dialogue with the African Commission, especially on areas of human rights that are not well understood – as in the case of sexuality and gender issues.

As earlier discussed under section 4 (Concluding Observations) of this report, Article 62 of the African Charter obliges 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 Concluding Observations for the state reports included in this section but should be doing this 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 and thus these reports are potential elaborations on the use of Resolution 275 by the African Commission.

#### 1. 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 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).”<sup>49</sup>

This aspect of the Angolan report will certainly be commended by the African Commission as it is in line with the objectives of Resolution 275. Nevertheless, even though Angola’s Criminal Code has been revised, LGBTIQ+ persons the country still face discrimination and stigma in both public and private spaces.<sup>50</sup> As such, the seriousness of the government in combatting discrimination must go beyond repeal of criminalising provisions and include positive steps to ensure actual inclusion. For instance, the state will need to undertake programs that sensitize, train, and educate law enforcement officers, health workers and the general public.

<sup>49</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>50</sup> AMSHeR ‘Angola New Penal Code Brings Hope for LGBT Communities in Africa’ 23 January 2019 at <https://amsher.org/news/hello-world/>.



## **2. 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>51</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 LGBTIQ+ communities. Just as importantly, this report gives the African Commission an opportunity to actually consider whether the measures adopted by Botswana are sufficient to eliminate discrimination on the basis of sexual orientation and gender identity.

## **3. Mauritius 9th to 10th Combined Periodic Report (2019)**

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>52</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 with a view to enhancing protection of the LGBT people in Mauritius.”<sup>53</sup> The report also notes the existence of government hospitals that provide free hormone treatments for trans persons.<sup>54</sup> However, medical sex change and ID sex change is 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 states towards taking further steps to ensure more protections for the LGBTIQ+ community.

<sup>51</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- 2018.*

<sup>52</sup> *The Republic of Mauritius 9th to 10th Combined Report to the African Commission on Human and People’s Rights Implementation of the African Charter on Human and People’s Rights para 294.*

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

<sup>54</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)

#### 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)

#### 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)

#### 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 the use of special rapporteurs, working groups, and committees to engage different human rights issues, as well as geographical and thematic areas across the continent.

In view of all these activities, the African Commission often issues relevant reports both for the general public and for 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 an insight into the workings of the African Commission and on the values that are reflected in the normative documents of the African Commission. 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 places an obligation on 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 the execution of 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 African Union's political body, they can serve as a process through which the norms set by the African Commission can influence political bodies of the African Union and become accepted as binding on all relevant state parties.

### **1. 39th Activity Report of the African Commission (2015)**

In this Activity Report, the African Commission commended South Africa on "the law on non-discrimination on 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 has been discussed under the section on 'Concluding Observations' above.

### **2. 40th, 41st, 42nd and 44th 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 by submitted by Liberia, Malawi, Nigeria, South Africa, Sierra Leone, Mauritius, and Niger. The content of these Concluding Observations are discussed under the section on 'Concluding Observations' above.

### **3. 56th Ordinary Session Intersession Activity Report, Commissioner Reine Alapini-Gansou (2015)**

This is a non-normative report documenting the Commissioner 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."

### **4. 56th Ordinary Session Intersession Activity Report, Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report (2015)**

This is a non-normative report intersession activity report in which Commissioner Lawrence Mute

condemned Gambia for their treatment of sexual and gender minorities in The Gambia. 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.”

#### **5. 60th Ordinary Session Intersession Activity Report, Commissioner Reine Alapini-Gansou (2017)**

This is a non-normative report in which, 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 criminalize work on sexual orientation and gender identity issues by human rights defenders.

#### **6. 60th Ordinary Session Intersession Activity Report, Commissioner Lawrence Mute and Annual Situation of Torture and Other Ill-Treatment in Africa Report (2017)**

This is a non-normative report in which 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, and 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.”

#### **7. 66th Ordinary Session Intersession Activity Report, Commissioner Hatem Essaiem 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 Essaiem, as chairperson of the Committee for the Prevention of Torture in Africa, notes that 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’”. 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.”

#### **8. 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 programmes without discrimination, including for transgender people, gay men and other MSM helps to achieve an effective and rights-based response.'<sup>55</sup>

### **9. 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 situation of the HIV epidemic in Africa and 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>56</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>57</sup>

<sup>55</sup> *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) <http://www.pulp.up.ac.za/component/edocman/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> 85.

<sup>56</sup> *HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses* (2018) [https://www.achpr.org/public/Document/file/English/africancommission\\_hiv\\_report\\_full\\_eng.pdf](https://www.achpr.org/public/Document/file/English/africancommission_hiv_report_full_eng.pdf) para 122, 88.

<sup>57</sup> As above, para 59, 12.

## CONCLUSIONS

Over the last six years, the African Commission on Human and Peoples' Rights has strengthened the aims of Resolution 275 by making reference to it in its resolutions, concluding observations, guidelines and principles, activity reports and other documents. 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.

From the review, the most typical engagements with Resolution 275 has been through the African Commission's Concluding Observations on state reports and – to a lesser extent – through the guidelines and principles. While most states still make no reference to these issues in their reports, it is a positive sign that a few states, such as Angola, Botswana, and Mauritius, are beginning to acknowledge sexual orientation, gender identity and sex characteristics as an aspect of human rights that should be reported on.

Nevertheless, the general implementation of the normative standards set by Resolution 275 by states, as well as oversight by the institutional bodies of the African human rights system remain unsatisfactory. Till date, SOGIESC-based violence and discrimination continues in most parts of the African continent with little or no remedies. In the near future, the African Commission has to take more proactive steps towards the promotion of Resolution 275 by directly engaging states through on-site visits and other special mechanisms.

It is also important that the African Commission utilises other means of obtaining information on national issues, for instance, through shadow reports by community-based organisations and other non-governmental organisations. 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 a more substantive and meaningful participation of civil society organizations.<sup>58</sup> This will give the African Commission an opportunity to hear perspectives that are different from or complement the state reports. These shadow reports will also be useful for developing and providing context-specific recommendations to the different states.

<sup>58</sup> *Rules of Procedures of the African Commission on Human and Peoples' Rights 2020, adopted by the African Commission on Human and Peoples' Rights during its 27th Extra-Ordinary Session held in Banjul (The Gambia) from 19 February to 04 March, 2020, Part Two, Chapter II, Rules 78-83, at* [https://www.achpr.org/public/Document/file/English/Rules%20of%20Procedure%202020\\_ENG.pdf](https://www.achpr.org/public/Document/file/English/Rules%20of%20Procedure%202020_ENG.pdf)

## 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 28 April to 12 May 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 continue to be committed on individuals 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 organizations 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 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014**



## 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 nor 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://www.achpr.org/sessions/resolutions?id=322">https://www.achpr.org/sessions/resolutions?id=322</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://www.achpr.org/pr_index.php?url=sessions/resolutions&amp;id=419">https://www.achpr.org/pr_index.php?url=sessions/resolutions&amp;id=419</a>

### 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://www.achpr.org/public/Document/file/English/">https://www.achpr.org/public/Document/file/English/</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 the Rights of Women in Africa	“State parties must ensure provision of comprehensive information and education on human sexuality”	<a href="https://www.achpr.org/legalinstruments/detail?id=13">https://www.achpr.org/legalinstruments/detail?id=13</a>
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://www.achpr.org/legalinstruments/detail?id=60">https://www.achpr.org/legalinstruments/detail?id=60</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://www.achpr.org/sessions/concludingobservations?id=41">https://www.achpr.org/sessions/concludingobservations?id=41</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://www.achpr.org/public/Document/file/English/concluding_observations_cameroon_eng.pdf">https://www.achpr.org/public/Document/file/English/concluding_observations_cameroon_eng.pdf</a>

2015	Liberia	Concluding Observations on the Initial Periodic Report of the Republic of Liberia	<p>“[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.”</p>	<p><a href="https://www.achpr.org/public/Document/file/English/concluding_observations_liberia.pdf">https://www.achpr.org/public/Document/file/English/concluding_observations_liberia.pdf</a></p>
2015	Malawi	Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi	<p>Commended Malawi’s “efforts to investigate claims of violation of access to health rights by sexual minorities.”</p>	<p><a href="https://www.achpr.org/public/Document/file/English/concluding_observations_initial_combined_state_report_malawi.pdf">https://www.achpr.org/public/Document/file/English/concluding_observations_initial_combined_state_report_malawi.pdf</a></p>
2015	Nigeria	Concluding Observations on the 5th Periodic Report of the Federal Republic of Nigeria	<p>“enactment of a law criminalizing 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 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.”</p>	<p><a href="https://www.achpr.org/public/Document/file/English/concluding_observations_nigeria_5th_sr_eng.pdf">https://www.achpr.org/public/Document/file/English/concluding_observations_nigeria_5th_sr_eng.pdf</a></p>

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	<p>“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.”</p> <p>“discrimination, homophobia, and prejudice against homosexuals resulting in murder and violence against homosexuals despite the existence of legal frameworks.”</p>	<p><a href="https://www.achpr.org/public/Document/file/English/co_combine_d_2nd_periodic_repUBLIC_of_south_africa.pdf">https://www.achpr.org/public/Document/file/English/co_combine_d_2nd_periodic_repUBLIC_of_south_africa.pdf</a></p>
2016	Sierra Leone	Concluding Observations on the Initial and Combined Periodic Report of the Republic of Sierra Leone	<p>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.”</p>	<p><a href="https://www.achpr.org/public/Document/file/English/concluding_observations_sierra_leone_eng.pdf">https://www.achpr.org/public/Document/file/English/concluding_observations_sierra_leone_eng.pdf</a></p>
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	<p>The Commission is concerned about (...) “discrimination and stigmatization 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.”</p>	<p><a href="https://www.achpr.org/public/Document/file/English/co_namibia_6th_sr_eng.pdf">https://www.achpr.org/public/Document/file/English/co_namibia_6th_sr_eng.pdf</a></p>

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://www.achpr.org/public/Document/file/English/concluding_observations_mauritius_6th_8th_sr_eng.pdf">https://www.achpr.org/public/Document/file/English/concluding_observations_mauritius_6th_8th_sr_eng.pdf</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://www.achpr.org/public/Document/file/English/co_niger">https://www.achpr.org/public/Document/file/English/co_niger</a>

### **GUIDELINES AND PRINCIPLES**

<b>Year</b>	<b>Country Involved/ Discussed</b>	<b>Document Name</b>	<b>Quote(s)</b>	<b>Link</b>
2015	NA	Guide lines 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, on the basis of gender identity, 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."	<a href="https://www.refworld.org/docid/5799fac04.html">https://www.refworld.org/docid/5799fac04.html</a>
2017	NA	Guide lines 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, color, 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, sexual orientation or gender identity."	<a href="https://www.achpr.org/legalinstruments/detail?id=5">https://www.achpr.org/legalinstruments/detail?id=5</a>

2017	NA	Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa	<p>“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 orientation and gender identity, or being journalists or human rights defenders”</p>	<p><a href="https://www.achpr.org/legalinstruments/detail?id=65">https://www.achpr.org/legalinstruments/detail?id=65</a></p>
2017	NA	Guidelines on Combating Sexual Violence and its Consequences in Africa	<p>“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.”</p>	<p><a href="https://www.achpr.org/legalinstruments/detail?id=4">https://www.achpr.org/legalinstruments/detail?id=4</a></p>
2018	NA	Principles on the Declassification and Decriminalization of Petty Offences in Africa	<p>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.”</p>	<p><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></p>

Year	Country Involved/ Discussed	Document Name	Quote(s)
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"
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."
2015	Gambia	56th Ordinary Session Intersession 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."
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."
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."

**STATE REPORTS**

Year	Country Involved/ Discussed	Document Name	Quote(s)	Link
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 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 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://www.achpr.org/states/statereport?id=117">https://www.achpr.org/states/statereport?id=117</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 (LEGA-BIBO) recently sued the Government for refusing to register it as an association of homosexuals.”	<a href="https://www.achpr.org/states/statereport?id=122">https://www.achpr.org/states/statereport?id=122</a>
2018		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	“The grounds of discrimination extend beyond those provided in the Constitution, notably age, ethnic origin, sexual orientation, impairment, and marital status”... “sensitization 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.”	<a href="https://www.achpr.org/states/statereport?id=131">https://www.achpr.org/states/statereport?id=131</a>



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