

Resolution of the NGO Forum of the 45th Session of the African Commission on Human and Peoples' Rights to end all forms of discrimination based on sexual orientation and gender identity in Africa.

Recalling in the 45TH session of the ACHPR, “the inherent dignity of and the equal and **inalienable** rights of all members of the human family” and that “All human beings are born free and equal in dignity and rights” and that all human rights are universal, interdependent, indivisible, and interrelated;

Affirming that “human beings of all sexual orientation and gender identity are entitled to the full enjoyment of all human rights” as established in the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity;

Noting Article 2 and 4 of the African Charter on Human and Peoples' Rights, the Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), the African Commission on Human and Peoples' Rights Resolution 69[XXXV]04 on the Protection of Human Rights Defenders in Africa;

Further noting the failure by states to ensure the enjoyment of the right to the highest attainable standard of health by everyone irrespective of their sexual orientation and gender identity; which has impacted to the scourge of HIV in communities of men who have sex with men (MSM) and women who have sex with women (WSW) despite the proven impact¹ of the pandemic in these communities and the population at large.

Notwithstanding that human rights protection for all women are guaranteed in various international instruments including the U.N. Security Council Resolution 1325 on women, peace and security which deals with the impact of conflict situations on women and girls especially as victims of sexual violence, the African Commission on Human and Peoples' Rights Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 18 of the African Charter on Human and Peoples' Rights, Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Solemn Declaration on Gender Equality in Africa; states continue to fail in their obligation to protect the rights of lesbian, bisexual and transgender women;

¹ Various research has proven that same-sex practicing people are up to 19 times more vulnerable than the general population.

Noting that Article 60 of the African Charter requires the Commission to draw inspiration from the content of other international treaties and laws, and further noting that articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which all African states are party, establish the principle of non discrimination on grounds of sexual orientation, as elaborated by the United Nations Human Rights Committee, and that U.N. treaty bodies and Special Procedures, including the U.N. Working Group on Arbitrary Detention, the U.N. Special Rapporteur on torture and other inhuman, degrading and cruel punishments and treatments, the UN Committee on Social, Economic and Cultural Rights, and the Committee on the Elimination of Discrimination against Women, have consistently held that all U.N. treaties include protection against discrimination based on sexual orientation and gender identity;

Further noting the continuing and increasing human rights violations against individuals and communities on the basis of their sexual orientation and gender identity, which include arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail, hate speech, violent attacks, including rape and other sexual assault, physical assaults, torture and murder, as well as the failure of protecting the rights to safety and security of the person, freedom of movement and association, freedom of expression;

And recognizing that LGBTI² people are not a homogenous group and that certain identities including race, ethnic and social origin, sexual orientation and gender identity, as well as legal, economic, social and cultural situations disproportionately impact on their experiences and access to the full enjoyment of all rights and freedoms;

The NGO Forum calls for urgent and sustained action by the African Commission on Human and Peoples' Rights to ensure the realization of the full range of human rights for all people living on the African continent, in particular people whose sexual orientation and gender identity render them more vulnerable.

And further calls on the African Commission on Human and Peoples' Rights to adopt a resolution to:

1. Acknowledge the continuing and increasing incidence of human rights violations, including murder, rape, assault, persecution and imprisonment based on perceived or actual sexual orientation and gender identity on the continent as a problem requiring urgent action;

² LGBTI in the scope of this resolution stands for and is not restricted to Lesbian, Gay, Bisexual, Transgender and Intersex

2. Condemn these acts of human rights violations;
3. Condemn discrimination and exclusion of individuals and communities from the enjoyment of rights and the full realization of their potential because of their sexual orientation and gender identity;
4. Mandate the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on the Rights of Women and the Special Rapporteur on the Freedom of Expression to lead and coordinate a Special Committee to investigate, document and report on these violations in order to develop appropriate responses and interventions;
5. Create a mechanism to address human rights violations based on sexual orientation and gender identity;
6. Ensure that states put in place mechanisms for access to HIV prevention treatment and care services for everyone regardless of their sexual orientations and gender identity.
7. Strongly urge states to:
 - 7.1 Comply with the African Charter on Human and Peoples' Rights, and other binding international treaties, by repealing laws which criminalise non-heteronormative sexualities and gender identities, such as laws criminalizing sexual conducts between consenting adults of the same sex, laws banning cross-dressing, laws against indecency, impersonation, debauchery, among others.
 - 7.2 End impunity for acts of violation and abuse, whether committed by state or non-state actors, by enacting appropriate laws, ensuring the proper investigation, arrests and punishment of the perpetrators, and establishing appropriate judicial procedures.
 - 7.3 Protect the right of all people, regardless of their sexual orientation and gender identity, to freedom of association and assembly, freedom of expression, and freedom to participate in civil society and key decision-making organs of government.