

# EKURHULENI DECLARATION

5 MARCH 2016

## ON PRACTICAL SOLUTIONS ON ENDING VIOLENCE AND DISCRIMINATION AGAINST PERSONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION

*We, the people from National Human Rights Institutions, civil society organisations and collectives from across the African continent, having assembled and engaged in dialogue at the First Regional African Seminar on Finding Practical Solutions for Addressing Violence and Discrimination Based on Sexual Orientation, Gender Identity and Expression in Johannesburg, South Africa from 3<sup>rd</sup> to 5<sup>th</sup> March 2016, do adopt the following Declaration:*

### **Preamble**

**Welcoming** the stance of the African Commission on Human and Peoples' Rights, in adopting Resolution 275, on *Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation and Gender Identity*.

**Recalling** and reaffirming our commitment to human rights made through the following provisions of the African Charter on Human and Peoples' Rights:

- Article 2 The right to freedom from discrimination
- Article 3 The right to equality before the law and equal protection of the law
- Article 4 The right to life
- Article 5 The right to dignity and prohibition of torture and cruel, inhuman and degrading treatment

**Highlighting** the centrality of the right to autonomy and dignity of every individual, and the imperative for all state and non-state actors and institutions to advance the right to dignity and autonomy;

**Recalling** the obligation of states to respect, protect and fulfill the human rights of all, including of those who face violence and discrimination on the basis of sexual orientation, gender identity and expression;

**Reaffirming** Article 1 of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights;

**Recognising** that violence and discrimination based on sexual orientation, gender identity and expression takes many forms and is perpetrated by multiple actors including both state and non-state actors;

**Concerned** that structural factors, particularly economic inequality and poverty and its intersection with racial and gender inequalities, as well as a lack of access to healthcare

services and educational opportunities, exacerbate vulnerability to violence and discrimination;

**Further concerned** at the deepening crises of structural, institutional, personal and interpersonal violence on the African continent, including growing militarism and conflict, expanding violent extremisms, crises in democracy, patriarchy and heteronormativity, environmental exploitation and the impacts of the global economic crisis;

**Acknowledging** persistent negative cultural, traditional and religious interpretations that establish and perpetuate violence and discrimination on the basis of sexual orientation, gender identity and expression amongst others, and emphasising the importance of sensitising traditional, cultural, religious leaders and communities to the rights of people who are non-conforming in terms of their sexual orientation, gender identity and expression;

**Convinced** of the need to have an urgent, coordinated and sustained response that recognises and addresses growing violence and other human rights violations against persons based on sexual orientation, gender identity and expression;

**Understanding** the need to identify the root causes and various manifestations of violations in order to help States develop practical and effective responses to violence and discrimination based on sexual orientation, gender identity and expression, and further understanding that these same root causes also result in all forms of gender based violence, including violence against women;

**Resolving** to provide guidance to support States in addressing and eliminating violence and discrimination on the basis of sexual orientation, gender identity and expression;

**Declare** our commitment to advancing the following agenda for action amongst states across the African continent, while working with multiple sectors:

## **1. The Role of State and Non-State Actors in Addressing Violence and Discrimination**

States have an obligation to respect, protect and promote civil, political and economic rights, as well as social and cultural rights. The right of every African to live in peace and dignity is central to these rights.

State and non-state actors must desist from perpetrating, promoting, condoning and ignoring violence and discrimination against any person on any basis, including sexual orientation, gender identity and expression. State and non-state actors have been, and continue to be, complicit in violence and discrimination directly or indirectly, through omission and commission. This includes violence, discrimination and rights violations by healthcare workers, including forensic doctors, by police, prison and court officials, and by educators. The violence, discrimination, and rights violations include, but are not limited to torture, beatings, sexual assault, harassment and extortion, arbitrary arrests, illegal detention and inhuman treatment in detention settings, and forced anal testing by state and

non-state actors.

Violence and discrimination by state actors also creates a climate of impunity which results in subsequent discrimination and violations of the rights of people based on their sexual orientation, gender identity and expression, by non-state actors.

## **Practical Solutions**

States should:

- 1.1. Develop, align and implement policies and legislation in accordance with regional and international human rights instruments.
- 1.2. Publicly condemn violence and other human rights abuses by state and non-state actors directed against people on the basis of their sexual orientation, gender identity and expression.
- 1.3. Create safe and confidential procedures through which survivors of public and state violence are able to file complaints with the police and independent monitoring bodies, such as national human rights institutions or independent policing oversight bodies.
- 1.4. Ensure that complaints are effectively investigated.
- 1.5. Ensure diligent and speedy prosecution of those responsible for violence and other human rights violations. States must establish judicial procedures responsive to the needs of survivors.
- 1.6. Ban forensic anal examinations of persons accused of same-sex sexual conduct.
- 1.7. Conduct regular inspections of prisons and other places of detention in order to verify and investigate cases of inhuman conditions, or other abuses directed against persons based on their sexual orientation, gender identity and expression.
- 1.8. Take steps to end arbitrary arrest and detention on the basis of sexual orientation, gender identity and expression.

## **2. Changing Perceptions and Creating Awareness**

Decision makers, policy makers, influential persons, leaders and groups (including politicians, religious and traditional leaders) have the power to ensure access to the rights to dignity, autonomy and equality.

These stakeholders also have the power to influence others to act in violation of these rights through public and private utterances that establish, reinforce and sustain a hostile environment that enables violence, stigma and discrimination, against persons with non-conforming sexual orientation, gender identity and expression.

There is a lack of information, awareness, understanding and recognition of gender-related rights and the needs and realities related to human sexuality. The lack of the above results in misconceptions about sexual orientation, gender identity and expression.

## **Practical solutions**

States should:

- 2.1. Create spaces that will promote dialogue in communities on human rights, human sexuality, sexual orientation, gender identity and expression, and that will address violence and discrimination
- 2.2. Share and collect evidence and information on violence on the basis of sexual orientation, gender identity and expression in a systematic way. This information and evidence should be collected in a timely manner that protects dignity, confidentiality, privacy and security of persons at all times. This information should be used to create awareness, change perceptions and inform policy.
- 2.3. Engage with the media and implement public campaigns that change perceptions and educate on the need to end violence and discrimination on the basis of sexual orientation, gender identity and expression.
- 2.4. Develop interventions and communication materials in plain language that is accessible and translated into local languages.
- 2.5. Develop, implement and monitor policies that prevent and respond to all forms of bullying, intimidation, violence and discrimination in educational institutions, and ensure that survivors of violence and discrimination on the basis of sexual orientation, gender identity and expression receive adequate support and redress sensitive to their needs.

### **3. Violence and Discrimination in Educational Institutions and Settings**

The rights to dignity and education are basic, fundamental and universal human rights which must be protected, promoted, respected and fulfilled. Learners and their families face violence and discrimination on the basis of sexual orientation, gender identity and expression. These violations include physical, sexual violence, harassment, bullying and rejection, as well as exclusion from educational and related social spaces. These learners are also often compelled to conform to a uniform policy and utilise sex segregated bathroom facilities, or to participate in sex segregated sports or other programs contrary to their gender identity and expression. The violence and discrimination, as well as absence of support services and redress lead to high levels of exclusion, learner drop out and substance abuse. This may harm the ability of persons who are non-conforming in terms of their sexual orientation, gender identity and expression to find employment, resulting in the inability to meet basic needs.

Teachers and other workers within educational institutions face extortion, harassment and workplace discrimination based on their real or perceived sexual orientation, gender identity and expression.

## **Practical Solutions**

States should:

- 3.1. Develop, implement and monitor policies and standards that ensure access for all to human rights education, in particular comprehensive sexuality education and sensitisation should be provided in all educational and social institutions at an age and context appropriate level.
- 3.2. Develop, implement and monitor policies and practices that create enabling and safe learning environments for all learners, including ensuring that educational practitioners and facilities are properly equipped to meet the diverse needs of all learners.
- 3.3. Systematically include in the curriculums of all disciplines, at all levels, sexual orientation, gender identity and expression in human rights education programmes and campaigns.
- 3.4. Strengthen gender mainstreaming programmes to ensure that they address all forms of gender-related discrimination.
- 3.5. Strengthen the understanding of the lived realities and unequal position in society of women and girls, including lesbian and bisexual women, intersex, transdiverse individuals and gay men.

#### **4. Economic Justice**

Economic justice is a necessary condition for substantive equality. Discrimination on the basis of sexual orientation, gender identity and expression leads to economic marginalisation and disempowerment. As a result, people who are non-confirming in terms of their sexual orientation, gender identity and expression are often economically and socially vulnerable. This discrimination can also inhibit access to social welfare, economic and educational opportunities that may result in homelessness and poverty.

#### **Practical solutions**

States Should:

- 4.1. Sensitise policy- and decision-makers and leaders on the links between sexual orientation, gender identity and expression, and poverty and inequality, as well as the need for the economic participation and employment opportunities for all people, regardless of any real or perceived identity, expression or status.
- 4.2. Enact, monitor and implement policies, and legislation to encourage the public and private sector to address economic disparities among all people, regardless of any real or perceived identity, expression or status.
- 4.3. Ensure that national and regional efforts to implement all macroeconomic policies, including the Sustainable Development Goals [SDGs], are fully inclusive of all people, regardless of any real or perceived identity, expression or status.
- 4.4. Lead, invest and engage in sustained processes, including dialogue with communities and families, the private sector, religious and traditional institutions, educational

institutions and policy makers about rights related to human sexuality, autonomy and dignity, and the links to poverty and inequality.

## **5. Health and Psychosocial Support**

The right to health is essential and facilitative for accessing all other rights, and is an essential component of wellbeing and the right to dignity. Experiences of violence and discrimination based on sexual orientation, gender identity and expression often result in disproportionately high levels of fear and anxiety, acute stress disorder and posttraumatic stress disorder, depression and other forms of emotional trauma.

Accessing psychosocial treatment is difficult due to the negative attitudes of service providers, and the stigma with which people of non-conforming sexual orientation, gender identity and expression are viewed and dealt with in the healthcare system.

Discrimination and secondary victimisation acts as a barrier to the accessing of healthcare services, such as sexual and reproductive healthcare, and post-violence prophylaxis, which can result in severe harm and loss of life.

### **Practical Solutions:**

States should:

- 5.1. Ensure that sexual orientation, gender identity and expression are not referred to as a disease.
- 5.2. Ensure that human sexuality, including sexual orientation, gender identity and expression is fully integrated and mainstreamed into the healthcare curriculum.
- 5.3. Ensure that every health care worker and educator must adhere to medical ethics that should focus on providing respectful, professional, competent and comprehensive care regardless of sexual orientation, gender identity and expression.
- 5.4. Create, maintain and monitor measures to ensure the right to confidentiality of information of all persons requiring psychosocial support, and broader healthcare services regardless of sexual orientation, gender identity and expression.
- 5.5. Ensure that health care services are integrated and that professionals trained in psychological counselling are stationed in all centres (including refugee and other shelters) to address the needs of persons facing all forms of violence and discrimination, including violence and discrimination related to sexual orientation, gender identity and expression.

## **6. Victimisation in the criminal justice system and in border control systems**

The right to privacy, dignity, justice and just administrative action, including freedom of movement, are universally accepted. Survivors of violence and discrimination directed against people's sexual orientation, gender identity and expression often experience secondary victimisation and survivor blaming when accessing the criminal justice system,

and within border control systems. These violations include inhuman and degrading treatment, ridicule, invasive and insensitive questioning lack of confidentiality and leaking of information to the public, intentional mismanagement and loss of case files and dockets, and lengthy delays in the investigation process. Perpetrators are often handed disproportionately lighter sentences or acquitted. This deters survivors from seeking legal recourse, assistance and support.

## **Practical Solutions**

States should:

- 6.1. Implement national training programs for all public service providers and border control officials (including amongst others: law enforcers, legal professionals, prosecution services, order control officials and the judiciary), in order to sensitise them to the rights and needs of all survivors of crime, discrimination and violence including on the basis of sexual orientation, gender identity and expression.
- 6.2. Adopt and popularise a charter that promotes the rights of all survivors, including the right to privacy and confidentiality. The charter must provide information on the recourse that is available when rights have been violated.
- 6.3. Establish inclusive, integrated and comprehensive justice units that provide comprehensive medical care, psychosocial support and police and prosecution services for all survivors of gender-based violence, which is inclusive of violence against women and violence based on sexual orientation, gender identity and expression.

## **7. Legal Support for survivors of violence and discrimination, and their families**

Access to justice is a fundamental right, and equality, protection and enjoyment of the law must apply to all, regardless of sexual orientation, gender identity and expression. Survivors of violence and discrimination are often unable to access legal support and representation. In instances where state authorities have failed to adequately investigate and prosecute violations, survivors are often left with no recourse, and are subsequently unable to pursue civil remedies against state authorities and perpetrators. Legal practitioners are not adequately informed of human rights relating to sexual orientation, gender identity and expression and are therefore unable to properly represent their clients.

### **Practical solutions**

States should:

- 7.1 Provide comprehensive education and sensitisation, including education related to human rights, sexual orientation, gender identity and expression, and training of law enforcement agencies and those involved in the justice system, including lawyers, police, prosecutors and the judiciary.
- 7.2 Provide comprehensive legal services for survivors and families of those who have been violated, including but not limited to, physical and sexual violence and murder

based on sexual orientation, gender identity and expression in order to facilitate legal remedies.

## **8. Accurate Data on Incidence of Violence and Discrimination based on Sexual Orientation, Gender Identity and Expression.**

Adequate and reliable data relating to acts of violence and discrimination directed against persons on the basis of their sexual orientation, gender identity and expression promotes the recognition of the true scale of the crises of violence and discrimination.

The lack of this data also enables policy- and decision-makers to justify their deprioritisation of the issue, and fail to put in place adequate responses.

### **Practical Solutions**

States should:

- 8.1. Ensure that data collection relating to acts of violence, discrimination and other human rights violations due to actual or imputed sexual orientation, gender identity and expression is accurate and disaggregated.
- 8.2. Ensure that data collection systems are structured so as to ensure that the right to privacy and confidentiality of all concerned is maintained. This must include the training of those responsible for collection, aggregation, interpretation and distribution of data in order to accurately capture and disaggregate the data in a manner that maintains confidentiality.
- 8.3. Develop an online and offline tracking tool that will capture data on all forms of violence related to gender and sexuality that, while maintaining privacy and confidentiality, will be shared with various service providers.
- 8.4. Strengthen information sharing and storing systems across the continent.

**We express our sincere appreciation to those who continue to advocate for ending violence and discrimination against persons based on their real or perceived sexual orientation, gender identity and expression and to the protection of their human rights.**

**We urge African governments to take leadership on the protection of the dignity and rights of people affected by violence and discrimination based on sexual orientation, gender identity and expression.**

**We call upon the media to promote codes of conduct to ensure responsible reporting that ensure human rights and dignity, regardless of sexual orientation, gender identity and expression.**

**We call on the United Nations, the African Union, the African Commission on Human and Peoples' Rights, Regional Bodies, National Human Rights Institutions, civil**



**society organizations, communities, human rights defenders and relevant stakeholders; to deepen engagement on bodily integrity and autonomy for all people and to advance rights related to human sexuality.**

**Finally, we call on all African States and Governments to take all necessary measures to fully implement this Declaration, in close collaboration and partnership with National Human Rights Institutions and civil society.**