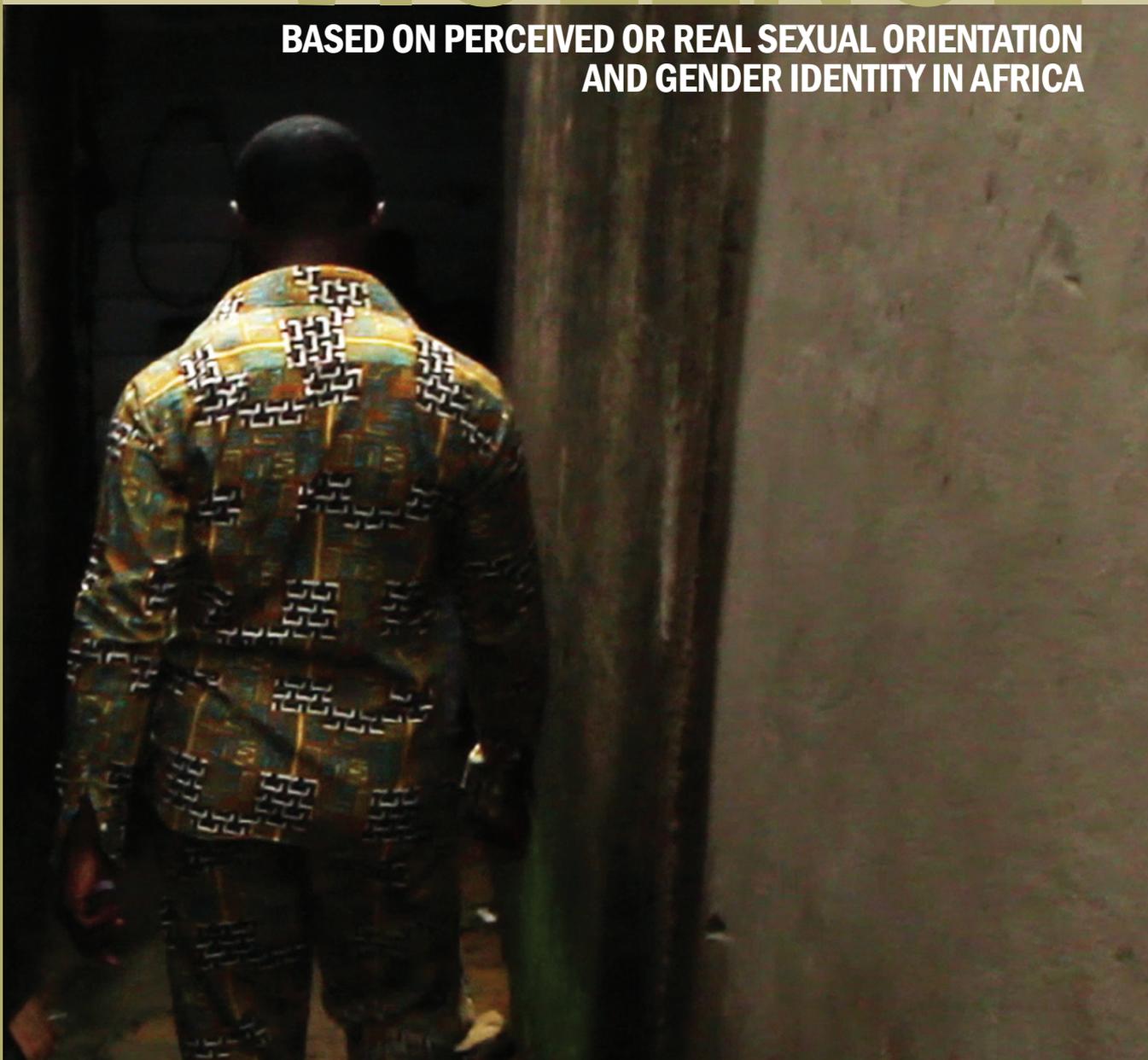


VIOLENCE

**BASED ON PERCEIVED OR REAL SEXUAL ORIENTATION
AND GENDER IDENTITY IN AFRICA**



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2013





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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ADEFHO	Association for the Defence of Gay and Lesbian Rights
GALZ	Gays and Lesbians of Zimbabwe
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and political Rights
ILGA	International Lesbian and Gay Association
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MSMs	Men/males who have sex with men/males
NCC	National Constitutional Conference (of Zambia)
SOGI	Sexual orientation and gender identity
WSWs	Women who have sex with women

Glossary

For the purposes of this report, the meanings to be attached to the following terms are as provided here:

Bisexual |

A person emotionally, romantically, sexually and relationally attracted to both men and women, though not necessarily simultaneously; a bisexual person may not be equally attracted to both sexes, and the degree of attraction may vary as sexual identity develops over time

Coming out |

The process in which a person first acknowledges, accepts and appreciates his or her sexual orientation or gender identity (SOGI) and begins to share this information with others

Gay |

A synonym for homosexual in many parts of the world. In this report, used specifically to refer to a man who is emotionally, romantically, sexually and relationally attracted to other men

Gender |

Socially constructed roles, behaviours and personal characteristics that a given society considers appropriate for men, women and others

Gender-based violence |

Violence directed against a person on the basis of gender or sex. Gender-based violence can include sexual violence, domestic violence, psychological abuse, sexual exploitation, sexual harassment, harmful traditional practices, and discriminatory practices based on gender. The term originally described violence against women but is now widely understood to include violence targeting women, transgender persons, and men because of how they experience and express their genders and sexualities

Gender expression |

External manifestation of one's gender identity, usually expressed through masculine, feminine or gender-variant behaviour, clothing, haircut, voice or body characteristics. Typically, transgender people seek to make their gender expression match their gender identity, rather than their birth-assigned sex

Gender identity |

One's deeply-rooted internal sense of their gender, i.e., being male or female, both, or something other than female and male. For most people gender identity aligns with assigned sex but this is not often the case for trans people

Homophobia |

The fear and hatred of or discomfort with homosexuals usually based on negative stereotypes of homosexuality

Homosexual |

A person who is emotionally, romantically, sexually and relationally attracted to people of the same sex

Intersex |

A term referring to a variety of conditions in which a person's sexual and/or reproductive features and organs do not conform to dominant and typical definitions of "female" or "male"

Lesbian |

A woman who is emotionally, romantically, sexually and relationally attracted to other women

LGBTI |

A blanket term that refers to people who identify as lesbian, gay, bisexual, and/or trans, intersex

Living openly |

A state in which LGBTI people are comfortably out about their sexual orientation or gender identity – where and when it feels appropriate to them

Outing |

Exposing someone's sexual orientation as being lesbian, gay, bisexual or transgender to others, without their permission; in essence "outing" them from the closet. Outing someone can have serious employment/economic/safety/religious repercussions in some situations

Sexual orientation |

An inherent or immutable enduring emotional, romantic, sexual and relational attraction to another person; may be a same-sex orientation, opposite-sex orientation or a bisexual orientation. It is not to be confused with sexual preference which is what a person likes or prefers to do sexually; a conscious recognition or choice

Transgender |

An adjective referring to a person whose gender identity or expression is different from their assigned sex

Transphobia |

The fear and hatred of, or discomfort with others because of their actual or perceived gender identity or expression

Transsexual |

A medical term describing people whose gender and sex do not line up, and who often seek medical treatment to bring their body and gender identity into alignment

Executive summary

Violence against sexual minorities in Africa is rife. Persons belonging to or perceived to be members of the broad grouping ‘lesbian, gay, bisexual, transgender and intersex (LGBTI)’ are often victim of violence in African states. This violence is sometimes perpetrated by state actors, such as the members of the Police force, and more often by ordinary persons (non-state actors). By condoning violence by state actors, and by failing to diligently investigate, prosecute and punish the perpetrators of these acts, states fail to respect the basic right to security of some of its citizens. By condoning these actions, or by failing to act effectively, the state also violates its human rights obligations. The argument of this report is not that sexual minorities deserve special protection, but that they are entitled to the rights all other citizens have – the right to security, liberty, life, dignity, and a fair trial.

As members of the African Union, states are party to and should abide by their obligations under the African Charter on Human and Peoples’ Rights (African Charter). Like several other regional and international human rights instruments, the African Charter guarantees freedom from discrimination, and equal protection and equality of individuals and peoples’ before the law (articles 2, 3 and 19). The African Commission on Human and Peoples’ Rights (African Commission), the body monitoring compliance with the African Charter, has in various communications presented to it denounced acts of discrimination on several of the listed grounds of discrimination and has clearly established that ‘other status’ (in article 2 of the Charter) can be broadly interpreted to include grounds other than those explicitly listed under that provision of the African Charter. The Commission made its first pronouncement on sexual orientation and gender identity (SOGI) issues in its Concluding Observations on Cameroon’s periodic report of 2005 by expressing concern about the upsurge in intolerance towards sexual minorities. Most recently, the Chairperson of the Commission issued a statement on in April 2013 stating that the Commission ‘equally denounces violence committed against individuals based on their sexual orientation as part of its mandate to protect individuals from all forms of violence’.

The principle of non-discrimination is at the heart of the African Charter and other human rights instruments. Its universality is affirmed under article 1 of the Universal Declaration of Human Rights, and is unequivocally reiterated in the Vienna Declaration and Programme of Action as a guiding principle in international

human rights law. Core UN human rights instruments as well as the UN Charter embody non-discrimination as a core principle and require that human rights be guaranteed for everyone without discrimination on grounds that are indicated in a non-exhaustive list that includes race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. 'Other status' has been interpreted to include sexual orientation and gender identity by the decisions and general comments of monitoring bodies of human rights treaties. The implications of the principle of equality and non-discrimination as it applies to LGBTI individuals has been further elaborated under the Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity.

Despite states' obligation to respect non-discrimination and the equality of all persons, the state of the rights of LGBTI individuals in Africa in recent years has been dismal. Outright display of homophobia and transphobia manifested through outrageous acts of violence against individuals on account of their real or perceived SOGI has continued to rise to alarming levels. This pattern of abuse in all regions of Africa continues despite states' obligations at the national and international levels to bring an end to the violence which takes various forms, including arbitrary arrest, detention and torture; physical violence including murder and rape; harassment and threats of violence and blackmail and extortion.

This report starts by providing an introduction to the legal and normative framework, placing it within the equality and non-discrimination context. In the introduction, positive developments and statements made by key stakeholders, including the UN Secretary General and the Chairperson of the African Commission on Human and Peoples' Rights calling for an end to violence and discrimination against LGBT persons based on sexual orientation or gender identity are highlighted.

The next section deals with forms of violence against LGBTI-persons based on their SOGI status including arbitrary arrest torture and detention. The cases highlighted present actual accounts of acts perpetrated by law enforcement agents using the different laws that criminalise same sex relations and conduct. The cases highlighted here are only a few of the multiple cases on the continent. Cases of rape and murder are presented as perpetrated by private and state actors. In these cases, a possible link could be inferred between rape and brutal murders. Furthermore, seeking legal redress is hampered by the difficulty in proving that the violence or the death was as a result of the victim's sexual orientation and gender identity.

Harassment and threats of violence are also included as another form of violence against LGBTI persons. These take the form of blackmail, extortion, bribery, and outing of LGBTI persons in the media. Cases presented point to state agents, media and individuals as the perpetrators of the harassment and violence.

In the next section, factors fuelling violence against LGBTI persons are examined. Among these are the existence of laws that criminalise same sex relations. In the same section, the influence of political leaders in inciting violence through public statements is underscored. These statements do not only encourage violence against LGBTI individuals but also give the impression, in the general populace, that violence against LGBTI persons is an accepted norm. The role of the media is emphasised as a factor that has contributed to escalating violence against LGBTI persons as the media plays an important role in influencing the thoughts and actions of the population. The belief that is held by some that same sex activities are un-African as well as perceptions on gender in Africa are presented as some of the contributors to the persistence of violence.

The impacts of violence based on SOGI include difficulty in accessing health care services by LGBTI individuals, thus impeding access to vital services for those with HIV/AIDS, and increasing incidences of LGBTI persons fleeing their communities and countries for fear of violence and difficulty in acquiring legal status as refugees in the countries to which they flee. In concluding, recommendations are proposed to the African Commission on Human and Peoples' Rights, to the state parties to the African Union, on the actions that ought to be taken in order to bring an end to all forms of violence based on sexual orientation and gender identity in Africa.



Introduction

Speaking at an event to commemorate International Human Rights Day in 2010, United Nations (UN) Secretary-General Ban Ki Moon, called for an end to violence and discrimination against persons based on their sexual orientation and gender identity.¹ He called for a rejection of discrimination in general, and in particular discrimination based on sexual orientation and gender identity. He highlighted the need to repeal laws that criminalise homosexuality, that permit discrimination on the basis of sexual orientation or gender identity and that encourage violence. He further noted the need to speak out against violence based on sexual orientation and gender identity as such acts of violence ‘are not merely assaults on individuals. They are attacks on all of us.’

Such strong pronouncement by a UN Secretary-General is commensurate with the gravity of violence faced by LGBTI persons and the urgent need to consider and formulate viable solutions to it. Such a clear stand against discrimination and violence based on sexual orientation and gender identity has long existed in international human rights law.

The principles of universality and non-discrimination under article 1 of the Universal Declaration of Human Rights² which has been unequivocally affirmed in the Vienna Declaration and Programme of Action³ are guiding principles in international human rights law. Core UN human rights instruments as well as the UN Charter embody non-discrimination as a core principle and require that human rights be guaranteed for everyone without discrimination on a grounds that are indicated in a non-exhaustive list that includes race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ‘Other status’ has been interpreted to include sexual

¹ United Nations (UN) Secretary-General Ban Ki-moon, Remarks at event on ending violence and criminal sanctions based on sexual orientation and gender identity [as delivered], UN Headquarters (2010) http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1034#.UUAwCqJHKE0 (accessed 1 March 2013).

² Article 1 of the Universal Declaration of Human Rights (UDHR) (1948) ‘all human beings are born free and equal in dignity and rights’.

³ A/CONF.157/23 Vienna Declaration and Programme of Action (1993) para 5. which states that ‘while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.’

**JUSTICE
FOR**

**SIZAKHELE
& SALOME**

**In July 2007, Sizakhele and Salome,
two black lesbians were tortured, raped and
murdered in Meadowlands, Johannesburg.**

**The primary suspect in the
case committed suicide
when police were
about to arrest him.**

**Despite it being
clear that there
were other
perpetrators,
the state has
closed the**



FOR

orientation and gender identity by the decisions⁴ and general comments⁵ of monitoring bodies of human rights treaties.

Under the Yogyakarta Principles⁶ adopted in 2007, it is underscored that the failure of governments to protect LGBTI persons results in violation of several rights including the right to non-discrimination and recognition before the law. The principles further highlight that such failure leads to the violation of the rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention. Also noted are the rights to expression, opinion and association which emphasise the importance of the freedom to express oneself, one's identity and one's sexuality, without state interference based on sexual orientation or gender identity.

In 2012, the UN Human Rights Council in an unprecedented move adopted Resolution 17/11 expressing 'grave concern' at violence and discrimination against individuals based on their sexual orientation and gender identity.⁷ The resolution paved the way for the first Office of the High Commissioner for Human Rights report on discrimination and violence based on sexual orientation and gender identity.⁸ Subsequent to the report, the General Assembly adopted a resolution that, among others, for the first

- ⁴ The first Human Rights Committee (HRC) case holding that States are obligated to protect individuals from discrimination on the basis of their sexual orientation was *Toonen v Australia*, communication 488/1992, UN Doc CPR/C/50/D/488/1992 (1994). This position is reflected in later decisions of the Committee, see, for example, *Young v Australia*, communication 941/2000, UN Doc CPR/C/78/D/941/2000 (2003), para 10.4; *X v Colombia*, communication 1361/2005, UN Doc CCPR/C/89/D/1361/2005 (2007), para 9; and *Concluding Observations on Mexico (Ninety Eighth session, 2010)*, UN Doc CCPR/C/MEX/CO/5, 17 May 2010, para 21, and *Concluding Observations on Uzbekistan (Ninety Eighth session, 2010)*, UN Doc CCPR/C/UZB/CO/3, 7 April 2010, para 22. 6; See Committee on Economic, Social and Cultural Rights, general comment No. 20 (E/C.12/GC/20), para 32; Committee on the Rights of the Child, general comment No. 13 (CRC/C/GC/13), para 60.
- ⁵ Committee on Economic, Social and Cultural Rights General Comment No 20 (E/C.12/GC/20) para 32; Committee on the Rights of the Child General Comment no 13 (CRC/C/GC/13) para 60 & 72(g); Committee Against Torture General Comment No 2 (CAT/C/GC/2) para 21; and Committee on the Elimination of Discrimination Against Women General Recommendation No 28 (CEDAW/C/GC/28) para 18.
- ⁶ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at: <http://www.unhcr.org/refworld/docid/48244e602.html> [accessed 25 March 2013] Drafted, developed and discussed by a group of human rights experts. Following an experts' meeting held at Gadjah Mada University in Yogyakarta, Indonesia from 6 to 9 November 2006, 29 experts from 25 countries with diverse backgrounds and expertise relevant to issues of human rights law unanimously adopted the Yogyakarta Principles.
- ⁷ 'Human rights, sexual orientation and gender identity' A/HRC/17/L.9/Rev.1 (15 June 2011).
- ⁸ Report of the United Nations High Commissioner for Human Rights (OHCHR) 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity' A/HRC/19/41 (17 November 2011).

time urges states to ensure effective protection of the right to life of all persons, investigate all killings, including those based on perceived or actual sexual orientation or gender identity.⁹ It is in the context of these developments and unprecedented attention given to discrimination and violence based on SOGI at the international level that this report highlights the plight of LGBTI individuals in Africa.

At the African regional level, the African Charter on Human and Peoples' Rights, like several other regional and international human rights instruments, guarantees freedom from discrimination, and equal protection and equality of individuals and peoples' before the law.¹⁰ The African Commission on Human and Peoples' Rights has on various communications presented to it denounced acts of discrimination on several of the explicitly listed prohibited grounds such as ethnicity or nationality,¹¹ political opinion¹² and religion.¹³ By making use of the prohibition of discrimination based on 'other status' the Commission has pronounced against discrimination based on disability,¹⁴ clearly establishing that 'other status' can be interpreted broadly to include grounds other than those listed under article 2 of the African Charter. The Commission has to date not decided a communication dealing with LGBTI rights on the merits. A communication submitted against Zimbabwe in 1995 was withdrawn by the author in 2000 before decision was given on admissibility.¹⁵ Under its promotional mandate, the Commission dealt with SOGI issues for the first time in its concluding observations to Cameroon's periodic report of 2005 in which the Commission expressed concern about 'the upsurge in intolerance towards sexual minorities'.¹⁶ Most recently in April 2013 the Chairperson of the Commission issued a statement stating that the Commission 'equally denounces violence committed against individuals based on their sexual orientation as part of its mandate to protect individuals from all forms of violence.'¹⁷ It should be noted that 16 African countries have no punitive laws on same sex

⁹ UN General Assembly 'Extrajudicial, summary or arbitrary executions' A/C.3/67/L.36 (9 November 2012) para 6(b).

¹⁰ See articles 2, 3 and 19 of the African Charter.

¹¹ See for example *Organisation Mondiale Contre la Torture and Others v Rwanda* (2000) AHRLR 282 (ACHPR 1996) paras 21, 22, 28, 30.

¹² *Amnesty International v Zambia* (2000) AHRLR 325 (ACHPR 1999) paras 43-44.

¹³ *Amnesty International and Others v Sudan* (2000) AHRLR 297 (ACHPR 1999) paras 72-76.

¹⁴ *Purohit and Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003) paras 50, 52-54.

¹⁵ *Courson v Zimbabwe* (2000) AHRLR 335 (ACHPR 1995) paras 2-3.

¹⁶ Concluding Observations on the Periodic Report on Cameroon, presented to the 39th Ordinary Session African Commission on Human and Peoples Rights, held in Banjul, The Gambia from 11-25 May, 2005, para 15.

¹⁷ Statement by the Chairperson of the African Commission on Human and Peoples' Rights, Commissioner Catherine Dupe Atoki, at a Concluding Conference on Addressing Violence and Discrimination based on Sexual Orientation and Gender Identity 15-16 April 2013 Oslo, Norway.

conducts at all. These countries are: Burkina Faso, Cape Verde, Central African Republic, Chad, Congo Brazzaville, Cote d'Ivoire, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Gabon, Guinea Bissau, Madagascar, Mali, Niger, Rwanda, and South Africa.

Despite states' commitment to equality and non-discrimination of all persons, LGBTI individuals in African continuously face rights violations as outright display of homophobia through outrageous acts of violence is on the rise. This pattern of abuse in all regions of Africa continues despite states' obligations at the national and international levels. Violence against LGBTI persons is exacerbated by the fact that in most African countries, consensual same-sex acts are criminalised. This effectively institutionalises discrimination against LGBTI persons as well as human rights defenders of LGBTI persons who tirelessly challenge existing discriminatory laws. These human rights defenders also face arrest, harassment, blackmail and discrimination because of their work.

This report provides examples of cases of violence that have been faced by LGBTI individuals from different parts of Africa. This compilation will aid in advancing the case for promotion and protection of the rights of LGBTI individuals in Africa. It is hoped to serve as a quick reference point to the plight of LGBTI persons in Africa. As we condemn acts of violence against LGBTI persons, we are motivated by a few positive developments in some African countries and by a few African leaders who have openly denounced the ill-treatment of LGBTI persons.

In South Africa, in addition to the 1996 constitutional provision which prohibits discrimination based on sexual orientation,¹⁸ section 18(4) of the Child Care Act 74 of 1983 which prohibited adoption by same-sex couples was declared unconstitutional by the South African Constitutional Court in 2002.¹⁹ In addition, legal same-sex marriage was recognised in 2006.²⁰ In Cape Verde, homosexuality was decriminalised in the 2004 Penal Code.²¹ On 10 February 2006, Mauritius promised to finalise and adopt a Sexual Offences Bill which will decriminalise homosexuality.²² Finally, on 4 May 2011, Seychelles promised to repeal all provisions in its national laws which criminalise consensual same-sex conducts. on another positive note, Liberia's President Ellen Sirleaf pledged to

¹⁸ Section 9(3).

¹⁹ *Du Toit and Another v Minister of Welfare and Population Development and Others* 2003 2 SA 198 (CC); *Child Care Act 74 of 1983* of South Africa was replaced by the Children's Act 38 of 2005 of South Africa.

²⁰ Preamble of the Civil Union Act 17 2006; *Minister of Home Affairs and Another v Fourie and Another* 2006 1 SA 524 (CC).

²¹ 'Where's Africa making progress in decriminalising homosexuality?' available at <http://www.trust.org/item/20130624114042-stle4/> (accessed 9 July 2013).

²² 'Where's Africa making progress in decriminalising homosexuality?' (n 21 above).

'never condone discrimination against any group';²³ while in May 2012, Malawi's president, Joyce Banda, announced her country's intention to decriminalise sodomy.²⁴

This report is prepared by a coalition of non-governmental human rights organisations and seeks to highlight critical human rights concerns that LGBTI persons in Africa face and the obligation of state parties to African human rights instruments to address the widespread violence against persons based on their perceived or real SOGI. It highlights factors that lead to violence based on SOGI and presents the human faces that suffer the violence by depicting factual situations. The report demonstrates the recurrent and far reaching repercussions such violence has not only on LGBTI individuals but also to the wider African community. Ultimately, this report seeks to inform various stakeholders on the prevalence and magnitude of violence perpetrated against LGBTI individuals and makes a case for swift intervention at the level of the African Commission.

Debunking the myth: Homosexuality as not un-African

The African narrative on homosexuality is clothed with elements of repression, stigma and in an increasing number of cases, violence. It is not uncommon to hear African leaders propound what perhaps are their personal fears and feelings but which have now crystallised into dominant narratives that lead to the culture of homophobia. This rhetoric greatly contributes to human rights violations faced by LGBTI individuals and human rights defenders working on LGBTI issues. Some African leaders have taken to labeling homosexual conduct as an 'un-African social and sexual behavior', 'a foreign concept', 'a western concept,' 'a form of sexual colonialism' and a 'western imposition that has no place in African society'.²⁵ Backed by legislation prohibiting same-sex conduct, African political and religious leaders continue to openly call for violence and hatred towards homosexuals thereby instilling and perpetuating negative stereotypes and feelings about homosexuality which in turn foster homophobic practices including violence. In forming the rhetoric that homosexuality is un-African, reliance is placed on unfounded

²³ 'Liberia: Working to prevent anti-LGBT legislation' International Gay and Lesbian Human Rights Commission 'Liberia: Working to prevent anti-LGBT legislation' OutSpoken Newsletter: Summer 2012 15 August 2012 available at <http://www.iglhrc.org/our-publications/newsletters/outspoken-newsletter-summer-2012#Liberia> (accessed 24 May 2013). <http://www.iglhrc.org/our-publications/newsletters/outspoken-newsletter-summer-2012#Cameroon>.

²⁴ International Gay and Lesbian Human Rights Commission 'Malawi: Decriminalisation in progress' OutSpoken Newsletter: Summer 2012 15 August 2012 available at <http://www.iglhrc.org/our-publications/newsletters/outspoken-newsletter-summer-2012#Malawi> (accessed 24 May 2013).

²⁵ For more see, K Essien & S Aderinto 'Cutting the head of the roaring monster – Homosexuality and repression in Africa' 30 *African Study Monographs* (2009) 121-135.

myths which sadly often demonstrate a general lack of knowledge and information. For example President Robert Mugabe repeatedly justifies his intolerance towards gays and lesbians with the claim that homosexuality is 'un-African,' describing it as a disease 'coming from so-called developed nations.' He also said, 'Let the Americans keep their sodomy, bestiality, stupid and foolish ways to themselves, out of Zimbabwe ... Let them be gay in the US, Europe and elsewhere ... They shall be sad people here.'²⁶

Sam Nujoma, during his presidency in Namibia said homosexuality is a practice alien to Namibian societies and that those that support 'this perverts are Europeans who imagine themselves to be the bulwark of civilisation and enlightenment'.²⁷ In denouncing homosexuality as un-African, one dominant view is that homosexuality is inconsistent with the African belief in continuity of filial and clan through birth of biological children. In March 2013, Gambia's President, Yahya Jammeh had said 'We want the population to grow. There will be children in this country. Homosexuality is anti-God, anti-human, and anti-civilisation. Homosexuals are not welcome in the Gambia.'²⁸

Discussions of this nature are known to occupy a central place in African politics, policies and in turn African legislation. It has been argued that African political leaders use this stance and speak about highly emotive subjects such as this to a population that is ill informed in order to divert attention of their respective states from more urgent and pressing matters that would have otherwise caused the citizens to seek their accountability to performance. Amid armed conflict, the HIV and AIDS pandemic, the collapse of health care and educational systems, and inequalities within most African counties that defy every principle of social justice, the attacks by political leaders against marginalised groups serve as a political distraction from urgent social and economic needs and divert debate away from reaching solutions, toward seeking scapegoats.²⁹

Is homosexuality un-African? Writer Stephen O. Murray, argues that in the case of Africa, there is evidence that in North Africa, the practice was well documented, well entrenched and that in fact,

²⁶ Quoted in C Dunton & M Palmberg 'Human rights and homosexuality in Southern Africa' *Current African Issues* 19 Nordic Africa Institute (1996) 13.

²⁷ See International Gay and Lesbian Human Rights Commission and Human Rights Watch 'More than a name – State-sponsored homophobia and its consequences in Southern Africa' (2003) available at <http://www.iglhrc.org/content/africa-more-name-state-sponsored-homophobia-and-its-consequences-southern-africa> (accessed 24 May 2013).

²⁸ 'Gambian president warns gays to stay away or else' *Huffington Post* 2 April 2013 available at http://www.huffingtonpost.com/2013/04/02/yahya-jammeh-homosexuals-gambia_n_3000249.html (accessed 18 May 2013).

²⁹ International Gay and Lesbian Human Rights Commission and Human Rights Watch (n 27 above).

the social structures themselves lent to the practice.³⁰ He argues further that while there is little opposition to this view of homosexuality in North Africa, that there have been attempts to present the 'myth' that pre-colonial sub Saharan Africa was exclusively heterosexual, particularly in those parts of Africa that have fallen to the influence of Christianity. He presents research from Southern, Eastern, and West African contexts to point to presence of homosexuality to the period prior to colonialism. Murray holds the view that the 'taboo' on the discussion of homosexual conduct can be linked to colonial dominance. 'This taboo, these anxieties and resentments are products of European domination. Rather than homosexuality having been introduced to Africa by ('corrupt') Europeans, the colonialists carried and transmitted intolerance for homosexuality.' A somewhat similar view is espoused by Yemesi Ilesanmi who argued:³¹

In fact from various historical paintings on Ancient Africans walls, our ancestors enjoyed homosexual relationships, affection and love. This was one reason why colonial administrators immediately imported sodomy laws into our constitutions; they imported homophobia because they thought our free loving ancestors were barbarians who freely indulged in same-sex loving.

This labelling of homosexuality as un-African has been criticised as being a convenient argument as it is called on to support some situations and called on as against other situations. Ilesanmi argues as follows in a recent book entitled *Freedom to love for all: Homosexuality is not un-African*:³²

There are many things that could be said to be "un-African", for example, laws allowing women to inherit land or criminalising female genital mutilation could be said to be un-African. Also, giving women the right to vote or participate in public debates was considered un-African in some African societies. We must also not forget that Christianity, Islam and their attendant festivals like Christmas, Easter and Ileya are all un-African; these, not homosexuality, are the real western imports.

Historians, anthropologists and writers in other fields continue to debunk the myth that pre-colonial Africa was exclusively heterosexual and thus today's homosexuality is un-African through their research. Same-sex conduct is not what is un-African, the victimisation and mistreatment of a marginalised group of gays, lesbians, bisexuals and transgender individuals including through the use of the law is. Most of the laws that criminalise same-sex conduct in African countries are laws that were left behind by colonial masters who introduced them to African societies that

³⁰ See SO Murray & W Roscoe *Boy-wives and female-husbands – Studies in African homosexualities* (2008).

³¹ Y Ilesanmi *Freedom to love for all: Homosexuality is not un-African* (2013) in which the author provides a scrutiny of the 'Jail the Gays' bill in Nigeria and debunks myths surrounding homosexuality in Africa.

³² Ilesanmi (n 31 above).

previously had embraced individuals with sexual and emotional attractions towards persons of the same sex.

The report and its methodology

The report was compiled by pooling information from civil society organisation and by analysing media and other reports. The lack of reports about incidents of violence, due to the stigmatisation attached to such reporting in an environment of fear and criminalisation, makes the task of quantifying homophobic and transphobic violence in Africa highly complicated. Incidences of violence are rarely monitored, recorded and reported or are misreported. For this reason, information included in this report was in most cases gathered mainly from media and civil society sources.



1. Forms of violence

Homophobic and transphobic violence which constitutes a form of gender-based violence driven by a desire to punish those seen as defying gender norms is widespread in Africa. Such violence may be physical (including murder, beatings, kidnappings, rape and sexual assault) or psychological (including threats, coercion and arbitrary deprivations of liberty).³³ Violence directed against lesbian and transgender women is particularly vicious and brutal due to the multiple and intersecting layers of discrimination facing women in highly patriarchal African families and societies.

Violence based on the basis of SOGI may take the form of attacks in public settings, abuses from family and community members, targeted and organised abuses including by religious extremists, political, religious and community leaders, media outlets and members of law enforcement agencies. Incidents of violence against LGBTI individuals tend to be of a particularly brutal and cruel nature compared to other bias-motivated acts of violence – homophobic and transphobic hate crimes often include beatings, torture, mutilation, castration and sexual assault including rape.

In many African countries, consensual same-sex acts are criminalised, violence against LGBTI individuals is openly encouraged or at best ignored, and brutality is often unpunished. These actions are encouraged by repressive laws, constant outings by the media, and by intolerant political and religious leaders. The following sections provide information on the different forms of violence LGBTI individuals all over Africa suffer in the hands of state and non-state actors.

1.1 Arbitrary arrest and detention

The African Charter in article 6 provides that no one may be deprived of his freedom through arbitrary arrest and detention except for reasons laid down by the law while article 7 provides for the right to be tried in time by an impartial court. The ICCPR also expressly prohibits arbitrary arrests and detention as well as any form of torture. Article 9 of the ICCPR provides for the liberty and

³³ This classification of violence against LGBTI individuals has also been in the OHCHR's report on the issue A/HRC/19/41 (n 8 above) para 20.

security of the person, not to be detained in custody and to be produced promptly before court, and article 7 provides that no one should be subjected to torture or to cruel, inhuman and degrading treatment or punishment. Arbitrary arrest, detention and torture of LGBTI individuals have become the norm in several African countries in clear violation of these rights.

In Bauchi state of Nigeria, 18 men were arrested on 4 August 2007. The men, all of whom were in their twenties, were originally charged with sodomy, but the charges were later changed to 'vagrancy' or 'idleness' under article 372 Sec 2(E) of the Bauchi State Islamic Code. The government maintained that the men were cross-dressers, though they were not wearing women's clothes at the time of their arrest. The men were guests at a heterosexual wedding party held at Benko Hotel, in Yelwa area of Bauchi.³⁴

In November 2007, six men were arrested in Morocco under Article 489 of Morocco's Penal Code, which criminalises sexual conduct between members of the same sex and gives police the power to interfere in people's private lives.³⁵ They were sentenced to between four to ten months in prison and on appeal; the appeals court upheld the ruling of the lower court.³⁶

On January 14, 2008, a Cairo court in Egypt sentenced four men to one-year prison term on 'debauchery' charges in a months-long campaign targeting men with HIV/AIDs.³⁷ The debauchery charges in Egyptian law encompass consensual sexual acts between men. In the same year, 12 men suspected of being HIV positive in Egypt were arrested and subjected to forced HIV tests and anal examinations to find out if they had had sex with other men. While in detention, the men were beaten, insulted, interrogated to reveal the names of their sexual partners. After they tested HIV positive, they were chained to beds in hospitals for months.³⁸

In 2008, local authorities of Uganda entered the homes of Victor Mukasa and Yvonne Arach without warrants, searched their homes illegally and arrested them together with their guests under

³⁴ International Gay and Lesbian Human Rights Commission 'Nigeria Arbitrary arrest and detention of men on charges related to sexual orientation and gender identity' 9 November 2007 available at <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/467.html> (accessed 13 March 2013).

³⁵ Human Rights Watch 'Ksar el-Kbir case prompts Moroccan Association for Human Rights: Human Rights Watch to Launch Petition for Fair Trials and Privacy' 15 February 2008 available at <http://www.hrw.org/news/2008/02/15/ksar-el-kbir-case-prompts-moroccan-association-human-rights> (accessed 21 May 2013).

³⁶ Human Rights Watch (n 35 above).

³⁷ Human Rights Watch 'Egypt: Court upholds HIV sentences, reinforces intolerance: Five convictions in fear driven crack down a blow to health and justice' 29 May 2008 available at <http://www.hrw.org/news/2008/05/28/egypt-court-upholds-hiv-sentences-reinforces-intolerance> (accessed 19 May 2013).

³⁸ Human Rights Watch (n 37 above).

sections 145, 146 and 148 of the Ugandan penal code which prohibit same-sex sexual acts. While in police custody, they were subjected to gruelling and degrading interrogations and were sexually violated.³⁹

In December 2008, police officers in the SICAP Mbao neighbourhood of Dakar in Senegal raided an apartment and arrested nine men and accused them of violating article 319(3) of the Senegalese penal code by engaging in homosexual conduct.⁴⁰ The men were members of an organisation providing HIV prevention services to men who have sex with men (MSMs). They were taken to the SICAP Mbao police station and were later charged and sentenced to eight years in jail for engaging in acts against the order of nature and for being members of a criminal organisation.⁴¹ They were released in April 2009 but many had lost their jobs, become isolated from their families and communities.

In Uganda, between April and June 2009, at least seven gay men were arbitrarily arrested; and several of them were detained on charges for 'having carnal knowledge against the order of nature.'⁴²

In December 2009, Steven Monjeza, 26, and Tiwonge Chimbalanga, 20 were arrested in Malawi following media coverage of their traditional engagement ceremony.⁴³ They were charged and convicted under sections 153 ('unnatural offences') and 156 ('indecent practices between males') of Malawi's criminal code. They were tortured by police officers in order for them to confess to having engaged in homosexual conduct and they were also forcefully subjected to medical examinations. They were subsequently disowned by their families and thus relied on local human rights organisations for support.⁴⁴ After 14 year sentences, the maximum provided in Malawian law for the charges against them, were handed by the court, then President Malawian president, Bingu wa Mutharika pardoned the pair 'on humanitarian

³⁹ International Gay and Lesbian Human Rights Commission 'Uganda: Victory for human rights' 23 December 2008 available at <http://www.iglhrc.org/content/uganda-victory-human-rights> (accessed 23 March 2013).

⁴⁰ International Commission of Jurists Kenya 'Statement on the situation of human rights violations and abuses based on sexual orientation and gender identity in Africa' 13 May 2009 available at <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/926.html> (accessed 18 March 2013).

⁴¹ International Commission of Jurists Kenya (n 40 above).

⁴² 'The rise and rise of homophobia' *The New Black Magazine* 6 December 2009 available at <http://thenewblackmagazine.com/view.aspx?index=2209> (accessed 20 March 2013).

⁴³ Human Rights Watch 'Malawi: Drop charges against same-sex couple: Government should respect privacy rights of all Malawians' 12 January 2010 available at <http://www.hrw.org/news/2010/01/12/malawi-drop-charges-against-same-sex-couple> (accessed 18 May 2013).

⁴⁴ Human Rights Watch (n 43 above).

grounds' following international pressure and a meeting with UN Secretary General Ban Ki-moon.⁴⁵

Cameroon is one of the African countries that regularly prosecute individuals for consensual same-sex conduct under article 347 of the Cameroon Penal Code.⁴⁶ Under that provision, 'sexual relations with a person of the same sex' are punished with a prison term of six months to five years and with a fine of 20,000 to 200,000 CFA francs (US \$40 to \$400).⁴⁷ The Association for the Defence of Gay and Lesbian Rights (ADEFHO) in Cameroon has documented over 50 arrests and prosecution of LGBT people or those suspected of being gay or lesbian since 2005.⁴⁸

While article 347 of the penal code relates specifically to sexual conduct, it is applied in a broad way to prosecute individuals on the basis of their appearance, their mannerisms, style of speech or general conduct.⁴⁹ One of the most outstanding cases was that of Roger Jean-Claude Mbede, a university student in Yaoundé who was accused of being homosexual, arrested and convicted under article 347 in March 2011 after sending another man a text message reading, 'I've fallen in love with you.'⁵⁰ He was beaten in order to extract confessions from him of prior same-sex relationships that he had got involved in.⁵¹ He was then sentenced to three years in prison only to be released on bail after over a year while his appeal was in process. On 17 December 2012, the appeals court decision upheld the criminal conviction for homosexuality and sentenced him to three years in prison.⁵² Since his arrest, Mbede has maintained that allegations that he was gay were false.

⁴⁵ 'Malawi pardons jailed gay couple' *BBC News* 29 May 2010 available at <http://www.bbc.co.uk/news/10190653> (accessed 23 May 2013).

⁴⁶ 'UPR Submission Cameroon' October 2012. The report was submitted by a consortium of organisations including Affirmative Action, Alternatives-Cameroon, the Association for the Defense of Gay and Lesbian Rights (ADEFHO), Cameroonian Foundation for AIDS (CAMFAIDS), Evolve, Human Rights Watch, Humanity First Cameroon, and the International Gay and Lesbian Human Rights Commission (IGLHRC).

⁴⁷ 'UPR Submission Cameroon' (n 46 above).

⁴⁸ 'UPR Submission Cameroon' (n 46 above).

⁴⁹ OHCHR Spokesperson Rupert Colville speaking at a news conference in Geneva about the UN's concerns about the arrest, harassment and prosecution of persons suspected of being lesbian or gay in Cameroon; 'Cameroon; UN News Centre 'Cameroon: UN concerned over reports of arrests of suspected gay and lesbian people' 16 November 2012 available at <http://www.un.org/apps/news/story.asp?NewsID=43516&Cr=cameroon&Cr1> (accessed 22 May 2013).

⁵⁰ 'Cameroon jails "gay" man for texting "I'm in love with you" to male friend' *The Guardian* 17 December 2012 available at <http://www.guardian.co.uk/world/2012/dec/17/cameroon-antigay-legislation-mbede-text> (accessed 23 May 2013).

⁵¹ Human Rights Watch 'Cameroon: Court upholds unjust "homosexuality" conviction' 8 December 2012 available at <http://www.hrw.org/news/2012/12/18/cameroon-court-upholds-unjust-homosexuality-conviction> (accessed 19 March 2013).

⁵² Human Rights Watch (n 51 above).

In July 2011, Jonas Singa Kumie and Franky Djome, transgender youth who identify as women, were arrested in Yaoundé the capital city of Cameroon on the basis that they looked feminine.⁵³ They were tried and convicted of homosexuality based on the fact that the police who stopped their vehicle saw they were wearing women's clothing and claimed that the two and a third person were 'groping' each other in the car, an allegation denied by both of them. The prosecutor did not present any eyewitnesses and relied only on the police testimony and on confessions that the accused made in police custody and later said were coerced. The judge also suggested that because they were drinking Bailey's liqueur the night of the arrest – which the judge considered a 'women's drink' – they must be homosexual.⁵⁴ While in prison, they were harassed and tortured in order to reveal their sexual orientation. They were then detained for seven days without being charged although Cameroonian law says a detainee should not be held for more than 48 hours before being brought before a judge.⁵⁵ They were sentenced to five years imprisonment, Cameroon's maximum sentence for homosexual conduct, before being released in January 2013 following their successful appeal. A third man, arrested with them but provisionally released, was convicted in absentia.

According to Human Rights Watch, between 2010 and 2012, prosecutions for homosexual conduct have been initiated against at least 28 individuals in Cameroon and at least 12 were convicted. At least seven people are in pre-trial detention on charges of homosexuality, while at least one, a lesbian, has been convicted and is serving out a five-year prison term. At least eight others have been released on bail but still have charges pending against them. Human Rights Watch also reports that, as far as its research shows, in the last three years, Cameroon has prosecuted more people for consensual same-sex conduct than any other country in the world.⁵⁶

Such state of affairs have been taken note of at the May 2013 Universal Periodic Review (UPR) of Cameroon at the United Nations Human Rights Council where 15 UN member states made

⁵³ UN News Centre 2 (n 49 above); Human Rights Watch 'Free men charged under 'Sodomy' law' 17 August 2011 available at <http://www.hrw.org/news/2011/08/17/cameroon-free-men-charged-under-sodomy-law> (accessed 20 March 2013).

⁵⁴ Human Rights Watch (n 53 above).

⁵⁵ Human Rights Watch (n 53 above).

⁵⁶ Human Rights Watch 'Cameroon: Drop charges against 2 transgender youth – Prosecution based solely on bias, not evidence' 17 May 2013 available at <http://www.hrw.org/news/2013/05/17/cameroon-drop-charges-against-2-transgender-youth> (accessed 22 May 2013).

recommendations to Cameroon related to LGBTI individuals' rights.⁵⁷ States recommended that Cameroon decriminalise same-sex conduct, protect LGBTI individuals from violence, and adopt measures to eliminate social prejudices and stigmatisation on the basis of sexual orientation and gender identity.⁵⁸

A 2012 joint submission to the United Nations Human Rights Council by seven Cameroonian organisations including CAMFAIDS, supported by Human Rights Watch (HRW) and IGLHRC, documents at least 18 instances of people being detained or arrested based on sexual orientation or gender identity under article 347 bis of the *Cameroonian Penal Code* between 2010 and 2012. The 2010 report, *Criminalising Identities: Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* by two Cameroonian organisations, *Alternatives-Cameroun* and *L'Association pour la Défense de l'Homosexualité* (ADEFHO), along with HRW and IGLHRC further details the unique brand of abuses that people suffer on the grounds of their perceived or actual sexual orientation or gender identity in Cameroon.⁵⁹

Zimbabwe criminalises homosexuality under its Criminal Law (Codification and Reform) Act 23 of 2004. The Act prohibits sodomy between two men.⁶⁰ On 11 August 2012, the police in Zimbabwe arrested and detained 44 members of Gays and Lesbians of Zimbabwe (GALZ) shortly after they had released their 2011 LGBTI Violations report.⁶¹ During their detention, the police assaulted them with batons, slaps and punches causing some of them medical injuries. The Government of Zimbabwe also targeted the individuals' homes and singled out their families for interrogation and harassment.⁶²

On 6 May 2013, two men, James Mwansa and Phillip Mubiana were arrested in central Zambia in response to reports from a family member that they were engaging in homosexual activities.⁶³ They were subjected to anal examinations without their consent and formally charged without any legal representation. They were

⁵⁷ See 'Draft report of the Working Group on the Universal Periodic Review – Cameroon' A/HRC/WG.6/16/L.13 (3 May 2013) available at http://www.upr-info.org/IMG/pdf/a_hrc_wg_6_16_l.13_cameroon.pdf (accessed 22 May 2013).

⁵⁸ Draft report of the Working Group on the Universal Periodic Review – Cameroon (n 57 above).

⁵⁹ <http://www.iglhrc.org/region/cameroon>

⁶⁰ Criminal Law (Codification and Reform) Act 23 of 2004, article 73.

⁶¹ Human Rights Watch 'Zimbabwe: End attacks on LGBT people' 27 August 2012 available at <http://www.hrw.org/news/2012/08/27/zimbabwe-end-attacks-lgbt-people> (accessed 20 March 2013).

⁶² Human Rights Watch (n 61 above).

⁶³ Human Rights Watch 'Zambia Stop prosecuting people for homosexuality: Drop charges, cease invasive exams, protect rights of the accused' 20 May 2013 available at <http://www.hrw.org/news/2013/05/20/zambia-stop-prosecuting-people-homosexuality> (accessed 22 May 2013).

charged under the penal code sections 155 that addresses unnatural offences, section 156 that addresses attempts to commit unnatural offenses and 158 that addresses indecent practices between persons of the same sex.⁶⁴ This arrest came on the heels of a vicious campaign against LGBTI people by politicians, religious and community leaders that has been ongoing since April 2013.

On 7 April 2013, Zambian AIDS activist Paul Kasonkomona was arrested and charged with an offence under section 178 of the Zambian Penal Code which provides that “every person who in any public place solicits for immoral purposes” is deemed an idle and disorderly.⁶⁵ According to Solomom Jere, Zambian Police chief, Paul Kasonkomona is charged for ‘inciting the public to take part in indecent activities’.⁶⁶ The arrest was carried out immediately after a live television show in which he proposed the repeal of Zambia’s anti-homosexuality law as the law prevents LGBTI people from accessing AIDS-related health services.⁶⁷ Even though his detention posed a great threat to his health, and that his supporters provided two working sureties to guarantee his return to court as was required by the police, the police was still reluctant to release him.⁶⁸ He was eventually released on bail on 11 April 2013.⁶⁹

In 2010, Saidi W., a 20-year-old gay Tanzanian university student, who sometimes does sex work to make ends meet, was on the street looking for clients when a police officer posing as a client took him to a guest house and then arrested him. The officer forced him at gunpoint to call five gay friends and tell them to meet him at a bar. When they arrived, the police arrested all of them. They proceeded to undress and beat the five friends before taking them into custody. Saidi recalled, ‘They said, “We’re arresting you because you’re gays and you’re shaming us. Our country does not allow homosexuals. Our law and our religion and customs don’t allow this.”’ At the police station, Saidi and his friends were repeatedly raped by fellow detainees. When they called out to the

⁶⁴ Human Rights Watch (n 63 above).

⁶⁵ Southern African Litigation Centre ‘Activist Defends Right to Freedom of Expression’ available at <http://www.southernafricalitigationcentre.org/cases/ongoing-cases/zambia-activist-defends-right-to-freedom-of-expression/> (accessed 9 July 2013).

⁶⁶ ‘Outspoken activist for gay rights arrested in Zambia’ 10 April 2013 available at <http://groundup.org.za/content/outspoken-activist-gay-rights-arrested-zambia> (accessed 9 July 2013).

⁶⁷ ‘Trial delayed for activist Paul Kasonkomona’ 15 May 2013 available at <http://76crimes.com/2013/05/15/zambia-trial-delayed-for-activist-paul-kasonkomona/> (accessed 9 July 2013).

⁶⁸ ‘Police refuse to release HIV positive gay rights activist’ 9 April 2013 available at <https://zambianwatchdog.com/police-refuse-to-release-hiv-positive-gay-rights-activist/> (accessed 9 July 2013).

⁶⁹ Southern African Litigation Centre (n 65 above).

police for help, the police said, 'This is good, this is what you want.'⁷⁰

Ellen Chademana was arrested for her work with Gays and Lesbians of Zimbabwe (GALZ), a community center that offers education and support for LGBT people in the country's capital city of Harare. GALZ and its employees and clients were under constant harassment from the country's regime. As if the unimaginably cruel conditions of the cells themselves weren't enough, Ellen was brought in each day for questioning by police. She was beaten with rubber batons, kicked in the stomach and made to stand in stress positions, squatting without support for up to an hour. The torture had one purpose: The police wanted Ellen to reveal the names of LGBT people in Zimbabwe so that they could be arrested and imprisoned. For five days Ellen endured brutality and refused to give their names. On the sixth day a police captain handed Ellen a piece of paper and a pen and wanted her to write down the names of the people who come to the centre. Chademana then told the captain that they only operated with pseudonyms and she had no knowledge of the real names. Eventually she was released.⁷¹

These arbitrary arrests, torture and detention are not only limited to the countries mentioned above but are also wide spread in several other African countries.

1.2 Physical violence including rape and murder

The violence meted out on LGBTI individuals ranges from general violence (such as assault) to the most brutal killings (murder). Sexual and physical violence based on sexual orientation and gender identity calls for urgent attention given the frequency of such acts and their particularly dehumanising nature, with many resulting in death of victims.

During 2004, one of the voices agitating for an end to discrimination of LGBTI individuals in Sierra Leone was silenced forever when 30 years old activist Fannyann Eddy was attacked while in her office in Freetown. It is reported that as she was working late, several men broke into her office and raped here and

⁷⁰ <http://www.hrw.org/news/2013/07/17/africas-small-steps-toward-lgbti-equality>

⁷¹ http://www.huffingtonpost.com/rev-dr-cindi-love/how-beyonce-and-rihanna-saved-an-african-gay-rights-activists-life_b_2714220.html

thereafter murdered her. Until the time of her death, Fannyann led the Sierra Leone Lesbian and Gay Association.⁷²

Eric Ohena Lembembe, executive director of the Cameroonian Foundation for AIDS (CAMFAIDS), an outspoken activist who defended the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people, was found dead at his home in Yaoundé on the evening of 15 July 2013. Lembembe spoke out earlier against the increase of violent attacks in Cameroon in 2013, targeting those who support equal rights on the basis of SOGI.

South Africa has some of the most progressive laws in Africa on outlawing discrimination based on sexual orientation. The 1996 Constitution of South Africa was the first in the world to outlaw discrimination based on sexual orientation.⁷³ Additionally, with the coming into force of the Civil Union Act in 2006, South Africa became the first African country to legalise same sex marriage. Despite this, South Africa has one of the highest recorded numbers of sexual and physical violence based on sexual orientation and gender identity. Lesbians are habitually targeted and exposed to beatings, rape and murder. In addition, black gay men are also targeted and subjected to hate and violence.⁷⁴

In what is by far the most high profile incidence of homophobic violence in the continent, in 2008, Eudy Simelane, an openly lesbian member of South Africa's acclaimed *Banyana Banyana* national female football squad and an LGBTI activist, was stabbed to death after being gang raped and brutally beaten in a park on the outskirts of Johannesburg.⁷⁵ She was stabbed 25 times in the face, chest and legs. Simelane's case has been one of the only cases that have resulted in a conviction when one of the perpetrators pleaded guilty.⁷⁶ During sentencing, however, the judge stated

⁷² International Gay and Lesbian Human Rights Commission 'Sierra Leone: IGLHRC Mourns the Murder of Fannyann Eddy; Calls on activists everywhere to respond' 10 April 2004 available at <http://www.iglhrc.org/content/sierra-leone-iglhrc-mourns-murder-fannyann-eddy-calls-activists-everywhere-respond> (accessed 21 May 2013).

⁷³ Section 9(3) of the South African Constitution provides: 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.'

⁷⁴ For more on this, see Human Rights Watch "'We'll show you you're a woman' – Violence and discrimination against black lesbians and transgender men in South Africa' 5 December 2011 available at <http://www.hrw.org/reports/2011/12/05/we-ll-show-you-you-re-woman> (accessed 23 May 2013).

⁷⁵ Open Society Initiative for South Africa 'Classifying "corrective rape" as a hate crime in South Africa: A call for justice' 25 November 2012 available at <http://www.osisa.org/buwa/south-africa/classify-%E2%80%98corrective%E2%80%99-rape-hate-crime> (accessed 18 March 2013).

⁷⁶ The two other men on trial were found not guilty due to lack of evidence. 'Mixed verdict in S. African lesbian's murder trial' *New York Times* 23 September 2009 available at http://www.nytimes.com/2009/09/23/world/africa/23safrica.html?_r=0 (accessed 18 March 2013).



that Simelane's sexual orientation played no part in the crime. Moreover, the judge made no effort to hide his own prejudice when he showed how uncomfortable he was using the word 'lesbian' during the trial at one point asking the prosecutor if there was another word he could use in its place.⁷⁷

Zoliswa Nkonyana, a 19-year-old lesbian was stabbed to death in Khayelitsha, an informal settlement in Western Cape, South Africa in 2006. She had been living openly as a lesbian and received constant taunts and threats from her community. Nine men stood trial for her murder. On 7 October 2011, five years after her death, judgment was finally delivered. Four of the men were found guilty, while the other five were released. The case has become infamous due to various failures of the criminal justice system. Proceedings were postponed more than forty times, suspects escaped, evidence had been collected improperly, and cases against most of the accused have been dismissed for lack of evidence.⁷⁸

Millicent Gaika was on her way home in Gugulethu, a township 15 kilometers from Cape Town, when a man she recognised asked her for a cigarette, and as she was reaching for one, he pushed her into a nearby shack, beat and raped her for five hours. During the attack, she claims he said 'you think you're a man, but I'm going to show you you're a woman'.⁷⁹ Zukiswa Gaca, a lesbian woman from Khayelitsha, was raped by an acquaintance in 2009. During the attack, the perpetrator told her he was going to 'teach her a lesson'.⁸⁰

On April 24 2011, an attack very similar to that against *Banyana Banyana* star Eudy Simelane was carried out against 24 year-old lesbian activist Noxolo Nogwaza who was found murdered.⁸¹ The attack took place in the same township of Kwa-Thema in Gauteng and was similarly suspected to have been motivated by Nogwaza's sexual orientation. Nogwaza's face and head were completely disfigured by stoning, she was stabbed several times with broken glass, and the evidence suggests that she was raped. A beer bottle, a large rock, and used condoms were found on and near her body.⁸²

⁷⁷ 'Mixed verdict in S. African lesbian's murder trial' (note 76 above).

⁷⁸ Treatment Action Campaign 'The final hearing in Zoliswa Nkonyana murder case' 11 October 2011 available at <http://www.tac.org.za/community/node/3165> (accessed 20 March 2013).

⁷⁹ "'Corrective rape': Fighting a South African scourge' *TIME* 8 March 2011 available at <http://www.time.com/time/world/article/0,8599,2057744,00.html> (accessed 21 March 2013).

⁸⁰ As above.

⁸¹ Human Rights Watch 'Homophobic Violence Continues Unchecked in Townships. South Africa: No Arrests in Lesbian Murder Case' 2 May 2011 available at <http://www.hrw.org/news/2011/05/02/south-africa-no-arrests-lesbian-murder-case> (accessed 21 March 2013).

⁸² Human Rights Watch (note 81 above).

A similar murder had taken place in Kwa Thema in 2009 when a lesbian woman, Girlie Nkosi, was stabbed a dozen times.⁸³ Numerous cases of rape have been reported in different parts of South Africa. While it is difficult to quantify precisely the level of the attacks, one source indicates that ten lesbian women per week are raped or gang raped in Cape Town alone⁸⁴ while another source suggests around thirty lesbian women were murdered because of their sexuality between 2003 and 2011.⁸⁵

Still in South Africa, a 36 year old gay man, Neil Daniels, was stabbed and set alight in June 2012, because of, according to his father, his sexual orientation.⁸⁶ Daniel's father, Reverend Casper Edward Daniels was reported to have said 'I think the reason why they killed my son is because he was gay ... I think it could have been a discrimination murder on gays because of the way it was carried out. The way they burnt his private parts – why do this to my child?' The mutilated, smouldering body of Daniels was discovered by a neighbourhood watch member in a reed-filled area in Milnerton called The Vlei two days after three witnesses saw how he was stabbed. He had been private about his sexual orientation and only confided in his father.

There have been reports of physical violence in various regions of Kenya with most coming from Nairobi where gay and lesbian individuals suffered violence when their orientation was discovered through same sex display of affection especially in night clubs, in the streets and neighbourhoods. A 2011 report prepared by the Kenya Human Rights Commission, 'The outlawed among us',⁸⁷ highlights cases of physical and sexual violence. In the report one 32 year-old victim relates her ordeal as follows:

I was dancing with my girlfriend in a night club in Nairobi Central Business District, the bouncers just came to us and said 'people like us were not allowed into their bars. He dragged us forcefully and humiliated us by physically kicking us out and shouting that we needed real 'penis to teach us how to be a woman'.⁸⁸

⁸³ South African Human Rights Commission Equality report – 'Comments on equality: Race, gender, disability and LGBTI issues' (2012) 52; See also 'Only a matter of time before next "corrective rape"' *Mail & Guardian Online* 11 May 2011 available at <http://mg.co.za/article/2011-05-11-only-a-matter-of-time-before-next-corrective-rape> (accessed 23 March 2013).

⁸⁴ 'Only a matter of time before next "corrective rape"' (n 83 above).

⁸⁵ 'South Africa gay rights activists warn of homophobic attacks after murder' *The Guardian Online* 3 May 2011 available at <http://www.guardian.co.uk/world/2011/may/03/south-africa-homophobicattacks> (accessed 23 March 2013).

⁸⁶ 'My son was torched for being gay' *IOL News* 6 June 2012 available at <http://www.iol.co.za/news/crime-courts/my-son-was-torched-for-being-gay-1.1312895> (accessed 12 March 2013).

⁸⁷ The Kenya Human Rights Commission 'The outlawed amongst us: A study of the LGBTI community's search for equality and non-discrimination in Kenya' (2011) 35 available at www.khrc.or.ke/resources/.../doc.../14-the-outlawed-amongst-us.html (accessed 12 March 2013).

⁸⁸ The Kenya Human Rights Commission (n 87 above).

The report includes acts of violence perpetrated by law enforcement officials. One such incident is recounted by a 26 year-old gay man as follows:⁸⁹

I was walking with my friends one Friday at midnight near Dagorretti corner early September this year (2010) coming from a party when a white salon car slowed down and one of the passengers splashed us with water. We hurled insults at them. They stopped the car and introduced themselves as police officers. One of them said he knew me through a friend of mine who I hang out with a lot (a gay friend). They took us to Karen police station and locked us up. It was a Friday evening; they said that if we paid five hundred shillings each they would let us go. We tried getting people to send us this money and one of the officers would go withdraw. I was unsuccessful all weekend. On Monday morning, my name was not read among those being taken to court for taking plea. Later, the officer who had said he knew me came and said he knows what I and my friend do and so we must go to his house so that I can pay for my freedom. I was confused. He dragged me to his house holding my hand. He then undressed me in the house and had unprotected anal sex with me. I contracted gonorrhoea. I spent a week in the house taking antibiotics then later reported to the KHRC legal aid desk. Without evidence, we couldn't proceed with charges against the officer ...

Furthermore, the report relays information on gang rape by organised gangs perceived to be *Mungiki* which is a politico-religious group and a banned organisation in Kenya. One incident experienced by a 20 year-old gay man is reported as follows:⁹⁰

Earlier this year, in February, we had come home late with 2 of my gay friends (all from our estate) from town. It was deserted. When we alighted off the *matatu*, we found some four men on the stage. They ordered us to stop and said they knew us and that we were *shogas*. They said they were *mungiki*. They slapped us and demanded silence as they dragged us to a bush. We were forced to bend and undress and they raped us using saliva as lubricant. They never used any condom. They strangled any who moaned of pain. When they were done, they beat us up and let us go threatening to kill us if we ever reported or told anyone. This is the first time any of us is speaking about this, six months later.

According to Trans Murder Monitoring project⁹¹ which records reports of murders of transgender persons in all regions, between 2008 and 2011, at least four transgender people were killed in South Africa. Daisy Dube, identified as a drag queen, was shot to death in an execution style on 2 July 2008 in Johannesburg reportedly after Daisy and three friends told three men to stop calling them 'isitabane', which in isiZulu means hermaphrodite and is usually used in a derogatory way to refer to LGBTI people in townships.

⁸⁹ The Kenya Human Rights Commission (n 87 above).

⁹⁰ See M Ruteere 'Dilemmas of crime, human rights and the politics of *Mungiki* violence in Kenya' Kenya Human Rights Institute (2008) referenced in 'The outlawed amongst us' (n 87 above).

⁹¹ Trans Murder Monitoring results March 2012 update available at http://www.transrespect-transphobia.org/en_US/maps.htm (accessed 13 March 2013).

In July 2012, a 19 year old transgender sex worker by the reported name of N.N. was shot to death by a client who discovered she was transgender in the Western Cape. Sasha Lee Gordon, a 38 year-old transgender sex worker was stabbed through the heart and left to die on the pavement in Cape Town on 24 June 2012. In what has been called a homophobic and transphobic attack, 24 year-old gay and transgender LGBTI activist Thapelo 'Queen Bling' Makutle's throat was slit after two heterosexual men she had an argument with in a bar about her sexuality followed her home, broke into her apartment and killed her on 9 June 2012 in Kuruman. Media reports stated that she was brutally mutilated, her genitals were cut off and put into her mouth.⁹² Makulte had just won the Miss Gay pageant in the small town of Kuruman.⁹³

Another case reported by Trans Murder Monitoring project is Shamir Mussan, 32, who was stabbed to death on 18 September 2011 in Port Louis, Mauritius in front of her own apartment by a group of men who came to 'teach her a lesson' after the victim and her partner had an argument with a group of people earlier the same day.⁹⁴

In July 2013, there was an arson attack by unknown assailants on the office of Alternatives-Cameroun, an NGO working in the field of the rights of men who have sex with men, and enjoying observer status with the African Commission.⁹⁵

⁹² 'Body of South African drag performer found mutilated in home' *NY Daily News* 13 June 2012 available at <http://www.nydailynews.com/news/world/body-south-african-drag-performer-found-mutilated-home-article-1.1095284#ixzz2Nd6NBtaw> (accessed 13 March 2013); see also Gay South African man slain in apparent hate crime' *Los Angeles Times* 13 June 2012 available at http://latimesblogs.latimes.com/world_now/2012/06/gay-man-slain-south-africa.html (accessed 13 March 2013).

⁹³ 'Thapelo Makutle, South African gay and transgender beauty pageant winner, killed in alleged hate crime' *Huffington Post* 13 June 2012 available at http://www.huffingtonpost.com/2012/06/13/thapelo-makutle-south-african-gay-transgender-pageant-winner-death_n_1593972.html (accessed 24 May 2013).

⁹⁴ 'Meurtre de Shamir Mussan: Reconstitution des faits ce matin' *Le Mauricien* 3 October 2011 available at <http://www.lemauricien.com/article/meurtre-shamir-mussan-reconstitution-des-faits-matin> (accessed 14 March 2013).

⁹⁵ See eg Cameroon: Leading LGBTI Human Rights Defender Fatally Attacked <http://www.iglhrc.org/content/cameroon-leading-lgbti-human-rights-defender-fatally-attacked>.

1.3 Harassment and threats of violence

There have been increasing reports of continued harassment and threats based on sexual orientation and gender identity.

Two human rights lawyers in Cameroon, Alice Nkom and Michel Togu , started receiving death threats since October 2012 in form of emails and text messages demanding that they stop defending those accused of engaging in homosexual activities.⁹⁶ Nkom and Togu  founded the Association for the Defense of Homosexuals (Association pour la D fense des Homosexuel-le-s) in 2003 and have represented a number of individuals accused of homosexuality often paying expenses out of their own pockets.⁹⁷ They are among the only lawyers courageous enough to take up these cases in a country where homophobia is pervasive and where, since 2010, at least 28 people have been prosecuted for consensual same-sex conduct, which is criminalised under the Cameroonian penal code's article 347.⁹⁸ The text and email messages threatening to kill the lawyers, their clients and children started when they filed appeals for Roger Jean-Claude Mbede, and Franky Djome and Jonas Singa Kimi , all of whom had been accused for engaging in homosexual activities.⁹⁹ One of the text messages received by Togu  in December told him to stop 'defending your faggot ideas,' or risk being 'at the bedside of one of your dying children.' Attached to the message were photos of Togu 's children leaving school.¹⁰⁰ The day before Jonas and Franky's hearing, the director of Togu 's young daughter's primary school received a phone call, at the school, telling her to pass on a similar threat to Togu . A message to Nkom, threatening her clients, warned, 'It only remains [to find] their houses ... the neighbourhoods are already in our hands'¹⁰¹ while another read 'If you don't stop, you'll see ... an accident [can] quickly happen.'¹⁰² Another message to Togu  threatened 'Choose

⁹⁶ 'Cameroon jails "gay" man for texting "I'm in love with you" to male friend' (n 50 above); See also 'Cameroon: UN concerned over reports of arrests of suspected gay and lesbian people' (n 49 above), where the UN expressed concern about these threats.

⁹⁷ N Ghoshal 'Three years in prison for love ... Impunity for hate' 28 February 2013 available at <http://www.hrw.org/news/2013/02/28/three-years-prison-love-impunity-hate> (accessed 25 May 2013).

⁹⁸ See section 2.1 above for more on these arrests and prosecutions.

⁹⁹ 'Cameroon: Stop turning blind eye to death threats' Human Rights Watch 13 February 2013 available at <http://www.hrw.org/news/2013/02/12/cameroon-stop-turning-blind-eye-death-threats> (accessed 24 March 2013).

¹⁰⁰ 'Cameroon jails "gay" man for texting "I'm in love with you" to male friend' (n 50 above).

¹⁰¹ 'Cameroon: Stop turning blind eye to death threats' (n 95 above).

¹⁰² Ghoshal (n 97 above).

one of your children and we'll turn him into a faggot like you.'¹⁰³ Although making death threats, in writing, is a crime in Cameroon punishable by two to five years in prison (article 302 of the penal code), when Nkom and Togu  reported the threats to law enforcement officers, they were told that if they wanted the death threats to stop, they should stop defending homosexuals.¹⁰⁴ Nkom submitted a written complaint to the public prosecutors' office but she never received a response.¹⁰⁵ The threats have continued, intensifying around the time of Mbede's appeals hearing in December 2012, which he lost, and Jonas and Franky's appeals hearing in January 2013, which they won.¹⁰⁶

The work of LGBTI human rights activists in Zimbabwe has been continuously frustrated by harassment and threats mainly from the state. Staff members of Gays and Lesbians of Zimbabwe (GALZ), one of the organisations working on LGBTI rights in Zimbabwe have received repeated threats of physical attacks through their office lines and invasion of their privacy by the police officers who usually illegally enter their homes, arrest them and threaten them to stop supporting or defending LGBTI rights.¹⁰⁷

In the past decade, Zimbabwean authorities have intensified attacks against members of GALZ including intimidation, arbitrary arrests, and beatings. President Robert Mugabe has been at the forefront of anti-gay harassment, repeatedly using his office to insult and denigrate gay and lesbian Zimbabweans. He has vowed not to allow the inclusion of LGBTI rights in Zimbabwe's new constitution, which is being drafted.¹⁰⁸

In the latest of what has become an alarming pattern of harassment of LGBTI human rights defenders, the Zimbabwe Republic Police (ZRP) on 23 August 2012, charged the co-chairperson of Gays and Lesbians of Zimbabwe (GALZ), Martha Tholanah, with running an 'unregistered' organisation in contravention of section 6 (iii) of the Private Voluntary Organisation (PVO) Act. The charges came after almost three weeks of on-going targeting of the LGBT community that began when police raided

¹⁰³ Ghoshal (n 93 above).

¹⁰⁴ 'Cameroon: Stop turning blind eye to death threats' (n 95 above).

¹⁰⁵ Ghoshal (n 93 above).

¹⁰⁶ Ghoshal (n 93 above).

¹⁰⁷ Amnesty International 'Zimbabwe: Halt police intimidation of LGBTI activists' 17 August 2012 available at <http://www.amnestyusa.org/news/news-item/zimbabwe-halt-police-intimidation-of-lgbti-activists> (accessed 26 May 2013).

¹⁰⁸ Human Rights Watch 'Zimbabwe: End attacks on LGBT people' 27 August 2012 available at <http://www.hrw.org/news/2012/08/27/zimbabwe-end-attacks-lgbt-people> (accessed 24 March 2013).

the GALZ office and arrested 44 people.¹⁰⁹ On 11 August 2012, 44 GALZ members were arrested during the launch of a human rights report, GALZ LGBTI Rights Violation Report 2011, at its office in Harare. Four ZRP officers disrupted the report launch and soon after were joined by 15 armed members of the riot police squad who used force during the raid, including destroying the electrical fence around the building housing its office, hitting some of those assembled with batons, and causing at least one activist to collapse. All of the people arrested were released in the early morning of August 12 without charge. Zimbabwe Lawyers for human rights were denied access to see the members detained.¹¹⁰ On 16 August 2012, police had visited the homes of ten GALZ members who had been arrested during the report launch, and three others were summoned to police stations in their neighbourhoods.¹¹¹ On August 20, members of the ZRP arrived at GALZ headquarters and demanded entry. They confiscated the organisation's computers and publications.¹¹² The government's targeting of GALZ is not something new, the earliest high profile incidence of harassment of GALZ happened when government objected to GALZ's participation in the annual Zimbabwe International Book Fair that had the theme 'Human Rights and Justice' for that year.¹¹³ In his speech inaugurating the book fair, President Mugabe called gays and lesbians 'sodomists' and 'sexual perverts'.¹¹⁴

In 2012, an anti-gay group in Liberia produced flyers with names of LGBT people as well as people that work with them.¹¹⁵ Similarly, in 2009, a local Ugandan newspaper 'Rolling Stone' produced a list of names of LGBTI individuals together with their addresses and photographs with a caption that read 'hang them'.¹¹⁶ Three months later, one of the most outspoken LGBTI activists in Uganda

¹⁰⁹ International Gay and Lesbian Human Rights Commission 'Zimbabwe: Police harassment of LGBT NGOs and activists must stop' 30 August 2012 available at <http://www.iglhrc.org/press-room/press-releases/zimbabwe-police-harassment-lgbt-ngos-and-activists-must-stop> (accessed 24 May 2013); Gay and Lesbians of Zimbabwe 'Police charge GALZ for running 'unregistered' organisation' 24 August 2012 available at <http://www.galz.co.zw/?p=783> (accessed 23 May 2013).

¹¹⁰ Gay and Lesbians of Zimbabwe '44 GALZ members assaulted detained and released without charges' 12 August 2012 available at <http://www.galz.co.zw/?p=762> (accessed 24 May 2013).

¹¹¹ Gay and Lesbians of Zimbabwe 'Harare police launch manhunt for GALZ members' 17 August 2012 available at <http://www.galz.co.zw/?p=768> (accessed 25 May 2013).

¹¹² Gay and Lesbians of Zimbabwe 'Police Pounce on GALZ offices again' 20 August 2012 available at <http://www.galz.co.zw/?p=771> (accessed 25 May 2013).

¹¹³ For more on this see International Gay and Lesbian Human Rights Commission and Human Rights Watch (n 27 above) 12-24.

¹¹⁴ International Gay and Lesbian Human Rights Commission and Human Rights Watch (n 27 above) 14.

¹¹⁵ Truth Wins Out 'LGBT community in Liberia faces violent threats' 3 April 2012 available at <http://www.truthwinsout.org/blog/2012/04/23907/> (accessed 12 March 2013).

was violently murdered at his home.¹¹⁷ Immediately following the publication in the newspaper, in which David's picture and name had prominently featured, the number of threats against him, and other activists featured, had increased dramatically. David and two others had brought action against Rolling Stone in the High Court, which, on 3 January 2011, ruled that the tabloid violated the constitutional rights to privacy and safety of the three individuals.¹¹⁸ Threats against David had further escalated after this ruling. During David's funeral, the presiding religious minister condemned David in his coffin and the larger LGBTI movement, further inciting people to violence.¹¹⁹ David was the advocacy officer for the organisation Sexual Minorities Uganda and had been a leading voice in the fight against the Ugandan Anti-Homosexuality Bill, which has been before Uganda's parliament since October 15, 2009. The Ugandan High Court ruled that the murder was a result of a misunderstanding between him and his sexual partner but the LGBTI community expressed suspicions about his exact cause of death.¹²⁰

In Senegal where homosexuality is punished by a five-year jail sentence, Madyère Diallo was threatened to death because of his sexual orientation and forced to exile in Mali. He was seropositive and died the following year because he could not get access to his medical treatment in Mali.¹²¹

1.4 Extortion and blackmail

Wherever LGBTI people are forced to keep their sexual orientation and gender identity secret, for fear of prosecution, violence, and other legal and social persecution, blackmail and extortion of LGBTI people is endemic. This usually involves extracting money, property

¹¹⁶ 'Uganda's LGBT community under threat' *Aljazeera* 23 July 2012 available at <http://stream.aljazeera.com/story/uganda%E2%80%99s-lgbt-community-und-er-threat-0022293> (accessed 10 March 2013).

¹¹⁷ 'Uganda's LGBT community under threat' (n 116 above).

¹¹⁸ International Gay and Lesbian Human Rights Commission 'Slain human rights defender David Kato Kisule's case in court: Case mention' 17 February 2011 available at <http://www.iglhrc.org/content/slain-human-rights-defender-david-kato-kisules-case-court-case-mention> (accessed at 24 May 2013).

¹¹⁹ Human Rights Watch 'Funeral of Ugandan LGBT Activist Marred by Homophobia' (audio) 28 January 2011 available at <http://www.hrw.org/audio/2011/01/28/funeral-ugandan-lgbt-activist-marred-homophobia> (accessed 25 May 2013).

¹²⁰ 'David Kato murderer sentenced to 30 years' *Global Post* 10 November 2011 available at <http://www.globalpost.com/dispatch/news/regions/africa/111110/david-kato-murderer-sentenced-30-years> (accessed 11 March 2013).

¹²¹ http://www.huffingtonpost.fr/joseph-vellone/etre-homosexuel-au-senegal_b_1892840.html

or services from LGBTI individuals using intimidation or threats of outing them or physically harming them.¹²² LGBTI individuals are usually threatened by police with imprisonment or being ousted and are thus asked to give money or personal belongings in exchange for silence. According to a survey the International Gay and Lesbian Human Rights Commission conducted on Namibia, Botswana and Malawi, blackmail was found to be one of the most common forms of harassment against gay and lesbian individuals with 21.2% of those surveyed reporting blackmail.¹²³ In Abuja, Nigeria, 23.1% of MSMs had been victims of blackmail while in South Africa, 10.5% of MSM respondents reported being blackmailed in peri-urban townships outside of Cape Town.¹²⁴

Furthermore, in a research conducted by Kenya Human Rights Commission in 2010, respondents reported incidences of blackmail and extortion by corrupt police officers.¹²⁵ They noted that police officers often ask them for money in exchange for imprisonment or outing them to the community. Below is a personal account of a victim of blackmail as told to the Kenya Human Rights Commission;

I was in my house with my partner when persons claiming to be police officers banged my door demanding entry. As I was trying to open they forced themselves in without identifying themselves and proceeded to search the house without a warrant. They claimed they had been tracking my text messages and knew we were about to commit an act of gross indecency (sodomy). They found gay pornographic magazines and also confiscated my laptop claiming to take it for further hard drive searches. They then made us strip naked, beat us up and told us to have sex for them to see what we do. We refused and they beat us further. They said they would frog march us naked from my fourth floor apartment, call the media and make an arrest of gay people caught in the act. I am a respected doctor and live in the staff residence. They said that if I paid them 100,000 shs they would leave us alone. I reluctantly agreed. They allowed me to dress; we drove to the bank in my car which they commandeered where I withdrew the 100,000 shs and paid them. I have since changed phone numbers and changed residence ...¹²⁶

In an incident reported from Uganda,¹²⁷ some time in June 2010, the anonymous blogger at GayUganda¹²⁸ posted a threatening letter sent to them by a group calling itself the National Anti-Homosexual Taskforce. The letter was written to someone who GayUganda called 'Mr Semakula Zilaba,' and described how much the 'taskforce' knew about him – his age, where he went to school,

¹²² International Gay and Lesbian Human Rights Commission 'Nowhere to turn: Blackmail and extortion of LGBT people in Sub-Saharan Africa' 15 February 2011 available at <http://www.iglhrc.org/cgi-bin/iowa/article/publications/reportsandpublications/1328.html> (accessed 23 March 2013).

¹²³ International Gay and Lesbian Human Rights Commission (n 118 above).

¹²⁴ International Gay and Lesbian Human Rights Commission (n 118 above).

¹²⁵ The Kenya Human Rights Commission (n 87 above) 21.

¹²⁶ The Kenya Human Rights Commission (n 87 above) 21.

¹²⁷ International Gay and Lesbian Human Rights Commission (n 118 above).

¹²⁸ This blog is available at <http://gayuganda.blogspot.com/>.

where he worked, details about his wife and child, and his whereabouts on certain days and times. The letter's authors then demanded a list of all the homosexuals Semakula knew in Kampala and Jinja. They also demanded a letter denouncing homosexuality that they could use to show that they were eradicating homosexuality in Uganda. If the demands were not met, the letter stated, Semakula would be exposed to his family, friends, employer, and neighbours.¹²⁹

International Gay and Lesbian Human Rights Commission's survey¹³⁰ indicates that the prevalence and severity of blackmail and extortion are exacerbated by the fact that although blackmail and extortion are criminal, in practice, the law typically offers little protection for LGBTI people who are its victims – particularly in places where police are complicit or even responsible for these violations. Where same-sex activity is criminalised, victims often fear that they will be arrested if the police are alerted to the situation. Moreover, the fact that the state is not the only or even the primary perpetrator makes it difficult to employ a human rights framework. Blackmail and extortion have a wide variety of harmful effects on their victims and the society at large. For the individual victims, blackmail and extortion are psychologically, financially, and often physically traumatising. Whether they live in a constant state of fear and security, neglect their other commitments and relationships to appease their blackmailer or extortionist, or are forced to flee the situation to safety, blackmail and extortion make it virtually impossible for victims to fully and meaningfully contribute to society.

According to the survey, blackmailers targeting LGBTI people are often attempting to privately enforce legal and social mores – thus usurping the state's power. The types of blackmail described by contributors are tremendously diverse, ranging from demands for snacks and small favours to demands for cars, houses, or sex. In different ways, blackmailers and extortionists use the need for secrecy and lack of support to manipulate their victims – to demand money, to force them into sex, to keep them in a particular place or relationship, to force them to cut off ties with partners, friends, or families, or to perform services, including those which are unpleasant, dangerous, or even criminal. Blackmail can be based on real or alleged sexual orientation, but it can also be based on the revelation of one's sex, gender identity, or gender expression when these are not widely known. As the survey shows, some of the most complex factors in the blackmail and extortion of LGBT people are class, privilege, and wealth. One of the persistent beliefs that underpins and fuels blackmail and extortion is that

¹²⁹ International Gay and Lesbian Human Rights Commission (n 118 above).

¹³⁰ International Gay and Lesbian Human Rights Commission (n 118 above).

LGBT people, particularly self-identified gays and lesbians, are affluent, if not spectacularly wealthy. Respondents in Douala and Yaoundé were frequently targeted because they were perceived to possess above-average wealth, despite the fact that many were unemployed, students, or labourers. Even if some victims are affluent, this myth of affluence places significant stress on those who are not wealthy and cannot meet demands for cars, apartments, or large sums of money.



2. Factors fuelling violence against LGBTI individuals

Several factors fuel violence against the LGBT community. Some of them are discussed below.

2.1 Criminalisation of same sex behaviour and incidences of violence

According to the International Lesbian, Gay, Bisexual and Transsexual Association (ILGA), of the 78 countries in the world that criminalise same sex sexual conduct between consenting adults, 38 are in Africa.¹³¹ Consensual same sex conduct behaviour is punishable by death in Nigeria, Mauritania, Sudan and some parts of Somalia.¹³²

While examples of African states where same sex relations are criminalised abound, some of them are indicated below:

1. On 21 November 2008, the National Assembly of Burundi for the first time in the country's history passed a law making same-sex acts punishable between three months and two years in prison, along with a substantial fine.¹³³ This is in addition to the enactment of legislation criminalising same-sex marriage;
2. On 25 September 2009, legislation was introduced in the Ugandan Parliament entitled the 'Anti-Homosexuality Bill' to strengthen

¹³¹ International Lesbian, Gay, Bisexual and Transsexual Association 'State sponsored homophobia: A world survey of laws criminalising same sex sexual acts between consenting adults' 2012 available at http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2012.pdf (accessed 16 March 2013).

¹³² European Parliament resolution of 5 July 2012 on violence against lesbians women and the rights of lesbians, gay, bisexual, transgender and intersex (LGBTI) persons in Africa (2012/2701(RSP)) available at <http://www.europarl.europa.eu/document/activities/cont/201207/20120718ATT49096/20120718ATT49096EN.pdf> (accessed 23 March 2013).

¹³³ Article 597 of the Penal Code of Burundi 2009 punishes same-sex relations with 3 months to 2 years imprisonment and a fine.

and expand existing anti-homosexuality law to prohibit any form of sexual relations between persons of the same sex;

3. In Cameroon, under article 347 of the Penal Code, same-sex relations are punished with a prison term of six months to five years and a fine of 20,000 to 200,000 CFA francs (US \$40 to \$400);

4. Nigeria has strict penal codes condemning homosexuality, following Uganda, Mauritania, Kenya, Ghana, Senegal and Sudan. The death penalty also is carried out against homosexuals in certain parts of Somalia and Nigeria;¹³⁴

5. Sudan is one of the countries, which strictly criminalises homosexuality. The Sudanese Criminal Act of 1991 regulates the practices of sodomy in article 14. Accordingly, whoever commits the offence of sodomy shall be punished, with whipping a hundred lashes, and he may be punished with imprisonment for a term, not exceeding five years. Where the offender is convicted for the second time, he shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding five years. If the offender is convicted for the third time, he shall be punished, with death, or with life imprisonment;¹³⁵

6. Male homosexuality is illegal in Zimbabwe and in 2006 the country's government amended the law which now states that sodomy is any 'act involving contact between two males that would be regarded by a reasonable person as an indecent act', thereby criminalising even holding hands, hugging, or kissing.¹³⁶ On 16 March 2013 a referendum was held in which 95 per cent of voters voted for a new constitution, which does not contain language protecting the rights of gay, lesbian and bisexual persons. This was the result of strong opposition to such protection by President Robert Mugabe and signals from Prime Minister Morgan Tsvangirai and his party that neither he nor his party would champion the inclusion of such language in the new basic document.¹³⁷ LGBT activists have expressed concerns that the new Constitution will be used to further harass and curtail their work;¹³⁸

7. Under Kenya's Penal Code, engaging in same-sex sexual activity, termed 'carnal knowledge of a person against the order of nature,' is characterized as an 'unnatural offence' and is a felony punishable by up to fourteen years in prison. Although the laws are rarely enforced, LGBT Kenyans are still prosecuted and imprisoned under these laws;¹³⁹

8. The current penal code of South Sudan is a departure from the *Shari'a* law previously practiced in the region when it was part of Sudan, yet it still criminalises sodomy. President Stealva Kiir Mayardit of South

¹³⁴ 'Five nations execute homosexuals, two more considering it' *Atlanta Progressive News* 31 August 2011 available at [http://www.atlantaprogressivenews.com/interspire/news/2011/08/31/\(ips\)-five-nations-execute-homosexuals-two-more-considering-it.html](http://www.atlantaprogressivenews.com/interspire/news/2011/08/31/(ips)-five-nations-execute-homosexuals-two-more-considering-it.html) (accessed 23 March 2013).

¹³⁵ See also articles 151 and article 152 which regulate acts akin to sodomy.

¹³⁶ 'Zimbabwe riot police arrest 44 gay activists' *The Zimbabwe Mail* 12 August 2012 available at <http://www.thezimbabwemail.com/zimbabwe/12877-zimbabwe-riot-police-arrest-44-gay-activists.html> (accessed 23 March 2013).

¹³⁷ Voice of America 'Zimbabwe constitutional draft excludes language protecting gay rights' 1 November 2012 available at <http://www.voazimbabwe.com/content/new-zimbabwe-constitution-will-not-enshrine-gay-rights-137118258/1465477.html> (accessed 25 March 2013).

¹³⁸ International Lesbian, Gay, Bisexual, Trans and Intersex Association 'Zimbabwe approves new anti-gay constitution' 22 March 2013 available at <http://ilga.org/ilga/en/article/o0ObQZc1Kv> (accessed 24 March 2013).

¹³⁹ The Penal Code of Kenya, (2009) Cap. 162. In addition, attempting to commit the crime of carnal knowledge against the order of nature is a felony punishable by up to seven years imprisonment.

Sudan recently said that democracy, equality, and justice do not extend to people who are homosexual;¹⁴⁰

9. On 18 February 2010 in Zambia, the National Constitutional Conference (NCC) adopted a clause that expressly prohibits same-sex marriage.¹⁴¹ This is in addition to a clause that provides that ‘A person who is eighteen years of age or older has the right to freely choose a spouse of the opposite sex and marry;’ and

10. Article 319.3 of the Senegalese penal code punishes ‘unnatural’ sexual acts with five years in prison and a fine. While the law ostensibly criminalises conduct, not character, it is in fact used as a tool for targeting certain ‘types’ of individuals.¹⁴²

11. In Nigeria, as in Uganda, anti-sodomy legislation has existed since colonial times, and conviction of this offence has long been punishable with 14 years’ imprisonment. In addition, in 12 northern states, Islamic Shari’a law has since 2000 allowed for punishment in the form of death by stoning. With little international fanfare, the Nigerian House of Representatives, on 30 May 2013, adopted a law prohibiting same-sex marriages (the Same-Sex Marriage prohibition Bill and other Related Matters), and allowing for punishment for all those involved in such ceremonies. However, it is in three other respects that this Act breaks new homophobic turf. First, it for the first time criminalises homosexual identity, that is, being gay, as opposed to punishing acts or conduct, in that it prohibits any ‘public show of same-sex amorous relationship directly or indirectly’. Second, it aims to silence the voice of all LGBTI organisations by prohibiting the ‘registration of gay clubs, societies and organisations, their sustenance, processions and meetings’. Third, it extends the law’s grasp beyond the LGBTI communities by stipulating that anyone who ‘supports the registration of gay clubs, societies and organisations, processions or meetings in Nigeria commits an offence’ and may be punished to 10 years’ imprisonment. In other words, if President Jonathan signs this into law, not only same-sex acts and same-sex marriages, but just being gay and even being pro-gay will be criminal, and will carry penalties ranging from 10 years to death.

This link between criminalisation and violence is aptly captured in a report by ILGA on state sponsored homophobia. According to the report:¹⁴³

Criminal laws prohibiting gay sex, whether or not regularly enforced, render LGBTI persons vulnerable to extortion, exploitation and other forms of abuse at the hand of both state and non-state actors. Such criminal laws systematically contribute to a failure of State protection, by preventing victims of homophobic violence from seeking and being provided assistance. Furthermore, criminal laws of this kind, whether or not enforced, contribute to persecutory environments, by stigmatising LGBTI people through official means. However the absence of, or repeal of, criminal proscriptions absolutely must not be taken as establishing the reverse proposition. Lack of explicit criminalisation of same-sex sexual activity does not prevent LGBTI people from facing extreme violence. The absence of criminalisation does not demonstrate the absence of risk of persecution and/or sufficiency of state protection. The

¹⁴⁰ ‘Five nations execute homosexuals, two more considering it’ (n 129 above).

¹⁴¹ ‘NCC to adopt clause that forbids same-sex marriage’ *The Post Online* 18 Feb 2010 available at http://www.postzambia.com/post-read_article.php?articleId=6027 (accessed 24 March 2013).

¹⁴² Human Rights Watch ‘Senegal: Law Promotes violence against homosexuals’ 30 November 2010 available at <http://www.hrw.org/news/2010/11/29/senegal-law-promotes-violence-against-homosexuals> (accessed 24 March 2013).

¹⁴³ International Lesbian, Gay, Bisexual and Transsexual Association (n 126 above).

question of legality of gay sex is only one element, and cannot alone be taken as an answer to the question of risk of persecution based on sexuality.

2.2 Incitement to violence by political leaders

Several African leaders have routinely made derogatory remarks that amount to hate speech against the LGBTI community and are also increasingly taking decisions that further discriminate and encourage violence against them.¹⁴⁴ For instance, on 15 May 2008, the President of the Gambia, Yahya Jammeh was quoted to have said, 'We are in a Muslim dominated country and I will not and shall never accept such individuals [homosexuals] in this country.' He also promised 'stricter laws than Iran' regarding homosexuality and to 'cut off the head' of any homosexual caught.¹⁴⁵ Speaking at the opening of the Gambian Parliament in Banjul in March 2013, Jammeh said '[i]f you are convicted of homosexuality in this country, there will be no mercy for offenders.' Claiming that homosexuality is 'anti-God, anti-human, and anti-civilisation,' Jammeh issued a threat to all gay people in Gambia by declaring that 'homosexuals are not welcome in the Gambia. If we catch you, you will regret why you are born.'¹⁴⁶ Zimbabwe's President, Robert Mugabe characterised homosexuality as 'sub-animal behaviour'¹⁴⁷ and compared it to that of pigs and dogs.¹⁴⁸ He publicly labelled homosexuals as 'sodomites' and 'sexual perverts' and declared: 'I don't believe they have any rights at all.'¹⁴⁹ In a 1998 speech, President Mugabe said '[a]nimals in the jungle are better than these people because at least they know that

¹⁴⁴ Voice of America 'Africa's gays say they are under siege' 1 February 2011 available at <http://www.voanews.com/content/africas-gays-say-theyre-under-siege--115100674/159757.html> (accessed 4 March 2013).

¹⁴⁵ Human Rights Watch 'Gambia: President should disavow reported homophobic threats: Dangerous remarks fuel tension and promote violence' 12 June 2008 available at <http://www.hrw.org/news/2008/06/11/gambia-president-should-disavow-reported-homophobic-threats> (accessed 20 May 2013).

¹⁴⁶ Human Rights Watch 'LGBT Rights: The 2013 "Hall of Shame"' 17 May 2013 available at <http://www.hrw.org/news/2013/05/17/lgbt-rights-2013-hall-shame> (accessed 23 May 2013).

¹⁴⁷ Quoted in C Dunton & M Palmberg 'Human rights and homosexuality in Southern Africa' (1996) Nordic Africa Institute 13.

¹⁴⁸ International Gay and Lesbian Human Rights Commission and Human Rights Watch (n 27 above).

¹⁴⁹ South African News Agency SAPA, *BBC Summary of World Broadcasts*, 3 August 1995.

this is a man or a woman.¹⁵⁰ President Robert Mugabe once again spoke out about his hatred of homosexuality as he campaigned for the 31 July 2013 election. At a rally, Mugabe told thousands of supporters that Zimbabwe would never accept homosexuals, whom he described as ‘worse than pigs, goats and birds,’ reports Zimbabwe’s *Newsday*. ‘If you take men and lock them in a house for five years and tell them to come up with two children and they fail to do that, then we will chop off their heads.’¹⁵¹

2.3 Negative media reporting

Negative and sensationalised media reporting is one of the factors underlying an upsurge of violence against the LGBTI community. In 2010, a local tabloid in Uganda (*Rolling Stone*) for example produced a list of gay Ugandans together with their addresses and with a caption which read ‘hang them’.¹⁵² This intensified attacks on the gay community in Uganda and three months later a top gay rights activist, David Kato, was found murdered in his house under unclear circumstances.¹⁵³ In May 2009, a local Tanzanian newspaper *Ijumaa* featured a photograph with men in bed together with a caption ‘caught live’ leading to the arrest of 40 gay and lesbian activists.¹⁵⁴ State inaction condones this negative and stereotyping reporting and allows a culture of hatred and violence to persist.

¹⁵⁰ ‘Zimbabwe’s Mugabe lashes out at homosexuals’ Reuters 23 April 1998 available at <http://www.glapn.org/sodomylaws/world/zimbabwe/zinews001.htm> (accessed 23 May 2013)

¹⁵¹ http://www.slate.com/blogs/the_slate/2013/07/28/zimbabwe_president_robert_mugabe_vows_to_behead_gays.html

¹⁵² ‘Out in Africa: A gay rights struggle with deadly stakes’ *The New Yorker* 24 December 2012 available at http://www.newyorker.com/reporting/2012/12/24/121224fa_fact_okeowo (accessed 24 March 2013).

¹⁵³ ‘Ugandan who spoke up for gays is beaten to death’ *The New York Times* 27 January 2011 available at http://www.nytimes.com/2011/01/28/world/africa/28uganda.html?_r=0 (accessed 23 March 2013).

¹⁵⁴ International Gay and Lesbian Human Rights Commission ‘Threat of violence against LGBTI community on the rise: Update Cameroon’ 15 August 2012 available at <http://www.iglhrc.org/cgi-bin/iowa/article/publications/newsletters/1561.html#Cameroon> (accessed 25 March 2013).



3. Impacts of violence

The consequences of the violence meted out against people based on their sexual orientation and gender identity have far reaching effects. Primarily, emanating from the nature of the violence itself, victims of violence suffer physical harm that in several instances includes serious bodily injury and the loss of life. This is clearly in violation of the rights to life, bodily integrity, and dignity. The harm done to victims also includes, in the case of women rape-survivors, unwanted pregnancy and abortions. Violence also results in LGBTI individuals losing their jobs, becoming alienated from their families and communities and struggling to survive. Rejection by family members and society causes isolation, depression and hopelessness. In a survey the International Gay and Lesbian Human Rights Commission conducted on Zimbabwe, Nigeria, Ghana, Malawi, and Cameroon, of those that responded 19% of men who have sex with men were afraid to walk in their community; 18.5% were afraid to seek health services, 12.2% had been beaten up by a government or police official, 6.9% were denied housing, and 5.1% were denied health care.¹⁵⁵

3.1 Difficulty in accessing health care services for HIV and sexually transmitted diseases

The risk of arrest, violence, harassment and social discrimination associated with being identified as a gay man in Africa often prevents men who have sex with men (MSM) from openly expressing their sexual orientation.¹⁵⁶ This makes it difficult for service providers to deliver essential services, such as information about how to prevent the transmission of HIV and other STDs, to men that need them.¹⁵⁷ This is compounded by the fact that due to the underground nature of most homosexual activities, the

¹⁵⁵ International Gay and Lesbian Human Rights Commission (n 118 above) 5.

¹⁵⁶ 'Closet case: How intolerance fuels Africa's AIDS crisis' *Time World* 21 July 2009 available at <http://www.time.com/time/world/article/0,8599,1911757,00.html> (accessed 20 March 2013).

¹⁵⁷ 'Closet case: How intolerance fuels Africa's AIDS crisis' (note 156 above).

extent to which the vulnerability of MSMs to HIV and STDs is increased cannot be fully assessed. Nevertheless, studies that exist make it clear that if HIV prevention, treatment and care services exclude gay men, efforts to prevent new HIV infections are undermined.¹⁵⁸

Non-governmental organisations that deliver basic sexual health education, HIV prevention, testing and treatment services and resources to gay men are often at risk of harassment, particularly in countries that criminalise same-sex partnerships.¹⁵⁹ Among these was the high-profile arrest of nine HIV prevention workers in Senegal for 'acts against nature', following which many MSMs no longer felt safe attending educational meetings. Social networks vital for the mental health and well-being of people who may feel marginalised by society, fell apart.¹⁶⁰

Gay men who are infected with HIV often face discrimination not only on the grounds of their sexual identity but also because of their HIV status.¹⁶¹ By ostracising gay men from services, the risk of them becoming infected with HIV or infecting others becomes greater. Gay men in Africa are often unaware that having many partners and not practicing sex safely consistently can lead to a higher risk of HIV transmission. A 2010 study conducted on 142 MSMs in Cameroon found 57% had engaged in unprotected anal intercourse with a male partner in the preceding six months, 44% of men reported sex with two to four partners in the preceding six months and 21% reported five or more partners in the preceding six months.¹⁶²

In addition to the problems with accessing information, gay men in Africa often face barriers when they try to access health care as many health providers discriminate against and stigmatise them.¹⁶³ Reports from across a number of countries reflect that many gay men in Africa have been refused health care due to their sexuality. These factors can result in STDs and HIV among gay men remaining undiagnosed and untreated. This places men who are not infected with HIV at risk of becoming infected and among

¹⁵⁸ 'Closet case: How intolerance fuels Africa's AIDS crisis' (n 156 above).

¹⁵⁹ T Poteat et al 'HIV risk among MSM in Senegal: a qualitative rapid assessment of the impact of enforcing laws that criminalise same sex practices' (2011) 6 *Plos One*: e28760. doi:10.1371/journal.pone.0028760.

¹⁶⁰ Poteat et al (n 159 above).

¹⁶¹ 'Men Who have Sex with Men: Homophobia and HIV in Africa' XVIII International AIDS Conference, Vienna IDS 21 July 2010.

¹⁶² E Henry et al 'Factors associated with unprotected anal intercourse among men who have sex with men in Douala, Cameroon' (2010) 86 *Sexually Transmitted Infections* 136-140.

¹⁶³ Henry et al (n 162 above).

those that are already infected with HIV at risk of early progression to AIDS or of infecting others.¹⁶⁴

3.2 Increase in persons fleeing their communities and seeking asylum

The violence or threats of violence against the LGBT have led them to flee their communities as well as their countries in order to seek asylum in other countries. This holds true also for those who work in advocating LGBTI rights. Fearing for their lives, many activists are in hiding or have fled their countries. As a new trend, countries in different parts of the world have started granting asylum to individuals with a well-founded fear of persecution owing to sexual orientation or gender identity.¹⁶⁵ Some states grant asylum even without a clear policy in this regard, while others do not track reasons for granting refugee status or asylum.

However, even when they flee their countries, LGBTI individuals are subjected to gruelling procedures before acquiring refugee status and their chances of being denied refugee status is often too high.¹⁶⁶ Before 2010, LGBTI individuals were often denied asylum in countries like the United Kingdom on the basis that they were capable of leading normal lives in their home countries as long as they did not publicly expose their sexual orientation.¹⁶⁷ In the United Kingdom, where many LGBT flee for asylum from different African countries, the asylum seekers are increasingly being required to go to extreme lengths to prove their sexual orientation and even then the chances of being granted asylum are usually very

¹⁶⁴ International Gay and Lesbian Human Rights Commission 'Off the map: How HIV/AIDS Programming is Failing same-sex practicing people in Africa' 7 September 2007 available at <http://www.iglhr.org/content/africa-map> (accessed 22 May 2013).

¹⁶⁵ 'Family Denied Asylum in the US they should have said they were gay' available at <http://www.turtlebayandbeyond.org/2013/family/family-denied-asylum-in-us-they-should-have-said-they-were-gay/>; http://www.ilga-europe.org/home/issues/asylum_in_europe/country_by_country/nl (accessed 10 July 2013).

¹⁶⁶ 'Gay asylum seekers feeling increased pressure to prove sexuality, say experts' *The Guardian* 3 February 2013 available at <http://www.guardian.co.uk/uk/2013/feb/03/gay-asylum-seekers-pressure-prove-sexuality> (accessed 23 March 2013).

¹⁶⁷ 'Gay asylum seekers feeling increased pressure to prove sexuality, say experts' (n 166 above).

slim as they often end up being deported back to their home countries.¹⁶⁸

On 16 October 2012, Alice N was deported to Cameroon on the basis that she and her female partner had not done enough to prove her lesbianism despite the massive anti-gay witch hunt in the country.¹⁶⁹ Furthermore, a Nigerian man Olalekun M Ayelokun who provided testimonies of his homosexuality was deported after a judge refused to believe he was 'gay'.¹⁷⁰ On June 2010, Robert Segwanyi left Uganda seeking asylum in the United Kingdom. The decision to flee Uganda came after his arrest in February 2010.¹⁷¹ An informer had notified law enforcement authorities that he had been in a homosexual relationship with a man. In prison, he was beaten with electric wires, sticks and metal objects. He managed to escape with the help of friends and made his way to the UK. However the UK border agency made a decision that Segwanyi was not a homosexual. Thus a decision was reached to deport him back to Uganda on 12 July 2012.¹⁷² Segwanyi's story is one of the many sad stories of LGBTI individuals who flee to other countries fearing for their life back in their home countries only to be deported in situations where they are likely to face even more persecution.

3.3 Other forms of impact

Other impact includes rejection by family and society, unwanted pregnancies and abortion, and loss of employment. It often occurs that once the family or community finds about the sexual orientation of LGBT people, they turn away from them or feel ashamed.¹⁷³ Unwanted pregnancies and as a result of it, abortion, can occur after the so called 'corrective rapes.' Individuals perceived to be homosexual or transgendered are sexually assaulted in an attempt to strip them of their sexual or gender orientation. It is a

¹⁶⁸ <http://swvg-refugees.org.uk/public/index.php/component/content/article/89-deportation-of-asylum-seekers> (accessed 10 July 2013).

¹⁶⁹ M Nathan 'UK breaks pledge to not deport gay and lesbian asylum seekers' 31 Oct 2012 available at <http://oblogdeeoblogda.me/2012/10/31/uk-breaks-pledge-to-not-deport-gay-and-lesbian-asylum-seekers/> (accessed 24 March 2013).

¹⁷⁰ 'Gay asylum seekers feeling increased pressure to prove sexuality, say experts' (n 166 above).

¹⁷¹ 'UK to deport Uganda gay man, Robert Segwanyi, despite torture and risk to his life' 8 July 2011 available at <http://oblogdeeoblogda.me/2011/07/08/uk-to-deport-uganda-gay-man-robert-segwanyi-despite-torture-and-risk-to-his-life/> (accessed 20 March 2013).

¹⁷² 'UK to deport Uganda gay man, Robert Segwanyi, despite torture and risk to his life' (n 171 above).

¹⁷³ http://www.hrw.org/sites/default/files/reports/cameroon0313_ForUpload.pdf

violent and demeaning act that leads to trauma, mutilation, unwanted pregnancy and transmission of HIV among the lesbian and gay populations.¹⁷⁴ In Senegal, Djamil, 24 years old was fired from his job after his employers heard a rumour he was gay. He then found himself without financial means to survive and was forced to live clandestinely.¹⁷⁵

Impacts of violence

Other forms of impact

¹⁷⁴ <http://www.psychologytoday.com/blog/talking-about-trauma/201305/fixing-gay-corrective-rape-in-south-africa>

¹⁷⁵ http://www.huffingtonpost.fr/joseph-vellone/etre-homosexuel-au-senegal_b_1892840.html



4. Conclusions and recommendations

The information presented above provides a discernible pattern of human rights violations against LGBTI individuals in Africa that needs to be addressed urgently. International human rights bodies have already taken steps to address violence and discrimination based on sexual orientation and gender identity. Measures need to be taken at the regional level to curb the high levels of violence and discrimination based on real or perceived sexual orientation and gender identity. The role of the regional is all the more important when it comes to issues where states, at the national level, are reluctant to act. This situation calls for the leadership of the regional mechanisms.

4.1 Recommendations to the African Commission on Human and Peoples' Rights

The African Commission is urged to:

- A. Adopt a resolution that condemns the on-going violence against persons based on their sexual orientation and gender identity. Additionally, the Commission should work with the various human rights bodies such as the UN special rapporteurs and reporting mechanisms, international and national human rights organisations working in the area of protecting LGBT rights to hold governments to account through its state reporting and other mechanism.
- B. Call on state parties to conduct thorough investigations of cases of violence based on sexual orientation and gender identity and hold those accountable, whether they are state or non-state actors.
- C. Call on state parties to abolish laws that encourage or legitimise violence based on sexual orientation and gender identity and outlaw the indiscriminate use of criminal laws on LGBTI individuals. Among these laws are those criminalising consensual same sex activities which depict LGBTI persons as criminals.

- D. Establish a monitoring and reporting mechanism within the Commission, purposely to inform about trends pertaining to LGBTI rights and make recommendations to governments accordingly.
- E. Create and regularly update a database of the various forms of violence based on sexual orientation and gender identity in all the states as well as human rights bodies in order to ascertain the magnitude of the problem. This is aimed at enabling the formulation of interventions that will effectively address the problem.
- F. Maximise advocacy and engagement with governments of states members (through the proposed specialised body to be established) to put an end to all forms of violence based on sexual and gender orientation.
- G. Place advisors, specialised in LGBTI advocacy, in member states to mainstream LGBTI awareness in day to day activities.
- H. Circulate publications in countries that witness increased violence against LGBTI for awareness raising purposes.
- I. As alternative and coping mechanism, incorporate awareness on LGBTI rights within relevant programmes such as HIV, gender, human rights.

4.2 Recommendations to AU member states

African Union member states should:

- A. Diligently investigate incidents of violence against persons based on their SOGI status, prosecute those responsible and punish them appropriately.
- B. Take measures to prevent violence based on SOGI both by state and non-state actors.
- C. Refrain, through its leaders, from making statements fuelling and encouraging violence on the basis of SOGI.
- D. Conduct sensitisation and awareness creation programs for police, prison officers and other law enforcement officers on ways of curbing violence based on sexual orientation and gender identity.
- E. Criminalise, in particular, hate speech and practices that promote discrimination and violence based on SOGI and use existing hate

speech laws to investigate and prosecute those that incite violence based on SOGI through their speech.

- F. Ensure that LGBTI individuals who end up as asylum seekers are provided the necessary assistance and protection as enshrined in the international norms governing asylum seekers.
- G. Ensure an environment conducive to organisations working on LGBTI rights to work without harassment and intimidation. In particular, to refrain from harassing, arresting or charging LGBTI defenders on account of their work.
- H. Ensure that victims of violence based on SOGI have access to effective and adequate remedy domestically.
- I. Fight impunity for violence based on SOGI perpetrated by state and non-state actors.



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