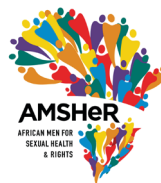


RESOLUTION 275

WHAT IT MEANS FOR STATE AND NON-STATE ACTORS IN AFRICA



Centre for
Human Rights
UNIVERSITY OF PRETORIA

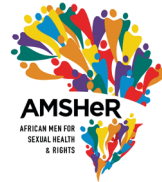


ACKNOWLEDGMENTS

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INTRODUCTION

The fight to curb violence against persons based on their real or imputed sexual orientation or gender identity in Africa is strengthened by two binding treaties that apply at the regional level. The principal treaty is the African Charter on Human and Peoples' Rights (African Charter), which guarantees the principles of non-discrimination and equality before the law; the rights to life, dignity and physical integrity; the guarantee against cruel, degrading or inhuman treatment or punishment; and the right to a fair hearing before competent national courts. The Protocol to the African Charter on the Rights of Women (Maputo Protocol) in addition requires state parties to take specific measures to combat violence against woman regardless of their sexual orientation or gender identity.

In order to clarify the meaning of the African Charter in the context of violence

against persons based on their real or imputed sexual orientation or gender identity, the African Commission on Human and Peoples' Rights (African Commission) on 12 May 2014 adopted Resolution 275. This Resolution, titled "*Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*", was adopted in line with the Commission's mandate (under article 45 of the African Charter) to interpret the rights in the Charter. Resolution 275 expresses grave concern about increasing violence and other human rights violations, including murder, rape, assault, in respect of persons based on their real or perceived sexual orientation or gender identity. It stresses the worrying nature of such violence whether committed by states or non-state actors. The resolution calls upon states to take action for stopping such violence,

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to ensure that human rights defenders working on the human rights of sexual minorities are free from reprisals and take appropriate measures to ensure adequate remedies are ensured to victims of such violence.

Since the adoption of the Resolution 275, violence against persons because of their real or perceived sexual orientation or gender identity has continued in different African countries. In Uganda persons who identify as gay, lesbian, bisexual or transgender continue to face violence on a daily basis. In Tanzania organisations advocating for equality of sexual minorities have been facing state sponsored homophobic violence since 2016. In Cameroon there have been arbitrary arrests of individuals

based on their real or imputed sexual orientation. In South Africa, murder and rape of individuals who identify as gay or lesbian is on the rise in township areas. In Nigeria, arrests of individuals or groups of individuals suspected to be gay or working on gay rights have become part of the daily news.

Against this background, civil society organisations and other stakeholders committed to fighting equality for sexual minorities have developed guidelines on implementing Resolution 275. These guidelines are meant to help state and non-state actors in Africa curb violence against persons who identify as lesbian, gay, bisexual or transgender.



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GENERAL PRINCIPLES AND OBLIGATION TO STATES

The non-discrimination principle

States must take the necessary measures to ensure that the rights of victims of violence are guaranteed, irrespective of their race, colour, nationality, citizenship, ethnicity, profession, political opinions, sex, sexual orientation, gender identity, gender expression or any other factor that could lead to discrimination against them. The interpretation of article 2 of the African Charter is open ended and inclusive, and aims at offering the maximum protection to all Africans, hence the inclusion of sex, gender and sexual orientation as prohibited ground of unfair discrimination.

The 'do no harm' principle

States must take legislative and all other necessary measures to guarantee the well-being and security of victims and witnesses of violence. States must also ensure that they diminish the negative impact that actions to combat violence and its consequences can have on victims and witnesses. In particular, states must ensure that the potentially negative consequences for victims and witnesses, of procedures to investigate acts of violence and efforts to prosecute perpetrators, are reduced as much as possible.

The due diligence principle

States must ensure that agents acting on their behalf or under their effective control refrain from committing acts of violence against persons who identify as lesbian, gay, bisexuals or transgender either by omission or by action. States must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of violence committed by State and non-state actors, prosecute and punish perpetrators, and provide remedies to victims in timely and effective manner.

Obligation to prevent violence and other human rights violations against LGBT individuals

States must take the necessary measures to prevent all forms of violence by eliminating the root causes of violence, including homophobic discrimination, preconceptions and stereotypes based on gender identity, real or perceived sexual orientation, and prejudices of masculinity and virility, irrespective of their source.



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Obligation to provide protection against re-occurrence of violence and other human rights violations against LGBT individuals

States must adopt the necessary measures to guarantee that victims are protected from any new forms of violence, particularly by guaranteeing that victims have access to all types of assistance that they need. States must ensure measures are taken to avoid double or multiple victimisation of survivors.

Obligation to guarantee access to justice and investigate, prosecute the perpetrator of violence and other of human rights violations against LGBT individuals

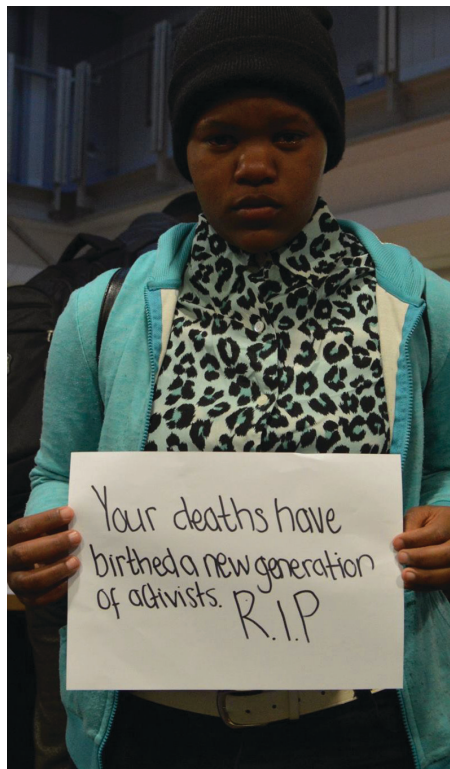
States must take measures to guarantee effective and timely access to justice for all victims of sexual violence, including in rural areas. States must ensure that investigation into acts of violence and the prosecution of the perpetrators are carried out:

- without unjustified delays
- independently, impartially and effectively; and
- in a manner that will lead to the identification and sentencing of perpetrators.

Investigations and prosecution must consider the rights of victims throughout the proceedings and guarantee the well-being and safety of victims and their families.

Obligation to provide an effective remedy and reparation for the victims/ survivors of violence

States must adopt legislative measures and any other measures required to guarantee effective, sufficient and timely remedies, including reparations, to the victims of violence. Remedies must be affordable and accessible without unjustified delays. There should be effective access to justice, a guarantee of fair and equitable treatment that is adapted to the legal proceedings undertaken; adequate, effective and timely reparation for any damages sustained; and free access to information regarding remedies and the methods of obtaining reparation. Reparation must include individual and collective measures, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.



PREVENTING VIOLENCE AND OTHER HUMAN RIGHTS VIOLATIONS AGAINST LGBT INDIVIDUALS

Awareness-raising strategies

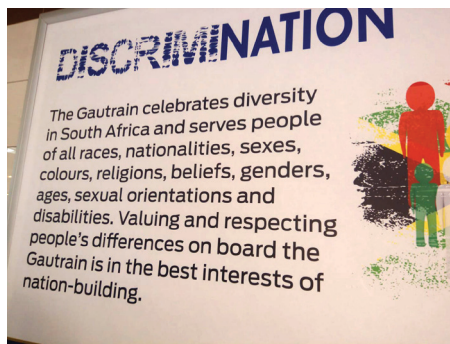
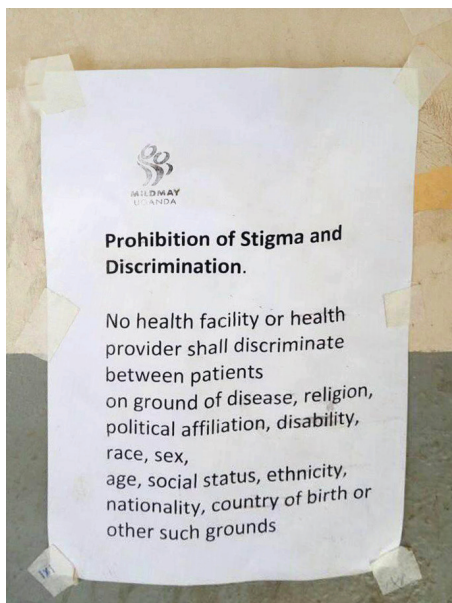
States must conduct campaigns to raise awareness about the causes of violence against LGBT individuals and the different forms it takes. These campaigns must address the root cause of violence against LGBT individuals, combat gender-based stereotypes, raise awareness of the unacceptable nature of this violence, and help people to understand that it represents a grave violation of the rights of LGBT individuals in Africa.

These campaigns must be targeted towards informing people about the laws enacted to combat violence against LGBT persons, their provisions and the remedies available to the victims under these laws. These campaigns must underscore that violence against LGBT persons is a criminal offence and specify corresponding penalties to deter people from committing these violent acts. They must also provide information on the mechanisms

available to report acts of sexual violence as well as measures to protect, assist and support victims.

These campaigns must be disseminated throughout the entire national territory, including rural areas; public spaces, public transportation, hospitals, police stations, educational institutions and businesses. States must also carry out awareness activities with stakeholders in the private and informal sectors. States must conduct these awareness raising activities through all appropriate means and channels based on the context and the specific needs of the target audience: poster campaigns, social media campaigns, through advertising in televisions, radio, including community radio, and newspapers.

States must educate advertising professionals, journalists, and other communication specialists including personnel working in pop culture media and community radio, to combat violence against LGBT individuals and



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refrain from fuelling derogatory and diminishing messages against LGBT individuals. States must encourage information professionals to establish partnerships with public authorities to implement and strengthen independent regulations to combat homophobic stereotypes, intentional negative reporting and depictions of LGBT individuals.

Educational programmes

States must create educational programmes and materials that promote equality, combat discrimination and violence against LGBT individuals, and challenge gender stereotypes. These programmes must be country-wide and must be included in the formal and informal educational sector.

Training of professionals

States must have appropriate and sufficiently funded training to combat homophobic discrimination and its consequences in different professional and state settings and communities. A variety of groups must undergo this training as part of their on-board process including but not limited to police, judges and magistrates, court staff, paralegals

and lawyers, traditional and religious leaders.

This training must focus on human rights of individuals who identify either as lesbian, gay, bisexual or transgender. The content of this training must also focus on the principles of non-discrimination and equality of everyone, including LGBT individuals.

Cooperation with local stakeholders and civil society organisation

Local authorities and civil society organisations, including community-based organisations, play a particularly important role in preventing and monitoring violence against LGBT individuals especially in remote or marginalised areas. States must ensure that these organisations are supported and directly participate in an ongoing manner in prevention activities and in all stages of the development, implementation and monitoring of national action plans.

States must allow, register and support LGBT organisations that conduct programmes that prevent and address violence against LGBT persons. Any barriers that hinder their work, including legal barriers, must be removed, and states must offer effective protection of such organisations or human rights defenders against attack, reprisals or recriminations.

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PROTECTING AND SUPPORTING VICTIMS OF VIOLENCE AND OTHER HUMAN RIGHTS VIOLATIONS

Reporting violence and other human rights violations

States must create a toll-free national emergency numbers that are available 24 hours a day, seven days a week, to make it possible for victims or any person to report cases of violence against LGBT individuals. These emergency help lines must be confidential and must in particular guarantee the anonymity of those reporting the violence. They must also be linked with all relevant services, police, medical, social, and legal services, in order to facilitate and hasten the intervention of the authorities.

States must also increase financial and human resources for these emergency help lines in times of political instability; before, during and after elections; and in situations of conflicts and crisis.

States must ensure that specially trained social workers have permanent offices at police station to provide care and guidance to the victims of violence, referring them to the appropriate services and ensuring that they do not experience re-victimization.

Access to information

States must adopt all necessary measures to ensure that victims of violence and their families are appropriately informed, through available communications channels, in languages that they understand and in a timely manner, regarding their rights and protection and support measures at the local, regional and national levels.



INVESTIGATING VIOLENCE AND OTHER HUMAN RIGHTS VIOLATIONS AGAINST LGBT INDIVIDUALS AND PROSECUTING THOSE RESPONSIBLE

Legal action initiated and conducted by public prosecutor

The public prosecution authorities must be able to initiate criminal proceedings, even in the absence of a complaint filed by victims. Prosecutors must be able to pursue legal action, even if the victims withdraw their complaint, in agreement with when possible, and always taking into consideration the security and safety of the victims. Civil society, individuals or groups of individuals must also be allowed to file complaints against cases of violence and discrimination based on real or perceived sexual orientation or gender identity, expression and sex characteristics.

Participation of the victims and witnesses in the proceedings

States must take all legislative and other measures so that victims and witnesses of sexual violence have the right to be heard and are duly represented. Victims of violence must be informed of the decision made in their case, especially regarding the arrest, detention and release of the perpetrator of violence, while respecting the rights of the accused.

Participation of LGBT organisations in legal proceedings

States must adopt legislative or any other measures to enable associations specifically mandated to combat LGBT violence or to support the victims of violence (including providing support during any trials) to

participate in proceedings related to acts of violence in order to contribute to the legal action in this type of case and combat the impunity of those who are responsible. This participation could take the form of the associations becoming civil parties, becoming involved through third-party intervention, or providing support or legal representation to the victims.

Sentencing and applicable penalties

States must provide for penalties that are proportional to the seriousness of the act of violence against an LGBT individual. The applicable penalties must take any aggravating circumstances into consideration, including the following:

- the vulnerability of the victim: this could be the result of age, disability, status as a displaced person or refugee, socio-economic status;
- the relationship between the victim and the attacker: the existence of a family relationship, status as a former or current spouse or partner, cohabitation, abuse of authority; or
- the number of attackers; the presence of accomplices and witnesses.

Prescription

States must take the necessary measures to ensure that prescription does not apply to the most serious offences, to guarantee that victims will have access to justice for these offences throughout their lives.



Right to reparation

States must take the necessary legislative and other measures required to guarantee access to appropriate, efficient, accessible, timely and long-lasting reparation for injury and loss suffered by victims of violence, as well as access to appropriate information regarding reparation mechanisms. The reparations must be proportional to the seriousness of the violation and injury undergone. Court-ordered and administrative reparation must be granted to the victims of violence. States must grant reparation to the victims for acts or omissions for which the States are responsible or for which a physical person or entity is responsible in cases where the latter are not able to or do not agree to repair the injury.

Enforcement of reparations

States must ensure the enforcement of the reparation orders issued by their national courts against the perpetrators of violence. States must also strive to ensure that trial decisions to provide reparation are enforced according to their internal law and international legal obligations. To that end, in their internal legislation, States must provide for effective mechanisms to ensure the enforcement of decisions to provide reparation.

Holistic reparation

Reparation measures must be designed and implemented to meet the needs of victims arising from the acts of violence and must take into consideration all forms of violence and all consequences, including physical, psychological, material, financial, and social consequences, immediate or otherwise, suffered by the victims. The reparations must

also go beyond the immediate causes and consequences of the violence and aim to remedy discrimination and structural and political inequality that negatively affect the lives of LGBT individuals.

Access of the victims to different types of reparations

States must take the necessary measures to guarantee that the victims of violence have access to different types of reparation, including individual and collective reparation. These measures must be determined by the appropriate authorities based on their relevance, and considering the context in which the violence was perpetrated. The types of reparation enumerated below should be accessible to victims of homophobic violence:

1 Restitution

Restitution should aim as far as possible to restore victims to the same or similar situation they were in before the violations took place. According to the principle of transformative reparation, this restoration must only be attempted when it does not lead to replicating or perpetuating discrimination against LGBT individuals, or discrimination based on sexual orientation or gender identity. In cases of sexual violence, restitution may include the following: the exercise and enjoyment of human rights, particularly the rights to dignity, security, and health, including sexual and reproductive rights; enjoyment of family life and return to employment and education.

2 Compensation

Compensation must be granted for all damages that can be quantified from an economic perspective, such as psychological or physical damages, job loss, loss of income or potential income, loss of social

services and learning opportunities, lost of educational opportunities, and compensation for legal, medical and social costs.

3 Rehabilitation

Rehabilitation must include medical, psychological, legal and social care for the victims. In situations of conflict and crisis, the psychological rehabilitation of the victims may require community therapy and awareness-raising activities for members of their communities, with a view to reducing the stigmatisation of victims, encouraging a sense of trust and promoting peaceful coexistence. Providing training to members of the community to lead this type of activity will make it possible to guarantee long-lasting reparation. Income-generating and community solidarity initiatives can promote the social rehabilitation of victims

IMPLEMENTING THESE GUIDELINES

States must adopt legislative, administrative, judicial and all other measures necessary to implement these guidelines and to ensure that the rights and obligations set forth herein are guaranteed in fact and in law. This will include examining legislative and regulatory provisions and all other relevant provisions to ensure that they are compliant with the provisions of the guidelines.

States should ensure that these guidelines are broadly disseminated, including at the offices of relevant ministries, local authorities, national representatives, national gender equality institutions and national human rights institutions; to defense and security personnel and personnel in the legal, educational, medical and social fields as well as throughout civil society. Disseminating the guidelines to services that are liable to be the first interveners in assisting victims of violence should be a priority.

States must ensure that all government employees in charge of preventing violence, punishing perpetrators and supporting and protecting victims receive effective, and appropriate training on the contents and implementation of these guidelines. These guidelines must make up an integral part of programmes for training government employees.