

# Annex 3: Relevant regional human rights frameworks

## Africa

### Resolution 275 of the African Commission of Human and Peoples' Rights

In May 2014, the African Commission on Human and Peoples' Rights adopted **Resolution 275** on the Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.

The Resolution **condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons, on the basis of their imputed or real sexual orientation or gender identity.

It **specifically condemns** the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity.

It **calls on** State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.

The Resolution **strongly urges** States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.



*In Africa, one of the most fundamental ideals we have fought for is that of non-discrimination on the grounds of skin colour, gender, religious orientation and other beliefs. We uphold this ideal passionately. Yet ironically, discrimination against LGBT people is still upheld and justified by our same nations and laws.*

- Festus Mogae, former President of Botswana

## Europe

### The Council of Europe

The Council of Europe<sup>33</sup> has taken positive steps to identify and respond to discrimination, violence and other issues affecting the LGBTI community. A Sexual Orientation and Gender Identity Unit is responsible for working with relevant stakeholders on issues of sexual orientation and gender identity.<sup>34</sup>

In March 2010, the Council of Europe adopted Recommendation CM/Rec (2010)5 on measures to combat discrimination based on sexual orientation or gender identity. Emphasizing the universality of human rights

33 The Council of Europe (founded in 1949) has 47 member states with approximately 820 million citizens.

34 Council of Europe Commissioner for Human Rights, [Issue Paper on Human Rights and Gender Identity](#) (2009).

and the importance of non-discrimination, the recommendation called upon Member States to take positive steps to protect the rights of the LGBTI community.<sup>35</sup>

The Council of Europe also published a report, *Discrimination on grounds of sexual orientation and gender identity in Europe* (second edition 2011), that addresses homophobia, transphobia and discrimination within the 47 Member States of the Council of Europe and makes recommendations for their prevention.<sup>36</sup> Moreover, the Commissioner for Human Rights published an issue paper, *Human Rights and Gender Identity*, in 2009.

## The European Union

The principle of equality and the prohibition of discrimination on the basis of sexual orientation are now part of the European Union Treaties (e.g., Article 10 Treaty on the Functioning of the European Union, Articles 2 and 3 Treaty on European Union).<sup>37</sup>

The European Union Charter of Fundamental Rights, which now has the same legal force as the Treaties, explicitly prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation. Sexual orientation acquired this status relatively recently.

The Framework Employment Directive also prohibits discrimination based on sexual orientation (Article 21(1)). It must be noted, though, that this Directive is restricted to employment, occupation and vocational training. Nevertheless, when implementing the Framework Employment Directive, some Member States already extend protection on the basis of sexual orientation to cover some or all fields to which the European Union Race Equality Directive applies.

Additionally, the European Commission has made a proposal for a new “horizontal directive” that would extend the prohibition of discrimination on the grounds of religion or belief, disability, age or sexual orientation outside of employment.

Further, the European Union Fundamental Rights Agency monitors the right situation of LGBTI people in the European Union, and has provided numerous analyses and reports on these matters.

European Union Member States are also discussing the creation of a single equality body that would deal with all grounds of discrimination.

## The Americas

In recent years, the Organization of American States (OAS) and the Inter-American Commission on Human Rights (IACHR) have taken steps to address patterns of violence and other human rights abuses affecting LGBTI persons within the Americas.

Between 2008 and 2013, the OAS General Assembly approved six resolutions concerning human rights, sexual orientation and gender identity.<sup>38</sup> These resolutions acknowledge and condemn discrimination and acts of violence against members of the LGBTI community. They also call upon States, the IACHR and other bodies to take appropriate measures to address the problem.

The OAS General Assembly requested that the IACHR and the Inter-American Juridical Committee prepare reports on the “legal implications and conceptual and terminological developments as regards sexual orientation, gender identity, and gender expression.”<sup>39</sup> In response, IACHR issued a document entitled *Sexual Orientation, Gender Identity*,

---

35 Council of Europe: Committee of Ministers, [Recommendation CM/Rec\(2010\)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity](#), 31 March 2010.

36 Council of Europe, [Discrimination on grounds of sexual orientation or gender identity in Europe](#) (2011).

37 The European Union is a political and economic union of 28 members in Europe, with an estimated population of over 508 million.

38 OAS, General Assembly Res. AG/RES. 2807 (XLIII-O/13), [Human Rights, Sexual Orientation and Gender Identity](#) (6 June 6 2013).

39 OAS, [General Assembly Res. AG/RES. 2653 \(XLI-O/11\)](#), Human Rights, Sexual Orientation and Gender Identity (7 June 7 2011), para 6.

and Gender Expression: Key Terms and Standards, and the Inter-American Juridical Committee released its Report on Sexual Orientation, Gender Identity, and Gender Expression.<sup>40</sup> In addition, IACHR developed an Action Plan to address the ongoing issue of discrimination and violence against the LGBTI people and proposed to “establish legal standards, rule on cases, and issue reports on the situation of members of the LGBTI communities in the American States.”<sup>41</sup>

In November 2011, IACHR also created a rapporteur on the rights of LGBTI people.<sup>42</sup> The rapporteurs are tasked with: advising IACHR on petitions and cases concerning sexual orientation, gender identity and gender expression; providing technical support to Member States; preparing reports on the rights of LGBTI persons; and monitoring the human rights violations against LGBTI persons in the Americas.

OAS adopted The Inter-American Convention against All Forms of Discrimination and Intolerance on 5 June 2013. The Convention calls on States to prevent, eliminate, prohibit and punish all acts and manifestations of discrimination and intolerance. Sexual orientation and gender identity and expression are explicitly included as protected grounds within the Convention. As of May 2016, there are nine signatory States to the Convention and thus far no ratifications. The Convention enters into force thirty days after the second instrument of ratification or accession to the Convention is deposited with the OAS General Secretariat.



***LGBTI people are disproportionately affected by violence and poverty in the Americas. They find themselves at higher risk of illiteracy and homelessness due to discrimination in private and public spaces. They face increased barriers to accessing education and employment which result in high levels of poverty and criminalization.***

***States’ legislative interventions should be premised on full respect for LGBTI people and aimed at preventing and addressing violence and ending discrimination.***

***The Organization of American States has taken important steps in the protection of the human rights of LGBTI people across the Americas. The creation of the Rapporteurship on the Rights of LGBTI Persons at the Inter-American Commission on Human Rights is a positive step forward. When it comes into force, the recent ‘Inter-American Convention against All Forms of Discrimination and Intolerance’ will become an important tool for protecting the human rights of LGBTI people across the diverse countries and cultures that constitute our region.*** ”

- Tracy Robinson, former Rapporteur for the Rights of LGBTI Persons, Inter-American Commission on Human Rights

40 IACHR, [Sexual Orientation, Gender Identity, and Gender Expression: Key Terms and Standards](#), CP/CAAP-INF. 166/12, 23 April 2012; Inter-American Juridical Committee, [Report on Sexual Orientation, Gender Identity, and Gender Expression](#), CP/doc.4846/13, 17 March 2013.

41 IACHR, [Action Plan 4.6.i \(2011-2012\) LGBTI Persons](#), para. 2.

42 IACHR, [Press Release No. 115/11: IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons](#), 3 November 2011, available at: [www.oas.org/en/iachr/media\\_center/PReleases/2011/115.asp](http://www.oas.org/en/iachr/media_center/PReleases/2011/115.asp).