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DISSERTATION TITLE: "VIOLENCE AND PERSISTENCE ANTI DISCRIMINATION AGAINST LGBT PERSONS: A COMPARATIVE LEGAL ANALYSIS BETWEEN CENTRAL AFRICAN STATES (CEMAC ZONE) VS THE AFRICAN UNION POLICY INSTRUMENTS IN ADDRESSING VIOLENCE AGAINST LGBT PEOPLE".

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## ABSTRACT

The widespread belief, that homosexuality is a “Western import”, or un-African has meant that activism by Western organizations around LGBT rights and decriminalization can be counter-productive and create backlashes in the countries that are the targets of advocacy. Local and regional organizations working on the issue are often accused of being controlled by Western organizations. 33 out of 55 countries in sub-Saharan Africa still criminalize homosexuality. 30 out of 55 countries have ratified the ICCPR; only 18 have submitted themselves to the jurisdiction of the UN Human Rights Committee by ratifying the Optional Protocol to the ICCPR.

Laws criminalizing same-sex conduct were introduced to Africa by the British, French, Dutch, and Belgian governments during the colonial era to date most countries in the continent have not yet abolished it. In many countries across the continent, there is a greater frequency of arresting and charging LGBT individuals. In two countries not directly affected by European colonialism, Liberia and Ethiopia, laws criminalizing same-sex conduct were introduced, in 1978 and 2004 respectively.

In many countries with criminalization laws, the police actively use the law to target not only those suspected of same-sex activity; but also those who are suspected of being LGBT people. As a result, people whose behavior is interpreted as falling outside strict gender norms of masculinity and femininity, or who are simply reported to the police, may be at risk of illegal arrest. Even in countries where the law does not criminalize same-sexual behavior, such as South Africa, there is still high levels of discrimination and violence against the LGBT population, coupled with a high level of violence against women, including rape and murder, because of their real or perceived sexual orientation.

The human rights of LGBT people are well established under international human rights law, as set out in the Universal Declaration of Human Rights and subsequent human rights treaties. All people, regardless of their sexual orientation or gender identity, are entitled to enjoy the protections provided by International Human Rights Law, including, the rights to life, security of person, and privacy; the right to be free from torture, arbitrary arrest, and detention; the right to be free from discrimination and equality before the law; the right to freedom of expression,

association, and peaceful assembly; the right to marry and found a family; and the right to the highest standard of health. Despite all this, there is still gross violation of LGBT rights across the globe.

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## ABBREVIATIONS

ACHPR	African Commission on Human and People Rights
ACRWP	African Charter on the rights and welfare of a child
AMSHER	African Men for sexual Health and Rights
ADEFHO	Association for the Defense of Homosexuality
AI	Amnesty International
AIDS	Acquire Immune Deficiency Syndrome
AU	African Union
AUC	African Union Commission
CAL	Coalition of African Lesbians
CAMFAIDS	Cameroon Foundation for AIDS
CFA	Central African Franc
CSO	Civil Society Organization
EAC	East African Community
ECCAS	Economic Committee of Central African States
FIDH	International federation for Human Rights
HEC	the Human Rights Committee
HURISA	Human Right Institute for South African
IGO	Intergovernmental Organization
IGLHRC	the International Gay and Lesbian Human Rights Commission

ILGA	International Lesbian, Gay, Bisexual, Trans and intersex Association
MSM	Sex with Men
NGO	Non-governmental Organization
OAU	Organization of African Unity
PAP	Pan African Parliament
REC	Regional Economic Committee
UMA	the Arab Maghreb Union
UN	United Nation
WAHRDN	West African Human Rights Defenders Network
WGAD	Working group on Arbitrary Detention
SADC	Southern African Development Community
SRH	Sexual and Reproductive Health
LGBT	Lesbian, Gay, Bisexual, or Transgender

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## 1. INTRODUCTION

LGBT is an umbrella term that was established in the late 1980s for marginalized sexualities and gender identities. LGBT stands for "lesbian, gay, bisexual, and transgender". Lesbian, gay, bisexual, or transgender (LGBT persons) are members of every community. They are different and come from all walks of life. They include people of all races, ethnicities, ages, all socioeconomic statuses, and from all parts of the globe. The point of view and needs of LGBT people should be routinely considered in public health efforts to better the overall health of the entire LGBT person and prevent health inequality.

In most cases, LGBT persons experience stigmatization, and discrimination, because of their sexual orientation and gender identity. According to Human Rights, LGBT People face a high risk of violence and harassment. Statistics have shown that LGBT people face high rates of poverty, housing insecurity, and limited ability that expose them to violence. The barriers that LGBT people, (especially transgender) face in obtaining gender-affirming health care and identification documents can lead to a high risk of violence which makes people perceive them as transgender and target them for harassment in public spaces.

Because of family rejection and discrimination in education and employment, most LGBT people have limited employment options and in some cases, they have no other option than to work in informal economies like sex workers. Sex workers are at a high risk of being assaulted or killed by clients and a lot of them especially in countries that criminalize LGBT feel reluctant to seek assistance from law enforcement for fear of being harassed or prosecuted.

The international human rights system has accepted the notion that all humans are endowed with equal dignity because Human dignity been a central value of international human rights over the last few decades. Under international human rights law, governments should respond to foreseeable threats to life and bodily integrity, and address patterns of violence targeting marginalized groups. Lawmakers and states need to work hard to address socioeconomic conditions that put LGBT people at risk of violence and equally provide support and funding to make sure that all survivors of violence are can access the resources they need.

As of October 2023, Out of the 55 African States recognized by the African Union homosexuality is outlawed in 32 African countries. South Africa became the first African country and the fifth country in the world to legalize same-sex marriage in November 2006. Also, Benin and Central African Republic, do not outlaw homosexuality, but they have laws that discriminate against homosexual individuals. In some of the countries with criminal punishments for homosexuality, most countries have recently enforced harsh laws, and many legislators have recently proposed stricter sentences for same-sex activity for example Uganda's Anti-Homosexuality Act, of 2023, which allows death sentences for certain types of consensual same-sex activities.

The application of the concept of human dignity to the protection of sexual minorities in Africa remains problematic in state law and policy. Sexual minorities in Africa have continued to be stripped of their dignity through acts of public and private humiliation; and criminalization of their identities under laws that specify penalties ranging from prison terms to the death sentences, through hate speech and acts of violence. Across Africa the right to dignity of sexual minorities has continued to be violated, this has resulted in the deployment of national, regional, and global human rights to secure the promotion and protection of LGBT persons.

The United Nations and other Organizations (like Amnesty International, and Human rights watchdog) have documented physical and psychological violence against LGBT persons in Africa (including murder, assault, kidnapping, rape, sexual violence, as well as torture and ill-treatment). The UN has always Protected individuals from discrimination thereby urging States to uphold international human rights standards on non-discrimination, including:

- Prohibiting discrimination against LGBTI adults, adolescents, and children in all contexts including; education, employment, healthcare, housing, social protection, criminal justice asylum and detention settings.
- Ensuring legal recognition of the gender identity of LGBT people without abusive requirements.
- Combating prejudice against LGBTI people through dialogue, public education, and training.

- Ensuring that LGBTI people are consulted and participate in the design, implementation, and monitoring of laws, policies, and programs that affect them including development and humanitarian initiatives.

Sexual orientation, gender identity, and expression have continued to have divided opinion across the globe. This is primarily driven by legal, cultural, religious beliefs and interpretations.

- In Africa most, colonial-heritage laws have been applied to criminalize same-sex relationships, behaviors, and expressions. These laws stipulate penalties for same-sex relationships ranging from 5-10 years to life imprisonment and death penalties.
- Most African countries have passed harsh laws against LGBT people but South Africa has reviewed its constitution in favor of homosexuals although public sentiment remains largely anti-homosexual
- African governments have signed a regional agreement to guarantee the human rights and inclusion of all people with one of the most important legal instruments being the “The African Charter”, which was adopted and ratified in 1981 by all African countries except Sudan”.
- The Charter grants rights to everyone without exception with Article 2 stating that “Every individual shall be entitled to the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind”. And Article 4, states that “every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of these rights”.

#### 1.1 THE RANGE OF UNEQUAL TREATMENT FACED BY LGBT COULD BE BASED ON:

- Sexual orientation
- Gender identity
- Gender expression
- Sex characteristics

## 1.2 PURPOSE OF STUDIES

- The purpose is to know better about the conditions of LGBT rights in the African context. Because most African countries criminalize this practice, making life unbearable/ difficult for LGBT people in Africa.
- To debate on any legal majors that can undermine LGBT rights and how these problems can be solved
- Also to enhance society by advancing knowledge through the development of scientific theories, concepts, and ideas.

### 1.3 A HISTORICAL BACKGROUND OF LGBT RIGHTS IN AFRICA

Most scholars and research demonstrates that homosexuality has long been a part of various African cultures. Before colonization, there were LGBTQ African cultures that accepted different gender expressions and sexualities.

Historically Northern Africa has a well-documented tradition of homosexuality in the world especially, during the Mamluk rule. During the early twentieth century in Egypt, the Siwa oasis was described by travelers as a point where same-sex relationships were quite common, and also a group of people from these areas were often known for paying dowries to younger men. But in the 1940's this practice was outlawed, and according to scholars this practice later spread to other parts of the world.

Since the late 1980s, the United States has been ranked among the most advanced Lesbian, gay, bisexual, and transgender (LGBT) rights across the globe. In November 2006, South Africa became the first African to legalize same-sex marriage. Many African countries have poor reputations when it comes to LGBT rights.

African Countries have some of the harshest and most discriminatory LGBTQ+ policies in the world. However, some governments are taking steps toward inclusion. The International Lesbian, Gay, Bisexual, Trans, and Intersex Association (Rights watchdogs) have found that most African countries impose restrictive policies against LGBT communities, with few offering basic protections. Penalties for gay sex generally include fines and prison time.

## 2. PROBLEM STATEMENT

Does the LGBT Community Face the Global Inequalities?

## 3. LITERATURE REVIEW

- According to Namwase, Jjuuko and Nyarango, 2017, (Africa Human rights activist). There is a rising intolerance for same-sex relationship (gays and lesbians) across states in Africa. The growing homophobia is expressed in relations to societal rejection and condemnation of same-sex acts, violent attacks against homosexuals, and, in extreme cases, the enactment of national legislation prohibiting homosexuality and its promotion
- Most religions do not condone homosexuality because it is seen as “ungodly”, “impure” and “unnatural”. Islam and Christianity, the two religions with the largest adherents in Africa oppose homosexual relationships. Thus, it is not surprising that both Christian and Muslim clergies in Africa support the prohibition of homosexual relationships. (van Klinken and Gunda, 2012; Habib, 2010)
- Obidimma and Obidimma (2013) argue that legislations prohibiting same-sex relationships often run contrary to constitutional provisions, citing Section 42 (1) of the 1999 Constitution of the Federal Republic of Nigeria. Obidimma and Obidimma (2013) aver that the Nigerian constitution promotes every citizen’s freedom from all forms of discrimination and as such the enactment of the anti-homosexual law
- When state forces, non-state armed groups, or violent mobs target LGBT+ communities with violence, it is inherently political. This is because political violence targeting LGBT+ communities is often informed by discriminatory laws, as well as homophobic and transphobic political rhetoric, past and ongoing international influences, and broader societal attitudes. Within Africa, 31 countries criminalize same-sex sexual acts (ILGA

World, 2020). Drawn largely from colonial penal codes, modern laws criminalizing same-sex sexual acts continue to foster political violence targeting LGBT+ communities (Human Rights Watch, 2008; Han and O'Mahoney, 2018). Colonial religious and educational systems and norms may also continue to shape public opinion and elite strategies in different ways (Van Klinken and Chitando, 2016).

- Violence targeting the LGBT+ community is especially underreported because of fears of repercussions, legal restrictions, and psychological trauma. In some countries, like Tanzania, political leaders exacerbate this underreporting by cracking down on civil society organizations and censoring media outlets, especially those covering LGBT+ issues (Human Rights Watch, 3 February 2020). This limits scholars, policymakers, and practitioners from understanding the scale of the violence and from detecting trends across contexts. Without this information, basic questions go unanswered about who perpetrates this violence, how many people experience it, and where and when it occurs.
- Additionally, 12% of political violence targeting LGBT+ civilians in Africa takes the form of sexual attacks by organized armed groups (in light gray on graph above). This figure is notably high when compared to the civilian population at large, where sexual violence constitutes less than 3% of all violence targeting civilians in Africa. This suggests that this type of political violence disproportionately targets the LGBT+ population. State forces, namely police, carry out the vast majority over 80% of such violence in Africa. It is most prominent in Nigeria, where police have arrested, beaten up, and sexually assaulted men accused of being gay. For example, police beat and sexually assaulted a man with a stick in Lagos in August 2015 after arresting him on suspicion of being gay (Human Rights Watch, 20 October 2016).
- According to Lars Kamer (a Research Lead of the African market), Jun 9, 2022 he said that there legal Legal barriers to freedom of expression on sexual and gender diversity in Africa 2020. According to him he confirms that in 2020, 37 percent of African countries had legal barriers to the freedom of expression on sexual and gender diversity issues.

Meaning that in 20 African countries, discussions on gender and sexuality were limited by censorship in media and movies, prosecution for LGBT+ symbols, as well as people being charged with offences against morality and religion among others. African countries with explicit legal barriers were Algeria, Cameroon, Egypt, Kenya, Nigeria, Togo, and Uganda. Non-explicit legal barriers limited freedom of expression in Burundi, Cote d'Ivoire, DR Congo, Djibouti, Ethiopia, Libya, Mauritania, Morocco, Somalia, Sudan, Tanzania, Tunisia, and Zambia.



#### 4. METHODOLOGY

This research is based on primary and secondary information. I conducted primary research by interviewing two persons (Tongwa and Azem) from Cameroon through WhatsApp calls. I collected information with a pen and paper, and the third person's information I took it on his social media platform (Shakiro). I tried to talk to him but to no avail. I went to his Facebook page and got his email address and I contacted him he gave me his WhatsApp number to contact him for further questions up till now I have been unable to talk to him. Maybe he does not want to talk to me, and since he has almost all the information on his Facebook that's where I got all his information. I knew Shakiro on Facebook he is a popular Cameroonian LGBT person.

The limitation I had was that I contacted a popular LGBT activist in Cameroon but no response. The one's I interviewed in Cameroon were scared to share certain information with me because they don't know where my research will end and as well for their security in Cameroon. There are some questions they felt uncomfortable answering and I couldn't force them to answer.

For secondary information; to identify most of the policy instruments reviewed I have searched for online databases and websites (Equaldex, LGBT and gender studies database, Google Scholar, the African court) of the African Union and its organs.

##### 4.1 THE LEGAL STATUS OF LGBTI PEOPLE UNDER INTERNATIONAL LAW

The UN Office of the High Commissioner for Human Rights concluded that; "The protection of people based on sexual orientation and gender identity does not require the creation of new rights or special rights for LGBT people.

The human rights of LGBTI people are well stated under the international human rights law, as set out in the Universal Declaration of Human Rights and other human rights treaties. Many countries whose laws criminalize same-sex behavior argue that the human rights of LGBTI

people are 'special' rights with no basis in international law but the UN Office of the High Commissioner for Human Rights has debunked this statement (false)

All people, including LGBT persons, are entitled to enjoy the protections provided for by international human rights law, without limited to, the rights to life, security of person, and privacy; the right to be free from torture, arbitrary arrest, and detention; the right to be free from discrimination and to equality before the law; the right to freedom of expression, association and peaceful assembly; the right to marry and found a family; and the right to the highest attainable standard of health.

#### 4.2 DIFFERENT CONTEXTS, IDENTITIES AND NEEDS

LGBTI activists have continued to face challenges from state actors, including arbitrary arrest detention, and extortion by the police. They also face abuse by non-state actors, including violence, harassment, threats from neighbors, colleagues, and friends for encouraging youths into ungodly activities, frequent eviction from their homes, violent attacks and even murders, the inability to access appropriate health care, forced anal examinations by doctors, expulsion from educational institutions, and discrimination and harassment in the workplace for example.

In Cameroon, Steve Nemande (a practicing medical doctor and director of Alternatives Cameroon) told Amnesty International in an interview that the continuing arrests of gay men are the main barrier to his outreach work for men who have sex with men (MSM). Steve concluded that, "In early January 2011, there was a massive arrest in Douala, at a bar. The police came to check our documents. Those people without documents were taken to the police station. The police returned later and took everyone to the police station at 2 or 3 pm. The police clearly stated that they were arresting the men for their presumed homosexuality. The police afterward told the owner of the bar that he was promoting homosexuality. His bar was closed for 3 months and he had to pay 300,000 CFA (457.39 Euro). Since this arrest, the peer educators have stopped doing work.

Another report has been made to Amnesty International on the challenges many organizations face in becoming officially recognized. For example, the Association for the Defense of Homosexuals (ADEFHO) in Cameroon has not received a registration number from the Government, despite its application in 2003 although the wait time is just two months.

Human rights defenders working on LGBTI issues has always complained that their work is blocked or challenged at different levels. For example Alice Nkom, (A lawyer in Cameroon who is willing to defend LGBTI individuals from prosecution) faced a complaint filed by the Cameroon Minister of Justice with the Bar Council, because she said in public that the Minister's actions proved him to be homophobic. The Minister of Justice filed a complaint that Alice Nkom does not deserve to be a lawyer, and that he will never forgive her for defending homosexuals

When Amnesty International asked Alice Nkom side of the story she said: "I am 66 years old and I have practiced the law for 43 years. I have nothing to lose. The police know that I am not doing this for me."

#### 4.3 SPECIFIC ADVOCACY CONCERNS FOR DIFFERENT PEOPLE

Most advocacy efforts over the past years have focused on the decriminalization of LGBT Persons, although their relentless efforts for a full realization of the human rights of LGBTI people have been insufficient. This focus has often meant that the human rights of lesbian women and transgender individual have been overlooked.

##### 4.3.1 LESBIAN WOMEN

Lesbian women in most countries that have criminalized activities face a broad range of challenges and oppression in many parts of Central Africa and Africa whole. Homophobia has often been directed at them by neighbors, colleagues, and family members, lesbian women are often subject to the added layer of violence, discrimination, and inequality that many women

throughout Africa face. One of the most common complaints published by Amnesty International is that lesbian women are more often the targets of violence and harassment within their home, from family, neighbors, and colleagues, rather than by state forces.

Humanity First Cameroon, an organization providing sexual health services, filed the following complaint to Amnesty International: “For lesbian women, there is the problem of denunciations by families, and psychological violence. Often families will send their daughters to traditional healers to try to “heal” their lesbianism because family finds such activities as spiritual. And corrective rape is also a big problem. Some lesbians have fled their homes before being evicted. Some hide their sexual orientation. Most are dependent financially on their parents. Violence against lesbians is very prevalent.”

Family members, neighbors, religious leaders, and community members feel entitled to police and punish women’s behavior to a much greater extent than they do to men (Gay). Another NGO (Ladies First in Cameroon), concurred that the main problems arise from the families and neighbors of lesbian women; “The first challenge is that we face discrimination from neighbors and families. Many of us have to hide our identity from society because of discrimination. Sometimes if families are aware of sexual identity, they try to hide it from the wider family. It is very stigmatizing to have a lesbian daughter in the family.”

Steve Nemande told Amnesty International that gay men are mainly targeted by the police, while lesbian women face violations from their immediate environment. “Discrimination is the overarching theme in Cameroon. Lesbians are subjected to abuse and discrimination from their direct environment. They get a lot of harassment from parents, friends, schoolmates, and neighbors. Gay men, on the other hand, are targeted more by the police and often illegally arrested and detained/imprisoned. The similarities between lesbians and gay men in terms of how they are treated are that they are both thought to be evil and when people find out, they are subjected to discrimination, and they are evicted, and lose their jobs.”

#### 4.3.2 TRANSGENDER AND INTERSEX PEOPLE

Transgender and intersex persons are often subjected to a litany of other laws most especially against cross-dressing, vagrancy, prostitution, and public nuisance are used and misused by governments and police to target them, and other individuals who do not conform to gender norms. Most attacks are based on non-conformity and the 'impersonation laws', which were originally designed to target theft and fraud, are now used to target Tran's individuals.

Often LGBT people are subjected to very high levels of violence from neighbors, colleagues, family members, and strangers on the streets. Due to very limited access to legal gender recognition, hormonal assistance, and medical and surgical gender reassignment surgery, trans people in Africa are often unable to "pass" as their identified gender, making them targets for violence.

The absence of legal and medical gender change and other health needs are frequently overlooked or denied in many African countries. Intersex individuals who possess genital chromosomal or hormonal characteristics that do not correspond to the given standard for male or female categories of sexual or reproductive anatomy also face distinct oppressions. In some countries, they may be targeted under the same laws criminalizing same-sex activity, and they may be targeted because of their appearance, or their apparent non-conformity to gender norms.

Infants who are diagnosed having an intersex condition at birth may be subjected to genital surgery or pharmaceutical procedures to correct their genital presentation which is common in most African countries. But adults be it male or female who want to change their sex, are not legal in most countries in Africa. Transgender cases for adults (male changing to female and vice versa) are common mostly in South Africa but in other parts of Africa, is rare.

Even in cases where intersex individuals have not undergone corrective medical procedures, as adults or as children, the very fact of possessing an intersex body can, in some cases, lead to discrimination/violence. There is a perception that males who dress in feminine clothing or vice versa are LGBT Persons.

#### 4.4 REASONS FOR HIGH VIOLENCE AGAINST LGBT IN AFRICA (POLITICISING HOMOSEXUALITY)

Being spotted, as LGBTIQ+ in Africa can be fatal. In countries like Mauritania, Sudan, parts of Somalia, Nigeria, and etc people can be sentenced to death while in thirty-three African countries; homosexuality is regarded as a crime and is punishable by imprisonment. Even in countries like South Africa where homosexuality is legal, LGBT+ people have been murdered and face frequent threats and abuse.

Diversity of gender identity, sexual orientation, and sexuality has always existed as male and female binaries, and the attachment of fixed gender norms to biological sex, have been imposed worldwide and the extent to which sexual and gender minorities were embraced, accepted, and excluded in pre-colonial African societies are still under researched.

In recent years, most African government officials, religious, community leaders, and media, from several African nations have stepped up attacks on sexual and gender minorities. They have declared LGBT as un-African, or, ungodly. Politicians in Zimbabwe and Uganda have also cashed in on popular homophobic sentiments to secure political points. For example, Robert Mugabe, Former Zimbabwean president in 1995 stated that “homosexuals are people who behaved like pigs and dogs” and since then the hate against homosexuals has continued.

This makes it difficult to win political battles in support of homosexual rights. It also highlights the imperative for advocacy and the need to protect the rights of individuals facing human rights violations owing to sexual orientation.

Often most African governments have used colonial legislation to discriminate and prosecute individuals who challenge heteronormativity (one man and one woman.) In some African countries, LGBT minorities who suffer violence are not seen as victims of prejudice rather, abuse is considered as a ‘corrective’ measure.

The role of religious, cultural, traditional, and political leaders in condoning or condemning violence against LGBT+ people and promoting or restricting rights; Media coverage of LGBT+

rights and violations reflecting reality or participating in prejudice? Referring to cases of outing (example Uganda), harassment (example Tanzania), rape (example South Africa), prosecution (example Malawi, Mauretania), and persecution (example Egypt).

In Nigeria, a same-sex prohibition bill was tabled in 2016 in the National Assembly and was signed into law on January 7, 2014, by President Goodluck Jonathan. This follows a declaration by the country's then-president to criminalize organizations convening, hosting or funding gay clubs or advocating for LGBT rights.

The anti-homosexual bill was tabled in the Ugandan parliament in 2009 and signed by President Yeweri Museveni on 24 february2014. This law included the death penalty. All these cases among others aggravated political and state-sponsored Homophobia in Africa.

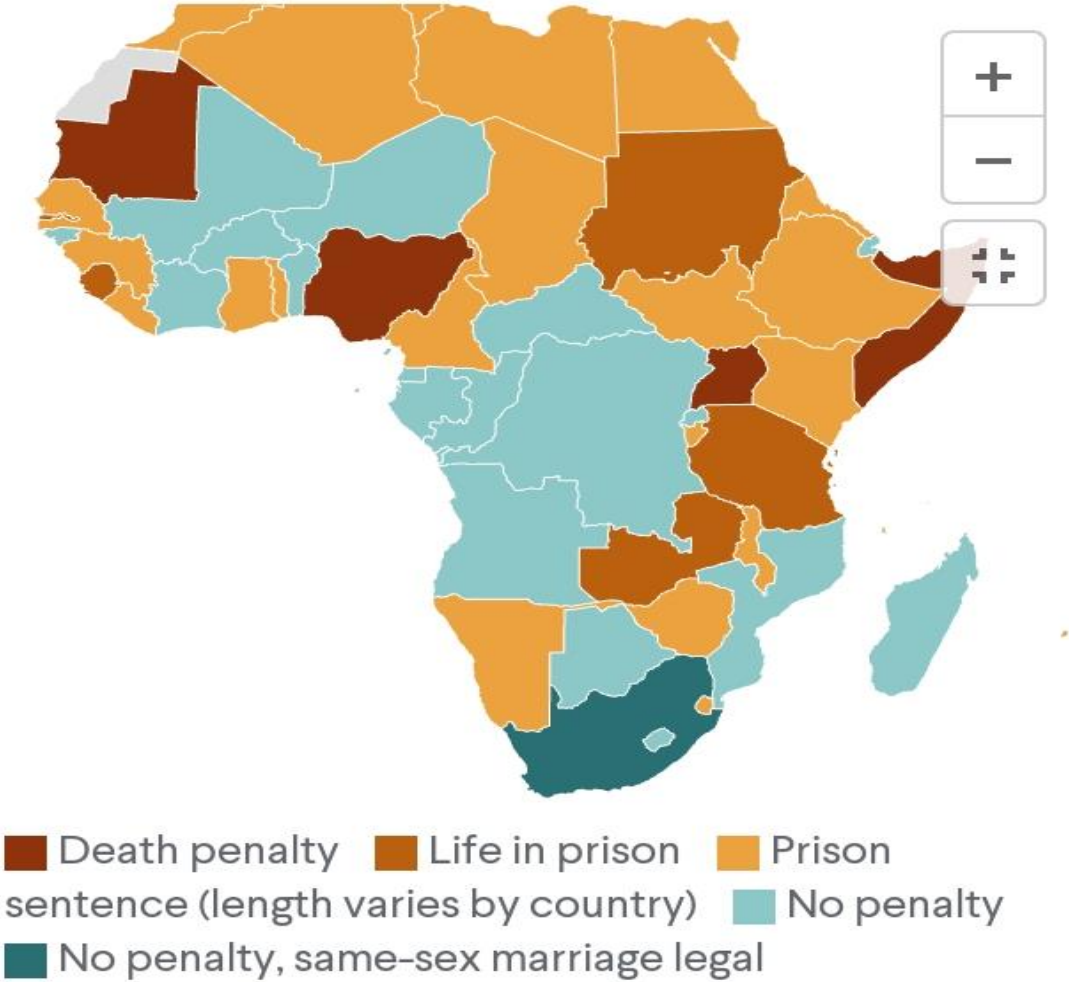
The three main African traditional religion (African tradition, indigenous religion Christianity, and Islam) has been contributing factor towards African homophobia although; Religion and culture have denied freedom to homophobia in Africa. The hypocrisy and predictability of politicians, clergy, and the rest of the self-appointed defenders of African traditions and culture are never short of amusing.

Many politicians have often used homosexuality narratives to deflect the public from real issues and launch their political comeback to cement their relevance. This is because an attack on homosexuality exploits cultural or religious beliefs and appeals to voters' emotions. Politicians would swiftly name and shame individuals and NGOs they accuse of supporting and spreading homosexuality in the country but would never dare to expose their peers who embezzle millions of dollars of public funds.

In 2021 Mama Samia (Samia Suluhu Hassan, Tanzanian president 2021) "said that human rights have their limits and everywhere, there are customs and traditions. We should not be forced into things that are not our customs and traditions," these politicians ignore the fact that it is the harsh anti-homosexuality laws not homosexuality that were imposed on us by the colonial government.

The role of the African Union being unable to sanction countries that violate the human rights of LGBT Persons is another problem. The AU also needs to strengthen the commission’s monitoring mechanisms.

4.5 MAXIMUM LEGAL PUNISHMENT FOR CONSENSUAL SAME-SEXUAL ACTIVITY IN AFRICA



Sources: ILGA World; Human Rights Watch; CFR research.

COUNCIL *on* FOREIGN RELATIONS



1. Countries with death penalties: Mauritania, Nigeria, Uganda, Somalia
2. Countries with life imprisonment: Sierra Leone, Sudan, Tanzania, Zambia, Gambia.
3. Prison sentence (length varies by country): Liberia, Guinea, Senegal, Ghana, Togo, Morocco, Algeria, Tunisia, Egypt, Libya, Chad, Cameroon, Eritrea, Ethiopia, South Sudan, Kenya, Burundi, Malawi, Zimbabwe, Eswatini, Namibia.
4. No penalty: Guinea-Bissau, Ivory Coast, Burkina Faso, Benin, Mali, Niger, Djibouti, Equatorial Guinea, Gabon, Republic of Congo, Central African Republic, The Democratic Republic of Congo, Angola, Rwanda, Mozambique, Lesotho, Botswana, Madagascar.
5. No penalty, same-sex marriage legal: South Africa

#### 4.6 ANALYSIS OF THE AU LEGAL POLICY INSTRUMENT TO TACKLE LGBT PERSONS IN AFRICA

The African Union is comprised of 55 member states. Membership to the African Union (AU) is regarded as one in which states have agreed to give up some of their sovereign powers to achieve a common objective. Africa is shared into Regional Economic Communities recognized by the African Union; each region has its role and structure. The purpose of REC is to facilitate regional economic integration between African Union member states through the African Economic committee. This Committee coordinates African Union member states interests such as peace, security, human rights, development, and security. This regional economic committee includes:

1. The Arab Maghreb Union: (UMA), Northern Region
2. The East African Community (EAC), East Region
3. The Economic Community of Central African States (ECCAS), Central Region
4. The Economic Community of West African States (ECOWAS), Western Region

## 5. The Southern African Development Community (SADC), Southern Region. Among others

According to the AU Constitutive Act, various organs with different competencies have been established whose effective execution is dependent on states transferring some of their sovereign powers to those bodies. These institutions include the Assembly of the Union (Articles 6-9) and the Executive Council (Articles 10-13). These bodies aim to achieve the AU common Objectives set out in the Constitutive Act including, the promotion of peace, Security, stability on the Continent, and the protection of human rights (Article 3).

The African Union (AU) has three principal mechanisms for protecting human rights which include; a Charter, a Commission, and a Court devoted to Human and Peoples Rights. Despite the numerous legal and institutional tools available, human rights are still violated in most African countries this is because there are many legal instruments that the countries have not ratified thereby making the human rights system suffer from weak governance. Most AU member states lack the political will to improve this situation.

### HUMAN RIGHTS ARCHITECTURE IN AFRICA

1. The African Charter on Human and People's Rights (ACHPR)
2. African Commission on Human and People's Rights (ACHPR)
3. African Court of Human and People's Rights (ACHPR)

#### 4.6.1 HUMAN RIGHTS ARCHITECTURE IN AFRICA

The African Union's (AU) main objectives are to promote democratic institutions, good governance, and human rights in Africa which is well stated in its Constitutive Act (2000).

The Organization for African Unity (OAU), the African Union predecessor, founded in 1963 has established several mechanisms to protect the human rights of Africans. The African Charter on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights (ACHPR), the African Court of Human and Peoples' Rights, and other elements make Africa's human rights architecture into a thick web of overlapping international, continental and national-level

instruments. Despite all these legal and institutional tools available, human rights continue to be violated in numerous African countries. This is because of the low level of the implementation of legal instruments and the African human rights institutions' lack of capabilities.

The African Union needs to build up the political will to overcome these shortcomings. Also, Local activists and Civil Society Organizations (CSOs) have relentlessly fought for human rights on different fronts and some positive moves have been documented by the continent's Executive body and the African Union Commission (AUC). Furthermore, engagement from international partners, like the European Union (EU), at both levels will be necessary to advance the protection of basic human rights across Africa.

#### 4.6.2 THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS:

The African Charter on Human and People's Rights (Charter) also Known as the Banjul Charter is the most prominent legal instrument for the promotion of human rights in Africa. It was approved in 1981 by the Organization of African Union (OAU's) Assembly of Heads of State which entered into force on 21 October 1986 and it has been ratified by most African Union states of members.

In honor of this day, 21 October was declared as African Human Rights Day. Before the replacement of the OAU in 1979, the assembly of the heads of state and government adopted a resolution that would create a committee of experts to draft the continent's human rights instrument similar to the one in Europe (Europe Convention on Human Rights and that of America (American Convention on Human Rights). Finally, this committee was successfully set up and it produced a draft approved at the OAU 18<sup>TH</sup> Assembly held in June 1981, in the administrative capital of Kenya (Nairobi).

O November 2, 1987, the Commission on Human and People's Rights was set up in Ethiopia and in 1998 the protocol to the charter adopted an African court on Human and people's rights. The protocol came into effect In January 2004 and in July 2004 the African Union Assembly decided

to merge the African Court of Justice. In 2005 the African Union Assembly decided that the ACHPR should kick-start even when the protocol establishing the African Court of Justice had not come into effect. In January 2006 the executive council of the African Union in Sudan elected the first judges of the African Court although the relationship between the newly created court and commission is not yet determine.

53 States of the African Union have ratified the charter as of 2019. The Charter establishes duties for states and individuals and recognizes the most universally accepted civil and political rights, as well as economic, social, and cultural rights as well as acknowledging the indivisibility and the collective dimension of rights such as self-determination, people's rights to development and the free disposal of natural resources which the most distinguishing feature of the African human rights system.

#### 4.6.3 African Commission on Human and People's Rights (ACHPR):

ACHPR is a partly judicial character that possesses the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts (quasi-judicial).The organ tasked with the interpretation of the Charter, as well as investigating individual complaints referring to its violation of the African Commission on Human and Peoples' Rights (ACHPR). The ACHPR was established under Art. 30 of the Charter and it became operational in November 1987.

The ACHPR ordinary session is held twice a year and its Secretariat is in Banjul (Gambia). As a body formally dependent on the AU, the 11 individual members who form the ACHPR are elected by the AU Assembly among the experts nominated by member states. The commissioners subsequently elect a Chairperson and Vice-Chairperson these posts are currently held by Ms. Catherine Dupe Atoki from Nigeria and Ms. Zainabo Sylvie Kayitesi from Rwanda. The work of the ACHPR is supported by 15 special mechanisms including special reporters and working groups.

The ACHPR can issue non-binding resolutions or laws, and so far so good it has delivered about 300 recommendations through resolutions and communication since it began its work. Also, it has engaged in several promotional missions. However, it has powers of persuasion, and often its influence has not always been effective. For instance, state parties to the African Charter are expected to submit reports to the ACHPR every two years. Despite this given length of time, over ten countries have never submitted a report, although the ACHPR also has internal shortcomings which are supposed to include its observations to the state reports in its Activity but have always failed to do so.

Another shortcoming is its staffing and administrative resources, the budget allocated to the ACPHR in 2011 is comparable to that of other regional human rights commissions which have been more productive. To some observers, the reasons for the ACHPR's perceived ineffectiveness with its leadership and Secretariat. Also, the location of the ACHPR has been criticized after the death sentence of nine Gambian prisoners; the World Coalition against Death Penalty has called on the AU to move the ACHPR to a different country.

#### 4.6.4 AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS

In 1998, a Protocol to the African Charter established the African Court of Human and Peoples' Rights (Court) that entered into force in 2004. The Court Tanzania meets four times a year. The AU Assembly elected 11 judges, and in September 2012 the Court elected Justice Sophia A. B. Akuffo from Ghana as President, and Justice Fatsah Ouguergouz from Algeria as Vice-President for a two-year term. The Court has jurisdiction over the cases and disputes submitted to it concerning the interpretation and application of the African Charter, thus complementing the mandate of the ACHPR. The Court's jurisdiction applies only to 26 states that have ratified the Court's Protocol. Complaints by individuals, and Non-Governmental Organizations (NGOs) are investigated by the Court upon referral by the ACHPR.

Only six AU member states - Burkina Faso, Ghana, Malawi, Mali, Rwanda, and Tanzania - have made optional declarations under article 34 (6) of the Protocol that citizens could present individual complaints directly. In 2009 the Court delivered its first judgment, on an application

from the previous year. In June 2012, 24 applications were received by the court two submitted by the AU itself, which had delivered an opinion on 12 of them.

In 2003 the AU accepted the Protocol on the Establishment of the African Court of Justice, which was intended to deal with matters related to economic integration and matters of a political nature. In 2008 a new Protocol was adopted to merge the Court's Protocol, although the Court of Justice had never come into existence. This court would have two sections: one for general affairs, and the other for human rights. The 15 member states needed to ratify the Protocol to come into force, so far, only three have done so.

The AU have had two occasions (June 2012 and January 2013) postponed deciding for the triple court. The reason for a decision not included is because of lack of agreement over the definition of 'unconstitutional change of government' and concerns over additional costs. Observers of the process see these as an obstacle, or a significantly delay to the draft protocol's approval.

#### 4.6.5 OTHER RELEVANT INSTRUMENTS

Apart from the three legal instruments and institutions, numerous instruments complement the African human rights system. These instruments complements include;

1. The Declaration Principles of Freedom of Expression in Africa.
2. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.
3. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
4. The AU Convention on Preventing and Combating Corruption.
5. African Committee of Experts on the Rights and Welfare of the Child. This instrument has a unique disposition for promoting human rights in the sense that it was established by the African Charter on the Rights and Welfare of the Child (ACRWC) ratified by 45 states. This is the only organ in the world with the competence to receive complaints

against states based solely on a treaty dealing exclusively with the rights of a child. Even the UN Convention on the Rights of the Child for instance has no similar procedure.

6. The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa entered into force in 2005 and is the first international treaty that includes health and reproductive rights. However, it faces criticism that it does not duly reconcile women's rights protection with African traditions.
7. The African Union's Human Rights Strategy and Action Plan were approved in 2011. the aim of these dedicated mechanisms is for a collective action by the AU, Regional Economic Communities (REC), and member states aimed at strengthening the African human rights system and addressing the current challenges, including inadequate coordination and collaboration, limited capacity of human rights institutions, insufficient implementation and enforcement of human rights norms and decisions as well as limited awareness and access to the African human rights mechanisms. The Strategy has a Governance Platform that includes human rights-related bodies, AU executive organs, and the Pan-African Parliament (PAP). The Pan-African Parliament has promoted the ratification of the AU's human rights instruments, including the 'African Charter on Democracy, Elections and Governance. The African human rights system suffers from the fact that few of its legal provisions have been ratified.

Several international policies recognize the impact of discrimination against the LGBT community. The first is the international policies are; the UN Human Rights Council Resolution 41/18 on the protection against violence and discrimination against LGBT persons. Also, another legally binding policy is the African Charter on Human and Peoples Rights. Article 2 of its policies provide the right to equality of all and protects against discrimination based on sex or another status.

However, the African Union (AU) has no official position on whether this policy includes sexual orientation; this is because the African Commission on Human and Peoples' Rights hasn't been

consistent on this issue. The commission stated that Article 2 included all people's rights and gave observer status to the Coalition of African Lesbians. But later on, the commission contradicted itself rejecting applications based on the organizations' sexual and gender identity. Other AU organs have interpreted Article 2 to exclude LGBT people, and several member states seem to agree on this point.

#### 4.7 AFRICAN COMMISSION ADOPTS LANDMARK RESOLUTION ON LGBT RIGHTS.

On the 22 of May 2014, an African human rights body (The African Commission) adopted a landmark resolution (Resolution 275) condemning violence and discrimination against gay, lesbian, bisexual, and transgender persons in its Final Communiqué.

Clement Voulé, (head of the International Society for Human Rights, Africa program) said that the resolution (Resolution 275) is historic, important, and timely,' he went further to explain that the resolution is historic because:

1. It marked the first time the African Commission pronounced itself on pertinent issues on the topic of LGBT rights.
2. Also, because it responds to discrimination and attacks against LGBT persons and LGBT rights defenders in many parts of Africa, in places like Uganda and Nigeria among others. It is also important because it rejects the spurious notion that LGBT rights are somehow "un-African",
3. He said it is timely because the resolution came at a time when it is anticipated and hoped that the UN Human Rights Council will adopt a follow-up to its first-ever resolution on LGBT rights in 2011.

Moreover, he said that With the African Commission leading the way to support LGBT persons, he used the opportunity to call on all African States to demonstrate their commitment to the



universal right supporting the resolution and condemn discrimination on the grounds of sexual orientation or gender identity at the Human Rights Council. He insisted that the time has come for the UN's body to establish a procedure or forum to monitor and report violations against LGBT persons and to advise States on how to respect and protect their rights.

Clement Voulé “acknowledge and thank brave human rights defenders and organizations including AMSHeR, the Coalition of African Lesbians, FIDH, HURISA, the East and Horn of Africa Human Rights Defenders Project, the West African Human Rights Defenders Network (WAHRDN), the Human Rights Defenders Network in Central Africa (REDHAC), the African Centre for Democracy and Human Rights Studies, and the NGO Forum Steering Committee, among others who have worked towards this resolution over many years.

In 2015, the Commission granted observer status to a South African-based NGO (known as the Coalition of African Lesbians). Making the commission's decision to be historical but the AU executive council (made up of ministers of foreign) told the commission to withdraw the observer status given to the South African NGO, on the basis that the NGO is attempting to impose values contrary to African values. Its mandate is to consider the commission's activity reports.

After getting an ultimatum from the executive council, in 2018, the commission complied. The Commission received legitimate criticism that the commission was not acting independently in supervising state compliance with human rights in Africa.

Its latest decision rests on three pillars.

- It assumes that all three NGOs advocate for the equal rights of lesbian, gay, bisexual, transgender, and queer (LGBT+) persons, without explaining how they do this.
- It argues that because sexual orientation is not a right expressly provided in the African human rights charter, these NGOs lack a basis to exist.
- The commission holds the view that the NGOs' work of advancing equal rights and dignity for all, irrespective of sexual orientation, is against African values.

From June 25 to July 2, 2018, the African Union held its 31st ordinary Summit of heads of state and governments in Nouakchott, Mauritania (known as the Nouakchott Summit) and gave a deadline of 31 December 2018 for the African Commission on Human and Peoples' Rights (ACHPR) to withdraw the observer status it had granted the Coalition of African Lesbians (CAL) that was granted in 2014. It was unclear whether the ACHPR would accept the pressure or not.

the Executive Council, in line with the PRC's recommendation, also asked the ACHPR to 'revise the criteria for granting and withdrawing observer status for Non-Governmental Organizations (NGOs), which should be in line with the already existing criteria on the accreditation of NGOs to the AU, taking into account African values and traditions'. By referring to African values and traditions, the council appears to emphasize that homosexuality is an import that goes against African traditions.

This decision led to a debate about homosexuality in Africa, where it is frequently perceived by Africans as a taboo and an import from the West. Also, this decision promotes a selective view of politically approved rights, thereby jeopardizing the efficiency of the African human rights body. Although the African Commission on Human and Peoples' Rights (ACHPR) is supposed to be an independent body so that the AU can temporarily suspend its activities by withholding funding.

Member states have to allow the ACHPR to create a platform where every human right can be openly debated, instead of only those that are politically tolerated. The ACHPR is mandated to promote and protect human rights in Africa. In practice, its autonomy is subject to question.

The Executive Council decision of July 2018 maintains that the functional independence that the ACHPR enjoys is functional and cannot be interpreted as independence from the same organs that created the body. Yet the independence of the ACHPR is crucial to its functioning and efficiency.

The limits of the African human rights body are evident in how member states default on implementing its decisions. AU member states through the Executive Council have also warned the ACHPR to ensure both confidentiality and due diligence with concerned states on any

allegations raised, before including them in its activity reports to the Executive Council. This reflects the unease among member states over ACHPR reports that are critical of governments.

This unease is also reflected in the fact that AU member states have covered little of the ACHPR budget, thereby making it highly dependent on external donors. The ACHPR complains that the limited funds affect its responsibility to promote and protect human rights on the continent.

While it is important to enhance trust and cooperation between the ACHPR and member states, African states have to take a step back from attempts to control the commission by allowing it to be a platform for robust engagement on all issues relating to human rights.

Wednesday, March 22, 2023, the African Commission of Human and Peoples Rights, made a decision that contradicted its existing decisions. It used a sexual or gender identity as a reason to reject applications for observer status from three nongovernmental organizations. The three NGOs the Commission recently refused observer status are; Alternative Cote d'Ivoire, Human Rights First Rwanda, and Synergia-initiatives for Human Rights. Although two of the NGOs' Alternative Cote d'Ivoire, Human Rights First Rwanda operates legally in countries where same-sex relationship is not criminalized. The commission implies that Rwanda and Cote d'Ivoire are un-African because they allow this NGO to operate legally.

The denial of this observer status means that before the Commission the NGO will not have a voice. The NGO will not be able to draw the Commission's attention to the Human rights Violations of LGBT persons in Africa. The Commission is politicizing sexual and minority rights in Africa thereby restricting civil society functioning and marginalizing community people who have been stigmatized and excluded. According to the Commission orientation it is not a recognized right in the African Charter on human and people's rights. Also, the Commission said that promoting and protecting sexual and gender minorities was Un-African.

This decision casts out shadow over the Commission's commitment to protecting the rights of Africans. Also, it seriously destroyed its independence from African Union States. One of the Commission's key roles is to grant observer status to NGOs. So far the Commission has granted observer status to 544 NGOs.

Most Europeans see African traditional sexuality as an example of racial inferiority and anti-LGBT as a means to subjugate the people involved. Christianity and other schools of Islamic law condemn LGBT, both religions have millions of followers in Africa to win support and distract them from their shortcomings.

#### 4.8 GENERAL PRINCIPLES AND OBLIGATION PROVIDED BY THE AFRICAN UNION TO STATES

The non-discrimination principle: States must take all the necessary measures to protect the rights of LGBT Persons irrespective of their race, color, nationality, citizenship, ethnicity, profession, political opinions, sex, sexual orientation, gender identity, gender expression, or any other factor that could lead to discrimination LGBT Persons. Article 2 of the African Charter is open-ended and inclusive, to protect all Africans.

The due diligence principle: 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 a timely and effective manner.

Victims and witnesses procedures to investigate acts of violence and efforts to prosecute perpetrators are reduced as much as possible.

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.

Obligation to protect the re-occurrence of violence, discrimination, and other human rights violations against LGBT persons.

Obligation to provide effective remedies 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. Reparation must include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

Obligation to guarantee access to justice, investigate, and prosecute the perpetrator of violence and other 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 those in rural areas. States must ensure that investigation into acts of violence and the prosecutions of the perpetrators are carried out: without unjustified delays independently, impartially, effectively, and in a manner that will lead to the identification and sentencing of perpetrators.

Awareness-raising strategies: States must conduct campaigns to raise awareness about the causes of violence against LGBT individuals and the forms it takes. These campaigns must be targeted toward 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 offense and specify corresponding penalties to deter people from committing these violent acts. They must also provide information on the mechanisms. These campaigns must be launched throughout the national territory, including rural areas, public spaces, public transportation, hospitals, police stations, educational institutions, and businesses. States must educate advertising professionals, journalists, and other communication specialists including personnel working in the media and community radio, to combat violence against LGBT individuals

Educational program: States must create educational programs and materials that promote equality, combat discrimination and violence against LGBT individuals

Cooperation with local stakeholders and Civil Society Organizations: States must allow, register, and support LGBT organizations that conduct programs 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 organizations or human rights defenders against attack, reprisals, or recriminations.

**Reporting violence and other human rights violations:** States must create 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, to facilitate and hasten the intervention of the authorities.

**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 will understand and promptly, regarding their rights, protection and supporting measures at the local, regional, and national levels.

**Sentencing and applicable penalties:** States must provide penalties that are proportional to the seriousness of the act of violence against an LGBT individual. The applicable penalties must consider any aggravating circumstances.

**Participation of the victims and witnesses in the proceedings:** Participation of LGBT organizations 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)

**Right to reparation** States must take the necessary legislative and other measures required to guarantee access to appropriate, efficient, accessible, timeous and long-lasting reparation for injury and loss suffered by victims of violence, as well as access to appropriate information regarding reparation mechanisms.

#### 4.9 REGIONAL LEGAL AND POLICY INSTRUMENTS ADDRESSING LGBT EXCLUSION IN AFRICA

Africa is made up of five geographic regions recognized by the AU which include: Central Africa, East Africa, West Africa, North Africa, and South Africa. African Union law is the body of law comprising treaties, resolutions, and decisions that have direct and indirect application to the member States. AU law regulates the behavior of countries party to the regional body. At the regional level by promoting peace, eradicating colonialism, promoting International Cooperation, defending state sovereignty, promoting International Cooperation, and harmonizing member states' policies.

The AU represents the interests of Africa at the level of intergovernmental organizations (IGOs) for example; the African Union is a permanent observer at the United Nations General Assembly. Member states of the African Union (AU) coordinate Foreign Policy by conducting International Relations on a state-by-state basis.

The United Nations Regional Office for Central Africa located in Cameroon is a political mission with a regional mandate that works closely with the UN on ground, governments, regional and sub-regional organizations like the Economic Community of Central African States (ECCAS) to strengthen regional capacity to address peace at the regional level, Human right issues, security issues, and cross border challenges. ECCAS is made up of all the Central African States.

The ability of the African Union (AU) to achieve its policy goals is through the adoption of treaties. These goals realize that the treaties be signed, ratified, and implemented by the member states. The treaties adopted have two interrelated factors which include the ability to translate treaty undertakings into binding norms and the political will of its member states. Unfortunately, the AU lacks powers to pressure member states to ratify its treaties and comply with their provisions.

The AU has provided its members with collectively adopted policies and positions on a wide variety of issues. (human rights, peace and security, non-proliferation of nuclear weapons, refugees and internally displaced persons, democracy, corruption, non-aggression, economic

integration, conservation and management of natural resources, environmental protection, defense, etc).

These policy goals and positions are in the resolutions, declarations, and decisions that have been adopted over the years at different levels by the AU and its predecessor, the Organization of African Unity ('OAU'), the most important of these policies are enshrined in the treaties to which the great majority of AU member states are signatory.

The vulnerability of LGBT persons in Africa to public health and other risks is at its highest peak because of their exclusion from socio-economic opportunities and services. The existing regional-level legal, policy instruments and treaties are often used to tackle the exclusion of LGBT persons in Africa at the regional level. Between 1981 and 2018, the African Union (AU), its precursor, and the Organization of African Unity adopted and formulated seven key living legal and policy instruments. Most of these treaties and instruments are binding and enforceable and all the treaties take full responsibility of AU member-states to safeguard and ensure the inclusion and protection of citizens, their gender or sexual orientation.

The treaties set forth ambitious agendas of inclusion and affirm the rights of the region's citizens to Sexual and Reproductive Health (SRH), equality, freedom, and opportunities, regardless of their sexual orientation. Generally, their language is universal and their rejection of discrimination, criminalization, and denial of socio-economic opportunities and services to the region's sexual minorities is straightforward.

However, the instrument does not directly mention LGBT persons because it lacks a clear and effective mechanism for answerability among member states. Accountability and commitment among the AU member-states towards these instruments and policies will improve national legal and policy environments and propel forward the agenda of LGBT inclusion, sexual and reproductive health (SRH), and well-being in the region.

Yet African governments have signed onto regional commitments and agreements to guarantee the human rights and inclusion of all people. One of the most important legal instruments is the African Charter, which was adopted in 1981 and ratified by all African countries except Sudan.



The Charter grants rights to everyone without exception, with Article 2 stating that every individual shall be entitled to the rights, and freedoms recognized and guaranteed in the Charter without distinction of any kind.

In Article 4, the Charter asserts that every human being shall be entitled to respect for his life and the integrity of his person. No one will be arbitrarily deprived of this right as a regional policy documents such that offer African countries that don't protect LGBT rights the basis to draft domestic legislation as the first step to protection to all.

Ambitious aspirations the African Commission on Human and Peoples' Rights is charged with ensuring that African Union member states protect the rights of all. The Commission has several instruments that set out to ensure this happens. Frameworks include key terms such as all and everyone, among others, and reflect the commitment to leaving no one behind as espoused in the Sustainable Development Agendas. Some of the frameworks this principle is enshrined in include Agenda 2063 the Africa We Want; the African Charter on Human and People's Rights; the Common African Position Post-2015 Development Agenda; and the Africa Charter on Democracy. But national governments need to step up their game. Those that don't protect LGBT rights must put these guarantees into their domestic laws.

They must also then show a commitment to interpreting existing supportive regional instruments broadly and in sweeping terms. A narrow interpretation of the regional policy documents runs the risk of excluding LGBT communities because they aren't explicitly named in the frameworks. Although most African countries have poor reputations when it comes to LGBT Rights, sexual and gender minorities are marginalized by African politicians, religious, and traditional leaders. Of the 69 countries in the world that criminalize same-sex relations, 33 are African countries. These laws are colonial rule remnants.

Boniface Ushie et al. said that “the question of LGBT Rights in Africa has continued to have divided opinion across the continent. These opinions are primarily driven by legal, cultural and religious beliefs and interpretations”. However, so far as the human rights of LGBT are concerned most African states have their restrictive State policies, treaties, laws, and public attitudes that have exposed LGBT individuals to exclusion, discrimination and fear. The AU

needs to strengthen the commission's monitoring mechanisms. The African Union is limited to give sanctions to countries that give penalties most especially to LGBT persons

In several African countries that protect LGBT people, several legal guarantees sought by LGBT individuals and groups have been adjusted based on the African Charter for instance: In central Africa, Angola's new penal code of 1886 was revised in January 2021 so that they no longer criminalize same-sex conduct. The new law has a non-discrimination provision and protects the grounds of sexual orientation to a certain extent.

In 2020 Gabon abandoned its brief experiment with criminalizing same-sex conduct when its parliament reversed a 2019 law that had criminalized same-sex conduct for the first time. But legal opposition and challenges to these archaic laws are increasing, if not always successful.

While many countries with colonial-era sodomy laws do not actively enforce them or do so only rarely, Cameroon actively enforces section 347 of its penal code, which punishes sexual relations between persons of the same sex, with up to five years in prison. In 2021, at least 38 people were arrested in Cameroon while victims of mob violence were detained for alleged same-sex conduct and gender non-conformity. In May 2021, two transgender women received prison sentences of five years each under the law that forbids same-sex relations.

The status of homosexuality in Chad became illegal in 2017. On 12<sup>th</sup>, December 2016, Chad's National Assembly passed an updated penal code criminalizing both male and female same-sexual activity by a vote of 111 to 1.

#### 4.9.1 THE GEOGRAPHICAL BACKGROUND OF CENTRAL AFRICA

Central Africa is the core region of the continent. The Central African region is a very complex region with a lot of countries, and different land forms which comprises of nine sovereign states which include: (Angola, Cameroon, Central African Republic, Chad, DR of Congo, Equatorial Guinea, Gabon, and Republic of the Congo, São Tomé and Príncipe).

Throughout their history, these countries have had imperialism, power struggles, and hardships. When these countries are not at war with each other they are very beautiful because of their geography with beautiful rivers, low plateaus and high plateaus, mountains, basins, and lakes vast deserts and vast forests. This river cuts through Central Africa like a snake winding through East and West Africa.

#### 4.9.2 LGBT EQUALITY INDEX IN CENTRAL AFRICAN STATES

The Equality Index measures the current status of LGBT rights, laws, and freedoms as well as public attitudes towards LGBT people. The most LGBT-Friendly Places in Central Africa. According to Equaldex; a collaborative knowledge base crowd sourcing LGBT (lesbian, gay, bisexual, transgender) rights by country and region.

In most African countries, homosexuality is still a taboo. The Equality Index measures the current status of LGBT rights, laws, freedoms, and public attitudes towards LGBT people. Equaldex's Equality Index is a rating from 0 to 100 (with 100 being the most equal) to help analyze the legal rights and public opinion attitudes towards LGBTQ. The most LGBT-Friendly Places in Central Africa (EQUALDEX Equality Index).

#### 4.9.3 LEGAL INDEX

The LGBT legal index measures the current legal status of 13 different issues ranging from the legal status of homosexuals, same-sex marriage, transgender rights, and LGBT discrimination protections LGBT censorship laws, among others.

Each topic is weighted differently in the total possible score and is assigned based on the status of the law using a rating scale that ranges from 0% to 100% for instance, if homosexuality is

legal, it would have a score of 100, but if it's illegal, it would have a score of 0 or If the status of an issue is unknown, not applicable, it will mean that no data has been added to EQUALDEX, the issue's score is completely discarded and not included in the ranking for example Cameroon is not on the list. Past laws that are no longer in effect do not impact the region's current score. New laws that have not gone into effect yet will not impact the region's score until the day it goes into effect.

#### 4.9.4 Public Opinion Index

The LGBT public opinion index measures the public attitudes towards LGBT people using surveys from reputable organizations. The scores of this index are based on the average of the results of all surveys in a given region. The averaged value is usually the most “equal” response in the poll. For instance, if a poll asked the following question, “Do you support same-sex marriage?” and 56% of the population said “Yes”, the value of “56” would be used. In some cases, a survey may be weighted less if the survey includes a specific group of people (such as Christians) and might not be a full representation of the overall attitudes of the region.

To represent current attitudes, surveys are scored using a time-decay weighting method based on the date published. This means that the most recent surveys carry more weight in the public opinion index. Surveys from the current year and the previous year receive full weight. However, for surveys older than two years, an exponential decay of 75% applies each year. This weight decay ensures that the public opinion index is most influenced by the most recent data, reflecting evolving public attitudes, while still taking into account older surveys to maintain a comprehensive overview. This change went into effect on July 21, 2023.

Public opinion data is not available in every region. The Equality Index will only be a representation of the legal rights of LGBT people in the region. Additionally, some regions do not have recent public opinion data available, so older data is used to score the region. The model for the Equality Index is evolving, and adjustments to weights and other parameters are likely as we continue to improve its accuracy and relevance

EQUALDEX'S (Equality Index) has constantly improved on and tracking of its data over time. As more data is contributed to EQUALDEX, the index becomes more accurate. For example, adding survey results to a region will likely change the region's Equality Index if there is limited data on the region. In this case, the change in score could represent a change in attitudes in the region, but it may also just be an increase in the index's accuracy. Global opinion surveys rarely include transgender topics. Surveys are usually limited to homosexuality or same-sex marriage. EQUALDEX continues to seek more international transgender public opinion data to make the Equality Index more inclusive

#### 4.9.5 LEGAL PROGRESS vs. PUBLIC OPINION IN CENTRAL AFRICAN EQUALITY INDEX

Country	Equality index	Legal index	Public opinion index
Angola	57/100	62/100	51/100
Sao Tome and Principe	50	58	43
Equatorial Guinea	47	47	-
The Republic of Congo	38	56	19
Gabon	32	51	14
Central African Republic	31	31	-
The Democratic Republic of Congo	21	32	10
Chad	18	24	12
Cameroon	10	8	11

Comparing public opinion and legal rights focus on regions has aided legal progress. A country without public opinion data is excluded. EQUALDEX rating is from 0-100 with 100 being the

most equal. The equality index is an average of two indexes (which are the legal index and public opinion). The higher the percentages the more friendly the country is to LGBT persons. In all the Central African states gay/lesbian marriage is illegal. But homosexuality is legal to a certain extent in some Central African states like Angola, Sao Tome and Principe, Equatorial Guinea, the Republic of Congo, Gabon, Central African Republic, and the Democratic Republic of Congo while homosexual is illegal with punishment in Chad, and Cameroon.

Globally, public opinion surveys rarely include transgender topics. Surveys are usually limited to homosexual or same-sex marriage. For the past years, EQUALDEX has sought International Transgender Public Opinion to make the equality index more inclusive. EQUALDEX updates its data automatically as a new law goes to into effect, and as new data is added the index will recalculate within a few hours.

4.9.6 LGBT RIGHTS IN CENTRAL AFRICA (ACCORDING TO EQUALDEX LGBT RIGHTS)

1. Angola:

Homosexuality	Legal
Gay marriage	Unrecognized (illegal)
Changing Gender	Legal, but surgery not required
Non-binary gender recognition	Not legally recognized
Discrimination	Illegal in some contexts (Article 212 of the penal code criminalizes acts of discrimination based on sexual orientation in employment, health education, and in the provision of goods and services)
Employment discrimination	Sexual orientation only
Housing discrimination	No protection
Military	Lesbian, gay, bisexual permitted, transgender people banned

Angola Ranking in 2023	75/119 Region
Censorship	No censorship
Adoption	Single only
Conversion therapy	Not banned
Age of consent	equal

2. CHAD:

Homosexuality	Illegal (imprisonment as punishment)
Gay marriage	Not Legal
Changing gender	Ambiguous
Non-binary gender recognition	unknown
Discrimination	Illegal in some context
Employment discrimination	No protection
Housing discrimination	No protection
Military	Illegal
Chad Ranking in 2023	95/114 region
Censorship	No censorship
Adoption	Single only
Conversion therapy	Not banned
Age of consent	N/A

### 3. SAO TOME AND PRINCIPLE

Homosexuality	legal
Gay marriage	Unrecognized
Changing gender	Ambiguous
Non-binary gender recognition	Not legally recognized
Discrimination	Illegal in some contexts
Employment discrimination	Sexual orientation only
Housing discrimination	No protection
Military	Lesbian, gay, bisexual permitted transgender people banned
Sao Tome Ranking in 2016	6/34 regions
Censorship	No censorship
Adoption	Single only
Conversion therapy	Not banned
Age of consent	Equal



4. THE DEMOCRATIC REPUBLIC OF CONGO

Homosexuality	Legal
Gay marriage	Not Legal
Changing gender	Illegal
Non-binary gender recognition	Not legally recognized
Discrimination	No protection
Employment discrimination	No protection
Housing discrimination	No protection
Military	Illegal
The Democratic Republic of Congo ranking 2023	101/124 Regions
Censorship	Imprisonment as punishment
Conversion therapy	Not banned
Age of consent	Equal

5. THE REPUBLIC OF CONGO

Homosexuality	Legal
Gay marriage	Unrecognized
Changing gender	Ambiguous
Non-binary gender recognition	Unknown
Discrimination	No protection
Employment discrimination	No protection
Housing Discrimination	No protection
Military	Lesbian, Gays, bisexuals permitted, transgender people banned

The Republic of Congo Ranking	84/124 Region
Censorship	No censorship
Conversion therapy	Ambiguous
Age of consent	unequal

## 6. GABON

Homosexuality	Legal
Gay marriage	Unrecognized illegal
Changing gender	Illegal
Non-binary gender recognition	Unknown
Discrimination	No Protection
Employment discrimination	No protection
Housing Discrimination	Ambiguous
Military	Lesbian, Gay, and Bisexuals are permitted, but transgender people are banned.
Gabon Ranking 2023	95/124 Regions
Censorship	No censorship
Conversion therapy	Not banned
Age of consent	Unequal

## 7. CAMEROON

Homosexuality	Illegal (imprisonment as punishment)
Gay marriage	Not Legal
Changing gender	Illegal
Non-binary gender recognition	Not legally recognized
Discrimination	No protection

Employment discrimination	No protection
Housing discrimination	No protection
Military	Illegal
Cameroon Ranking 2023	100/124 Regions
Censorship	State-enforced
Conversion therapy	Not banned
Age of consent	N/A

#### 8. EQUATORIAL GUINEA

Homosexuality	Legal
Gay marriage	Unrecognized
Changing gender	Illegal
Non-binary gender recognition	Not legally recognized
Discrimination	No protection
Employment discrimination	No protection
Housing discrimination	No protection
Military	Lesbian, gays, bisexual permitted, transgender people banned
Equatorial Guinea Ranking 2023	No data
Censorship	No censorship
Conversion therapy	Not banned
Age of consent	Equal

## 9. CENTRAL AFRICAN REPUBLIC

Homosexuality	Legal
Gay marriage	Not Legal
Changing gender	Illegal
Non-binary gender recognition	Not legally recognized
Discrimination	No protection
Employment discrimination	No Protection
Housing Discrimination	No protection
Military	Ambiguous
Central African Republic Ranking 2023	No data
Censorship	Imprisonment as punishment
Conversion therapy	Not banned
Age of consent	Equal

### 4.10 A COMPARATIVE LEGAL ANALYSIS BETWEEN CENTRAL AFRICA STATES (CEMAC ZONE) VS THE AFRICAN UNION POLICY INSTRUMENTS IN ADDRESSING VIOLENCE AGAINST LGBT PEOPLE

THE AFRICAN UNION POLICY INSTRUMENTS IN ADDRESSING VIOLENCE AGAINST LGBT PEOPLE	LEGAL ANALYSIS BETWEEN CENTRAL AFRICA STATES (CEMAC ZONE)
The African Union (AU) has three principal mechanisms for protecting human rights which include; a Charter, a Commission, and a Court devoted to Human and Peoples Rights.	The AU has provided its members with collectively adopted policies and positions on a wide variety of issues. These policy goals and positions are in the resolutions, declarations, and decisions that have been

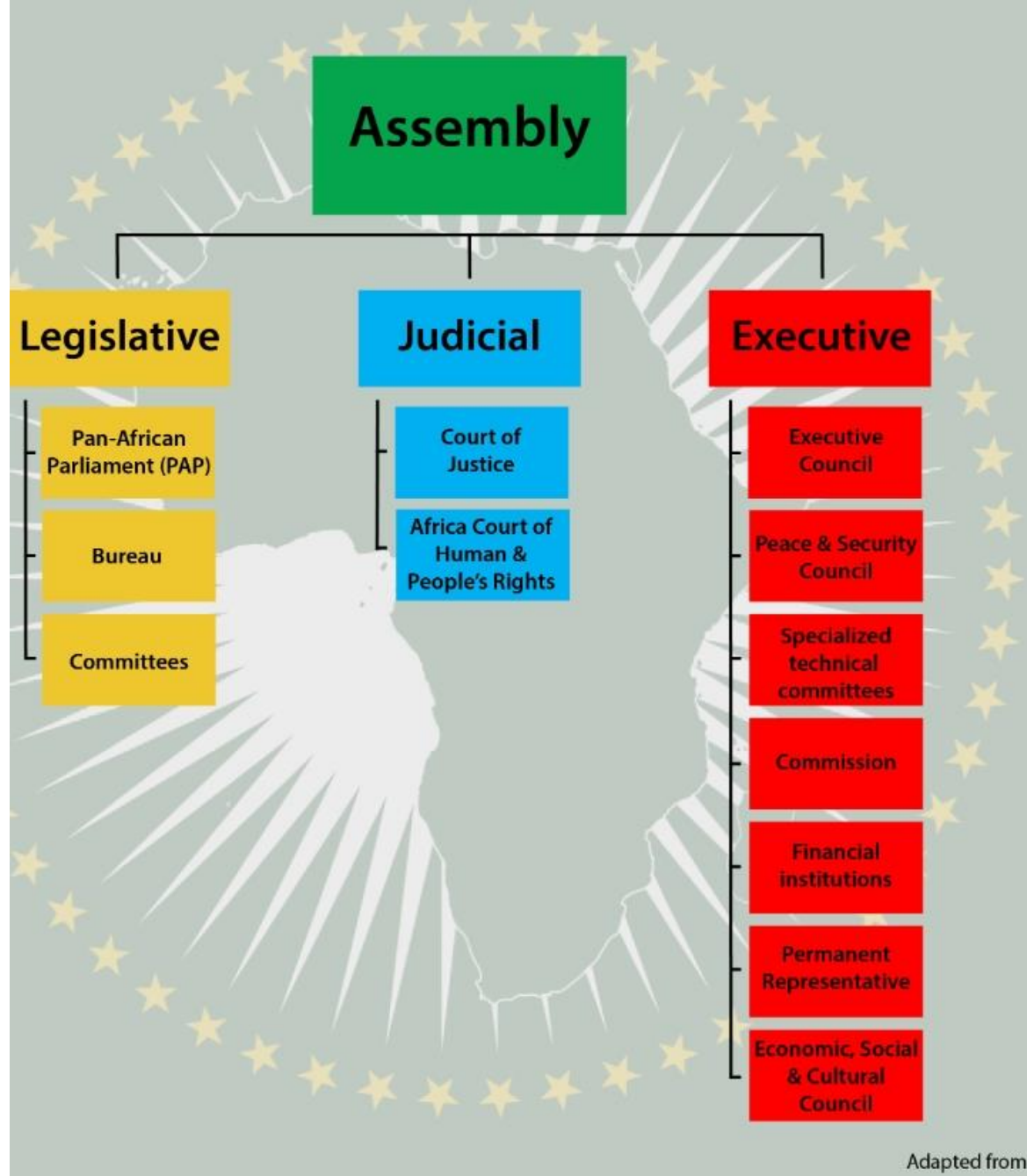
	<p>adopted over the years at different levels by the AU and its predecessor</p> <p>One of the most important legal instruments is the African Charter, which was adopted in 1981 and ratified by all African countries. The Charter grants rights to everyone without exception</p>
<p>The UN Human Rights Council Resolution 41/18 on the protection against violence and discrimination against LGBT persons.</p>	<p>Central African Republic was among the few African states to sign a joint statement to end acts of violence against LGBT persons at the United Nations and as well condemning violence</p>
<p>Also, another legally binding policy is the African Charter on Human and Peoples’ Rights. Article 2 of its policies provides for the right to equality of all and protects against discrimination based on sex or other status.</p>	<p>Cameroon anti-homosexuality laws, particularly Article 347, discriminate against LGBT persons</p>
<p>On the 22 of May 2014, an African human rights body (African Commission) adopted a landmark resolution (Resolution 275) condemning violence and discrimination against gay, lesbian, bisexual, and transgender persons</p>	<p>In central Africa, Angola’s new penal code of 1886 was revised in January 2021 so that they no longer criminalize same-sex conduct. The new law has a non-discrimination provision and protects the grounds of sexual orientation to a certain extent. In 2020 Gabon made the same decision.</p>

<p>The African Charter is not an accident of history but it's a law that was created by the Organization of African Unity as a legitimate subject of international discourse</p>	<p>But for African states, the Human right of LGBT is as a result of colonial influence. The strict policies passed out to sanction LGBT persons are the same laws most African Countries are using to date (domestic law). It is these same rights that the African Charter further erodes.</p>
<p>The African Union has its general principles and obligations to prevent violence against LGBT persons which include: Non-discrimination, prevention of family violence, engagement of LGBT People in the planning and implementation of plans to prevent violence, gender equality, etc.</p>	<p>African Sovereign state that LGBT activities are legal have general principles to prevent violence like; non-discrimination  (However so far as the human rights of LGBT are concerned most African states have restrictive State policies, treaties, laws, and public attitudes)</p>
<p>The AU represents the interests of Africa at the level of intergovernmental organizations (IGOs) for example; the African Union is a permanent observer at the United Nations General Assembly</p>	<p>Member states of the African Union (AU) coordinate Foreign Policy by conducting International Relations on a state-by-state basis.</p>
<p>The African Union is limited to give sanctions to countries that give penalties most especially to LGBT persons</p>	<p>Countries make their decisions and are respected by it citizens</p>

#### 4.11 WEAKNESSES OF THE AFRICAN UNION

- The African Union faces a lot of challenges Contrary to the vision stated in its Constitutive Act.
- The AU was highly fragmented with too many focus areas
- Its complicated structure and limited managerial capacity made it inefficient and unaccountable.
- It was neither financially independent nor self-sustaining.
- There was poor coordination between the AU and the Regional Economic Communities.

# Institutional Structure of the African Union



AU



After 2 years of reconsideration, the AU came up with a renewal plan to:

- Refocus the AU's priorities on fewer areas.
- To review its structure to realign institutions.
- To safeguard, and expand citizens' participation.
- To improve operational effectiveness.
- To enhance financial independence.

#### 4.12 GROSS VIOLATION OF INTERNATIONAL OBLIGATIONS IN SOME CENTRAL AFRICAN STATES CASE STUDY CAMEROON

Cameroon is located in Central Africa and it happens to be one of the countries in Africa where homosexuality is illegal. For the past years, Cameroon has continued to ignore the Human Rights of Homosexuals: Currently, hundreds of Cameroonians are in prison where they face overcrowding, abuse, and unsanitary conditions. Most of them are sentenced to three years for the criminal act of "being homosexual. The Police always used an intercepted text to arrest victims for homosexuality under Cameroon's "Article 347". Article 347 of Cameroon's Penal Code forbids sexual relations between persons of the same sex and punishes violators with a fine and jail time.

Men/women are often harassed, abused, arrested, and killed by angry mobs when suspected of being homosexual in Cameroon. The Cameroonian government, law enforcement, and even average citizens commit these acts with impunity, while Article 347 ensures that the victims of these attacks are the ones being prosecuted. Article 347's continued existence has resulted in specific violations of international law and basic human rights guaranteed by the International

Covenant on Civil and Political Rights (“ICCPR”) in particular, freedom of expression, freedom from arbitrary arrest and detention, and freedom from invasions of privacy.

The arrest and conviction of Shakiro, an alleged homosexual in 2021, illustrates Cameroon’s disregard for International Human Rights Obligations. In Cameroon anti-homosexuality laws, particularly Article 347, violate these specific provisions of the ICCPR. For the past years, the Western world has witnessed the decriminalization in many states of sodomy between consenting adults in many states. Moreover, the United Nations recently passed the Resolution on Sexual Orientation and Gender Identity in June 2011. As support for homosexual rights continues to grow around the world, Cameroon will find it hard to defend its criminalization of homosexual acts.

Given this increased awareness of issues that homosexuals face across the globe, it is not surprising that Article 347 and the Shakiro conviction have gained International attention. For example, In July 2022, Belgium granted Asylum to a homosexual Cameroonian man (Shakiro) because of the risk he faced within his own country. Cameroon submitted a petition seeking decriminalization with more than 1,500 signatures to the Cameroonian National Assembly in November 2009, but the petition is yet to be discussed.

Responding to the Shakiro case specifically, Human Rights Watch, in collaboration with two other NGOs, sent a letter to Cameroon’s President condemning Shakiro’s illegal arrest and conviction. Additionally, Amnesty International published an “Urgent Action” notice calling for Shakiro release. Article 347 forbids sexual relations between members of the same sex and punishes violators with a fine of 30.80-308.03 Euros as well as imprisonment of six months to five years. The existence of Article 347 continues to foster dangerous social norms in Cameroon by justifying for the ill-treatment of homosexuals.

Ahmadou Ahidjo, (Cameroon’s former president) passed a decree by putting the law into effect without the review of the National Assembly. Presently there are no records on how the law (Article 347) was enforced for the past 34 years. The media has continued to promote anti-

homosexual ideals, painting homosexuality as a menace to society. Cameroon's Minister of Justice and Vice Prime Minister justified Article 347's continued enforcement on moral grounds.

Citizens have taken the law into their hands to report those they suspect of being homosexual. The law has become a tool of corruption, People who are arrested under Article 347 are often held without charges for more than forty eight hours, which is longer than allowed by Cameroonian law. They are frequently denied bail and are detained for months before trial where they are often abused and treated inhumanely. People arrested under Article 347 can be convicted and sentenced without sufficient evidence that the person engaged in illegal homosexual behavior.

Additionally, Article 347 requires law enforcement to invade the privacy of suspected homosexuals because the acts that are criminalized cannot be proven without a witness, which breaches the standard of reasonable, legal invasions of privacy established in previous human rights

#### 4.12.1 CAMEROON'S OBLIGATIONS UNDER THE ICCPR

Cameroon's Constitution affirms its "attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, and all duly ratified international conventions. Further, Article 45 of Cameroon's Constitution states that treaties and international agreements override conflicting domestic laws.

On June 27, 1984, Cameroon acceded to the ICCPR, a multilateral treaty adopted by the United Nations General Assembly intended to protect civil and political human rights. At the same time, Cameroon acceded to the ICCPR's First Optional Protocol, which created The Human Rights Committee ("HRC") to monitor the implementation of the rights defined in the treaty Cameroon is obliged to abide by all of its articles these articles include protections against arbitrary arrest.

#### 4.12.2 PROMOTING UNLAWFUL INTERFERENCE WITH ALLEGED HOMOSEXUALS' PRIVACY

Article 347 promotes unlawful interference with the privacy of those suspected of being homosexual, therefore violating Article 17 of the ICCPR which states that, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honor and reputation, everyone has the right to the protection of the law against such interference or attacks." Article 17 seeks to protect private matters that are individual, personal, confidential, or which are kept or removed from public observation. Article 17 requires that correspondence "be delivered to the addressee without interception." Article 17 forbids arbitrary or unlawful interference with individuals' privacy

Cameroon as a member of ICCR unreasonably interferes with individuals' privacy through its enforcement of a law that criminalizes homosexual behavior. Cameroonian leaders do not believe that homosexuality has a place in Cameroonian culture and defend Article 347 because it protects the social values of Cameroon and that it is protected by Section 92(3) of Cameroon's Criminal Procedure Code, which allows for invasions of privacy in certain instances. Because the HRC established that such reasons for criminalizing homosexual acts were disproportional to the actual laws, Article 347 violates Article 17 of the ICCPR. The HRC found the mere existence of anti-homosexuality laws in Shakiro's case to be an Invasion of privacy, despite the lack of enforcement; the situation in Cameroon is even direr because Article 347 is fervently enforced.

#### 4.12.3 ARTICLE 347 VIOLATES ARTICLE 9 OF THE ICCPR BY PROMOTING ARBITRARY ARREST AND DETENTION

Shakiro's arrest is an example of Article 347 that violates Article 9 of the ICCPR because Cameroon police arrested Shakiro on mere suspicion of homosexuality and detained him for a longer period than allowed by law. The Police took Shakiro into custody with no evidence that he had engaged in sexual relations with another male aside from their suspicion that he could

be a homosexual based on his contact with another male. Additionally, Shakiro arrest can be considered arbitrary because Article 347 is invalid under Article 17 of the ICCPR, and arrest under an invalid law is necessarily arbitrary. Shakiro was then detained for seven days before he was charged with a crime, which is three times the limited time permitted by Cameroonian law.

Article 9 of the ICCPR states that “Everyone has the right to liberty and security of person; no one shall be subjected to arbitrary arrest or detention, no one shall be deprived of his liberty except on such grounds and by such procedure as established by law.” Additionally, Article 9 provides, “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Article 9 also requires that a person arrested under a criminal law be “brought promptly before a judge or other officer authorized by law to exercise judicial power.” Shakiro was not brought promptly before a judge or an authorized law enforcement officer. Such detention falls into the Category of the Working Group of Arbitrary Detention (WGAD).

- The only way to protect the human rights of homosexuals in Cameroon is to repeal Article 347.
- Article 347 offends basic human rights in many ways, but most significantly by violating Articles 9, 17, and 19 of the ICCPR.
- Cameroon has been urged to repeal Article 347 but to no avail.
- Cameroon has created a culture where hatred and fear of homosexuality are deeply rooted.

#### 4.12.4 COLLABORATION BETWEEN FOUR ORGANIZATIONS IN CAMEROON

1. Alternatives-Cameroun (a Douala-based organization that provides health services to lesbian, gay, bisexual, and transgender (LGBT) people and advocates for their rights)
2. the Association for the Defense of Gays and Lesbians (Association pour la Défense des Homosexuel-le-s, ADEFHO) (a Douala-based group of lawyers and human rights monitors that represents clients accused of homosexuality)
3. Cameroon Foundation for AIDS (CAMFAIDS), a Yaoundé-based advocacy organization that provides legal advice to LGBT people and denounces abuses against them;
4. Human Rights Watch, an international organization.

These four organizations sought to document recent cases of arrests, prosecutions, and convictions under Article 347, etc. Unfortunately, some people who are accused of homosexuality lack any legal representation, and when due process violations occur in cases against them, they may never come to light. The Ministry of Justice records showed that 22 people were convicted for homosexuality in 2010 and 2011, but the Organizations that drafted this report were only aware of eight convictions during the same period. Generally, defendants who live in urban centers have legal representation but those in the rural areas are the ones that suffer the highest violence because they barely have representation.

In 2010, the Ministry of Justice began a process of revising the 1967 penal code. A draft revision, made public during a 2011 validation process, left the provision on homosexuality unchanged. Afterward, the Minister of Justice was replaced shortly. In early 2012, President Paul Biya told diplomats that he was not prepared to call for the decriminalization of homosexuality in Cameroon; he would seek to impose suspension on arrests under Article 347. However, no progress had been made. In January 2013, during a press conference in France, Biya spoke of a “change of mind” in Cameroon regarding homosexuality but did not commit to taking any specific steps to decriminalize it.

Cameroonian lawyers have argued that because the law was imposed by the former president and was never approved by the parliament, its application violates Cameroon’s 1996

constitution, which states that only the parliament can legislate about “the definition of felonies and misdemeanors and the institution of penalties of all kinds.” However, the courts have not responded. The two lawyers filed in recent homosexuality cases that challenge homosexuality prosecutions because the law is unconstitutional.

#### 4.12.4 THE STATUS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER RIGHTS IN CAMEROON

The Republic of Cameroon, is a member of the African Union, on 27 June 1984, Cameroon joined the International Covenant on Civil and Political Rights (ICCPR) without reservations. Through its accession to the ICCPR, Cameroon agreed to meet all obligations; it actively discriminates against LGBT persons. The ICCPR explicitly prohibits discrimination based on the landmark case of *Toonen v. Australia*.

However, discrimination based on sexual orientation is a violation of Articles 2(1) and 26 (non-discrimination) of the ICCPR. Unfortunately, Cameroon happens to discriminate against sexual minorities by outlawing same-sex activities. In violation of its obligations under the ICCPR, Cameroon has maintained legal provisions that criminalize same-sex conduct between adults.

Even after the UN Working Group on Arbitrary Detention condemned the nation’s law regarding same-sex sexual relations and sexual orientation, Cameroon defended its law and actions. Cameroon has failed to meet its obligations under ICCPR. Forced anal examinations, a form of degrading and inhuman treatment prohibited under Article 7, are administered by Cameroon authorities; these examinations are profoundly intrusive, invasive, and abusive: they are medically valueless, and by International standards, is a form of torture

The UN Human Rights Council recommended that same-sex sexual conduct be decriminalized during Cameroon’s Universal Periodic Review (UPR) in December 2008, but Cameroon did not accept this recommendation

#### 4.12.5 THE EFFORTS OF CAMEROONIAN AND INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS TO PREVENT VIOLENCE AGAINST LGBT PEOPLE IN CAMEROON

In September 11, 2013, a letter was addressed to the Government of Cameroon by the Executive Director of Affirmative Action (Serge Yotta), President of Alternative Cameroon, Amnesty International, Cameroon Foundation for AIDS, the International Federation for Human Rights, International Lesbian, Gay, Trans and intersex Association (ILDA), World Organization and Torture, Permanent Organization to the United Nation office in Geneva among others. This letter focused on the urgent problems of violence against LGBTI people and their defenders,

This letter was written on behalf of 12 Cameroonian and international human rights organizations that had documented cases of violence against LGBTI people in Cameroon. They respectfully urged the Government to accept and adopt recommendations, put forth at the May 2013 Universal Period Review (UPR) at the United Nations Human Rights Council, to prevent violence against LGBTI people, also they urged the government to hold the perpetrators of homophobic violence accountable to ensure the protection of human rights defenders that work with these marginalized groups. They suggested concrete steps the government of Cameroon can take to prevent homophobic violence. They stated worrisome incidents organizations have already brought to the attention of the Cameroonian authorities:

They stated the murder of Eric Ohena Lembembe, the executive director of the Cameroonian Foundation for AIDS (CAMFAIDS), who was brutally assaulted and killed in July 2013.

Surprisingly no one has been arrested, although Lembembe's friends suspected he was killed because of his outspoken advocacy on behalf of LGBTI people. Unfortunately, the government of Cameroon did not condemn this killing publicly, and police investigation failed to produce the perpetrators. According to them, the government's action sends out a strong signal to Cameroonians that they can violate the law with impunity if they target LGBT People.

In 2010 reports from Alternatives-Cameroun, the Association for the Defense of Gays and Lesbians (ADEFHO), the International Gay and Lesbian Human Rights Commission (IGLHRC), and Human Rights Watch among other organizations, documented cases in which individuals were



beaten by mobs, neighbors, police officers, and family members because they were suspected of being gay or lesbian. In October 2012, Human Rights Watch and CAMFAIDS conducted additional interviews with LGBT people in Cameroon who had been beaten because of their sexual orientation and gender identity.

They complained of a series of death threats sent by email and SMS to human rights lawyers Alice Nkom and Michel Togu  (two Cameroonian lawyers protecting LGBT people), including threats to kill their children. They stated that both lawyers have filed complaints with police and prosecutors, with no effect. On February 13, 2013, Human Rights Watch issued an open letter because they wanted to ask the government to address these threats. Afterward the Cameroon government ignored them.

· On June 16, 2013, there was illegal entry at Michel Togu 's office, in which sensitive legal documents related to his work defending LGBTI clients were, stolen.

Also, they stated that a Cameroonian association organized a "national day of action against homosexuality." on August 21 2013 a march pass, authorized by the authorities, was held in the streets of Yaound , during which the association's leaders made speeches promoting violence against LGBTI people and announced the establishment of a militia aimed at tracking down LGBTI people.

They condemn the application of article 347 of the Cameroon Penal Code, which criminalizes LGBT Persons which in turn has the effect of legitimizing acts of violence against LGBT people. In this context, many LGBTI people are afraid to report crimes to the police. When they do, sometimes they are arrested and treated as criminals. Such arrests violate Cameroon's constitution and its international human rights obligations and incite hatred and violence against LGBT people.

They quoted a statement made by chairman of the African Commission on Human and Peoples' Rights, Catherine Dupe Atoki, which stated that the Commission opposes violence based on

sexual orientation. They pleaded with Cameroon to make a similar unambiguous statement to detect homophobic and transphobic violence.

The Human Rights Council meeting in Geneva provided an opportunity for Cameroon to take a clear stance against violence. The Council strongly urged the Government to adopt appropriate measures to tackle social prejudices, stigmatization, harassment, discrimination and violence against individuals because of their sexual orientation

They equally urged the government to adopt necessary steps to avoid discrimination and to protect and integrate the LGBT population. Also, they propose that the government should investigate police violence that took place on people because of perceived sexual orientation

Furthermore to ensure adequate protection of defenders of human rights that help LGBT persons, and to continue to investigate acts of threats and aggression against human rights defenders and journalists, and bring justice the perpetrators. To implement these recommendations, they suggested the following specific steps:

- They suggested that the government should publicly condemn the killing of human rights activist and community health worker Eric Ohena Lembembe, to call for a prompt, effective, independent, impartial investigation and to those responsible for the act to be brought to justice.
- The government should collaborate with Cameroonian civil society organizations and the media to develop and implement a large-scale public awareness campaign about the basic humanity, dignity, and rights of sexual and gender minorities.
- The Government should conduct trainings for the police, the gendarmerie, and the judiciary on sexual orientation, gender identity, and LGBTI rights, including the right to access justice.
- The government should pass laws prohibiting incitement of violence and hate crimes, including crimes motivated by a presumed sexual orientation or gender identity of the victim.

- The government takes all necessary measures, including legislative and administrative ones, to prohibit and eliminate discriminatory treatment based on sexual orientation and gender identity, at every stage of the judicial process.
- The government should provide funds for a working group composed of government and civil society representatives that will create a National Plan of Action to eliminate discrimination against sexual and gender minorities, with clear benchmarks for each aspect of the plan.
- That the government should allow organizations working on issues related to sexuality, sexual orientation, and gender identity to officially register as non-profit organizations. With this effort put in place, the Cameroon Government ignored them.

#### 4.13.1 CASES OF VICTIMS IN CAMEROON

Based on primary information I interviewed two victims whom I spoke to them on WhatsApp calls. I got the third victim information on his social media handles. He is known as Shakiro, a popular Cameroonian LGBT Person. I tried to talk to him in person, and he gave me his WhatsApp number, but he kept on giving me different appointment dates which he never respected any. He kept on saying he was busy; he barely had time for himself. I sent the questionnaires I drafted for him to take just ten minutes off his busy schedule and answer the questions but to no avail.

This is almost a month since I sent the questionnaire to him but no response. I had no choice but to go to his Facebook page to extract the relevant information. Shakiro is a social media personality he always shares his life experiences about his sexuality on his social media handles. He became popular in Cameroon in 2021 because of his way of life which was different from others. It became a slap to the face of the government because LGBT is illegal in Cameroon and according to the government he was using social media to convince the youths to become like him.

While the other two victims I spoke with I know Tongwa personally and the other victim Azem a friend connected me to him and asked the questions on phone. I had a lot of limitations because they weren't comfortable with some of the questions I asked coupled with the fact that they are in Cameroon and they don't know where my thesis will end.

4.13.2 QUESTIONNAIRE

- 1. Name.....
- 2. Age.....
- 3. Are you an LGBT Person?
- 4. Have you ever witnessed any form of violence?.....
- 5. Has the police interrogated you or arrested you for being an LGBT person?.....
- 6. Where were you when you were arrested?.....
- 7. How many people were arrested?.....
- 8. Where were you taken to?.....
- 9. What happened?.....
- 10. Your personal experiences.....

11. Were you guilty or not?.....
12. How did your family and friends feel when it became known that you are an LGBT person.....
13. What process did you go through before you were released.....
14. How many years were you sentenced.....
15. How did the police find out to know you were LGBT persons.....
16. Did they find any concrete evidence.....
17. What advice will you give to the Cameroon youths and Africa as a whole.....
18. What advice will you give to Cameroon authorities and Africa as a whole.....
19. Do you think the government will change its policies in the future.....
20. Where are you presently.....
21. What advice will give to LGBT persons in Cameroon and Africa.....
22. Can you compare your safety before and after.....

23. What do you think about the justice system of  
Cameroon.....

24. Does LGBT persons in Cameroon and Africa need  
Justice.....

25. Do you think LGBT is politicized in Cameroon and  
Africa.....

## CASE 01

Name: Loic Midres Njeukam aka Shakiro

Age: 25 years

Sex: Male



Njeuken Loic (known as “Shakiro”) and Mouthe Roland (known as “Patricia”), two transgender women, in a Douala prison. © Private, Douala, Cameroon, March 2021

Shakiro is an LGBT person from Cameroon. He was in a restaurant with friends dressed in women’s clothing in public on February 8, 2021. The police came to the restaurant and arrested him and his friend to the police station for interrogation. According Shakiro the police beat and bullied them saying “they must not bring homosexuality into Cameroon”. Human rights groups in Cameroon have often reported that in most cases some homosexuals are often beaten and subjected to forced anal examination, especially in cases where the victim deny the allegations. This is basically to confirm accusations of homosexuality.

After interrogation Shakiro and his friend were charged guilty and were sentenced to five years imprisonment for practicing homosexuality, with a fine of 200000CFA Francs (\$370) in Douala

prison. They were also convicted for public indecency and failing to present their Cameroon national identity cards (identification).

Shaikiro's case was serious because he is a social media star and was using his platform to convince youth to homosexuality. In March 2021 Shaikiro wrote on his Facebook page "My sexual orientation and my sexuality aren't choices, but your baseless hatred and your homophobia", Human right groups all over the world condemned the government of Cameroon, for terming and sentencing Shaikiro and his friend as unfair and unjust.

After his Lawyer and human rights interventions he and his friend were released a few months later. When he came out of prison he continued making videos on Facebook threatening to expose his partners with the pretext that when he was in prison none of them came for his rescue. He equally said he will not go down alone because his face is out there and, he has been tagged as a bad person while his partners are hiding behind the scenes as good people.

Due to the threats sent out on his platform on social media, his life became at risk because a lot of people were involved. They became scared that he would call their names. Afterward Shaikiro started using his social media platform to blackmail some of the victims by promising to release nudes of married men on social Media. As a result of this, he started receiving threat messages on daily bases from the victims involved.

In 2022 he said while he was taking a walk a group of boys worked to him and seized all his phones. He said they seize his phones because he had nudes, pictures, and private conversations with a lot of people. It got to a point where he discovered he would lose his life. He flew to Nigeria for safety. While in Nigeria he exposed some politicians and some artists he had sexual relationships with. He equally exposed nudes of some married men, pictures, and private conversation. However, he said while in Nigeria he was unsafe because Nigeria does not accept homosexuality. Finally, in 2023 he got a visa to travel to Belgium where he was granted



asylum while his appeal of homosexuality conviction was still pending in Cameroon.



*Transgender activist Shakiro has been granted asylum after a long struggle | Photo: Reuters*

## CASE 02

Name: Tongwa

Age: 28

Sex: Male

Tongwa was arrested by the police based on a confession made by a teenager to her parents. In 2012 in a small village in the Southwest Region of Cameroon, a 16-year old boy confessed to his parents that Tongwa forced himself on him and he was in pain and even bleeding. This sounded very strange to the parents of this boy, and the parents of the boy called on friends and neighbors and the 16-year-old boy explained again to the population. The angry population went to Tongwa's family home and beat him to the point of death. The police stormed the scene, safe him, and took him to the hospital. After about three weeks when Tongwa had regained his sanity, he was arrested from the hospital to prison for practicing homosexuality and rape.

During his court case, he denied the allegation levied on him. After serious torture from the police, he later on confessed and the court found him guilty and he was sentenced to 5 years imprisonment for practicing homosexuality and rape with a fine of 2000000 CFA francs. After serving five years in prison he was released in 2017 where he finally gained his freedom

Based on what he told me he went to prison healthy and came back as a patient because of the poor and difficult conditions in prison. He told me he was tortured, bullied, and humiliated for the years he was in prison. He came back from prison with scars all over his body because of the beatings he received plus poor living conditions in Cameroon prisons.

He said while in prison he asked himself several questions of which he was unable to answer any of these questions. While in prison he met a pastor who always came around to pray with them and give them food and clothing, from the pastor preaching's he decided to give his life to Christ. Presently he said he has made up his mind to embrace Christ as his lord and savior. He said "My story my past". He told me he regretted his actions and he has made up his mind to start all over again. Presently he is a changed person. I had limitations because he didn't answer the entire questions, he was uncomfortable coupled with the fact that he is in Cameroon and he doesn't know where this paper will end. It might implicate him in the future. The questions below are the ones he didn't answer;

1. What advice will you give to Cameroon youths and Africa as a whole.....
2. What advice will you give to Cameroon authorities and Africa as a whole.....
3. Do you think the government will change its policies in the future
26. What advice will give to LGBT persons in Cameroon and Africa.....
27. Can you compare your safety before and after.....

- 28. What do you think about the justice system of Cameroon.....
- 29. Does LGBT persons in Cameroon and Africa need Justice.....
- 4. Do you think LGBT is politicized in Cameroon and Africa.....

Name: Azem

Sex: male

He is a school dropout; in 2018 he was arrested by the police for suspected Gay. Based on what Azem told me he was never guilty because it was a set from his friends in his secondary days he used to dressed in feminine wear, paint his nails, and tint his hair. In 2018 when he was in a saloon the police came to the saloon demanded money from him but he said he told the police that he didn't have money and they immediately arrested him for alleged homosexuality. He was arrested without a warrant. When he arrived at the police station he told the police he was innocent.

After serious interrogation from the police, he was kept behind bars for 13 days. The police didn't have any proof saying he was Gay. He told me his lawyer told the Attorney general that his arrest was illegal. With the intervention of his lawyer, he was released on bail. He told me that from his case he discovered that there are people in Cameroon prisons that are there not because they are guilty but because of mere suspicion or what haters of the victims say. He didn't want me to include his names and identity. He did not answer the following question;

- 1. Age.....
- 2. How did your family and friends feel when it became known that you are an LGBT person.....

3. What advice will you give to Cameroon authorities and Africa as a whole.....
4. Do you think the government will change its policies in the future.....
5. Where are you presently.....

#### 4.14 THE IMPLICATIONS OF ANTI-LGBTQ LAWS

LGBTQ+ populations suffer different types of consequences:

Physical violence which includes: death penalty laws, Long prison sentences, in most cases state violence forces many Africans to live in fear of their identity being exposed. Anti-LGBTQ policies also reinforce societal rifts, placing LGBTQ+ people at increased risk of violent hate crimes. Even in countries where homosexuality is decriminalized, such as Egypt, LGBTQ+ people face state-sanctioned violence. The true extent of violence is difficult to ascertain, as experts believe most instances go unreported.

Repression: Limits on freedom of expression are some of the most significant restraints on LGBT+ rights. Several countries ban LGBTQ+ community organizing. Pride events are often raided by police and targeted for violence by the public. In some countries, laws prohibit LGBTQ+ rights groups from even registering as nongovernmental organizations.

Discrimination: Even where same-sex activities are legal, almost no African countries have laws in place to protect LGBTQ+ populations from discrimination, which is pervasive in schools, workplaces, healthcare facilities, and other social settings. Additionally, media outlets often spread false information about LGBTQ+ people, due to reporters’ own biases or political pressure in their operations, says Rita Nketiah, a queer feminist activist and researcher who works on the continent. Disinformation campaigns by politicians and other prominent figures

perpetuate stigma, and low literacy rates across the continent make it harder for people to seek accurate information, she says.

**Health:** LGBTQ+ populations, especially men who have sex with men, are disproportionately burdened with serious illnesses such as HIV. Studies show that the high prevalence of these diseases is at least in part linked to homophobic laws, as fears of being identified as LGBTQ+ prevent individuals from seeking medical attention. Mental illnesses, such as anxiety, depression, and psychological trauma are often also more common in LGBTQ+ people than in the general African population.

**Political blowback:** Some attempts by Western governments, including the United States, to punish an African country for enacting anti-LGBTQ+ laws can backfire. While some in the LGBTQ+ community may endorse the support, others say it risks stoking further animosity and violence from the public.

#### 4.15 WHAT CAN BE DONE TO PREVENT VIOLENCE AGAINST LGBTQ+ PEOPLE (RECOMMENDATION)?

- School-based interventions.
- Program with youths to challenge harmful norms.
- Interventions targeting family members and intimate partners.
- Interventions working with faith-based leaders, health sector actors, media actors, and the police and law enforcement agencies.

#### Policy-makers and donors

- Increase funding in evidence-informed and evidence-generating prevention programming and evaluation
- Integrate support for survivors within violence prevention programming
- Support sustainability of LGBT+ organizations and movements

## 6. CONCLUSION

After African colonies gained independence between the 1950s and 1960s, the result was an independent and sovereign nation with each country having an internationally recognized identity. Sovereignty was supposed to grant each African government full power over its territory and its people. This principle clearly stated that the intervention in the internal affairs of a sovereign state was considered a violation of International law. The African Union does not interfere in the internal affairs of Member States. This is why states making harsh laws on LGBT persons, the AU do not have the direct power to sanction them.

The African Charter does not have a general derogation clause. This omission is more serious because the Charter in effect permits states through the claw back clauses to suspend, de facto, fundamental rights in their municipal law. In any event, nothing in the Charter prevents African states from denying certain rights during national "emergencies. A revision of the Charter should excise the offending "claw back" clauses; insert a provision on non-negotiable rights, and another specifying which rights states can derogate from, when, and under what conditions.

As far as LGBT is concerned the ACHPR does not have an official position because it has not been consistent. Some scholars have stated that the AU is being unfairly judged against impossible ideals as it is ultimately an organization of member states who must commit themselves to these norms

Cameroon prosecutes people for consensual same-sex conduct more aggressively than almost any country in the world. Cameroonian prosecutors have brought charges against at least 28 people for homosexual conduct over the last three years. Police and government officials have claimed on several occasions that Article 347 only applies to those who are caught in the act of having sex. The chief of Cameroon's police force told Human Rights Watch and the Cameroonian Foundation for AIDS (CAMFAIDS) that it only applies to those who engage in same-sex conduct publicly. But among the cases in Cameroon no case was there even a

suggestion in the evidence presented in court that the accused engaged in sexual intercourse publicly

In 2018, the chasm between the international human rights framework with its plethora of instruments promising equality and non-discrimination, and the experience of LGBT+ people in Africa and across the world requires responses that address deeply held beliefs and entrenched practices. There are examples from across the continent illustrating how governments have exerted and responded to pressure from within and outside their countries to repeal legislation and to enforce or resist using it. There are also many instances reflecting how LGBT+ individuals and communities confront, navigate, or avoid legislated and social discrimination.

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