

THE APPLICABILITY OF AFRICAN HUMAN RIGHTS STANDARDS IN ADDRESSING CONVERSION PRACTICES

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Outright International works together for better LGBTIQ lives. Outright is dedicated to working with partners around the globe to strengthen the capacity of the LGBTIQ human rights movement, document and amplify human rights violations against LGBTIQ people, and advocate for inclusion and equality. Founded in 1990, with staff in over a dozen countries, Outright works with the United Nations, regional human rights monitoring bodies, governments, humanitarian and development institutions, and civil society partners. Outright holds consultative status at the United Nations, where it also serves as the secretariat of the UN LGBTI Core Group.

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I. Executive Summary

Across Africa, lesbian, gay, bisexual, transgender, and queer (LGBTQ) persons experience violence and discrimination based on their sexual orientation and gender identity and expression from state and non-state actors and institutions.¹

Governments, religious leaders, health professionals, and media outlets have at times advanced the idea that LGBTQ identities and behaviors are a form of psychological disorder, mental illness, religious sin, or even possession by a supernatural entity. This thinking has encouraged various psychological, religious, traditional, and individual practices, collectively referred to as “conversion practices,” that have often resulted in severe physical and psychological harm to victims. LGBTQ people are encouraged or coerced into seeking some form of “cure” to convert them to what are believed to be their “normal” heterosexual or cisgender identities.

Despite the prevalence of these practices in Africa and growing progressive jurisprudence within the region on issues related to sexual orientation and gender identity, there has been little attention paid to conversion practices on the continent. This report examines how some of the norms and institutions of the African regional human rights system can contribute to the eradication of conversion practices. It reviews the norms set forth in the African Charter on Human and Peoples’ Rights as interpreted in the statements and jurisprudence of the African Commission on Human and Peoples’ Rights. It also reviews the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol).

This report seeks to enhance the capacity of human rights defenders, survivors, civil society organizations, and other stakeholders in the fight against conversion practices. Drawing from African human rights standards, frameworks, and institutions, the report provides a detailed but user-friendly and accessible guide for those looking to eradicate these harmful practices. The report is designed to be a resource for a wide range of stakeholders looking to make a difference in this area.

The findings of this study indicate that in recent years, the African human rights system has significantly progressed in its jurisprudence on issues affecting sexual and gender minorities on the continent but has not paid particular attention to conversion practices and their harmful effects. The only direct reference to a form of conversion practices is the inclusion of “corrective rape” in some texts of the African Commission on Human and Peoples’ Rights.

¹ Violence and discrimination also impact intersex people, who are targeted based on their sex characteristics. Outright works to end violence and discrimination against intersex people, along with LGBTQ people. However, because the type of conversion practices addressed in this report typically target people based on sexual orientation or gender identity and expression, throughout most of the report, we limit our discussion to LGBTQ people.

Nevertheless, this lack of attention to conversion practices in the African human rights system does not imply an absence of principles. In its statements and jurisprudence, the African Commission on Human and Peoples' Rights has condemned various acts that are typically used in conversion practices, including sexual violence and abuse, whippings, and guided masturbation. The African human rights system has also addressed underlying issues such as notions of masculinity and femininity, harmful traditional and cultural practices, patriarchal attitudes, and discriminatory laws and policies, all of which perpetuate conversion practices. The protection of women's rights and the eradication of sexual and gender-based violence provide areas of intersection with the eradication of conversion practices.

Clearly, the African human rights system can do more to bring attention to the dangers of conversion practices. It still provides, pending further jurisprudential progress, an ample array of norms, recommendations, and best practices that States, human rights institutions, civil society, and individuals can utilize to eradicate conversion practices in Africa.

II. Introduction

INTRODUCTION AND PURPOSE OF THIS REPORT

Project Background

Outright International (Outright) works at global, regional, national, and local levels to eradicate the persecution, inequality, and violence that lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) people face around the world. Outright strengthens the capacity of LGBTIQ movements, documents human rights violations, advocates for inclusion and equality, and holds leaders accountable for protecting the rights of LGBTIQ people everywhere. Outright has a recognized consultative status at the United Nations.

Outright has undertaken several initiatives to end conversion practices, beginning with a global study of the extent and harms of conversion practices around the world.² In 2019, Outright, working with partner organizations in Kenya, Nigeria, and South Africa, embarked on a project to build a body of evidence and knowledge on the nature, extent, and impact of conversion practices in these countries.³ In 2022, Outright published a toolkit for advocates addressing different pathways to ending conversion practices.⁴

Methodology and Purpose of this Report

This report situates conversion practices within the African regional human rights system. It is based primarily on a desk review of documents related to the norms and institutions of the African human rights system, as well as other international human rights documents, civil society reports, academic publications, and news media publications.

This report has been developed as an accessible resource that various stakeholders, particularly human rights defenders and those advocating for curbing these harmful practices, can use in various spaces to advocate for the protection of LGBTIQ+ persons in Africa.

This report is also intended to offer guidance to States, policymakers, and various organs of States on how to respond to conversion practices and put in place protections against these harmful practices within their jurisdiction using the law and human rights standards.

²Outright International, *Harmful Treatment: The Global Reach of So-Called Conversion Therapy*, 2022, https://outrightinternational.org/sites/default/files/2022-09/ConversionFINAL_Web_0.pdf.

³Outright, *Converting Mindsets, Not Our Identities*, 2022, <https://outrightinternational.org/our-work/human-rights-research/converting-mindsets-not-our-identities>.

⁴Outright, *Pathways for Eliminating Conversion Practices: Advocacy Toolkit*, 2022, https://outrightinternational.org/sites/default/files/2022-12/Outright_Report_DEC2022.pdf.

THE NATURE AND DANGERS OF CONVERSION PRACTICES

What Are Conversion Practices?

Outright uses “conversion practices” as an umbrella term for various techniques or actions that attempt to change or alter sexual orientation or reduce a person’s attraction to other persons of the same sex and instill conventional gender roles. Conversion practices are based on thoroughly discredited beliefs that sexual orientation and gender identity can be changed; that being lesbian, gay, bisexual, transgender, or queer (LGBTQ) is a disorder or illness that requires treatment or cure; and that cisgender heterosexuality is inherently normal and preferred.⁵

These practices are often referred to as “conversion therapy,” a term Outright rejects in that it incorrectly implies the practices are a treatment for a disorder or that people can be converted to cisgender heterosexuality through such “treatment.” These practices are often abusive, invasive, and harmful.⁶ Other terms used to describe conversion practices include sexual orientation change efforts, reorientation therapy, reparative therapy, reintegrative therapy, gay cure therapy, and ex-gay therapy. Some of these terms have emerged in recent years to disguise or soften the actual purpose of these unethical practices.

In this report, we use the term “conversion practices” to encompass all sexual orientation, gender identity, and gender expression change or suppression efforts, regardless of whether medical or mental health professionals, religious personnel, traditional or spiritual healers or practitioners, or other entities such as social or self-help groups are involved. We also include in our definition violent attempts to force change, such as bias-motivated rape (so-called corrective rape), when it is part of conversion efforts.

What Forms Do Conversion Practices Take?

Through our research in collaboration with partner organizations in Kenya, South Africa, and Nigeria, we found that conversion practices take on various forms, including what we term “physical” and “non-physical” forms of conversion practices.⁷ Physical forms of conversion practices include overt violence and affect a person’s physical integrity; this includes bias-motivated sexual assault, beatings, forced starvation, forced confinement and other forms of arbitrary detention, electric shock administration, administration of drugs or other substances, and other actions that have a physical impact on the survivor’s body, many of which could amount to torture or cruel, inhuman, and degrading treatment.⁸ The non-physical forms of conversion practices include “talk therapy,” religious or spiritual counseling, prayer, and other

⁵United Nations Office of the High Commissioner for Human Rights (OHCHR), “Practices of So-Called ‘Conversion Therapy’ – Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity,” A/HRC/44/53, 1 May 2020, <https://www.ohchr.org/en/documents/thematic-reports/ahrc4453-practices-so-called-conversion-therapy-report-independent>.

⁶Outright, *Harmful Treatment*.

⁷Outright, *Converting Mindsets*.

⁸Similar abusive forms of conversion practices have been well-documented throughout the world. See, for instance, OHCHR, “Practices of So-Called ‘Conversion Therapy,’” paras. 37-55, and ILGA World, “Curbing Deception: A World Survey on Legal Regulation of So-Called ‘Conversion Therapies,’” 2022, https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/IESOGI/CSOsAJ/ILGA_World_Curbing_Deception_world_survey_legal_restrictions_conversion_therapy.pdf, 38-43. Earlier conversion practices included injecting individuals perceived as homosexual, bisexual, or transgender with chemicals and other substances, sterilization or the surgical removal of the testicles, uterus, ovaries, or clitoris, and reportedly even lobotomy. OHCHR, “Practices of So-Called ‘Conversion Therapy,’” para. 46, citing submission from Tyler Adamson, Stef Baral, and Chris Beyrer. ILGA, “Curbing Deception,” 23, citing Vernon A. Rosario, *Homosexuality and Science: A Guide to the Debates* (Denver and London: ABC CLIO, 2002), 97.

efforts to change a person's sexual orientation through communication when they are not accompanied by physical force.⁹

Do Conversion Practices Work?

All forms of conversion practices described above have been proven ineffective. As the UN Independent Expert on violence and discrimination based on sexual orientation and gender identity concludes in a comprehensive report, "based on the overwhelming evidence available, none of those approaches can claim 'conversion' as an outcome."¹⁰ Instead, these practices are harmful, causing physical and psychological harm, including feelings of shame, depression, and suicidal ideation experienced by the individuals who have undergone these practices.¹¹

Who Are the Main Perpetrators of Conversion Practices in Africa?

Conversion practices are generally based on the premise that homosexual desire or gender nonconformity is a disease, addiction, or religious aberration. While these practices can spring from hostile sources, they can also be pursued by well-intentioned persons who are concerned that being LGBTQ will make an individual's life more difficult within society.¹² Our research in Kenya, South Africa, and Nigeria found that religious leaders, mental health practitioners, and family members are all among the main perpetrators of conversion practices. Family members were found to be the main instigators of conversion practices in Africa.¹³

Faith-based conversion practices include prayer and exorcism, both within the home and in places of worship or special camps, as well as traditional healing practices like drinking herbs and undergoing deprivations. Some faiths perceive same-sex desire or gender nonconformity as possession by spirits, thereby justifying the use of exorcism to "cure" the person.¹⁴

In many of these instances, the victim may be willing or cooperative in the practice, often seeing no path to safety and social inclusion apart from attempted conversion. However, many forms of conversion practices, such as beatings, whippings, burnings, electric shocks,

Excerpt from *Converting Mindsets* Nigeria

"When my parents found out about my sexual orientation, I was severely punished and beaten. Then, they took me to the church for deliverance. The pastor who did the deliverance later counselled me, telling me all sorts of things, including that I should go to the gym and take exercises to look more masculine. He also told me I needed to fast. ... I went through the process to please my mom and sister even though I felt what they did to me wasn't right. I wasn't happy. I still get these feelings of shock, but I am just trying to comport myself."

⁹Emily Reynolds, "The Cruel, Dangerous Reality of Gay Conversion Therapy," *Wired*, 7 July 2018, <https://www.wired.co.uk/article/what-is-gay-conversion-therapy>.

¹⁰OHCHR, "Practices of So-Called 'Conversion Therapy,'" para. 70.

¹¹*Ibid.*, para. 56.

¹²Centre for Human Rights, *Ending Violence and Other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and United Nations*, 2016, <https://www.pulp.up.ac.za/component/edocman/ending-violence-and-other-human-rights-violations-based-on-sexual-orientation-and-gender-identity-a-joint-dialogue-of-the-african-commission-on-human-and-peoples-rights-inter-american-commission-on-human-rights-and-united-nations> (accessed 26 August 2023), 5.

¹³Outright, *Converting Mindsets*, 5.

¹⁴ILGA, "Curbing Deception," 38.

and nausea-inducing medication are violent and coercive. While appropriate legal and policy responses may depend on whether there is some level of consent, albeit under constrained circumstances or direct force or coercion, all these forms of conversion practices can cause grave harm to the victim.¹⁵

What Is the Medical Position on Conversion Practices?

The depathologization of homosexuality and transgender identity has been an ongoing process in the medical community. The World Health Organization has removed homosexuality from its lists of mental disorders and recognizes transgender identity as a natural variation of human gender identity.¹⁶

This shift in medical perspectives has helped to dispel the myth that being lesbian, gay, bisexual, transgender, or queer is a mental illness that can or should be cured. The medical community's stance on conversion practices reinforces the idea that individuals should be accepted for who they are, rather than subjected to harmful and ineffective practices aimed at changing their sexual orientation or gender identity.

Numerous recognized medical authorities have taken a clear stance on conversion practices, stating that they are not only ineffective but also harmful to individuals who undergo them.¹⁷ These organizations recognize that conversion practices are a form of abuse that can lead to serious mental health issues such as depression, anxiety, and post-traumatic stress disorder.

Excerpt from *Converting Mindsets* Nigeria

Among 1,072 respondents who had undergone conversion practices, 59% stated that they had undergone religious rituals such as exorcisms (casting out demons), prayer, or laying of hands for healing. This was the most prevalent form of conversion practice, while 28% indicated that they experienced physical deprivation, including fasting (abstaining from food) and use of medications.

South Africa

Conversion practices in South Africa take on different forms, including sessions with a professional psychologist or a religious representative, encounters with a family member, engagement with a traditional (e.g., Sangoma) or cultural (e.g., Chief) representative, participating in a traditional ritual such as initiation school, forced marriage, so-called corrective rape, and beatings and torture.

Kenya

The forms of conversion practices in Kenya identified through lived experience testimonies from the respondents include prayers, beatings to enforce conformity, coercion into sex, relationships, or marriage; forced confinement in homes, churches, or camps; and medical interventions such as counseling.

¹⁵ Outright, *Converting Mindsets*, 3. Respondents in our research who said they had sought out conversion practices were 30% in South Africa, 23% in Nigeria, and 14% in Kenya.

¹⁶ World Health Organization, "Gender Incongruence and Transgender Health in the ICD," <https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd>.

¹⁷ See, for instance, the following statements: Dinesh Bhugra et al., "WPA Position Statement on Gender Identity and Same-Sex Orientation, Attraction and Behaviours," *World Psychiatry* 15, no. 3, October 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5032493/>; South African Society of Psychiatrists, "Homosexuality – Position Statement," https://web.archive.org/web/20180420080900/https://www.sasop.co.za/Statements/Homosexuality_State (accessed 26 August 2023). A list of associations that condemn conversion practices and LGBTQ pathologization can be found in the annex of this report.

III. Principal Treaties of the African Human Rights System

INTRODUCTION

What Is the African Human Rights System?

The African human rights system refers to the combination of **institutions** (such as commissions, courts, and committees) and **norms** (such as international laws, resolutions, and statements) for the purpose of protecting and promoting the human rights of people in Africa.

The institutions and norms of the African human rights system were created by a set of regional **treaties** and **protocols** that have been entered into and agreed by the member states of the African Union.¹⁸

What Are the Main Institutions of the African Human Rights System?

The main institutions of the African human rights system are the:

- African Commission on Human and Peoples' Rights (African Commission);
- African Court on Human and Peoples' Rights (African Court); and
- African Committee of Experts on the Rights and Welfare of the Child (the Committee).¹⁹

Chapters 4–5 will further discuss the African Commission and the African Court and how they have produced norms that are relevant to eradicating conversion practices.

What Are the Principal Treaties and Protocols of the African Human Rights System?

The principal treaties and protocols of the African human rights system relevant to a discussion of conversion practices are the:

¹⁸ A treaty and a protocol are agreements between countries or organizations that outline specific rules and commitments they will follow. Simply put, a treaty is a formal agreement between nations (or states), while a protocol is an addition to an existing treaty that outlines additional rules and details. Both treaties and protocols serve as a guide for how countries or organizations will work together and address certain issues.

¹⁹ This publication does not address in detail the applicability of the African Children's Charter and the relevance of the African Committee of Experts on the rights and welfare of the Child in addressing conversion practices that target children. Outright will address this topic in a future publication.

- African Charter on Human and Peoples' Rights (**African Charter**);²⁰
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (**Maputo Protocol**);²¹ and
- African Charter on the Rights and Welfare of the Child (**African Children's Charter**).

The rest of this chapter will discuss the African Charter and the Maputo Protocol.

THE AFRICAN CHARTER

What Is the African Charter?

The African Charter is the fundamental human rights document in the African regional human rights system. The African Charter was adopted on 27 June 1981 and became operative on 21 October 1986. Since then, it has provided the international legal basis for the protection and promotion of human rights in Africa.

How Is the African Charter Implemented?

The States that are parties to the African Charter are obliged to implement its provisions. The African Commission is the treaty body established to interpret the provisions of the African Charter and to monitor States' implementation of the Charter.

The African Court is also responsible for interpreting and applying the provisions of the African Charter and other human rights instruments. The Court has jurisdiction over cases brought by individuals, non-governmental organizations (NGOs), and other groups, and its decisions serve as binding precedents for African State parties.

Why Is the African Charter Relevant to Conversion Practices?

The African Charter states the foundational values and principles that guide the African human rights system.

In its preamble, the African Charter provides that "freedom, equality, justice, and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples" and that "fundamental rights stem from the attributes of human beings." This statement recognizes that while the African Charter itself may articulate the scope of human rights, it is not the source of those rights. In essence, the absence of an enumerated right in the charter does not invalidate its existence.

This understanding is buttressed by Articles 2 and 3 of the African Charter which guarantee all individuals the freedom from discrimination and the equal protection and equality of individuals under the law respectively. Article 2 states:

Every individual is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind, including race, ethnic group,

²⁰ African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (accessed 26 August 2023).

²¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force 25 November 2005, https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf (accessed 26 August 2023).

colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3 also provides that:

1. *Every individual shall be equal before the law.*
2. *Every individual shall be entitled to equal protection of the law.*

The phrase “other status” in Article 2 of the African Charter is meant to show that the categories of unfair discrimination are not closed. Similarly, Article 3 encompasses everyone with the term “every individual.”

Consequently, while a person’s sexual orientation or gender identity is not expressly referred to in the African Charter, it is within the ambit of the African Charter.

The African Commission has interpreted the African Charter in a progressive manner. In the case of *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, the African Commission points out that the African Charter ensures equality of treatment for individuals “irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation.”²²

When a person is forced or coerced into undergoing conversion practices, they are being subjected to discrimination based on their sexual orientation, which is prohibited under the African Charter.

The African Charter also establishes the African Commission, which has produced several important norms. Chapter 4 will further discuss how the African Commission and the African Court have used the African Charter to address violations that can amount to conversion practices.

Rights under the African Charter Violated by Conversion Practices

Conversion practices may violate several rights protected and promoted under the African Charter, including:

- Article 3, equality before the law and equal protection of the law;
- Article 4, protection of the right to life and bodily integrity, which includes physical and mental integrity;
- Article 5, the right to dignity and respect of dignity of all persons; and
- Article 22, economic, social, and cultural development of persons with regard to their freedom and identity.

The African human rights institutions have not yet developed standards on these rights in relation to conversion practices, but the provisions of the African Charter can serve as a framework for advocating for standards by the institutions.

²² *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Comm 245/2002, Decision on Communications, 15 May 2006, <https://achpr.au.int/en/decisions-communications/zimbabwe-human-rights-ngo-forum-v-zimbabwe-24502> (accessed 14 September 2023)

THE MAPUTO PROTOCOL

What Is the Maputo Protocol?

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is an additional document to the African Charter that focuses on human rights issues that arise specifically from the violation of women's rights and discrimination against women. The protocol was inspired by a recognized need to compensate for the inadequate protection of women's rights under the African Charter, which does not comprehensively address human rights issues that specifically affect women, such as sexual and gender-based violence, abortion rights, and gender-based discrimination.

The Maputo Protocol was adopted on 11 July 2003 and entered into force on 25 November 2005. Under Article 26, States are required to submit reports on their implementation of the protocol to the African Commission along with reports on the implementation of the African Charter. In view of its monitoring powers, the African Commission develops norms related to the implementation of the protocol by States. Under Article 27, the African Court is tasked with interpreting the Maputo Protocol.

What Are the Key Provisions of the Maputo Protocol?

The Maputo Protocol provides a comprehensive articulation of civil and political rights, for example, the right to equality and non-discrimination in all forms (Article 2) and the right to freedom from all forms of violence, including gender-based violence (Article 4). It also provides for economic, social, and cultural rights, such as the right to equal opportunity in education (Article 12) and health and reproductive rights (Article 14).

The Maputo Protocol also provides for the rights of women in specific situations, such as the protection and promotion of widow's rights (Article 20) and the rights of women with disabilities (Article 23), thereby recognizing the rights of women who experience multiple forms of discrimination.

It also contains provisions considered innovative in advancing women's rights at the time of its adoption. These include the prohibition of female genital mutilation (Article 5); the authorization of abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental or physical health of the mother or the life of the mother or the fetus (Article 14); and explicit reference to HIV/AIDS in the context of sexual and reproductive health rights (Article 14).

Why Is the Maputo Protocol Relevant to Conversion Practices?

The Maputo Protocol does not make express reference to conversion practices. It also does not make explicit provisions for lesbian, bisexual, and queer (LBQ) women or transgender people. However, its provisions on sexual and reproductive rights engage issues that affect LBQ women's rights.²³ Significantly, its definition of women as "persons of female gender"²⁴ can be interpreted as inclusive of transgender women.²⁵

²³Maputo Protocol, art. 14.

²⁴Ibid, art. 1.

²⁵Tegan Snyman and Annika Rudman, "Protecting Transgender Women Within the African Human Rights System Through an Inclusive Reading of the Maputo Protocol and the Proposed Southern African Development Community Gender-Based Violence Model Law," *Stellenbosch Law Review* 33, no. 1 (June 2022), https://hdl.handle.net/10520/ejc-jlc_slr_v33_n1_a4.

The overall interest of the Maputo Protocol is to promote and protect the human rights of women and girls, including their sexual and reproductive rights. In this context, the Maputo Protocol provides a framework for addressing conversion practices that violate the human rights of women and girls, including LBQ and trans women and girls. The Protocol serves as a reference for human rights advocates, civil society organizations, and other stakeholders seeking to protect the rights of LBQ and trans women and girls from the harmful impacts of conversion practices.

In Chapter 4, we will further discuss specific forms of conversion practices affecting women and how the African Commission has used the Maputo Protocol to address these violations.

Rights under the Maputo Protocol that May be Violated by Conversion Practices

Conversion practices may violate several rights protected and promoted under the Maputo Protocol, including:

- Article 2, which promotes the elimination of discrimination against women;
- Article 3, the right to dignity of women;
- Article 4, the right to life, integrity, and security of the person (including from cruel, inhuman, and degrading treatment); and
- Article 5, which prohibits harmful practices negatively affecting women.

The African human rights institutions have not yet developed standards on these rights in relation to conversion practices, but the provisions of the Maputo Protocol can serve as a framework for advocating for standards by the institutions.

CONCLUSION

How Are Conversion Practices Covered in African Human Rights Instruments?

The treaties and protocols of the African human rights system do not explicitly address conversion practices. However, the system is founded on principles of equality and non-discrimination that have birthed a variety of norms by the various African institutions. These norms—such as resolutions, general comments, decisions on cases, and guidelines—cover a range of human rights violations, some of which amount to conversion practices.

The African human rights system plays a crucial role in addressing conversion practices. The provisions of various treaties can be used to highlight conversion practices' harmful impacts on the human rights of individuals. The African human rights system provides a framework for addressing conversion practices and promoting the rights of all individuals, regardless of their sexual orientation or gender identity.

What to Expect in the Next Chapters

Chapters 4 and 5 focus on some of the principal institutions of the African human rights system and their norms. These chapters will examine the roles of the African Commission and the African Court, respectively, as well as the norms that guide their work in promoting and protecting human rights in Africa. We will also analyze how the institutions and their norms can be used to address conversion practices on the continent. Understanding these institutions and norms is essential for effectively using the African human rights system to address conversion practices and promote the rights of all individuals.

IV. Eradicating Conversion Practices through the African Commission

INTRODUCTION

In the previous chapter, this report introduced the African human rights system and some of its principal treaties: the African Charter and the Maputo Protocol. It also showed how these treaties broadly relate to conversion practices.

This chapter and the next will look more closely at some of the principal institutions of the African human rights system and their norms. Specifically, this chapter will examine how the African Commission has developed several norms (including resolutions, general comments, decisions, concluding observations, and guidelines) that address violations that amount to conversion practices.

THE GENERAL ROLE OF THE AFRICAN COMMISSION

As mentioned in the previous chapter, the African Commission is the premier treaty body of the African human rights system responsible for interpreting and monitoring the implementation of the African Charter.²⁶

To this end, the African Commission often clarifies the rights under the charter through resolutions, decisions on communications, general comments, concluding observations on state reports, guidelines and principles, and other reports.²⁷ In the following sections, we consider what these various documents are and the extent to which they may be used to address conversion practices in Africa.

²⁶ African Charter on Human and Peoples' Rights, art. 45.

²⁷ For more on the practice and procedures of the African Commission, see Frans Viljoen, *International Human Rights Law in Africa* (Oxford: Oxford University Press, 2012).

RESOLUTIONS

What Are Resolutions?

Resolutions are official statements adopted by the African Commission on Human and Peoples' Rights, which serve to clarify and interpret the provisions of the African Charter.²⁸ As part of its promotional and protective mandates, the African Commission often adopts resolutions to expound on norms and inform States on their human rights obligations under the African Charter.

Resolutions may address various human rights issues, including those related to conversion practices, and provide guidance and recommendations to States, individuals, and organizations.

While not legally binding, the African Commission's resolutions are widely recognized as authoritative interpretations of the African Charter and can be considered a premier source of guidance on human rights in Africa.

The most relevant resolution of the African Commission related to conversion practices is Resolution 275.

Resolution 275

Full title: *Resolution on Protection Against Violence and Other Human Rights Violations Against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity (2014)*²⁹

Understanding Resolution 275

Within the African human rights system, Resolution 275 is the principal resolution articulating the position of the African Charter in relation to the rights of LGBTQ persons in Africa since its adoption on 12 May 2014.

Resolution 275 expressly condemns "the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity."

It raises concern over the fact that States have often failed to investigate and prosecute the perpetrators of these violations and calls on States to:

- end all acts of violence and abuse, whether committed by State or non-state actors, targeting persons on the basis of their imputed or real sexual orientation or gender identity;

²⁸ Ibid, 379.

²⁹ African Commission on Human and Peoples' Rights, *Resolution on Protection against Violence and Other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity (Resolution 275)*, adopted May 12, 2014, ACHPR/Res.275(LV)2014, <https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations> (accessed 26 August 2023).

Resolution 275

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

- enact and effectively apply appropriate laws prohibiting and punishing violence targeting persons on the basis of their imputed or real sexual orientation or gender identity;
- ensure proper investigation and diligent prosecution of perpetrators; and
- establish judicial procedures responsive to the needs of victims.

Why Is Resolution 275 Relevant?

Although this resolution does not directly mention conversion practices (except in its preamble, where it lists “corrective rape” as a type of violence), it is relevant for the following reasons:

- The scope of Resolution 275 on ending violence and discrimination addresses acts utilized in conversion practices, particularly those involving invasive and violent methods.
- Conversion practices that use abusive techniques such as forced isolation, aversive conditioning therapies, and physical abuse are, by extension, condemned under this resolution.
- The resolution can also be interpreted as prohibiting sexual abuse and sexual violence that are perpetrated to force LGBTQ persons into heterosexual or cisgender identities.

How Can You Use Resolution 275?

The existence of Resolution 275 is an affirmation of the rights and dignity of LGBTQ persons within the African human rights system. It is, therefore, a valuable document for lobbying policymakers and litigating cases to eradicate conversion practices.

Furthermore, Resolution 275 can be used to encourage the African Commission to issue statements and guidelines under the African human rights system to address conversion practices. Despite the absence of specific provisions on conversion practices, Resolution 275 can be utilized as both a substantive rights document and as an advocacy tool in the fight to eradicate conversion practices in Africa.

GENERAL COMMENTS

What Are General Comments?

General Comments are the authoritative interpretation of treaty provisions for the purpose of guiding States in their compliance with human rights obligations under the treaties. Essentially, a General Comment in the African human rights system is a “commentary” by the African Commission on the provisions of the African Charter or the Maputo Protocol.

The competence of the African Commission to issue General Comments is derived from Article 45 (1) (b) of the African Charter, which authorizes the African Commission to “formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights.”

General Comments can deal with both substantive treaty rights and procedural aspects, and they tend to focus on specific articles within a treaty document rather than the entirety of the treaty. It should be noted that as an interpretative guide, General Comments are not international law in themselves but are a means of understanding what the law states and, as such, can be relied on in either human rights litigation or implementation.

The relevant General Comments of the African Commission that relate to conversion practices are discussed below.

GENERAL COMMENT 1

Full title: *General Comment No. 1 on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2012)*³⁰

Why Is General Comment 1 Relevant?

General Comment 1 focuses on Article 14 (1) of the Maputo Protocol.

Article 14 (1) reaffirms that the women's right to health includes the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS, and the right to be informed on one's health status and the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices.

Although these provisions do not seem to directly intersect with conversion practices, the interpretation of these rights under General Comment 1 provides instances of how lack of access to education and other barriers to sexual and reproductive health rights can result in conversion practices.

Access to Information and Education vs. Conversion Practices

In paragraph 26, General Comment 1 encourages States to guarantee access to information and education on sexual and reproductive rights that is "evidence-based, facts-based, rights-based, non-judgmental and understandable in content and language."

This education should not just provide information but should "address all taboos and misconceptions relating to sexual and reproductive health issues, deconstruct men and women's roles in society, and challenge conventional notions of masculinity and femininity which perpetuate stereotypes harmful to women's health and well-being."³¹

Clearly, harmful patriarchal notions of masculinity and femininity play a significant role in perpetuating conversion practices and their resulting harms. Comprehensive sexuality education can help ensure that these harmful notions are unlearned and that a more

General Comment 1, Paragraph 26

The African Commission wishes to emphasize the importance of information and education on HIV prevention for women, in particular adolescents and youths. States Parties must guarantee information and education on sex, sexuality, HIV, sexual and reproductive rights. The content must be evidence-based, facts-based, rights-based, non-judgmental, and understandable in content and language. This information and education should address all taboos and misconceptions relating to sexual and reproductive health issues, deconstruct men and women's roles in society, and challenge conventional notions of masculinity and femininity which perpetuate stereotypes harmful to women's health and well-being. This should be pursued in line with the Maputo Plan of Action as well as Articles 2 and 5 of the Protocol.

³⁰ African Commission on Human and Peoples' Rights (ACHPR), *General Comment No. 1 on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 6 November 2012, <https://achpr.au.int/en/node/855> (accessed 26 August 2023).

³¹ ACHPR, *General Comment 1*, para. 26.

rights-based understanding of sexuality and gender is learned. Therefore, States must dedicate resources to awareness raising and sensitization of society and state actors to address harmful gender stereotypes.

Health and Reproductive Rights vs. Conversion Practices

Similarly, regarding barriers to sexual and reproductive health rights, General Comment 1 encourages States to “take all appropriate measures, through policies, programmes and awareness-raising towards the elimination of all barriers to women and girls’ enjoyment of sexual and reproductive health.”³²

Of note is the injunction to States to “address gender disparities, harmful traditional and cultural practices, patriarchal attitudes, discriminatory laws and policies.” This norm-setting recommendation by the African Commission underscores the role of social psychology in the perpetuation—and eradication—of conversion practices. It also suggests an intersection between the need to eradicate certain cultural and traditional practices and the eradication of conversion practices, as it is often harmful gender stereotypes that fuel the perpetuation of discrimination against LGBTQ persons.

Although General Comment 1 focuses on the rights of women, an implementation of its provisions ultimately benefits all groups that are subjected to harm based on their sexual orientation and gender identity.

General Comment 1, Paragraph 46

States Parties should take all appropriate measures, through policies, programmes and awareness-raising towards the elimination of all barriers to women and girls’ enjoyment of sexual and reproductive health. In particular, specific efforts should be made to address gender disparities, harmful traditional and cultural practices, patriarchal attitudes, discriminatory laws and policies in accordance with Articles 2 and 5 of the Protocol. In this regard, the State should collaborate with traditional and religious leaders, social movements, civil society, non-governmental organizations including women-centred NGOs, international organizations and development partners.

³² Ibid, para. 46.

GENERAL COMMENT 2

Full title: *General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2014)*³³

Why Is General Comment 2 Relevant?

Like General Comment 1, General Comment 2 also focuses on parts of Article 14 (1) of the Maputo Protocol. It discusses women’s rights to control their fertility, decide whether to have children, the number of children and the spacing of children, and choose any method of contraception, amongst others.

In this regard, States are required to take measures to remove all obstacles to the enjoyment by women of their rights to sexual and reproductive health. Paragraph 60 of General Comment 2 requires that States address “gender disparities, patriarchal attitudes, harmful traditional practices, prejudices of health care providers, discriminatory laws and policies, in accordance with Articles 2 and 5 of the Protocol.”

As with General Comment 1, General Comment 2 highlights the connection between patriarchal and harmful traditional attitudes and practices and the perpetuation of violence and discrimination based on sexual orientation and gender identity and expression. The same obstacles that impede access to sexual and reproductive health of women are intrinsic to the perpetration of conversion practices.

The perpetuation of harmful gender stereotypes and norms is a significant factor in the perpetration of conversion practices, and addressing these stereotypes is essential for ending these practices. General Comment 2 provides an important framework for understanding and addressing the connection between patriarchal attitudes and practices, on one hand, and violence and discrimination based on sexual orientation and gender identity and expression, on the other.

What Are the Obligations of the State to Curb Conversion Practices under General Comment 2?

States are obliged to take steps to reduce gender disparities, patriarchal attitudes, and harmful traditional practices.

General Comment 2, Paragraph 60

State parties should take all appropriate measures, through policies, sensitization and civic education programs, to remove all obstacles to the enjoyment by women of their rights to sexual and reproductive health. Specific efforts should especially be made to address gender disparities, patriarchal attitudes, harmful traditional practices, prejudices of health care providers, discriminatory laws and policies, in accordance with Articles 2 and 5 of the Protocol. In this regard, State parties should work in cooperation with health care providers, traditional and religious leaders, civil society organizations, non-governmental organizations, including women’s organizations, international organizations and technical and financial partners.

³³ ACHPR, *General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, 12 May 2014, <https://ihrrda.uwazi.io/fr/entity/kwxwd2jd6h5ckzcsjrzxjq0k9?page=4> (accessed 26 August 2023).

GENERAL COMMENT 3

Full title: *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*³⁴

Why Is General Comment 3 Relevant?

General Comment 3 focuses on the right to life. While it is not specific to conversion practices or the protection of sexual and gender minorities, its interpretation of the African Charter provides several bases for eradicating conversion practices.

First, the General Comment provides that the right to life should be interpreted broadly.³⁵ This means that it is not sufficient for the State to avoid taking life arbitrarily. It also has “a positive duty to protect individuals and groups from real and immediate risks to their lives caused either by actions or inactions of third parties.”³⁶ In extreme instances, conversion practices can lead to loss of life, particularly practices arising from violent and abusive acts³⁷ and because they contribute to suicidal ideation. Consequently, within this understanding of the right to life, the State has a duty to eradicate such conversion practices, including those arising from cultural or religious activities.

The Right to Life vs. Conversion Practices

General Comment 3 makes clear that risks to the right to life do not have to arise from malicious intent by the perpetrator for the State to be obligated to take a preventive step.³⁸ This means that even well-meaning but potentially mentally and physically threatening actions by friends and family members to “convert” a person’s sexual orientation or gender identity should be actively discouraged.

Such discouragement can be done through measures that educate and sensitize society on the dangers of such actions, and by eliminating discriminatory laws and practices that negatively impact the lives of individuals and groups. States can also provide affirming mental health services for LGBTQ persons to reduce susceptibility to harmful conversion practices and mitigate the risk of suicide.

In cases where conversion practices lead to a loss of life, the State has a “due diligence” obligation to take all necessary measures to prevent further human rights violations, investigate the violation, prosecute perpetrators, and provide effective remedies to survivors.³⁹ This principle applies to all human rights violations, including those related to conversion practices.

This standard means that States must take proactive measures to prevent conversion practices and to respond effectively to incidents of violence. This includes measures to ensure that perpetrators are held accountable and that victims are provided with effective remedies,

³⁴ ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples' Rights on the Right to Life (Article 4)*, 12 December 2015, <https://achpr.au.int/en/node/851> (accessed 26 August 2023).

³⁵ *Ibid.*, para. 41.

³⁶ *Ibid.*

³⁷ Damian Barr, “The Murder of Raymond Buys: ‘I Think They Knew They Were Going to Kill My Boy,’” *Guardian*, 30 May 2019, <https://www.theguardian.com/world/2019/mar/30/ramond-buys-think-they-knew-going-to-kill-my-boy>.

³⁸ ACHPR, *General Comment 3*, para. 41.

³⁹ *Ibid.*, para. 9.

including compensation, rehabilitation, and guarantees of non-repetition. By fulfilling their due diligence obligations, States can help create a more enabling environment for human rights advocacy and promote respect for the right to life of all individuals, regardless of their sexual orientation, gender identity, or expression.

What Are Other State Obligations under General Comment 3?

General Comment 3 also elaborates on the role of the State in securing the enjoyment of several other rights which, collectively, ensures that people can live with dignity, that is, that they enjoy the right to be treated with respect and to have their basic human needs, such as food, shelter, and medical care, met in a manner that does not undermine their dignity as a human being.⁴⁰

The violations of rights that allow a person to live with dignity may also entail violations of the right to life.⁴¹ In relation to conversion practices, this means that ease of access to social goods such as education, healthcare, employment, and the justice system can, in turn, impact the extent to which conversion practices are practiced and tolerated within society.

A broadly interpretation of the right to life to include living with dignity is crucial for the protection of sexual and gender minorities. Respect for human dignity requires that the conditions of living should recognize the freedom of every person to explore the full actualization of their human rights, including their sexual orientation and gender identity.⁴²

GENERAL COMMENT 4

Full title: *General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5) (2017)*⁴³

Why Is General Comment 4 Relevant?

As discussed in Chapter 2 above, some forms of conversion practices may rise to the level of torture. General Comment 4 focuses on the scope and content of the right to redress for victims of torture and other forms of cruel, inhuman, or degrading punishment or treatment (CIDT) in specific contexts in Africa. The right to redress for victims of torture and CIDT is not only a means of securing justice for victims but is also intended to deter such acts and promote respect for human rights and the rule of law.

Torture and CIDT are often associated with the acts of State actors in their capacity as such. However, where torture and CIDT are perpetrated by non-state actors, as is often the case in conversion practices, the State has a duty to investigate the acts, bring the perpetrators to

⁴⁰ See, for example, the African Commission's elaboration of socioeconomic rights in *Social and Economic Rights Action Center (SERAC) & the Center for Economic and Social Rights v. Nigeria*, Decision, Communications, 155/96 (ACHPR, 27 October 2001), <https://www.escri-net.org/caselaw/2006/social-and-economic-rights-action-center-center-economic-and-social-rights-v-nigeria>.

⁴¹ Ibid, paras. 64-65.

⁴² Ayodele Sogunro, "Dignity for the Queer African: How the Right to Dignity in International Human Rights Law Imposes Obligations On All States to Protect Sexual Minorities," *Southern African Public Law* 37, no. 1 (June 2022), 10-15, <https://doi.org/10.25159/2522-6800/10066>.

⁴³ ACHPR, *General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)*, 4 March 2017, <https://ihra.uwazi.io/en/entity/fti2vbxnd0tveyzo9au4n29> (accessed 26 August 2023).

justice, and provide effective remedies to the victims.⁴⁴ As with the case of State actors, forms of redress include compensation, rehabilitation, and guarantees of non-repetition. Essentially, the State obligations under General Comment 4 continue to be applicable regardless of whether the acts are committed by State or non-state actors.

What Is the Relationship Between Conversion Practices and Sexual and Gender-Based Violence as a Form of Torture and Cruel, Inhuman, and Degrading Treatment?

Paragraphs 57–61 of General Comment 4 address the use of sexual and gender-based violence as a form of torture and CIDT. General Comment 4 notes that “acts of sexual and gender-based violence, or the failure by States to prevent and respond to such acts, may amount to torture and other ill-treatment in violation of Article 5 of the African Charter.”

Sexual and gender-based violence often stems from social norms that establish gendered power relations and parse out the enjoyment of rights and the recognition of human dignity according to gender hierarchies. To enforce these power relations, these norms create or sustain stereotypical notions of sexuality, gender relations, and gender identity and expression and punish those who do not conform.

These punishments include inflicting harm on persons perceived to be acting in a way contrary to the accepted gender norms: for example, violence inflicted against trans persons or persons engaged in same-sex relations as a way of “punishing” what is perceived as a transgression against the gender norms of a cisheteronormative society.

As demonstrated by findings from our research, sexual and gender-based violence can be used as a type of conversion practice to attempt to force people to change their sexual orientation or gender identity.⁴⁵ In recognition of this range of targets, General Comment 4 notes, “Any person regardless of their gender may be a victim of sexual and gender-based violence. There is wide prevalence of sexual and gender-based violence perpetrated against women and girls. Acts of sexual violence against men and boys, persons with psychosocial disabilities, and lesbian, gay, bisexual, transgender and intersex persons are of equal concern, and must also be adequately and effectively addressed by State parties.”⁴⁶

How Does General Comment 4 Prohibit Conversion Practices?

General Comment 4 describes sexual and gender-based violence that amounts to torture or cruel, inhuman, and degrading treatment, including physical and psychological acts committed against victims without consent or under coercive circumstances.⁴⁷

The General Comment describes the range of such acts to include “rape (including so-called ‘corrective rape’), domestic violence, verbal attacks and humiliation, forced marriage, isolation, dowry-related violence, trafficking for sexual exploitation, enforced prostitution, indecent assault, denial of reproductive rights including forced or coerced pregnancy, abortion and sterilization, forced nudity, mutilation of sexual organs, virginity tests, sexual slavery, sexual exploitation, sexual intimidation, abuse, assault or harassment, forced anal testing, or any

⁴⁴ Ibid, paras. 72–73.

⁴⁵ Outright, *Converting Mindsets*.

⁴⁶ ACHPR, *General Comment 4*, para. 59.

⁴⁷ Ibid, para. 58.

form of sexual or gender-based violence of comparable gravity. These acts may occur in public or private and include force or coercion caused by fear of violence, duress, detention, psychological oppression or abuse of power.”⁴⁸

The prevalence of these incidents in Africa is well-documented, and findings from our *Converting Mindsets* report show how many of these acts are utilized in conversion practices. Verbal attacks and humiliation around a person’s sexual orientation or gender identity or expression are commonly used even in non-physical conversion practices, such as prayer. Forced marriage and isolation are often used to control and manipulate individuals and force them to conform to specific social and cultural norms based on gender and sexuality.

What Are States’ Obligations to Curb Conversion Practices under General Comment 4?

General Comment 4 calls attention to the need for States to address torture and cruel, inhuman, and degrading treatment, including in the form of sexual and gender-based violence, adequately and effectively.

Regarding sexual and gender-based violence that may constitute forms of torture or cruel, inhuman, and degrading treatment, paragraph 60 of General Comment 4 requires States to adopt specific measures to address the barriers that prevent access to redress for sexual and gender-based violence. The paragraph also notes that “effective redress for acts of sexual and gender-based violence is hindered by the fact that they are often hidden and over-looked as taboos. Stigma, feelings of guilt or shame, fear of retribution, and the unavailability of support or lack of information about available support, often prevent victims from coming forward. Further, injuries, both physical and psychological, may be less obvious than those caused by other forms of violence.”⁴⁹

Paragraph 61 calls on States to address sexual and gender-based violence through the following measures:

- ensure adequate documentation;
- criminalize all forms of sexual and gender-based violence;
- ensure accountability of perpetrators;
- provide support to victims at all stages of the legal process;
- identify the causes and consequences of sexual and gender-based violence and take all necessary measures to prevent and eradicate it;
- put in place efficient and accessible reparation programs and ensure the participation of victims in the elaboration, adoption, and implementation of the programs;
- provide unimpeded and regular access to comprehensive health care, including sexual and reproductive health-care services, physical rehabilitation, psychological and psychosocial support, and socio-economic support; and
- observe the need to ensure the dignity and safety of victims and the importance of confidentiality and privacy.⁵⁰

⁴⁸ Ibid.

⁴⁹ Ibid, para. 60.

⁵⁰ Ibid, para. 61.

How Can You Use These General Comments?

In the absence of a comprehensive document by the African Commission dealing with conversion practices, the four General Comments of the African Commission discussed above provide a useful interpretation of the African Charter for activists and stakeholders.

These General Comments also provide comprehensive guidance on what States must do to eradicate coercive and invasive conversion practices, including prohibiting torture and other cruel, inhuman, and degrading treatment and ensuring effective remedies for victims.

Activists and stakeholders can use these General Comments to raise awareness about how conversion practices run counter to the African Charter and to advocate for the protection of the rights of affected individuals.

They can also use these General Comments to hold States accountable for their obligations under the African Charter and demand that they take adequate measures to prevent and respond to conversion practices, including providing support and protection to victims.

The General Comments of the African Commission can serve as a valuable tool for those working to promote and protect the human rights of all individuals, regardless of their sexual orientation, gender identity, or expression.

AFRICAN COMMISSION'S DECISIONS ON COMMUNICATIONS

What Are Decisions on Communications?

The African Commission is mandated under Article 45 (2) of the African Charter to receive and consider allegations of human rights violations from individuals, non-governmental organizations, and other non-state entities against State parties to the African Charter. This process of receiving an allegation is known as a "communications procedure," while the outcome of the process is known as a "decision."

Through the communications procedure, individuals and organizations can directly approach the African Commission to hold States accountable for human rights violations.⁵¹ The process generally involves four stages:

- submission and receipt of the complaint;
- consideration of jurisdictional and admissibility validity;
- consideration of the merits; and
- issuance of a decision on the communications.⁵²

If the complaint is successful, the African Commission issues recommendations to the relevant State. It is up to the State to implement these recommendations. The African Commission's decisions are not legally binding on the affected State.

⁵¹ The guidelines for submitting complaints to the African Commission are available at ACHPR, "Guidelines for Submitting Complaints," 13 April 2021, <https://achpr.au.int/en/guidelines-submitting-complaints> (accessed 26 August 2023).

⁵² The African Commission's rules of the procedure are available at: ACHPR, "Communications Procedure," 13 April 2021, <https://achpr.au.int/en/communications-procedure> (accessed 26 August 2023).

However, the African Commission's interpretation of the African Charter under the communications procedure forms part of international law jurisprudence and can be authoritatively relied on in a future communications procedure.⁵³

What Are Some of the Relevant Decisions?

The relevant decisions on communications by the African Commission that relate to conversion practices are discussed below.

Curtis Francis Doebller v. Sudan

In the case of *Doebller v Sudan*,⁵⁴ the African Commission had to consider whether corporal punishment could amount to cruel, inhuman, and degrading treatment. Briefly, the facts of the case were that police officers and security agents arrested and beat some Sudanese university students during a riverside picnic on the grounds that they had violated public order because they were not "properly dressed" and were "acting in a manner considered being immoral."⁵⁵

The complainant stated that the alleged immoral acts included "girls kissing, wearing trousers, dancing with men, crossing legs with men, sitting with boys, and sitting and talking with boys."⁵⁶ A trial court convicted eight students and sentenced them to fines and/or lashes, carried out under the court's supervision. The complaint to the African Commission was that the punishment meted out was grossly disproportionate and constituted inhuman, degrading treatment or punishment.

Although the facts of the case do not involve conversion practices, the issues in the case and the jurisprudence of the African Commission provide an insight into how the African Commission would approach a decision on conversion practices. Whipping and other corporal punishments have been used as conversion practices with the aim of coercing the victim to renounce their sexual orientation. In cases where this type of punishment as a form of conversion practice is conducted by State actors, the jurisprudence of the African Commission in this case should be applicable.

In deciding the case, the African Commission noted that the prohibition of torture and cruel, inhuman, or degrading treatment or punishment should be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses.

African Commission Decision in *Curtis Francis Doebller v. Sudan*, Paragraph 42

"There is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the African Charter and contrary to the very nature of this human rights treaty."

⁵³ Chidi Anselm Odinkalu and Camilla Christensen, "The African Commission on Human and Peoples' Rights: The Development of Its Non-State Communication Procedures," *Human Rights Quarterly* 20, no. 2 (May 1998), 246, <https://www.jstor.org/stable/762765>.

⁵⁴ *Curtis Francis Doebller v. Sudan*, African Commission on Human and Peoples' Rights, Comm. No. 236/2000 (2003), <http://hrlibrary.umn.edu/africa/comrcases/236-2000.html> (accessed 26 August 2023).

⁵⁵ *Ibid*, para. 2.

⁵⁶ *Ibid*, para. 3.

The African Commission then noted that, in line with jurisprudence from the European Court of Human Rights,⁵⁷ even a beating carried out in private, with appropriate medical supervision, and under strictly hygienic conditions still violated the rights of the victim. In ruling against the State, the African Commission concluded, “There is no right for individuals, and particularly the government of a country, to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State-sponsored torture under the Charter and contrary to the very nature of this human rights treaty.”⁵⁸

How Can You Use the African Commission’s Decisions and the Communications Procedure?

The African Commission’s decisions and the communications procedure can also be used as tools for eradicating conversion practices in Africa.

Decisions of the African Commission provide authoritative interpretations of the provisions of the African Charter and serve as precedents for future cases. Using the communications procedure, victims and other stakeholders can bring to the attention of the African Commission human rights violations perpetrated through conversion practices. They can seek remedies and hold States accountable for their obligations under the African Charter.

The communications procedure can also serve as a means of raising awareness about human rights issues, including conversion practices. It can help to create a more enabling environment for human rights advocacy in Africa.

CONCLUDING OBSERVATIONS

What Are Concluding Observations?

Under Article 62 of the African Charter, States must submit a report every two years on the legislative and other measures adopted to give effect to the rights and freedoms contained in the African Charter.

After submission of the State report, the African Commission examines and asks questions from the State at a public session.⁵⁹ At the end of this examination, the African Commission makes recommendations and observations to the State. These recommendations and observations are referred to as “Concluding Observations.”

Concluding Observations provide practical guidance to States on how to implement their obligations under the African Charter. Concluding Observations are not binding and are most effective when accepted and implemented by the States themselves.

Which Concluding Observations Have Discussed Conversion Practices?

In recent years, particularly since the adoption of Resolution 275, the African Commission has increasingly referenced the protection of sexual and gender minorities in its Concluding Observations in various State reports.

⁵⁷ *Tyrer v. The United Kingdom*, Application No. 5856/72 (European Court of Human Rights), 25 April 1978, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-57587%22%5D%7D> (accessed 26 August 2023).

⁵⁸ *Ibid.*, para. 42

⁵⁹ Malcolm Evans and Rachael Murray, *The African Charter on Human and Peoples’ Rights: The System in Practice* (Cambridge: Cambridge University Press, 2008), 53.

Some relevant examples include:

- In the 2013 Concluding Observations on Cameroon’s 3rd periodic report, the African Commission mentions the country’s “discrimination, stigma and violation of the right to life and physical and mental integrity of individuals based on their sexual orientation.”⁶⁰ The African Commission directs Cameroon to “take appropriate measures to ensure the safety and physical integrity of all persons irrespective of their sexual orientation and maintain an atmosphere of tolerance towards sexual minorities in the country.”⁶¹
- In its 2015 Concluding Observations on Liberia, the African Commission directs the State to “ensure the equal rights of all Liberians without discrimination including on the basis of sexual orientation or gender identity.”⁶²
- In its 2015 Concluding Observations on Nigeria’s 5th periodic report, the African Commission directs the State to “review the Same-Sex Marriage Prohibition Act in order to prohibit violence and discrimination in access to HIV prevention, treatment and care services, as well as to ensure the protection of other human rights of sexual minorities guaranteed under the African Charter and other international instruments to which Nigeria is a party.”⁶³
- In its 2016 Concluding Observations on South Africa’s periodic report, the African Commission condemns the widespread “discrimination, homophobia, and prejudice against homosexuals resulting in murder and violence against homosexuals despite the existence of legal frameworks.”⁶⁴
- In its 2016 Concluding Observations on Sierra Leone’s initial and combined reports, the African Commission directs the State to take “effective and concrete measures to end all acts of violence and abuse, whether committed by State or non-State actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.”⁶⁵

The preceding examples indicate the progressive thinking that the African Commission has adopted in recent years on the rights of LGBTQ persons. While they do not specifically speak to conversion practices, these observations address the broader issues of violence and discrimination that both encompass and result from these practices.

⁶⁰ ACHPR, *Concluding Observations and Recommendations – Cameroon: Third Periodic Report, 2008–2019*, 5 November 2013, <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-cameroon-third-periodic-report> (accessed 26 August 2023), para. 85.

⁶¹ *Ibid.*, rec. 36.

⁶² ACHPR, *Concluding Observations and Recommendations – Liberia: Initial and Combined Periodic Reports, 1982–2012*, 2015, <https://achpr.au.int/index.php/en/state-reports/concluding-observations-and-recommendations-liberia-initial-and-combined-pe> (accessed 26 August 2023), para. 49.

⁶³ ACHPR, *Concluding Observations and Recommendations – Nigeria: 5th Periodic Report, 2011 – 2014*, 18 November 2015, <https://achpr.au.int/en/concluding-observation/concluding-observations-and-recommendations-nigeria-5th-periodic-report-2011> (accessed 26 August 2023), para. 126.

⁶⁴ ACHPR, *Concluding Observations and Recommendations – South Africa: 2nd Periodic Report, 2003–2014*, 18 June 2016, <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-south-africa-2nd-periodic-repor> (accessed 26 August 2023), para. 32.

⁶⁵ ACHPR, *Concluding Observations and Recommendations – Sierra Leone: Initial and Combined Reports, 1983–2013*, 2016, <https://achpr.au.int/index.php/en/concluding-observation/concluding-observations-and-recommendations-sierra-leone-initial-and-combine> (accessed 26 August 2023), para. 38.

If States take measures to address the various issues pointed out by the African Commission, including repealing criminalizing laws, eradicating discriminatory healthcare policies and social attitudes, conducting investigations into acts of violence, prosecuting perpetrators of violence based on sexual orientation and gender identity, and providing redress for victims, the incidence of conversion practices and their resulting harms is likely to be reduced in society.

How Can You Use the African Commission’s State Reporting Procedure?

The African Commission issues Concluding Observations at the end of the State reporting procedure. The State reports provide an opportunity to hold States accountable regarding the steps they have taken to address human rights challenges, including violations arising from conversion practices.

By participating in the preparation and review of State reports, activists, non-governmental organizations, and other stakeholders can provide constructive criticism and recommendations for improvement. Additionally, the State reporting procedure provides an opportunity for organizations to raise awareness about conversion practices through shadow reports that offer a separate situational perspective from the State report.

GUIDELINES AND PRINCIPLES

What Are Guidelines and Principles?

Article 45 of the African Charter empowers the African Commission to issue rules and principles to solve legal problems relating to the rights contained in the African Charter. Guidelines and principles clarify the interpretation and implementation of the African Charter. States, organizations, and individuals can use them in their efforts to promote and protect human rights in Africa.

Guidelines and principles cover a wide range of human rights issues, including freedom of expression and the rights of women, children, and marginalized and vulnerable groups. Although no guidelines and principles specifically discuss conversion practices, some of the existing ones can help to identify State obligations concerning conversion practices.

GUIDELINES ON COMBATING SEXUAL VIOLENCE AND ITS CONSEQUENCES IN AFRICA (2017)

What Is the Focus of These Guidelines?

Also known as the Niamey Guidelines,⁶⁶ this document provides comprehensive guidance on combatting sexual violence and its consequences through concrete, cross-cutting, and coordinated measures that include attacking root causes, providing protection and support to victims and witnesses, bringing the alleged perpetrators to justice, and offering guarantees of non-repetition.⁶⁷

⁶⁶ ACHPR, *The Guidelines on Combating Sexual Violence and Its Consequences in Africa (Niamey Guidelines)*, adopted during the 60th Ordinary Session held in Niamey, Niger from 8 to 22 May 2017, <https://achpr.au.int/en/node/848> (accessed 26 August 2023).

⁶⁷ *Ibid*, preamble.

What Do the Niamey Guidelines Say about Conversion Practices?

The Niamey Guidelines directly address bias-motivated or “corrective” rape as an act of sexual violence. The Guidelines define corrective rape as “the use of rape against women because of their real or alleged homosexuality supposedly in order to ‘cure’ them of this sexual orientation.”⁶⁸

Elsewhere, the Guidelines do not directly engage with conversion practices, but instead make references to acts that could constitute such practices. These include compelled rape (committed by a third person compelled to do so); attempted rape; sexual assault; anal and vaginal virginity tests; violent acts to the genitalia (such as burning, electrical shocks, or blows); forced marriage; forced pregnancy; forced sterilization; forced abortion; forced prostitution; forced pornography; forced nudity; forced masturbation; and any other forced (sexual) touching that the victim is compelled to perform on themselves or a third person.⁶⁹

Some of these acts have been documented in African contexts through our research on conversion practices in Kenya, Nigeria, and South Africa.

The Guidelines define the victims of these acts to include the individuals and groups that are directly harmed by these acts physically and psychologically as well as close family and persons in whose care they are who are harmed as a result of providing assistance or attempting to prevent their victimization.⁷⁰ Importantly, the Guidelines note also that factors such as sexual orientation, gender identity, or gender expression can increase the vulnerability of individuals or groups of individuals to sexual violence.⁷¹

What Are States’ Obligations under the Niamey Guidelines?

With the gravity of these acts in view, the Niamey Guidelines remind States of their non-discrimination, due diligence, and do no harm obligations in eradicating these acts.

In terms of non-discrimination, States are mandated to take necessary measures to ensure that the rights of the victims of sexual violence are guaranteed, irrespective of “...sexual orientation and identity, [and] gender expression.”⁷²

States must also “do no harm” by adopting legislative measures to guarantee the well-being and security of the victims and witnesses of sexual violence, and to minimize the negative impact that actions to combat sexual violence and its consequences can have on victims and witnesses.⁷³

State agents must refrain from committing any acts of sexual violence. The State must act with due diligence to prevent and investigate acts of sexual violence committed by State and non-State actors, prosecute and punish perpetrators, and provide a remedy to victims.⁷⁴

⁶⁸ Ibid, para. 3.1.

⁶⁹ Ibid, para 3.1(b).

⁷⁰ Ibid, para. 3.2.

⁷¹ Ibid, para. 3.2(e).

⁷² Ibid, para. 4.

⁷³ Ibid, para. 5.

⁷⁴ Ibid, para. 6.

Conversion practices are rooted in harmful notions about sexuality and gender. The Guidelines urge States to take measures to eliminate the root causes of sexual violence including “sexist and homophobic discrimination, patriarchal preconceptions and stereotypes about women and girls, and/or preconceptions and stereotypes based on gender identity, real or perceived sexual orientation, and/or certain preconceptions of masculinity and virility.”⁷⁵ This directive is consistent with the previous statements of the African Commission through its General Comments, again underscoring how stereotypes of sexuality and gender can lead to violence and discrimination.

To eradicate sexual violence—and by extension conversion practices associated with sexual violence—States must guarantee that victims are protected from any new act of sexual violence and are protected from the consequences of sexual violence, particularly by guaranteeing that victims have access to all types of assistance that they need.⁷⁶

States must also guarantee access to justice for all victims of sexual violence, including in rural areas where these acts tend to be prevalent yet underreported. Investigations into acts of sexual violence and the prosecution of the perpetrators are expected to be carried out without unjustified delays; independently, impartially and effectively; and in a manner that leads to the identification and sentencing of the perpetrators. Throughout the course of the investigations and proceedings, the rights of the victims must be considered, particularly their well-being and safety.⁷⁷

How Can You Use the Niamey Guidelines?

The Niamey Guidelines can be used along with Resolution 275 as an effective and comprehensive resource for dealing with coercive conversion practices that utilize sexual violence as a tool of conversion.

The Niamey Guidelines provide a set of best practices for States and other stakeholders in various aspects of preventing sexual violence, protecting and supporting victims of violence, investigating sexual violence and punishing those responsible, providing reparations, and implementing regional and international obligations—all of which are useful and relevant in eradicating conversion practices that utilize sexual violence.

ACTIVITY AND INTERSESSION REPORTS

What Are Activity and Intersession Reports?

As part of its promotional mandate, the African Commission participates in various activities such as country visits. In this way, the commissioners gain first-hand information on various issues and can engage directly with civil society and policymakers. The African Commission produces occasional reports on these activities.

Although these are not normative documents as they do not elaborate on State obligations or interpret the African Charter, they are still valuable to activists because they provide information on the African Commission’s meetings, visits, and other initiatives aimed at advancing human rights in Africa. The reports also provide insights into the human rights

⁷⁵ Ibid, para. 7.

⁷⁶ Ibid, para. 8.

⁷⁷ Ibid, para. 9.

challenges faced by individuals and communities in Africa and can be used to identify areas where greater attention and action is needed.

The African Commission is also mandated under Article 54 of the African Charter to submit a regular report on its activities to the Assembly of the Heads of States and Government of the African Union. These reports are formally adopted by the African Union and form part of the dialogue process between the political system and the human rights system.

So far, none of these reports have directly engaged conversion practices. Some have addressed the general underlying issues of discrimination and violence based on sexual orientation, gender identity and expression, which are the root causes of conversion practices. A few such reports are highlighted in the following paragraphs.

Full title: 60th Ordinary Session – Intersession Activity Report, Annual Situation of Torture and Other Ill-Treatment in Africa Report (2017)⁷⁸

In their report, the Committee for the Prevention of Torture in Africa condemns the use of forced anal examinations to prove homosexuality and urges States to “respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including.... lesbian, gay, bisexual, transgender and intersex persons.”⁷⁹

Full title: 66th Ordinary Session – Intersession Activity Report, Annual Report on the Situation of Torture and Other Ill-Treatment in Africa (2020)⁸⁰

In this report, the Committee for the Prevention of Torture in Africa similarly notes the continued use of forced anal examinations to obtain physical evidence of homosexuality, an act that “amounts to torture and ill-treatment and has been found ‘medically worthless.’”⁸¹ The report recommends that States “respect and protect the rights of persons or groups at heightened risk to acts of torture and other ill-treatment, including... lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.”⁸² States should prohibit and punish these types of acts even when supposedly utilized in the service of converting a person’s sexual orientation or gender identity and expression.

Full title: Ending Violence and other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights and United Nations (2016)⁸³

This report summarizes a joint dialogue between the African Commission, the Inter-American Commission on Human Rights, and the United Nations on the issue of human rights violations based on sexual orientation and gender identity.

⁷⁸ 60th Ordinary Session – Intersession Activity Report, Annual Situation of Torture and Other Ill-Treatment in Africa Report, 2017.

⁷⁹ Ibid, para. 34.

⁸⁰ 66th Ordinary Session – Intersession Activity Report, Annual Report on the Situation of Torture and Other Ill-Treatment in Africa, 2020.

⁸¹ Ibid, para. 87.

⁸² Ibid, recommendation 10.

⁸³ Centre for Human Rights, *Ending Violence*.

Amongst other issues, the report identifies “so-called corrective rape” as one of these violations and urges the implementation of Resolution 275 to eradicate such instances of violence.⁸⁴

How Can You Use the African Commission’s Promotional Mandate?

The African Commission’s activity and intersession reports can be used to inform advocacy efforts and to hold States accountable for their human rights obligations.

By analyzing and drawing attention to the findings and recommendations contained in these reports, individuals and organizations can help raise awareness about human rights issues and advance the promotion and protection of human rights in Africa.

Additionally, the activity and intersession reports can be used as a source of information and guidance for those working to eradicate conversion practices in Africa by providing insights into the African Commission’s activities and priorities.

⁸⁴ Ibid, para. 18.

V. Eradicating Conversion Practices Through the African Court

INTRODUCTION

The previous chapter looked at the African Commission and several of its norms related to conversion practices, and analyzed how these norms can be used by activists in eradicating these practices. This chapter undertakes a similar analysis of the African Court on Human and Peoples' Rights (African Court). Because the African Court is a judicial institution, its norms are derived through a review of relevant case decisions rather than through comments or statements.

The General Role of the African Court

The African Court on Human and Peoples' Rights (African Court) was established through a protocol to the African Charter, titled *Protocol on the Establishment of an African Court on Human and Peoples' Rights*, which came into force in 2004.⁸⁵ Like the African Commission, the Court is mandated to interpret the African Charter.

The African Court can hear individual and inter-state cases and has the authority to provide binding decisions and make legally binding orders. In this way, the African Court complements the role of the African Commission by providing a judicial mechanism for enforcing the rights protected under the African Charter and for holding States accountable for human rights violations.

⁸⁵ Organization of African Unity (OAU), *Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights*, adopted 10 June 1998, entered into force 25 January 2004, https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf (accessed 26 August 2023).

AFRICAN COURT DECISIONS

Who Can Bring a Case before the African Court?

Generally, only State parties to the Protocol establishing the African Court and the institutions of the African Union have an automatic right to approach the court against another State party. Individuals can only approach the court directly for relief against a State if that State has submitted a declaration under Article 34 (6) of the Protocol to allow individual petitions.

So far, only eight States have made this declaration and not withdrawn it. These are Burkina Faso, Malawi, Mali, Ghana, Tunisia, Gambia, Niger, and Guinea Bissau.⁸⁶ This situation limits opportunities for cases to be brought before the court for adjudication, as individuals and non-governmental organizations (NGOs) from States that have not submitted the Article 34 (6) declaration cannot bring cases directly to the African Court.

For States that have not made a declaration allowing individual petitions, NGOs and individuals may still have an opportunity to bring a complaint against the State through the African Commission. Under the African Commission's rules of procedure, after a complainant has brought a communication before the African Commission, the African Commission may decide to refer the case to the African Court, upon which the Commission plays the role of Applicant before the court.⁸⁷

What Decisions of the African Court Deal with Conversion Practices?

The African Court has yet to preside over a case involving sexual orientation, gender identity, and expression of conversion practices. Its jurisprudence on adjacent issues can provide insight into how it is likely to interpret the African Charter in respect of conversion practices. Some of these related cases are examined in the following paragraphs.

African Commission on Human and Peoples' Rights v. Kenya (2017)⁸⁸

With regard to Article 2 of the Charter on non-discrimination, the Court in *African Commission on Human and Peoples' Rights v. Kenya* expanded on the scope of the right to non-discrimination. The case involved the forced eviction of the indigenous Ogiek community, and the Court noted that: "The expression 'any other status' under Article 2 encompasses those cases of discrimination, which could not have been foreseen during the adoption of the Charter."⁸⁹ Hence, the Court must take into consideration the general spirit of the African Charter in determining whether a particular ground falls under this category.⁹⁰ In essence, it is arguable that the recognition of sexual orientation and gender identity as a prohibited ground of discrimination would also apply to decisions of the African Court. Consequently, the general

⁸⁶ African Court on Human and Peoples' Rights, "Declarations," <https://www.african-court.org/wpafc/declarations/> (accessed 26 August 2023). By 2020, four member states – Tanzania, Benin, Rwanda and Cote d'Ivoire – had withdrawn from Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (The African Court Protocol).

⁸⁷ African Commission on Human and Peoples' Rights, "Rules of Procedure of the African Commission on Human and Peoples' Rights," adopted by the African Commission on Human and Peoples' Rights during its 2nd ordinary session held in Dakar (Senegal) from February 2 to 13, 1988, approved during its 47th ordinary session held in Banjul (The Gambia) from May 12 to 26, 2010, 2020, <https://www.african-court.org/wpafc/wp-content/uploads/2020/10/25-RULES-OF-PROCEDURE-ON-THE-AFRICAN-COMMISSION-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf> (accessed 26 August 2023), rules 130-133.

⁸⁸ *African Commission on Human and Peoples' Rights v. Kenya*, Application 006/2012 (African Court on Human and Peoples' Rights), 2017, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-57587%22%5D%7D> (accessed 26 August 2023).

⁸⁹ *Ibid*, para. 138.

⁹⁰ *Ibid*.

jurisprudence of the African Court on issues relating to violence and discrimination should be equally applicable to cases involving conversion practices.

***Rashidi v. Tanzania* (2019)⁹¹**

Rashidi v. Tanzania provides an instance of the African Court presiding over a case that is analogous to acts carried out under conversion practices. In this case, the African Court held that the anal search of a complainant, which State authorities had carried out in the process of detaining the complainant on immigration charges, violated his right to dignity.⁹² The Court noted that the anal search constitutes an interference with the complainant's physical integrity, an inviolable right as enshrined under Article 4 of the African Charter.⁹³ By extension—and applying the court's ruling on non-discrimination discussed above—forced anal examinations conducted with the intent of examining whether or not an individual has engaged in same-sex conduct, either in the course of a conversion practice or otherwise, would constitute a violation of the individual's right to dignity.

How Can We Use the African Court and Its Decisions?

The African Court can play an important role in addressing conversion practices. In the eight States that have submitted an Article 34 (6) declaration, individuals and NGOs can directly bring cases before the African Court if they have exhausted domestic remedies and if they believe that rights protected under the African Charter have been violated as a result of conversion practices. In other States, the African Court may still have jurisdiction if the African Commission refers a communication to the court.

Whether a case is brought directly or through the African Commission, the African Court can provide binding decisions and make legally binding orders, which can serve as a means of holding States accountable for human rights violations related to conversion practices.

In addition, the African Court's decisions can be used as a source of information and guidance for those working to advance human rights in Africa, including activists, NGOs, and other stakeholders. The African Court's decisions can help to raise awareness about human rights issues related to conversion practices and can provide insights into the human rights obligations of States under the African Charter.

⁹¹ *Rashidi v. Tanzania*, Application 009/2015 (African Court on Human and Peoples' Rights), 2019, [https://www.pulp.up.ac.za/edocman/legal_compilations/2019_cases/Rashidi%20v%20Tanzania%20\(merits%20and%20reparations\)%20\(2019\)%203%20AfCLR%2013.pdf](https://www.pulp.up.ac.za/edocman/legal_compilations/2019_cases/Rashidi%20v%20Tanzania%20(merits%20and%20reparations)%20(2019)%203%20AfCLR%2013.pdf) (accessed 26 August 2023).

⁹² *Ibid*, para. 96.

⁹³ *Ibid*, paras. 97-98.

VI. Conclusion and Recommendations for Stakeholders

CONCLUSION

This study on conversion practices and the African human rights system indicates a significant engagement by the system—mainly through the African Commission—on issues affecting sexual and gender minorities on the continent. This engagement has generally been limited to broad topics of violence and discrimination. It has not fully addressed areas of specific concern, including the issue of conversion practices and their harmful effects. The most direct reference to conversion practices in the African human rights system is the condemnation of “corrective rape” in some texts addressing violence based on sexual orientation and gender identity.

Despite the absence of specific attention to conversion practices in the African human rights system, the collective statements and jurisprudence of the African human rights treaty bodies discussed in this report show an intent to eradicate several harmful acts that are typically used in conversion practices.

The African human rights treaty bodies also acknowledge the need to set standards to transform harmful social attitudes. To this end, the treaty bodies have called States’ attention to issues such as harmful notions of masculinity and femininity, harmful traditional and cultural practices, patriarchal attitudes, and discriminatory laws and policies, all of which perpetuate and are reproduced by conversion practices.

In conclusion, the African human rights system plays a critical role in addressing conversion practices and promoting the human rights of all individuals in Africa, regardless of their sexual orientation or gender identity. While there is still much work to be done to raise awareness about the dangers of conversion practices, the African human rights system provides a valuable framework for addressing this issue. The African Charter and its protocols, as well as the work of the African Commission on Human and Peoples’ Rights, and the African Court on Human and Peoples’ Rights, offer a range of State obligations and recommendations on best practices that can be utilized to eradicate conversion practices in Africa. With continued advocacy and collaboration between States, civil society organizations, and other stakeholders, the African human rights system can be an effective tool in promoting and protecting human rights and ensuring that everyone in Africa is able to live with dignity.

RECOMMENDATIONS

Based on the findings from this study on conversion practices and the African human rights systems, Outright offers the following recommendations.

Recommendations for the African Human Rights Treaty Bodies

- The African human rights treaty bodies should condemn all forms of conversion practices and ensure, through their concluding observations on State reports, that States understand their obligations to eradicate such practices.
- The African human rights treaty bodies should gather data, including through missions and country visits, on conversion practices as one of many forms of discrimination and violence perpetrated against LGBTQ people.
- The African human rights treaty bodies should design and implement campaigns as part of their promotional mandates to promote an end to all forms of conversion practices and raise awareness of their harmful effects.
- The African human rights treaty bodies should provide a general comment or guideline on the issue of conversion practices, articulating the scope of the African Charter as it relates to conversion practices, the dangers and harmful effects of these practices, and processes for eradicating these practices, supporting survivors, and holding perpetrators accountable.
- The African human rights treaty bodies should establish a reporting process for informing them on human rights abuses resulting from conversion practices.
- The African human rights treaty bodies should encourage national human rights institutions to mainstream LGBTQ awareness and rights into their work.

Recommendations for States

- States should condemn the use of conversion practices in all forms.
- States should review and repeal discriminatory laws that encourage conversion practices, including laws that criminalize same-sex intimacy and gender nonconformity.
- In line with African human rights jurisprudence, States should undertake measures to prohibit acts associated with conversion practices including, but not limited to: torture and cruel, inhuman, or degrading treatment; corporal punishment; and acts of sexual violence. States should create effective processes for reporting and investigating cases, prosecuting perpetrators, and providing protection and remedies to survivors.
- In line with African human rights jurisprudence and the statements of the African human rights treaty bodies, States should work towards eliminating harmful notions of sexuality and gender, harmful traditional and cultural practices, patriarchal preconceptions and stereotypes about women and girls, preconceptions and stereotypes based on gender identity, real or perceived sexual orientation, and preconceptions of masculinity and virility, all of which contribute to the perpetration of conversion practices.
- States should include sexual diversity and comprehensive sexuality education in the training curriculum of service providers across healthcare, welfare, and policing services and undertake other measures to promote understanding, acceptance, and inclusion of LGBTQ people.

- States should prohibit police raids, arbitrary and indiscriminate arrests, and searches of individuals based on perceived or actual sexual orientation or gender identity or expression and refrain from harassing, arresting, or prosecuting LGBTQ human rights defenders and organizations on account of their work.

Recommendations for Civil Society

- Civil society organizations working in Africa should condemn conversion practices in their work on health, gender, and human rights. They should advance broad-based recognition that conversion practices do not work and instead cause lasting psychological and physical harm.
- Civil society organizations working in Africa should conduct additional research to more precisely characterize the prevalence and nature of conversion practices in a given country or locality so that more informed strategies for tackling the practices can be adopted.
- Civil society organizations in Africa should work with the African human rights treaty bodies to draft guidelines and general comments on eradicating conversion practices. They should also design and implement campaigns to promote an end to all forms of conversion practices and raise awareness of their harmful effects.
- Civil society organizations working in Africa should document cases of conversion practices and work with the African human rights treaty bodies to address cases involving coercive practices, including through shadow reporting, domestic litigation, utilizing the communications procedures, and bringing relevant cases before the African Commission and the African Court on Human and Peoples' Rights.



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