

# **Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia**

## **A Shadow Report on Liberia's Compliance with the African Charter on Human and Peoples' Rights**

**Submitted for consideration at the 55th Session of the  
African Commission on Human and Peoples' Rights**

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## I. Introduction

This shadow report on the rights of sexual minorities in the Republic of Liberia is the result of a collaborative effort by Stop AIDS in Liberia (SAIL), the Association of People Living with HIV and AIDS (ALL+), the Liberian Initiative for the Promotion of Rights, Identity, and Diversity (LIPRID), the Liberian Women Empowerment Network (LIWEN), Action Aid Liberia (AAL), The Initiative for Equal Rights (TIERs), African Men for Sexual Health and Rights (AMSHeR), the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights,<sup>1</sup>

Liberia signed the African Charter on Human and Peoples' Rights ("the African Charter")<sup>2</sup> on August 4, 1982 and ratified it on January 31, 1983. The African Commission will consider Liberia's September 2012 periodic report on the implementation of the African Charter entitled "General Report on the Human Rights Situation in Liberia"<sup>3</sup> ("2012 Liberia Periodic Report") during the 55<sup>th</sup> ordinary session of the Commission, which will take place from April 28 to May 12, 2014.

In its periodic report to the African Commission for the period of 1984 to 2012, the Government of Liberia affirmed that "Liberia remains committed to promoting human rights and the respect for the rule of law as a means of sustaining peace and stability, as well as the means of fulfilling her international obligations, with the overall view of improving the general welfare of the Liberian people."<sup>3</sup> Notwithstanding this commitment, the 2012 Liberia Periodic Report ignores the many serious violations of the human rights of lesbian, gay, bisexual, and transgender ("LGBT") persons in Liberia. Liberians continue to face criminalization, violence, intimidation, harassment, discrimination, homophobia, and hate speech on account of their sexual orientation and gender identity. The Government of Liberia continues to take an active part in certain of these violations and allows other violations to be committed with impunity by private actors.

We hope that the African Commission will find the information presented in this report to be useful in promoting and protecting human rights for all under the African Charter.

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<sup>2</sup> Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at <http://www.achpr.org/instruments/achpr/> [hereinafter African Charter].

<sup>3</sup> General Report on the Human Rights Situation in Liberia, Government of Liberia, 2012, available at <http://www.achpr.org/states/liberia/report/1-1984-2012/>

## II. Executive Summary

Article 2 of the African Charter provides that all individuals “shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter” without distinction of any kind, including on the basis of sex or “any other status.”<sup>4</sup> Article 3 of the African Charter guarantees that every individual “shall be equal before the law” and “shall be entitled to equal protection of the law.”<sup>5</sup> African Commission jurisprudence affirms that the protections of Articles 2 and 3 extend to sexual minorities.<sup>6</sup>

The Constitution of Liberia likewise guarantees equality before the law and equal protection of the law to all persons without distinction.<sup>7</sup> The rights specifically protected by the Constitution include the right to privacy, family life, freedom of association, due process of law, access to justice, freedom from torture and inhumane treatment, and the right to non-discrimination in employment and livelihood.<sup>8</sup>

Article 95(b) of the Constitution emphasizes Liberia’s commitment to abide by its international commitments, including all “treaties, executive and other international agreements and obligations” entered into by any prior Liberian government.<sup>9</sup> Liberia is a State Party to the International Covenant on Civil and Political Rights (ICCPR),<sup>10</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>11</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>12</sup> and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>13</sup> Therefore, Art. 95(b) affirms Liberia’s commitment to safeguard the rights protected by these international instruments.

Liberia has violated the non-discrimination and equality guarantees of Articles 2 and 3 of the African Charter by criminalizing the sexual conduct of adult, consenting same-sex couples. This criminalization of same-sex conduct has led, in turn, to additional serious violations of Charter rights. It has led to the arbitrary arrest and detention of individuals suspected of engaging in same-sex conduct, in violation of the African Charter’s guarantee of liberty and prohibition of arbitrary arrest and detention (Article 6) and its guarantee of trial without unreasonable delay (Article 7). It has contributed to a climate of homophobia that encourages private as well as state

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<sup>4</sup> African Charter, *supra* note 2, art. 2.

<sup>5</sup> *Id.*, art. 3.

<sup>6</sup> *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), available at [http://www.achpr.org/files/sessions/39th/comunications/245.02/achpr39\\_245\\_02\\_eng.pdf](http://www.achpr.org/files/sessions/39th/comunications/245.02/achpr39_245_02_eng.pdf)

<sup>7</sup> Constitution of the Republic of Liberia, art. 11

<sup>8</sup> *Id.*, arts. 11-26.

<sup>9</sup> *Id.*, art. 95b.

<sup>10</sup> Acceded on 29 July, 1993.

<sup>11</sup> Acceded on 29 July, 1993.

<sup>12</sup> Signed on 23 April, 1984, ratified on 13 June, 1985.

<sup>13</sup> Signed on 28 July, 1988, ratified on 28 June, 2001.

actors to victimize LGBT individuals because they are seen as criminals rather than as persons entitled to rights and the full and equal protection of the law. As a consequence, people have suffered violent attacks on the basis of their perceived sexual orientation, in violation of the rights to personal integrity (Article 4), dignity and freedom from cruel, inhuman and degrading treatment (Article 5), and security of person (Article 6). Violence and mob action have been used to deny people, again based on their sexual orientation, their right to freedom of association (Article 10). Individuals have been denied their right to work (Article 15) and their right to access health care (Article 16) on the basis of their perceived sexual orientation. Certain government officials, politicians, media personalities and religious leaders have felt free to violate their obligation to treat their fellow beings with respect and tolerance rather than discrimination (Article 28). The criminalization of same-sex sexual conduct and the overall climate of hatred and discrimination promote impunity by discouraging LGBT individuals from seeking police protection or reporting instances of violence for fear that they themselves would be prosecuted if their sexual orientation or gender identity were discovered. The same factors can also deter people from seeking essential health services.

### III. Substantive Violations of the Charter

#### A. Articles 2 and 3 (Non-Discrimination and Equal Protection) and Article 28 (Obligation of Respect, Tolerance and Non-Discrimination)

Article 2 of the African Charter provides that all individuals “shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter” without distinction of any kind, including on the basis of sex or any other status. Article 3 of the African Charter guarantees that every individual “shall be equal before the law” and “shall be entitled to equal protection of the law.” Article 28 of the Charter further provides that “[e]very individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

Though the African Commission jurisprudence on the interpretation of Articles 2 and 3 is limited, the Commission has established the importance of these articles in *Purohit and Another v. The Gambia* as follows:

“Articles 2 and 3 of the African Charter basically form the anti-discrimination and equal protection provisions of the African Charter. Article 2 lays down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises, while article 3 is important because it guarantees fair and just treatment of individuals within a legal system of a given country. Their provisions are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter.”<sup>14</sup>

The Commission further affirmed in *Human Rights NGO Forum v. Zimbabwe*<sup>15</sup> that the scope of the equal protection and non-discrimination provisions of Articles 2 and 3 extends to the prohibition of unequal treatment of individuals on the basis of sexual orientation:

“Together with equality before the law and equal protection of the law [as provided for by article 3 of the Charter], the principle of non-discrimination provided under article 2 of the Charter provides the foundation for the enjoyment of all human rights. . . . [E]quality and non-discrimination ‘are central to the human rights movement.’ The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation.”

In forbidding discrimination, the African Commission has emphasized the importance of the obligation of states parties to afford equal protection to all individuals. In *Legal Resources Foundation v. Zambia*, the Commission underlined the importance of the right to equal protection, observing that “equality, or the lack of it, affects the capacity of one to enjoy many

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<sup>14</sup> *Purohit and Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003), available at <http://www.escr-net.org/docs/i/401249>

<sup>15</sup> *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, *supra* note 6.

other rights.”<sup>16</sup>

Article 60 of the African Charter provides that “the Commission shall draw inspiration from international law on human and peoples’ rights” and “various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members.” The African Commission has decided several cases in part by relying upon jurisprudence from other regional human rights bodies.<sup>17</sup> The case of *Law Office of Ghazi Suleiman v. Sudan*, in particular, has highlighted the relevance of Article 60 in applying jurisprudence from the European Court of Human Rights and the Inter-American Court of Human Rights.<sup>18</sup> Accordingly, international human rights treaties, including the ICCPR, can provide further guidance on the interpretation of Articles 2 and 3 of the African Charter.

Article 2(1) of the ICCPR contains language analogous to Articles 2 and 3 of the African Charter, stating that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind,” including on the basis of sex or other status.<sup>19</sup> Article 26 of the ICCPR provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”<sup>20</sup> Article 26 also emphasizes the prohibition of any discrimination and the guarantee of “effective protection” against discrimination on the basis of any ground, including sex or other status.<sup>21</sup>

The U.N. Human Rights Committee (“HRC”) requires that “non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”<sup>22</sup> In *Toonen v. Australia*, the HRC interpreted “sex” in Articles 2(1) and 26 of the ICCPR to include sexual orientation, and thus concluded that a domestic law criminalizing private, same-sex relations between consenting adults was discriminatory and in violation of these articles.<sup>23</sup> Additionally, the U.N. Working Group on Arbitrary Detention, has held that arrests for consensual same-sex conduct are *per se* human rights violations.<sup>24</sup>

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<sup>16</sup>*Legal Resources Foundation v Zambia*, [Communication 211/98 – 14th Annual Activity Report: 2000-2001], at 63.

<sup>17</sup> For example, *Curtis Francis Doebbler v. Sudan* [Communication 236/2000 – 16th Annual Activity Report] applied jurisprudence from the European Court of Human Rights.

<sup>18</sup> Communication 228/1999 – 16th Annual Activity Report at 48-50.

<sup>19</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 2(1), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>20</sup> *Id.*, art. 26.

<sup>21</sup> *Id.*

<sup>22</sup> Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm>

<sup>23</sup>*Toonen v Australia*, Communication No. 488/1992, U.N Doc CCPR/C/50/D/488/1992 (1994).

<sup>24</sup> Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 15 December 2003, para. 73; see also Working Group on Arbitrary Detention, Opinion No. 7/2002 (Egypt), para. 27, UN Doc. E/CN.4/2003/8/Add.1; Opinion No. 22/2006 (Cameroon), para. 19, UN Doc.A/HRC/4/40/Add.1.

The principles of non-discrimination and equality before the law are reinforced in the Liberian Constitution of 1986. Article 11 of the Liberian Constitution guarantees equal enjoyment of “the fundamental freedoms and rights of the individual” (as outlined in Chapter III of the Constitution) to all persons without discrimination, including discrimination on the basis of sex.<sup>25</sup> Article 11 also guarantees equality before the law and equal protection of the law to all persons.<sup>26</sup> These provisions, combined with Liberia’s commitments under the African Charter and the ICCPR, further emphasize the state’s obligations to protect sexual minorities within its borders and to eliminate all forms of discrimination on account of sexual orientation.

This section of the report will focus on (1) the criminalization of same-sex conduct in the Liberian Penal code, which directly contravenes Article 2 the African Charter which guarantees the enjoyment of the rights and freedoms of the African Charter without discrimination of any kind and Article 3 of the African Charter which guarantees equality before the law; and (2) discriminatory homophobic media coverage and anti-homosexual public statements made by official state figures, political leaders, and religious leaders, in violation of the obligation to ensure non-discrimination, mutual respect, and tolerance under Articles 2 and 28 of the African Charter.

The criminalization of same-sex conduct and the prevalence of homophobic media coverage and public statements against homosexuals, in addition to violating the equality and anti-discrimination provisions of the African Charter, have led to violations of other Charter provisions. They have encouraged state and private actors to harass and abuse homosexuals, in violation of Articles 4 (protecting the integrity of person) and 5 (protecting an individual’s right to the respect of his dignity). Moreover, the criminalization of same-sex conduct has led to the arbitrary arrest and detention of individuals suspected of engaging in same-sex conduct, in violation of Article 6 (guaranteeing an individual’s liberty and security of his person). These violations will be discussed in more detail in the following sections.

## **1. Discriminatory Criminalization of Same-Sex Sexual Conduct in the Penal Code and Proposed Legislation**

The Penal Code of Liberia criminalizes “voluntary sodomy” by same-sex couples but not by opposite-sex couples. This criminalization of same-sex sexual conduct is in direct violation of Article 2 of the African Charter, which guarantees the equal enjoyment of the rights of the Charter without discrimination and Article 3, which guarantees equality before the law.

Section 14.74 of the Penal Code, entitled “Voluntary Sodomy,” states that it is a first degree misdemeanour to engage in “deviate sexual intercourse under circumstances not stated in Section 14.72 [relating to aggravated involuntary sodomy] or Section 14.73 [relating to involuntary sodomy].” Section 14.79 of the Penal Code defines “deviate sexual intercourse” to mean “sexual contact between human beings who are not husband and wife or living together as man and wife though not legally married, consisting of contact between the penis and the anus, the mouth and

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<sup>25</sup> Constitution of the Republic of Liberia, art. 11

<sup>26</sup> *Id.*

the penis, or the mouth and the vulva,” and “sexual contact” to mean “any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying sexual desire.”<sup>27</sup>

Chapter 50 of the Penal Code specifies the penalties for violating the prohibition of voluntary sodomy as follows: Sections 50.7 and 50.9 provide that a person convicted of a misdemeanor of the first degree may be sentenced “to a definite term of imprisonment to be fixed by the court at no more than one year,” and to pay a fine of up to LBR\$1,000, subject to the restrictions stipulated in Section 50.10 on the imposition of fines.<sup>28</sup>

Criminalization of same-sex conduct in Liberia has led to the arbitrary arrest and detention of individuals suspected of engaging in homosexual activity. Additionally, anti-sodomy provisions in the Penal Code have created a climate of fear and discrimination against individuals based on their real or presumed sexual orientation. This climate encourages private as well as state actors to victimize LGBT individuals because they are seen as criminals rather than individuals deserving rights and protection. The criminalization of voluntary sodomy also discourages LGBT individuals from seeking essential health services and from reporting instances of violence perpetrated against them by private actors for fear of prosecution if their sexual orientation is discovered.

Despite the existence of these provisions criminalizing homosexual behavior, there are now two bills pending before the legislature that would expand the definition of criminalized same-sex conduct, reclassify the offense as a felony rather than a misdemeanor, increase the penalties for same-sex conduct, and explicitly criminalize same-sex marriage in Liberia.

In 2012, Representative Clarence Massaquoi proposed a bill to the House of Representatives that would amend the Penal Code to make same-sex “sexual practices” a second degree felony, punishable by up to five years in prison.<sup>29</sup> The proposed amendment also extends the prohibition to any action that “arouses or tends to arouse another person of the same gender to have sexual intercourse.”<sup>30</sup> It also applies to any action that “willfully, and with total disregard to societal moral dignity, seduces, encourages, or promotes another person of the same gender to engage into sexual activities.”<sup>31</sup> The bill is currently before the House Judiciary Committee, but no future reading has yet been scheduled.<sup>32</sup>

The second bill, proposed in 2012 by Senator Jewel Howard-Taylor, would amend the Domestic Relations Law to prohibit same-sex marriage and make violation of the same-sex marriage prohibition a first-degree felony, punishable by a minimum of ten years in prison and a

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<sup>27</sup> Penal Law, *supra* note 14, Section 14.

<sup>28</sup> *Id.*

<sup>29</sup> Human Rights Watch, *It's Nature, Not a Crime: Discriminatory Laws and LGBT People in Liberia* (2013), available at [http://www.hrw.org/sites/default/files/reports/liberia1113\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/liberia1113_ForUpload.pdf) [hereinafter Human Rights Watch Report]

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

maximum penalty of death.<sup>33</sup> The proposed amendment states that “[n]o one shall give effect to any public act, record, or judicial proceeding of any one which represents a relationship between persons of the same sex that is treated as a marriage under the laws of the Republic.”<sup>34</sup> Senator Howard-Taylor’s bill was approved by the Senate in July 2012, with the modification that a violation of the same-sex marriage ban would be considered a second-degree felony, punishable by up to five years in prison.<sup>35</sup> The bill is pending referral to the House of Representatives.<sup>36</sup> If passed by the House of Representatives, the bill would go next to President Sirleaf to be signed into law.<sup>37</sup>

Both bills violate the equal protection and non-discrimination provisions of the African Charter, as they target and discriminate against a specific group of people based on their sexual orientation and prevent them from being treated as equal members of their community and society. The proposed bills are likely to increase the intensity of discrimination, harassment, and hate crimes against homosexuals, who already represent a vulnerable and marginalized group in Liberia.

The wording of both bills is vague in several aspects, giving room to differing interpretations that could subject LGBT individuals and LGBT human rights defenders to severe human rights abuses. For example, the prohibition against “seducing, encouraging, or promoting” homosexual sexual activities in the proposed amendment to the Penal Code can foreseeably be used as a basis to target activists and defenders of LGBT rights in Liberia.

## **2. Discriminatory Public Statements Against Homosexuals**

Discrimination against LGBT people in Liberia is reinforced and encouraged by the government, members of parliament, and the media through public statements condemning homosexuality and advocating homophobic stances. Moreover, religious leaders use their influence to demonize and marginalize LGBT Liberians as un-African, un-Liberian, and ungodly, in violation of Article 28 of the African Charter.

On January 26, 2012, Liberian Press Secretary Jerolinmek Piah stated that “[t]his government opposes gay rights.”<sup>38</sup> Jerome Verdier, former Chairman of Liberia’s Truth and Reconciliation Commission,<sup>39</sup> wrote in an open letter dated January 12, 2012 that homosexuality is

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<sup>33</sup> The Liberian Senate, *An Act Amending the Domestic Relations Law of Liberia*, Feb. 3, 2012.

<sup>34</sup> *Id.*

<sup>35</sup> E. J. Nathaniel Daygbor, *Liberia: Senate Passes Anti-Gay Bill*, ALLAFRICA, Jul. 20, 2012, <http://allafrica.com/stories/201207200861.html>

<sup>36</sup> Human Rights Watch Report, *supra* note 30.

<sup>37</sup> Constitution of the Republic of Liberia, art. 35

<sup>38</sup> Patrick Burke, *African Leaders Reject U.N. Call for Homosexual Equality*, CBS NEWS, Feb 20, 2012, <http://cbsnews.com/news/article/african-leaders-reject-un-call-homosexual-equality>

<sup>39</sup> The Truth and Reconciliation Commission of Liberia was formed by an Act of Parliament in 2005 to investigate and report on human rights violations that occurred during the Liberian Civil war (1979-2003) and national peace, security, unity and reconciliation.

“anti-Liberian and anti-God” and is “condemnable as an abomination for the nation.”<sup>40</sup> He described a “conspiracy for gay rights” that promotes “legalizing carnality and exemplifying moral corruption and bribery.”<sup>41</sup>

Reverend Kortu Brown, pastor of New Water in the Desert Apostolic Pentecostal Church and member of the Liberian Council of Churches, formed a group in 2012 called the Anti-Gay Rights Campaign Team to combat what he called the “subtle means by lesbians, gays, bi-sexual and transgender practitioners and supporters to promote and legalize same-sex practices in the country.”<sup>42</sup> Reverend Jasper Stephen Ndaborlor, President of the Pentecostal Fellowship Union of Liberia and member of the Anti-Gay Rights Campaign Team declared that “gay or lesbian right is not a human right.”<sup>43</sup> The executive director of the New Citizen Movement, Inc., Reverend Cleopatra J. Watson, stated that “our children are already going astray. Legal homosexual practices will be the worst thing to allow them to be engaged in.”<sup>44</sup>

Liberian newspapers, including the New Democrat, Front Page Africa, the Chronicle, the New Republic, and the Public Age Agenda, through biased reporting and anti-gay editorials, continue to promote hate speech, discrimination, and violence towards the LGBT community in Liberia. For example, in March 2012, the media responded to Action Aid Liberia’s LGBT security, sensitization and protection workshop with homophobic propaganda. The workshop was held from March 21-25, 2012 for approximately 50 Action Aid Liberia staff and Liberian LGBT individuals. The workshop was intended to educate the attendees about personal security measures to avoid homophobic attacks. However, the media described the event as a way for Action Aid Liberia to promote and encourage homosexuality.<sup>45</sup>

On July 4, 2013, Liberian online newspaper FrontPage Africa reported that an employee of First International Bank in Monrovia had accused a fellow employee, JM, of sexual harassment and the solicitation of sexual favors in exchange for employment.<sup>46</sup> SAIL investigated the incident and concluded that the accusation was false and was intended to damage JM’s reputation and standing in society. As a result of the newspaper’s publication of the incident, including disclosure of JM’s full name and place of employment, JM continues to suffer harassment and abuses by members of his community, media personalities and the youth advisor to the president of the republic of Liberia on account of being gay.<sup>47</sup> In this case, the church was very supportive of JM.

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<sup>40</sup> Jerome Verdier, Open Letter, *Homosexuality is Anti-Liberia! Anti-God!* Jan. 12, 2012, available at <http://www.frontpageafricaonline.com/old/op-ed-editorial/73-letter-from-the-editor/2221-homosexuality-is-anti-liberia-anti-god-former-trc-chair-verdier-laments.pdf>

<sup>41</sup> *Id.*

<sup>42</sup> *Liberia: Christians Intensify Anti-Gay Campaign -Rally More Signatories to Press Govt Pass Felonious Law*, ALLAFRICA, Sept. 2, 2012, <http://allafrica.com/stories/201209030769.html>

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Incident reported to SAIL.

<sup>46</sup> Incident reported to SAIL.

<sup>47</sup> *Id.*

## **B. Articles 4 (Personal Integrity), 5 (Dignity), and 6 (Liberty and Security of the Person)**

Article 4 of the African Charter proclaims that “human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”<sup>48</sup> Articles 5 and 6 of the African Charter recognize the right to “the respect of the dignity inherent in a human being,” and the right of every individual to “liberty and security of his person.”<sup>49</sup> Article 6 of the African Charter also establishes that “no one may be deprived of his freedom except for reasons and conditions previously laid down by the law,” expressly banning arbitrary arrest and detention.<sup>50</sup>

Article 5 of the African Charter also specifically prohibits all forms of “exploitation and degradation of man,” including “torture, cruel inhuman or degrading punishment and treatment.”<sup>51</sup> The African Commission has held that Article 5 of the Charter prohibits “not only cruel, but also inhuman and degrading treatment... [which] includes not only actions which cause serious physical or psychological suffering, but which humiliate or force the individual against his will or conscience.”<sup>52</sup> This prohibition encompasses a wide array of abusive conduct. In *Curtis Francis Doebbler v Sudan*, the Commission held that whether an act constitutes a violation of Article 5 will depend on the circumstances of the particular case, but it also decided that “torture, cruel, inhuman or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses.”<sup>53</sup> The Constitution of Liberia also guarantees that “no person charged, arrested, restricted, detained or otherwise held in confinement shall be subject to torture or inhumane treatment.”<sup>54</sup>

A number of violations of Article 4, 5, and 6 of the Charter on the basis of the victims’ sexual orientation have been reported to SAIL. However, incidents of harassment, violence, torture, and cruel or degrading punishment and treatment motivated by the victims’ sexual orientation are greatly underreported, largely due to the attitude of intolerance and stigmatization perpetuated by the government’s homophobic statements and actions, the lack of police protection of homosexuals, and the fear of prosecution under the Penal Code. The cases reported to SAIL in themselves are serious cause for alarm; additionally, they suggest the existence of further violations of the right to personal integrity, dignity, security, liberty, and security under Articles 4, 5, and 6 of the African Charter.

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<sup>48</sup> African Charter, *supra* note 2, art. 4.

<sup>49</sup> *Id.*, arts. 5, 6.

<sup>50</sup> *Id.*, art. 6.

<sup>51</sup> *Id.*, art. 5.

<sup>52</sup> *Curtis Francis Doebbler v Sudan*, [Communication 236/2000 – 16th Annual Activity Report], at 36.

<sup>53</sup> *Id.*

<sup>54</sup> Constitution of the Republic of Liberia, art. 21.

For example, in October 2012, a gay man was assaulted, beaten, and stabbed in the neck on account of his homosexuality.<sup>55</sup> He reported the case officially to the local police and to the Ministry of Justice; however, the authorities did not investigate or prosecute his case.<sup>56</sup>

On April 12, 2013, the Liberian police arrested five young gay men in Logan Town's Sayontown Bushrod Island community and asked them to pay bribes in order to be released<sup>57</sup>. The police beat the five men, called them "faggots," and mocked their "homosexual" demeanor, behavior, and dress. On the same day, the police also conducted raids targeting the homes of LGBT individuals living in low-income communities, arrested the inhabitants, and then asked them for money in exchange for their release.<sup>58</sup>

In November 2013, SAIL reported the case of SJ and AD to the Ministry of Justice and the Independent Human Rights Commission of Liberia.<sup>59</sup> SJ and AD are active members of the Monrovia LGBT community and would often host other LGBT people at their home. While SJ and AD were out of the house, a mob of 50 men broke into their home and publicly announced their intention to kill them and any other homosexuals in the community. When SJ and AD learned of this threat from neighbors who had heard the threats of the mob, they relocated to another neighborhood several miles away in fear for their safety. SJ had to drop out of school, as his school was located in the same neighborhood. AD had to quit his job, also located in this neighborhood. The Ministry of Justice had promised to follow up, but has yet to take any action to protect SJ or AD or hold the perpetrators accountable.<sup>60</sup>

In January 2014, PA, a 19 year old gay high school student, was bullied by his classmates for being gay and he was threatened with violence if he continued to attend school.<sup>61</sup> On one occasion, two of his classmates attacked him physically, beating him and tearing his shirt. The school did not discipline the perpetrators and instead asked PA's parents not to report the attack. PA continues to attend the same school, as his parents cannot financially afford to transfer him to another school. PA continues to suffer humiliation because of his sexual orientation, which has caused his academic performance to deteriorate.<sup>62</sup>

In January 2014, while a group of LGBT Liberians were attending the wake of a fellow LGBT person (EM) who had passed away, a group of five men attacked them for "being gay and acting like women," and threatened bloodshed if they did not leave the funeral<sup>63</sup>. One gay man suffered

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<sup>55</sup> Incident reported to SAIL.

<sup>56</sup> *Id.*

<sup>57</sup> Incident reported to SAIL.

<sup>58</sup> *Id.*

<sup>59</sup> Incident reported to SAIL.

<sup>60</sup> *Id.*

<sup>61</sup> Incident reported to SAIL.

<sup>62</sup> *Id.*

<sup>63</sup> Incident reported to SAIL.

a significant injury. The victims of the attack did not press charges or report the crime for fear of retaliation from the police. Therefore, no charges were ever brought against the attackers.<sup>64</sup>

In addition, AF was assaulted by eight men on February 14, 2014.<sup>65</sup> The attackers “accused” him of being gay, chased him, and called him derogatory names. AF reported the attack to the HIV unit at the national police station, but subsequently refrained from formally registering the case with the police for fear of retaliation by the attackers.<sup>66</sup>

On September 8, 2012, a mob attacked a group of gay men at their home on account of their homosexuality and caused injury to three of the gay men.<sup>67</sup> During the attack, the mob stated that that being gay is “evil,” that their community “hates gay people,” and that the gay men have no protection (since the police would not protect gay people). SAIL assisted the victims in reporting these incidents to the Human Rights Section of the Ministry of Justice, which advised the victims to file a report at the local police depot. The local police launched an investigation and questioned the attackers. The attackers claimed that the gay men had tried to have sex with them; therefore, the attack had been in self-defense. Without further inquiry, the police threw the victims in jail. The attackers later admitted that they gave false testimony, so the victims were released. However, no further action was taken by the police or Ministry of Justice to hold the perpetrators accountable.<sup>68</sup>

Articles 4, 5, and 6 of the African Charter establish that human beings are entitled to “integrity of his person” and shall have the right to “liberty and security of his person.”<sup>69</sup> These incidents demonstrate that LGBT people in Liberia live in a hostile environment, and as described above, are afraid to even walk down the street for fear of being assaulted. Furthermore, these articles are further violated because the LGBT people of Liberia cannot even seek help from local police without fear of retaliation and imprisonment for their sexuality.

### **C. Article 7 (Right to Trial Within a Reasonable Time)**

Article 7 of the African Charter establishes the right of every individual to have his cause heard, which includes the right to appeal, the right to be presumed innocent until found guilty by a competent court or tribunal, the right to a defense, and the right to be tried within a reasonable time by an impartial court or tribunal.<sup>70</sup>

The Liberian Constitution guarantees a right to “due process of law,” providing that “no person shall be deprived of liberty, security of the person, property, privilege or any other right except

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<sup>64</sup> *Id.*

<sup>65</sup> Incident reported to SAIL.

<sup>66</sup> *Id.*

<sup>67</sup> Incident reported to SAIL.

<sup>68</sup> *Id.*

<sup>69</sup> African Charter, *supra* note 2, arts. 4-6.

<sup>70</sup> *Id.*, art. 7.

as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution.”<sup>71</sup>

On December 28, 2008, DQ, an employee of the Central Bank of Liberia, was accused of being a homosexual and of “recruiting” young men to homosexuality.<sup>72</sup> DQ was imprisoned without trial from December 2008 to 2011, in violation of his right to a trial within a reasonable time under 7(1)(d) of the African Charter. DQ was eventually released from prison but he lost his employment and now suffers from alcoholism, drug dependency, and mental illness, and continues to suffer abuse in his community.<sup>73</sup>

In June 2013, the police arrested JD based on an accusation of homosexual assault made by RK, a man from Sierra Leone.<sup>74</sup> JD, who is a gay man, maintained that he had not had any sexual relations with RK. Nonetheless, JD was charged with sodomy and transferred to the Monrovia Central Prison on June 19, 2013. Although JD was ultimately released for lack of evidence, before his release he was imprisoned without trial for six months, in violation of his right to be tried within a reasonable time.<sup>75</sup>

#### **D. Article 10 (Freedom of Association)**

Article 10 of the African Charter establishes that “[e]very individual shall have the right to free association provided that he abides by the law.”<sup>76</sup> The right to free association is also guaranteed in the Liberian Constitution, which provides that all persons “at all times, in an orderly and peaceable manner, shall have the right to assemble and consult upon the common good, to instruct their representatives, to petition the government or other functionaries for the redress of grievances and to associate fully with others . . . .”<sup>77</sup>

The existence of legislation criminalizing same-sex conduct and the hostile environment that surrounds individuals on grounds of their real or perceived sexual orientation or gender identity have a severe adverse impact on the ability of LGBT Liberians to freely associate or advocate for the protection of their rights. Moreover, the Liberian government has failed to provide adequate protection or recourse for human rights defenders working on behalf of those who are persecuted or denied essential services because of their sexual orientation and gender expression. LGBT human rights defenders are frequently harassed, threatened, and subjected to violence by mobs with little protection by state authorities.

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<sup>71</sup> Constitution of the Republic of Liberia, art. 20.

<sup>72</sup> Incident reported to SAIL.

<sup>73</sup> *Id.*

<sup>74</sup> Incident reported to SAIL.

<sup>75</sup> *Id.*

<sup>76</sup> African Charter, *supra* note 2, art. 10.

<sup>77</sup> Constitution of the Republic of Liberia, art. 17.

For instance, on January 13, 2012, Liberian LGBT activists Archie Ponpon and Abraham Kamara were stoned by students on the University of Liberia campus while giving a speech advocating LGBT rights.<sup>78</sup> On January 27, 2012, the home of Archie Ponpon's mother was burned to the ground by arsonists.<sup>79</sup> This attack also illustrates the role of the government's homophobic speech in endangering the lives and safety of LGBT community members and activists, as it occurred only one day following the statement against gay rights made by Press Secretary Piah (please refer to Section III(B)(3) of this report).

On February 23, 2012, mobs surrounded a radio station in Monrovia as it was airing a live interview with Ponpon.<sup>80</sup> The crowds shouted "let that dog come out here and he will know if his gay thing will hold in this country!" and threatened to "skin him raw." A day later, SAIL's office was also surrounded by angry mobs threatening violence against LGBT activists.<sup>81</sup>

### **E. Article 15 (Work)**

Article 15 of the Charter establishes that every individual has a "right to work under equitable and satisfactory conditions."<sup>82</sup> This provision, combined with the principle of non-discrimination of Article 2, emphasizes that discrimination in the workplace on grounds of real or perceived sexual orientation or gender identity is contrary to the African Charter.<sup>83</sup>

This is consistent with the Liberian Constitution's guarantee that all citizens "shall have equal opportunity for work and employment," without discrimination, including discrimination on the basis of sex.<sup>84</sup>

There have been multiple cases of discrimination in employment on account of sexual orientation. For instance, in 2013, an employee of a leading Liberian bank was asked by his superiors to resign his post on account of being homosexual.<sup>85</sup>

Another incident occurred in 2010, where LKR, a Liberian gay army officer, was attacked by a fellow army officer because of his homosexuality.<sup>86</sup> LKR reported the case to his superiors in the military. The case was investigated, but the attacker was not found guilty of assault and was not subject to any disciplinary action. LKR successfully requested a transfer to the Coast Guard

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<sup>78</sup> Incident reported to SAIL.

<sup>79</sup> Incident reported to SAIL; *see also* Jonathan Paye-Layleh, *Liberian Anger over Gay Rights Call*, BBC NEWS, Mar. 18, 2012, <http://www.bbc.com/news/world-africa-17380950>

<sup>80</sup> Incident reported to SAIL; *see also* Winston W. Parley, *Gay Activist Escapes Angry Mob*, THE NEW DAWN, Feb. 24, 2012, [http://www.thenewdawnliberia.com/index.php?option=com\\_content&view=article&id=5325:gay-activist-escapes-angry-mob&catid=25:politics&Itemid=59](http://www.thenewdawnliberia.com/index.php?option=com_content&view=article&id=5325:gay-activist-escapes-angry-mob&catid=25:politics&Itemid=59)

<sup>81</sup> Incident reported to SAIL.

<sup>82</sup> African Charter, *supra* note 2, art. 15.

<sup>83</sup> *Id.*, arts. 2, 15.

<sup>84</sup> Constitution of the Republic of Liberia, art. 18.

<sup>85</sup> Incident reported to SAIL.

<sup>86</sup> Incident reported to SAIL.

in order to avoid future threats and harassment based on his sexuality. LKR continued to be harassed in the Coast Guard as well because of his sexuality, and in 2012, he was again attacked and received death threats by an army officer. LKR became very fearful for his life and began searching for a safer opportunity outside of Liberia. LKR was granted a scholarship to work and study in Australia, and he moved to Australia on November 5, 2012. LKR is currently seeking asylum in Australia for fear of his safety due to his sexual orientation.<sup>87</sup>

The November 2013 incident of AD, described in Section III(B) of this report, is a further illustration of the denial of a homosexual's opportunity to work based on his sexual orientation.

## **F. Article 16 (Health)**

Under Article 16 of the African Charter, "every individual shall have the right to enjoy the best attainable state of physical and mental health." Additionally, the Charter directs States Parties to take "necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick." The African Commission's Committee of People Living with HIV/AIDS and Those at Risk, Vulnerable to and Affected by HIV has also mandated that special attention should be given to vulnerable groups, including men who have sex with men in the fight against HIV/AIDS.<sup>88</sup>

There are few safeguards in place to ensure equal access to healthcare by LGBT persons in Liberia. Given the penalties associated with homosexuality stipulated in the Penal Code, it is easy to see why many homosexuals living in Liberia would fear both persecution and prosecution if they were to attempt to visit a public hospital.

For example, in August 2013, APP, a SAIL HIV peer educator and an LGBT person, fell ill and tested positive for HIV at the Redemption Hospital in Monrovia.<sup>89</sup> He revealed his HIV positive status and his sexual orientation. APP was then excommunicated from the church, and his HIV status and sexuality was disclosed to the entire congregation, including APP's family. APP did not have health insurance, and the only health care treatment he received was his HIV test. He passed away shortly after from an HIV-related illness.<sup>90</sup>

The impact of legislation criminalizing same-sex conducts on the health of LGBT persons is also highlighted in the recently published Integrated Bio-Behavioral and Surveillance Survey (IBBSS) by Liberian Ministry of Health and the National AIDS Commission (NAC) which highlighted an HIV prevalence rate of 13% among men who have sex with men (MSM). The IBBSS study has been published in March 2014.

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<sup>87</sup> *Id.*

<sup>88</sup> Mandate of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV, established by the African Commission on Human and Peoples' Rights with the adoption of Resolution 163 at the 47<sup>th</sup> Ordinary Session held in Banjul, The Gambia from 12 to 26 May 2010, available at <http://www.achpr.org/mechanisms/hiv-aids/>

<sup>89</sup> Incident reported to SAIL,

<sup>90</sup> *Id.*

#### **IV. Recommendations for the Government of Liberia**

1. The government of the Republic of Liberia should amend the Penal Code and repeal Sections 14.75 and 14.79 to decriminalize private, consensual, adult same-sex sexual activity.
2. The government of the Republic of Liberia should enforce the non-discrimination and equal protection provisions of the African Charter.
3. The government should implement extensive police trainings on sexual orientation and gender identity issues, put in place procedures to ensure full investigation and prosecution of all acts of violence, and establish a disciplinary system for police officers who fail to investigate or prosecute acts of violence based on real or presumed sexual orientation or gender identity.
4. The government should take effective measures to ensure equal access to healthcare regardless of an individual's sexual orientation.

#### **V. Proposed Questions for the Government of Liberia**

1. What steps does the Government of Liberia intend to take to repeal the law criminalizing private, consensual, adult same-sex sexual activity?
2. What impact do laws criminalizing same-sex sodomy have on ensuring the fundamental rights of health, personal integrity, dignity, and liberty of the person?
3. What steps does the Government of Liberia intend to take to protect individuals subject to harassment, violence, and discrimination on account of their sexual orientation and gender identity?
4. What steps does the Government of Liberia intend to take to ensure, in the future, that sexual minorities are able to access essential health services and HIV/AIDS prevention programs?