

# ◀ SOGI'S STORY ▶

## Sexual Orientation, Gender Identity and Intersex Status Fact Sheet<sup>1</sup>

### Introduction and definitions

Discrimination on the basis of sexual orientation, gender identity or intersex status (SOGII) may be pervasive across the world, but it is never legal under international law. All countries have core human rights obligations that apply to all people, including those who are part of a sexual minority.

Promoting and protecting these basic human rights for all people is an important step in realising the vision embodied in the Universal Declaration of Human Rights: of a world where all human beings are born free and equal in dignity, and are entitled to rights and freedoms “without distinction of any kind”.

### Discrimination and criminalisation

Discrimination based on homosexuality, or on different forms of gender identity or intersex status, can appear in the form of statutes and government policies. Discrimination can also take the form of social behaviour, as exclusion, verbal abuse, harassment and violence.

Of the 53 Commonwealth countries, 41 have criminalised homosexuality through law. For the most part, these laws were introduced during the colonial era, and have remained a part of criminal codes post-independence. Enforcement of these punitive laws varies between countries, as does the wording of the statutes.<sup>2</sup>

In everyday life, discrimination on the basis of SOGII most often involves denial of housing, medical care and employment. Discrimination also occurs in the media and online, where articles and reports can encourage prejudice and even harm against LGBTI people. LGBTI (lesbian, gay, bisexual, trans\* and intersex) people are more likely to be victims of arbitrary arrest, abuse and attacks.

### Positive steps

*International:* Under international law, countries are obliged to protect the human rights of all people, regardless of their sexual orientation, gender identity or intersex status. These basic obligations fall into five categories:

- Protect individuals from violence
- Prevent torture, cruel, inhuman and degrading treatment of all persons
- Decriminalise homosexuality
- Prohibit discrimination based on SOGII
- Respect freedom of expression, association and peaceful assembly.<sup>3</sup>

<sup>1</sup> Discrimination on the basis of sexual orientation and gender identity is pervasive across many parts of the world. Addressing this burden of discrimination has been identified as a key issue by the CFNHRI. This fact sheet is based on material relevant to the 16 African NHRIs that are currently members of the CFNHRI: Botswana, Cameroon, Ghana, Kenya, Lesotho, Malawi, Mauritius, Namibia, Nigeria, Rwanda, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia. This fact sheet is based on material relevant to these countries.

<sup>2</sup> Some countries, such as Ghana, merely criminalise “unnatural carnal knowledge”, while other countries, such as Nigeria, ban all meetings and organisations relating to homosexuality.

<sup>3</sup> These rights are outlined and reinforced by the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child* and the *International Covenant on Economic, Social and Cultural Rights*.

*Regional:* The African Charter on Human and Peoples' Rights, which has been ratified by every AU member country except South Sudan, recognises the rights to freedom from discrimination, freedom from degrading treatment and the right to equality, dignity and due process. The Charter states that every individual is entitled to these rights and freedoms "without distinction of any kind".

*National:* Most Commonwealth countries in Africa have a National Human Rights Institution (NHRI) which is obliged to protect and promote human rights of all individuals, without prejudice or discrimination. These institutions are important for LGBTI people who experience unlawful discrimination or abuse.

### In their own words – icons and allies

- **Kofi Annan**, UN Secretary-General (1997-2006): *We should be much more tolerant and compassionate... we should stress those positive aspects in our society, the things that bring us together, and move away from discrimination and persecution.*
- **Nelson Mandela:** *People must learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite.*
- **Archbishop Desmond Tutu:** *I have no doubt that in the future, the laws that criminalise so many forms of human love and commitment will look the way the apartheid laws do to us now, so obviously wrong.*
- **Chimamanda Ngozi Adichie**, award-winning Nigerian author: *We cannot be a just society unless we are able to accommodate benign difference... Adults do no harm to society in how they love and whom they love.*

### A way forward

In May 2014, the African Commission on Human and Peoples' Rights took an important first step and adopted a landmark resolution condemning discrimination and violence based on sexual orientation or gender identity. The Commission declared that such human rights violations are in breach of the African Charter on Human and Peoples' Rights.<sup>4</sup>

In a joint statement, a broad coalition of organisations and human rights defenders welcomed the resolution, dedicating it to "the memories of all those who have lost their lives to violence because they were perceived to be different".

[www.sogistory.com](http://www.sogistory.com)

<sup>4</sup> The 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*, 55<sup>th</sup> Ordinary Session (28 April to 12 May 2014)

