

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity and the Working Group on discrimination against women and girls

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9 September 2024

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on minority issues and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/10, 52/9, 50/17, 51/21, 52/4, 53/5, 52/5 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a draft Bill entitled *Anti-Homosexuality Law of Liberia 2024* tabled as an individual MP's Bill and dated 4 July 2024. The Bill calls for an amendment to the 1978 Penal Code to further criminalize same-sex conduct, and outlaws the so-called 'promotion of homosexuality' which would intrude on freedoms of expression, peaceful assembly and association. Specifically, the bill calls for an "Act to amend chapter 14, sub-chapter D of the new penal code to create a new section 14.80 making homosexuality a criminal offence."

The "Anti-Homosexuality Law of Liberia 2024" initiative, dated 4 July 2024, was introduced as an individual MP's Bill by Johnson S. N. Williams, representative from District 3 of the River Gee County, and is currently under review by the Joint Committee on Gender, Health, and Judiciary, as mandated by the House of Representatives. Consensual same-sex conduct is already criminalized in Liberia in the 1978 Penal Code, under section 14.74 which includes "voluntary sodomy" as a "first degree misdemeanour", with a potential prison sentence of up to one year, or a fine.

The preamble to the Bill frames it as an effort to prevent same-sex marriage in Liberia "Whereas, to allow same sex marriage and or the promotion of any of its form in Liberia is a potential breakdown of our value system and a flagrant disregard of our belief and rich heritage". Yet same-sex marriage is already not permitted in Liberia, making an additional law redundant.

Her Excellency
Ms. Sara Beysolo Nyanti
Minister for Foreign Affairs

The proposed law contains a section on “child grooming” (14.88 "Offence Committed Against a Child”) inaccurately conflating homosexuality and pedophilia. Such legal provisions may contribute to misleading rhetoric and a hostile social environment.

The Bill also contains a provision that would make it a criminal offence for any person who “knowingly allows any (sic) his / her premises to be used by any person for the purpose of homosexuality.”

Additionally, another provision in the Bill (14.91 "Disqualification and Disclosure") would bar anyone convicted of ‘homosexuality’, or ‘aggravated homosexuality’ from employment in any institution where they would hold a position of authority over children, or care for them. This regulation would be contrary to Liberia’s Labour Law, which since 2015 has included an explicit prohibition against discrimination in employment based on “sex, gender identity or sexual orientation” amongst other grounds. Further, this provision also could perpetuate a false and misleading narrative that gay or lesbian people represent a threat to children.

The rights to privacy, non-discrimination and freedom from arbitrary arrest or detention

The Bill seeks to further criminalize consensual same-sex conduct. The Bill includes a provision on ‘aggravated homosexuality’ (14.82(b) “Aggravated homosexuality”), as a first-degree felony, that carries a life sentence. This section of the Bill also contains a clause that would prohibit disabled people from having consensual sexual relations with a member of the same sex, or face life in prison. This section includes ‘serial offender’ under the category ‘aggravated homosexuality’, subject to a life sentence. Consent is explicitly mentioned as being inadmissible as a defense. The categorization of ‘serial’ offenders seems to indicate that the intent of this revision may be that of persecuting persons who are homosexual. In addition, the vague wording of the law seems to further exacerbate this intent.

These provisions, if enacted, would be in contravention of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Government of Liberia on 22 September 2004. According to article 9, paragraph 1, clause 2 of the ICCPR “[n]o one shall be subjected to arbitrary arrest or detention.” The Working Group on Arbitrary Detention has stipulated that detention based solely on consensual same-sex conduct is always arbitrary. The Working Group on Arbitrary Detention, (opinion n°22/2006 (A/HRC/4/40/Add.1, page 91, at para. 19), held that “[e]ver since the Human Rights Committee adopted its view in *Toonen v. Australia* and it itself adopted its opinion 7/2002 ... the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers the fact that the criminalization of homosexuality is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights.”

In *Toonen vs. Australia*, (1994), the Human Rights Committee found that “the reference to ‘sex’ in articles 2, paragraph 1, and 26 of the ICCPR is to be taken as including sexual orientation.” In numerous subsequent Concluding Observations, the Committee has urged State parties to guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation. The right to freedom from discrimination on grounds of sex is also recognized in article 2 of the African Charter on Human and Peoples’ Rights, which was ratified by Liberia in 1992. The African Commission stated that the core principle of article 2 is to ensure equal treatment for all individuals and listed sexual orientation as one of the grounds of prohibited discrimination (Twenty-First Activity Report of the African Commission on Human and Peoples’ Rights, para. 169 (EX.CL/322 (X))). Liberia, as a State party to the ICCPR, has a duty to guarantee equal protection before the law and to prohibit discrimination on any grounds.

Furthermore, in reference to discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, the United Nations High Commissioner for Human Rights, with reference to violence and discrimination based on sexual orientation or gender identity recommended that States repeal laws that criminalize consensual same-sex sexual conduct, and ensure that other criminal laws are not used to harass or detain people based on their sexuality or gender identity and expression (A/HRC/19/41, para 84(d)).

The Bill includes a provision on ‘aggravated homosexuality’, as a first-degree felony, that carries a life sentence. This section would prohibit disabled people from having consensual sexual relations with a member of the same sex, or face life in prison. This section includes ‘serial offender’ under the category ‘aggravated homosexuality’, subject to a life sentence. Consent is explicitly mentioned as being inadmissible as a defense.

The age of consent in Liberia is 18 years with no close-in-age exemption. Having sex with someone under the age of 18 is considered statutory rape under existing Liberian Penal Code. The proposed Bill would provide for up to 3 years in prison for children between ages 10 to 15 who fall foul of the law, and up to 6 years for children between the ages of 16 to 18 years. Article 37 of the Convention on the Rights of the Child states that: “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time...” The Committee on the Rights of the Child in general comment No. 20 “urges States to [...], repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds.”

The Committee on the Elimination of Discrimination against Women (CEDAW) has consistently emphasized the importance of protecting the human rights of all women. In 2022, in an individual case decision, it was noted that “The Committee considers that the rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women.”

The Committee interprets the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as covering all women, including those that

are lesbian identified and/or engaging in same-sex sexual conduct, and that prohibited discrimination against women includes discrimination based on sexual orientation. Article 1 of the CEDAW defines discrimination against women as "any distinction, exclusion, or restriction made on the basis of sex" that impairs or nullifies the recognition, enjoyment, or exercise of human rights and fundamental freedoms in various fields. The broad definition of discrimination includes any form of discrimination against women, including on the basis of sexual orientation covering also lesbian women, in public and private life, and in any field.

In its decisions, the Committee has expressed concern about the violence and discrimination that lesbian women often face, including corrective rape, harassment, and other forms of gender-based violence. The Committee has also called on States to take measures to protect lesbian women from such violence and ensure their access to justice. The Committee also urged States to review and amend laws, policies, and practices that discriminate against lesbian women. This includes decriminalizing same-sex relationships, recognizing same-sex partnerships, and ensuring that lesbian women have equal access to health services, education, employment, and other rights. The Committee has also highlighted the importance of considering the intersectionality of discrimination. Lesbian women may face multiple forms of discrimination "based on sex and gender [which] is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men." (General recommendation No. 28, CEDAW). Furthermore, the Committee has called for measures to address these intersecting forms of discrimination. The Committee's general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention explicitly mentions that States should ensure that all women, including those facing discrimination on the basis of sexual orientation, enjoy their rights under the Convention. General recommendation No. 33 on women's access to justice also highlights the need to protect lesbian women from discrimination within the legal system. The Committee has also considered that the rights enshrined in the Convention belong to all women, including lesbian women, and that article 16 of the Convention applies to non-heterosexual relations.¹ Article 16 states that "States shall ensure that women have equal rights with men in relation to marriage and as parents, as well as in respect of other aspects of family life".

Freedoms of expression, peaceful assembly and association

The Bill seeks to criminalize the so-called 'promotion of homosexuality'. This clause, if enacted as is, would be contrary to the right to freedoms of expression, peaceful assembly and association.

Article 19 of the ICCPR stipulates that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". This right applies online as well as offline and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

¹ CEDAW Committee, 'Views on Communication No. 134/2018' (2018) UN Doc CEDAW/C/81/D/134/2018, para 9.7.

In its [general comment No. 34](#), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (paragraph 11). The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed.

The only other restriction applicable to freedom of expression is if it is required by article 20 ICCPR. Article 20(2) ICCPR prescribes that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. The prohibition has a high threshold as it requires the fulfilment of three components: a) advocacy of hatred; b) advocacy which constitutes incitement and c) incitement likely to result in discrimination, hostility or violence (A/67/357, para 43).

In our view, the provisions of this Bill do not adhere to the strictly and narrowly construed limitations to freedom of expression allowed by international human rights standards, including articles 19(3) and 20(2) ICCPR and thus breach freedom of expression in an unjustified manner.

Article 21 of the ICCPR guarantees the right to freedom of peaceful assembly. It states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”. Article 22 of the ICCPR provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

Human Rights Council resolution 21/16, paragraph 1, reminds States “of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions

on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Besides, Human Rights Committee, in its general comment 37, indicates that “States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status.” The General Comment also clarifies that “restrictions on peaceful assemblies should only exceptionally be imposed for the protection of “morals” and indicates that restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.

The vague proposed restrictions on the ‘promotion of homosexuality’ contained in the Bill, that carry a prison sentence of up to 20 years would serve to criminalize the work of human rights defenders and associations advocating for human rights without discrimination, including based on sexual orientation.

Articles 1 and 2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”. Additionally, article 7 of the Declaration provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.

The Special Rapporteur on the situation of human rights defenders has encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

Human Rights Council resolution 49/18 called upon States to promote a safe and enabling environment for human rights defenders and to ensure that laws, policies and practices are in compliance with applicable obligations and commitments under international law, including international human rights law, so that they do not hinder or limit unduly the ability of human rights defenders to carry out their work and have access to resources (OP 9 c).

The right to the highest attainable standard of physical and mental health

The Bill proposes the criminalization of HIV transmission, under the ‘aggravated homosexuality’ provision.

Article 12 of the International Covenant on Economic, Social and Cultural Rights ratified by Liberia on 22 September 2004, obliges State parties to, inter alia, take the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases and for the creation of conditions that would assure to all medical service and medical attention in the event of sickness. It also includes an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for the most vulnerable or marginalized sections of the population, without discrimination. Furthermore, article 2 of the ICESCR requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind. The Committee on Economic, Social and Cultural Rights (CESCR), in general comment No. 14, reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, sexual orientation, health status (including HIV/AIDS), and civil, political, social or other status (para. 18). The principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para. 30). Furthermore, in its general comment No. 14, CESCR emphasizes the right to control one's health and body, including in relation to sex and reproduction. Criminalization of same-sex conduct also has an adverse effect on the ability of individuals to access appropriate health facilities, goods and services due to the stigma attached to criminalization (paras. 17-18).

Furthermore, the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stressed that "criminalization has adverse consequences on the enjoyment of the right to health of those who engage in consensual same-sex conduct, through the creation of the societal perception that they are "abnormal" and criminals. This has a severe deleterious impact on their self-regard, with significant, and sometimes tragic, consequences on their health-seeking behaviour and mental health" (A/HRC/14/20, para. 17). He also indicated that "[t]he criminalization of HIV transmission, or behaviours around transmission, is generally recognized as counterproductive, and should be reconsidered in the context of any comprehensive HIV/AIDS response framework" (A/HRC/14/20, para. 51). In this regard, he recommended to "take immediate steps to decriminalize consensual same-sex conduct and to repeal discriminatory laws relating to sexual orientation and gender identity, as well as to implement appropriate awareness-raising interventions on the rights of affected individuals;" and to "immediately repeal laws criminalizing the unintentional transmission of or exposure to HIV, and to reconsider the use of specific laws criminalizing intentional transmission of HIV, as domestic laws of the majority of States already contain provisions which allow for prosecution of these exceptional cases" (A/HRC/14/20, paras. 76 (a) and (c)).

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health highlighted that "[i]n countries practicing criminalization [of HIV or HIV transmission], high levels of gender inequality and gender-based violence [...], place women, adolescents, LBGTIQ+ people and those in vulnerable situations at increased risk of HIV infection." She added that "[i]f the current legal and policy environments remain unchanged, ending the AIDS epidemic by 2030, as envisioned in the Agenda for Sustainable Development and the global commitment to fast-track the HIV response, will not be possible (A/76/172, paras. 57-58). She concluded by observing "a global patriarchal culture, a regressive

climate and pushback in the area of sexual and reproductive health rights and opposition to gender equality.” She warned that “[g]ains made in the past decades in these areas are at risk of being rolled back, with the rights and perspectives of women, girls and LGBTIQ+ persons sidelined” (A/76/172, para. 82).

The African Charter on Human and Peoples Rights, ratified by Liberia in 1992, requires States parties to “take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick” (article 16). The Charter also imposes the obligation of non-discrimination when ensuring the right to the highest attainable standard of physical and mental health (article 28).

Furthermore, we wish to bring your attention to the 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty, in particular principles 18 and 19 respectively, which stress that “[no] one may be held criminally liable for conduct or status based on their gender identity or gender expression.” and that “criminal law may not proscribe non-disclosure of HIV status or exposure to HIV or HIV transmission per se”.

In a joint statement by the High Commissioner for Human Rights and the Executive Director of UNAIDS on 19 July 2024 said: “Such laws harm public health. Criminalization of LGBTQ+ people generates justified fear amongst people who need access to health services, and amongst the frontline workers who provide those services. In criminalizing countries, there is decreased provision and uptake of HIV prevention services, and decreased uptake of HIV care and treatment services. A study in sub-Saharan Africa showed that HIV prevalence among gay men and men who have sex with men was five times higher in countries that criminalized same-sex relationships than in non-criminalized settings. Criminalizing countries have significantly lower rates of both knowledge of HIV status and HIV viral suppression among all people living with HIV.”

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all the cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide details of any assessment undertaken to ensure that the provisions contained in the Bill comply with Liberia’s obligations under international human rights law.
3. Kindly provide information on the status of the legislative process of the Bill.
4. Please provide details of how the domestic legal framework safeguards the rights of all persons of diverse sexual orientations and gender identities, including same-sex attracted persons.

5. Kindly provide information of how the domestic legal framework protects the rights of human rights defenders and those advocating for the rights of LGBT individuals in Liberia so that they can carry out their legitimate work in a safe environment without fear of harassment or intimidation.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Graeme Reid

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Gina Romero

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Cecilia M. Bailliet

Independent Expert on human rights and international solidarity

Laura Nyirinkindi

Chair-Rapporteur of the Working Group on discrimination against women and girls