LEGAL BACKGROUND AND CONTEXT FOR

#EQUALITYCHALLENGE GUIDELINES

FOR ADVERTISERS, MARKETERS & BUSINESSES
TO SUPPORT, PROMOTE & ENHANCE
LGBT EQUALITY IN AFRICA

INTERNATIONAL, REGIONAL AND NATIONAL LAWS
AND THE SOUTH AFRICAN ADVERTISING CODE
ON LGBT RIGHTS AND EQUALITY

LGBT rights are laid out in many national, regional and international laws, resolutions and codes which speak to equality, non-discrimination, dignity, non-violence and protection of the law.
UNIVERSAL DECLARATION OF HUMAN RIGHTS

The United Nations’ Declaration of Human Rights (adopted by the UN General Assembly in 1948) sets out fundamental human rights to be universally protected, including the following, and promotes the teaching thereof to expand the understanding of, respect for and realization of these human rights:

Article 1
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3
Everyone has the right to life, liberty and security of person.

Article 7
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 16
(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 28
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

HUMAN RIGHTS COUNCIL RESOLUTION 32/2

In 2016, the United Nations Human Rights Council (HRC) adopted Resolution 32/2 on “protection against violence and discrimination based on sexual orientation and gender identity.” In it, the HRC reaffirmed the rights to freedom, equality and dignity as laid out in the Universal Declaration of Human Rights, strongly deplored acts of violence and discrimination based on sexual orientation and gender identity, and appointed an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity for three years.
AFRICAN UNION

THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS

The African Charter on Human and Peoples’ Rights (“Banjul Charter” or “African Charter”) which came into effect in 1986 on October 21 (“African Human Rights Day”) has been ratified by all except South Sudan of the fifty-five member states of the African Union. It is an international human rights instrument that is intended to promote and protect human rights and basic freedoms on the African continent.

Oversight and interpretation of the Charter is the task of the African Commission on Human and Peoples’ Rights (ACHPR/ “African Commission”). Articles 2-5 and 19 particularly speak to equality and non-discrimination:

**Article 2**
Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

**Article 3**
1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

**Article 4**
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.

**Article 5**
Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

**Article 19**
All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.
AFRICAN COMMISSION ON HUMAN & PEOPLES’ RIGHTS

SOGI RESOLUTION 275

In 2014, the African Commission on Human and Peoples' Rights (ACHPR/“African Commission”) adopted the landmark Sexual Orientation and Gender Identity (SOGI) Resolution 275 on “Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity” at the 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014.

This is currently the most powerful pan-African LGBT commitment to date. It states that the ACHPR:

Recalling that Article 2 of the African Charter on Human and Peoples’ Rights (the African Charter) prohibits discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status;

Further recalling that Article 3 of the African Charter entitles every individual to equal protection of the law;

Noting that Articles 4 and 5 of the African Charter entitle every individual to respect of their life and the integrity of their person, and prohibit torture and other cruel, inhuman and degrading treatment or punishment;

Alarmed that acts of violence, discrimination and other human rights violations continue to be committed on individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity;

Noting that such violence includes ‘corrective’ rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail;

Further alarmed at the incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa;

Deeply disturbed by the failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity;

1. 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;
2. Specifically condemns the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity;
3. Calls on State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; and
4. 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.
SOUTH AFRICAN GOVERNMENT

THE SOUTH AFRICAN CONSTITUTION

Sections 9 -12 of the South African Constitution, which was signed into law in 1996, particularly speak to LGBT rights and equality:

9. Equality

1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

10. Human Dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

11. Life

Everyone has the right to life.

12. Freedom and Security of the Person

1) Everyone has the right to freedom and security of the person, which includes the right-
   a) not to be deprived of freedom arbitrarily or without just cause;
   b) not to be detained without trial;
   c) to be free from all forms of violence from either public or private sources;
   d) not to be tortured in any way; and
   e) not to be treated or punished in a cruel, inhuman or degrading way.

2) Everyone has the right to bodily and psychological integrity, which includes the right-
   a) to make decisions concerning reproduction;
   b) to security in and control over their body; and
   c) not to be subjected to medical or scientific experiments without their informed consent.
ADVERTISING STANDARDS AUTHORITY OF SOUTH AFRICA

ADVERTISING CODE OF PRACTICE

The General Principles of the Advertising Code of Practice of the Advertising Standards Authority of South Africa (ASA) stipulate that discriminatory advertising or advertising that stereotypes based on gender and advertising that might lead to violence or gender-based violence is unacceptable.

Unacceptable Advertising

1. Fear
Advertisements should not without justifiable reason play on fear.

2. Violence
Advertisements should not contain anything which might lead or lend support to acts of violence, including gender-based violence, nor should they appear to condone such acts.

3. Legality
Advertisements should not contain anything which might lead or lend support to criminal or illegal activities, nor should they appear to condone such activities.

4. Discrimination
No advertisements shall contain content of any description that is discriminatory, unless, in the opinion of the ASA, such discrimination is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

5. Gender
Gender stereotyping or negative gender portrayal shall not be permitted in advertising, unless in the opinion of the ASA, such stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

With regards to the ASA Principles, the following definitions apply:

"Discrimination" means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly –

- imposes burdens, obligations or disadvantage on; or
- withholds benefits, opportunities or advantages from,
- any person on one or more of the following grounds:
  - race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, or
  - any other analogous ground; and "discriminate" and "discriminatory" shall have corresponding meanings.

"Gender stereotyping" means advertising that portrays a person or persons of a certain gender in a manner that exploits, objectifies or demeans.
GLOSSARY

Biological Sex
Is defined by primary and secondary sex characteristics identified at birth. ‘Sex’ refers to the biological and physiological characteristics that define men and women.

Gender
Refers to the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for men and women. To put it in another way – male and female are sex categories, while masculine and feminine are gender categories.

Gender Expression
How one demonstrates and showcases their gender of identity through the ways they dress, behave, carry themselves and interact socially.

Gender Identity
Refers to an individual’s innate sense of being male or female, man or woman, both or neither. It usually, but not always, matches the gender expected of the person’s sex assigned at birth. However, in the case of trans diverse people, their innate gender identity often does not match the expected gender of the sex assigned to them at birth.

Gender Non-Conforming (GNC)
Refers to a gender identity and expression by an individual which does not match typical masculine or feminine gender norms.

Gender and Sex
The term ‘sex’ refers to biologically determined differences, whereas ‘gender’ refers to differences in social roles and relations. Gender roles are learned through socialization and vary widely within and between cultures. Gender roles are also affected by age, class, race, ethnicity, and religion, as well as by geographical, economic, and political environments.

Hate Crime & Violence Against LGBT People
Any incident, which may or may not constitute a criminal offence, perceived as being motivated by prejudice and hate. The perpetrators seek to demean and dehumanize the targeted person or group, whom they consider different from themselves based on their actual or perceived race, ethnicity, gender, age, sexual orientation or identity, disability, health status, nationality, social origin, religious convictions, culture, language or other characteristics.

LGBT/LGBTIQGNC
AIDS Accountability International (AAI) and the Advertisers Activists Collective (AAC) use the short and well-known “LGBT” to refer to Lesbian, Gay, Bisexual, Trans, Intersex, Queer and Gender Non-Conforming people (LGBTIQGNC). LG and B in this context are sexual orientations, while the “T” is a gender identity and “I” is a biological variant. They are clustered together in one abbreviation due to similarities in experiences of marginalization, exclusion and discrimination in a heteronormative and heterosexist society, in an effort to ensure equality before the law and equal protection by the law. It is important to recognize that LGBT persons are not a homogenous group and that their issues, experiences and needs may differ significantly in several respects.

Sexual Orientation
A person’s lasting emotional, romantic, sexual or affectional attraction to others (heterosexual, homosexual, pansexual, bisexual or asexual).
ABOUT AAI & THE ADVERTISERS ACTIVISTS COLLECTIVE

AIDS Accountability International (AAI) is an independent think tank that works towards equality for all and accountability from all. We believe that stronger leadership is pivotal to changing the way that systems include or exclude the powerful and the powerless.

In 2015, AAI launched the Destabilising Heteronormativity project which aims to improve access to health and other human rights for people in Africa who are LGBTIQGNC (Lesbian, Gay, Bisexual, Trans, Intersex, Queer or Gender Non-Conforming (LGBTIQGNC) and all other forms of sexual orientation and gender identity and expression (SOGIE) that exist.

IN ORDER TO DO THIS, THERE NEEDS TO BE A CHANGE IN “NORMS”.

Many people think that being straight and only either male or female is how the world operates, that it is the only way to be. It is not like that for a lot of people. We need to change what people consider the “norm”. First, we must disrupt the status quo. Only then, can we shift people away from a two-gender (male and female) binary rut and a heterosexual cliché and into an understanding that includes everyone.

IN OUR AREA OF WORK, WE CALL THAT DESTABILISING HETERO NormATIVE AND BINARY GENDER THINKING.

The Advertisers Activists Collective (AAC) was launched in early 2016 as a means to reach out specifically to the advertising industry in Africa and for activists and advertisers to collaborate to promote LGBT equality and LGBT-positive advertising.

NO MORE STEREOTYPING LABELS: THE POWER OF THE ADVERTISING CREATIVE TO CHANGE NORMS.

Advertisements (and those who create them and commission them) have the power to change norms and either reinforce or reverse stigma and discrimination. Whether advertisements feature women, mentally ill people, the disabled, LGBT people, or certain race groups, they can perpetuate harmful stereotypes or break them down. But the choice doesn’t have to be between non-stigmatizing and creativity, or between reaching audiences via stereotyping and serving equality. In fact, choosing to positively represent marginalized groups is not only good for equality; it can be good for brand building.

NOT SUPPORTING EQUALITY IS NO LONGER AN OPTION.

GET IN TOUCH WITH AIDS ACCOUNTABILITY INTERNATIONAL

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