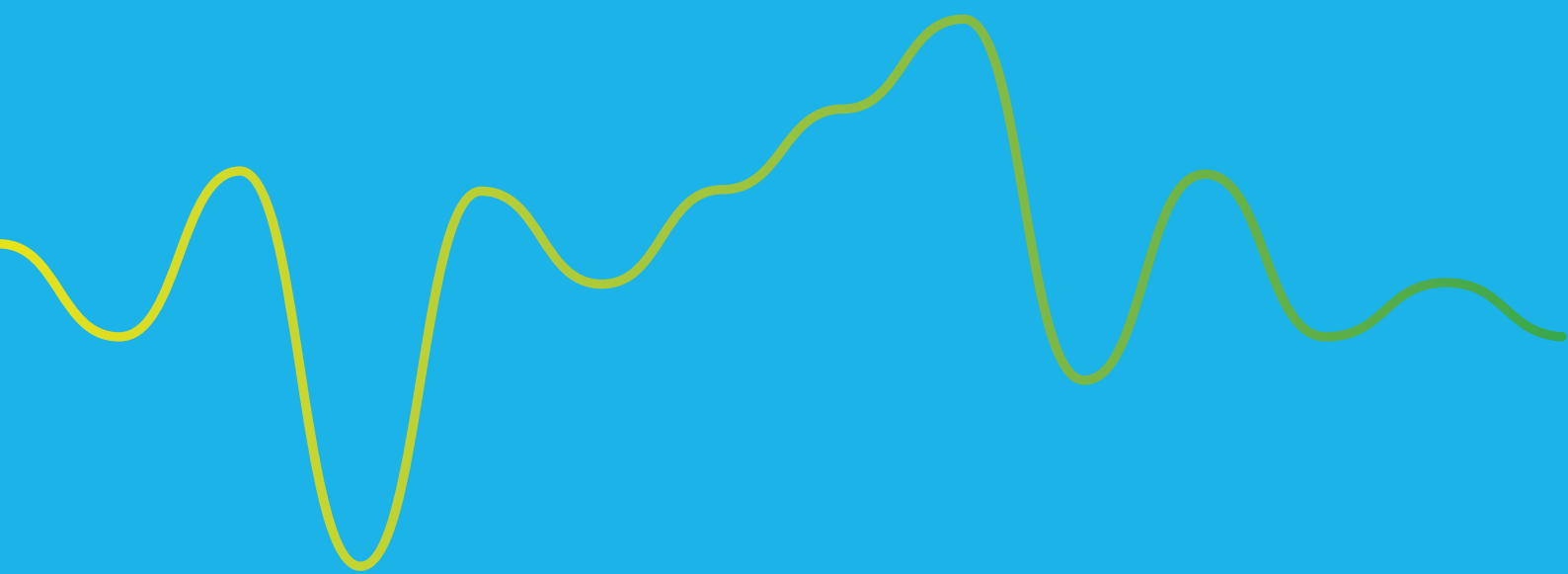


Inclusive Governance Initiative

Kenya

Baseline Report



#WeBelongAfrica
Inclusive Governance Initiative





#WeBelongAfrica brings together multiple initiatives that enable inclusive, just, affirming, safe, productive and fulfilling lives for all people in Africa, irrespective of sexual orientation, gender identity, gender expression or sex characteristics, and irrespective of HIV status or risk.

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Acronyms and abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CSE	Comprehensive Sexuality Education
CSOs	Civil Society Organisations
CEO	Chief Executive Officer
COVID-19	Coronavirus
EEP	Equity and Equality Party
FAQ	Frequently Asked Questions
FHOK	Family Health Options Kenya
GALCK	Gay and Lesbian Coalition of Kenya
GBV	Gender-based Violence
HIV	Human Immunodeficiency Virus
HRDs	Human Rights Defenders
ICJ Kenya	Kenya Chapter of the International Commission of Jurists
ICOP	Integrated SOGIE Community Online Platform
ICPD	International Conference on Population and Development
IDAHOBIT	International Day Against Homophobia, Biphobia and Transphobia
IGI	Inclusive Governance Initiative
INEND	Initiative for Equality and Non-Discrimination
IRCK	Inter-Religious Council of Kenya
IWD	International Women's Day
KANU	Kenya African National Union
KASF II	Kenya AIDS Strategic Framework II
KELIN	Kenya Ethical Legal Network
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KLRC	Kenya Law Reform Commission
LGBT	Lesbian, gay, bisexual, transgender
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
MP	Member of Parliament
NACC	National AIDS Control Council
NASA	National Super Alliance
NASCOP	National AIDS and STI Control Programme
NAYA	Network for Adolescents and Youth of Africa
NGEC	National Gender and Equality Commission
NGLHRC	National Gay and Lesbian Human Rights Commission
NEPHAK	National Empowerment Network for People Living with HIV/AIDS in Kenya
NCD	Non-communicable Diseases
NGO	Non-governmental Organisation
NYARWEK	Nyanza Rift Valley and Western Kenya Network
ODM	Orange Democratic Movement
RHRN	Right Here Right Now
SDGs	Sustainable Development Goals
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Sex Characteristics
SRHR	Sexual and Reproductive Health Rights
STI	Sexually Transmitted Infection
TDOR	International Transgender Day of Remembrance
TDOV	International Transgender Day of Visibility
TICAH	Trust for Indigenous Culture and Health
UDA	United Democratic Alliance
UHC	Universal Health Coverage
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
US	United States
WFOAK	Women Fighting HIV & AIDS in Kenya

Introduction

The Inclusive Governance Initiative (IGI) is a regional project that aims to support countries to include sexual and gender minorities in national efforts to achieve the Sustainable Development Goals (SDGs) and to promote and protect human rights. The project is led overall by the United Nations Development Programme (UNDP).

The Kenya National Commission on Human Rights is collaborating with UNDP in the inception of project work in Kenya. The overall goal of the project is to see that state entities in sub-Saharan Africa are increasingly accountable to, and inclusive of, their entire populations, including LGBTI people. If this is achieved, participating countries

will see better laws, more responsive public sector services, and social norms that affirm LGBTI rights.

This baseline report provides a high-level analysis of the Kenyan context (specifically of key indicators relevant to country level activities) and a baseline assessment for the monitoring and evaluation needs of the project going forward. In addition to discussing LGBTI-focused, sector-specific, and cross-sectoral legislation, policies, plans and practices, the baseline report contextualises these developments in relation to the country's social, economic, cultural, and political realities.

Country overview

More than a decade since the passing of the Constitution of Kenya in 2010, LGBTI populations continue to face violence and discrimination on account of their sexual orientation, gender identity, expression, and sex characteristics (SOGIESC). Although the Constitution offers robust human rights protections to LGBTI populations, systematic, institutional, and widespread violence and discrimination on grounds of SOGIESC continues almost unabated. LGBTI inclusion in Kenya is hampered by criminalization, violence, and discrimination. Punitive laws meant to create a hostile environment for LGBTI populations exist and protective constitutional provisions that could apply to LGBTI populations have not been enforced, either directly or through the passing of laws meant to implement these constitutional provisions. These impediments have cascading effects for LGBTI populations in Kenya, including exclusion in most areas of public life including education, employment, economic security, social protection, housing, access to justice, and public participation.

There are negative downstream effects of the criminalisation of consensual, adult, and private same-sex conduct, which can be said to affect the rights of LGBTI persons, regardless of whether they identify as gay, lesbian, or bisexual. Downstream effects include discrimination of LGBTI refugees as well as prohibitions related to adoptions, among other areas, such as health access, education, employment, and housing. These effects cannot be redressed in any meaningful way without decriminalisation taking place first, followed by the passing of strong equality and non-discrimination laws, policies, and plans.

The KNCHR, through its programming and work, has become a thought leader on intersex inclusion, which is one of the few areas in which actors in all branches of government are willing to engage in when it comes to LGBTI inclusion. Efforts into assessing how intersex inclusion can be contextualised as an entry point into movement on LGBTI issues should be considered.

Kenya has witnessed slow progress on the establishment and implementation of official plans, policies, and technical guidance on SRHR, with key legislative proposals stalling in parliament. Policies, plans and guidance on the achievement of UHC do not address LGBTI inclusion needs, including the UHC priorities of key populations. Technical support and capacity enhancement towards elevating LGBTI inclusion priorities during future updates to these policies should be considered.

Kenya's patchwork of policies and plans covering sexual education do not address the specific needs of LGBTI learners in the country. There is need for the inclusion of LGBTI learners' needs and priorities in the design of teachings around equality and non-discrimination,

sexual diversity, violence on SOGIESC grounds including bullying, LGBTI sexual and reproductive health needs among other topics. LGBTI CSOs and activists and their allies are unwilling to engage in work to move the needle on LGBTI inclusion in CSE initiatives in the country, out of fear of backlash and reprisals, considering negative myths related to this issue. This had led anti-CSE movements to control the narrative on this issue, risking even more harm to LGBTI youth.

Many parliamentarians are either hostile towards or lack adequate knowledge regarding LGBTI inclusion. This was attested to by the frequency of anti-LGBTI statements made by parliamentarians and recorded in the Hansard, as well as statements made outside parliament. This report notes a strong need to identify both pro- and anti-LGBTI parliamentarians, especially the latter's links with anti-LGBTI CSOs and movements from both within and outside Kenya. Additionally, there is a strong need for capacity enhancement efforts targeting parliamentarians, including capacity enhancement for KNCHR and LGBTI CSOs to engage in legislative policy advocacy efforts. More resources should be dedicated to analysing parliamentary activities touching on LGBTI inclusion to further contextualise parliamentary discourse when it comes to this issue.

Strategic litigation has brought with it significant LGBTI rights and inclusion gains and defeats. Limiting and negative judicial outcomes may point to knowledge gaps on LGBTI rights issues among the judiciary that can be addressed through the capacity enhancement of judicial actors. The enhancement of the capacity of the Office of the Attorney General, particularly in respect of litigation for human rights, should be a priority. This could include the development of guidelines on strategic litigation and on court mediation with litigants

Other than the KNCHR, few other state entities have been willing to document LGBTI inclusion issues in their work, with the overwhelming focus of engagement by state organs being in the realm of HIV and AIDS programming. However, even in cases where the government has been willing to address recommendations issued by the KNCHR, particularly on intersex rights, this willingness has not addressed the root causes of intersex inclusion. Mechanisms for further integrating KNCHR recommendations on LGBTI inclusion should be considered, as well as efforts to broaden LGBTI-related documentation by state organs.

Political parties were found to be unwilling to include LGBTI inclusion proposals in their official platforms and published manifestos, with some choosing to focus on general human rights concerns instead. In the absence of documentation of political party platforms addressing LGBTI inclusion, this report makes note of pro- and anti-

LGBTI rights and inclusion statements by politicians, arguing that these statements, especially those made by national leaders, are part and parcel of their parties' platforms. Cases where these leaders walked back their statements might point to increasing political sensitivity on the issue, including the fear of alienating key western partners. Recommendations along the lines of expanding hate speech protections, capacity enhancement of LGBTI CSOs to engage in political advocacy and lobbying and support to aspiring LGBTI politicians are made.

Cross-movement joint initiatives between LGBTI CSOs and activists from wider movements were in most cases anchored in specific initiatives, such as strategic litigation, and responded to interest by these actors to enhance network effects and pool resources. The need for mapping and documenting cross-movement joint initiatives to identify underserved areas as well as support for capacity enhancement with the aim of enhancing and replicating existing areas and approaches of collaboration were identified.

Many opportunities for LGBTI activists and CSOs to be involved in broader rights, development, and gender equality issues were identified. A two-sided reticence by both LGBTI activists and CSOs and "mainstream" CSOs to engage with each other was also noted. The possibility of the KNCHR bringing together LGBTI and non-LGBTI stakeholders in a bid to establish collaborations between these camps was discussed. Mapping of LGBTI CSOs, their allies and supporters, and potential allies and supporters, with the aim of identifying points of engagement and collaboration between these organisations was also identified as a way of addressing the cross-movement dynamics between the LGBTI movement and broader rights movements.

Opportunities exist for the growth of allies for LGBTI inclusion in Kenya and a deeper collaboration between allies and LGBTI activists and CSOs is needed. In-country programming to support the enhancement of capacity of supporters of LGBTI inclusion within the KNCHR was identified as a way of consolidating even more thought and action leadership within the organisation. This support could also be extended to other allies for LGBTI inclusion as well as support the work of LGBTI activists and CSOs seeking to deepen advocacy links with allies for LGBTI inclusion.

Most LGBTI CSO and activist involvement in Kenya in the past decade has contributed to the development of HIV and AIDS policies, plans and technical guidance, with limited engagement on SRHR and sexual education policies, plans and technical guidance. The involvement of intersex CSOs and activists in the development of reports aimed at further contextualising the human rights situation of intersex prior to legislative and other reforms is notable. The exclusion of LGBTI CSOs and activists in certain policy development processes was noted. The key stakeholders interviewed regarding this exclusion worry about the efficacy and downstream exclusionary effects when these policies are passed and implemented. Lastly, there was

some interest in engaging in the legislative processes by LGBTI CSOs and activists but their participation in these forums could invite backlash and even regression in terms of LGBTI inclusion, a major fear that led to unwillingness to engage with parliament. Engagement by LGBTI CSOs and activists in policy development processes at county level is a new area of collaboration that offers even more opportunities for engagement.

Coordinated advocacy and policy messaging amongst LGBTI groups to influence laws, policies and programming in Kenya is a core element of LGBTI movement organising. Most of this coordination was on a need's basis, or in relation to developments that have a movement-wide impact. There is a need for mapping and the enhancement of the capacity of LGBTI CSOs and activists to reenergise coordination on advocacy and policy messaging.

Coordinated advocacy and policy messaging between LGBTI groups and other development actors is an under-explored aspect of LGBTI inclusion efforts in the country and in-country programming may intervene by consolidating ways of working, establishing communities of practice, relying on action points and commitments, among other approaches. Publication of press statements and releases on LGBTI inclusion issues, diplomatic advocacy efforts on LGBTI inclusion, increased financial and other forms of support for LGBTI inclusion, among other efforts, were identified as key interventions in this regard.

The lack of official policies and strategies in the areas of poverty, gender equality, justice and education sectors are in line with the segmented and alienating approach the government has taken when dealing with LGBTI inclusion needs and priorities, which has led to an almost exclusive focus on LGBTI inclusion through a prism of HIV/AIDS programming. Additionally, policies that may touch on areas that directly affect LGBTI populations seek to entrench approaches and strategies that further criminalise and exclude LGBTI persons. Advocacy for LGBTI inclusion in these policies was identified as a way of redressing this situation, especially during review periods for these policies. KNCHR and other state organ capacity to contribute meaningfully to policy development processes by government agencies should also be bolstered, considering their mandate in this regard. In country-programming should also support LGBTI CSOs and activists to engage in the development of national policies, as a means of expanding the range of LGBTI-relevant policy areas in the country.

There is a lot of research and documentation of themes and topics related to LGBTI inclusion in Kenya, which affords a great deal of knowledge products on LGBTI inclusion that can be used for training that targets a wide range of actors and stakeholders, including the Kenyan LGBTI population, and spans both grey and peer reviewed materials. This, however, does not translate to the application and use of these products in the work of LGBTI CSOs and their partners and allies. In-country programming can support efforts towards the application of these products in LGBTI inclusion programming.

Analysis of indicators

OUTCOME 1: To what extent are decision makers responsive to, inclusive of and accountable to sexual and gender minorities (indicators 1 to 8)

COUNTRY INDICATOR 1: Punitive laws

Brief Description

Punitive laws exist in Kenya. Section 162 (a) of the Penal Code criminalises “carnal knowledge against the order of nature” while section 162 (c) of the Act criminalises “any person who permits a male person to have carnal knowledge of him or her against the order of nature.” Section 163 of the Penal Code criminalises “attempts to commit any of the offences specified in Section 162” of the Penal Code. Section 165 of the Penal Code criminalises gross indecency between males, defined as “any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private.” Offences under Section 162 of the Penal Code carry a prison sentence of 14 years upon conviction, while offences under Sections 163 and 165 carry prison sentences of 7 years and 5 years respectively.

Section 382 of the Penal Code also criminalises personation, defined as “any person who, with intent to defraud any person, falsely represents himself to be another person, living or dead, is guilty of a misdemeanour.”

Section 158 (3) (c) of the Children Act prohibits adoption of children by homosexuals.

Section 19 of the Refugees Act of 2021 provides for the expulsion of refugees and their family members for conduct which breaches “public immorality” irrespective of whether such conduct is linked to their claim of asylum or not.

Human Rights Watch has documented instances of the existence of punitive local government bylaws in certain localities in Kenya, particularly in the urban counties of Nairobi and Mombasa.¹ Although the status of these laws is unclear under the system of devolved government as part of constitutional reforms in 2010, bylaws of both counties have been reported as criminalising sex work as well as LGBTI identities, according to the abovementioned Human Rights Watch report. Enforcement of these county bylaws has also been reported as leading to human rights abuses against LGBTI populations including law enforcement brutality, and extortion, among others.²

Sources of Data

Government Laws

- Penal Code, Chapter 63, Laws of Kenya <http://www.kenyalaw.org/lex/actview.xql?actid=CAP.%2063>
- Children Act, Chapter 141, Laws of Kenya http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ChildrenAct_No8of2001.pdf
- Refugees Act, No 10. of 2021, Laws of Kenya <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2010%20of%202021>
- Reports by human rights CSOs

Specific Data

- Criminalisation of consensual, adult, and private same-sex conduct.
- Criminalisation of personation.
- Prohibition of formal adoption of children by homosexuals.
- Expulsion of refugees or members of their family on grounds of public immorality, irrespective of whether of whether the conduct is linked to a claim of asylum.

Contextual Analysis

Sections 162 (a) and 162 (c) of the Penal Code criminalise sexual relations that do not conform to the “order of nature,” regardless of the sex, sexual orientation or gender identity of persons said to commit the act.³ Although prosecutions are rare, and unheard of in the case of adult, consensual and private sexual conduct between

1 The Issue is Violence: Attacks on LGBT People on Kenya’s Coast. <https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast#:~:text=The%20Issue%20is,on%20Kenya%27s%20Coast> Human Rights Watch, (accessed April 15, 2022)

2 The Issue is Violence: Attacks on LGBT People on Kenya’s Coast.

3 ‘Know Your Rights’. Gay and Lesbian Coalition of Kenya, 2 Dec 2016, www.galck.org/know-your-rights (accessed 15 April 2022)

persons of the opposite sex, these laws serve as the primary way in which LGBTI persons are criminalised under Kenyan law. For instance, enforcement of the law has been documented as the reason for raids and arrests of LGBTI persons, particularly gay men.⁴ Until 2018, when the practice was found unconstitutional by the Court of Appeal, forced anal examinations were used as a means of “proving” that those arrested under Section 162 (a) and (c) had committed the act.⁵

Section 165, derived from the Labouchere Amendment in the UK, was incorporated into Kenyan law, alongside the rest of the Penal Code, as a way of closing legal loopholes in the prosecution of sodomy laws. Under the provision, “any sexual activity between two men that does not involve penetration whether committed in public or in private” is criminalised.⁶

With the increasing visibility of the Kenyan trans community, Section 382 has been applied increasingly against the trans population, albeit in small numbers, according to a key stakeholder interview. The law has been construed by authorities as empowering them to arrest trans persons for dress and other ways of presentation that do not conform to their sex assigned at birth, as well as in cases where trans persons provide a name that is not on their legal identity documents.

The prohibition of adoption of children by homosexuals under Section 158 (3) (c) of the Children Act extends to persons seeking adoption individually or as part of a couple. However, a definition of the term “homosexual” is not provided.

Section 19 of the Refugees Act is meant to respond to the influx of LGBTI refugees and asylum seekers from neighbouring countries to Kenya.

Data Gaps & Limitations

Some gaps or limitations exist in the analysis of existing punitive laws. For instance, it was not possible to access copies of county government bylaws as they are not available online. To address this gap, secondary sources such as reports by human rights organisations were relied on. Additionally, data gaps and limitations do exist in the extent of enforcement of these punitive laws. For instance, the number of prosecutions and convictions for consensual, adult private same-sex conduct under Section 162 (a) and (c) and Section 165 is unknown. So is the case with prosecutions and convictions of trans persons under Section 382 of the Penal Code. The relevant government authorities also do not publish data on the number of

enforcement actions (if any) under Section 158 (3) (c) of the Children Act and Section 19 of the Refugees Act.

Synthesised Implications

Implications from the data and the contextual analysis point to the negative downstream effects of the criminalisation of consensual, adult, and private same-sex conduct. Criminalisation of “homosexuality” can be said to affect the rights of LGBTI persons, regardless of whether they identify as gay, lesbian, or bisexual. The prohibition of adoption by homosexuals under the Children Act of 2001 and new prosecutions under Section 382 of the Penal Code and potentially under Section 19 of the Refugees Act flow directly from the effects of the criminalisation of same-sex conduct, pointing to how criminalisation serves to entrench and consolidate sentiment that condones or even encourages violence and discrimination against LGBTI persons. Simply put, the discriminatory effect of these laws in other areas of life cannot be addressed unless these laws are reformed.

In-country programming can support the decriminalisation of same-sex conduct through the repeal of Sections 162 (a) and (c) and 165 of the Penal Code as well as clarifying, either through amendments or prosecution guidelines, that Section 382 should not be used to prosecute trans persons. Amendments to Section 19 of the Refugees Act, or prosecutorial guidelines clarifying the provision should also be considered. Initiatives aimed at addressing the discriminatory effect of Section 158 (3) (c) of the Children Act should also be considered. Additionally, in-country programming should support efforts to gather data on the number of prosecutions and other enforcement actions undertaken by the authorities under these laws. Additionally, in-country programming should also support data collection on LGBTI-related human rights violations in the country by both state and non-state actors, with the aim of drawing their correlation with the existence of these punitive laws.

COUNTRY INDICATOR 2: Protective laws

Brief Description

Article 2 (6) of the Kenyan Constitution states that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” Kenya is signatory to a number of international human rights treaties, including key conventions such as the ICCPR, ICESCR, and CEDAW, among others.⁷ Additionally, Kenya is signatory to a

4 The Issue is Violence: Attacks on LGBT People on Kenya’s Coast. Human Rights Watch, September 28, 2015, <https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast> (accessed April 15, 2022)

5 Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions. Human Rights Watch, <https://www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions> (accessed April 15, 2022)

6 ‘Know Your Rights’. Gay and Lesbian Coalition of Kenya.

7 Status of Ratification by Kenya. UN Treaty Body Database. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN (accessed 28 March 2022)

number of continental human rights treaties, including the Africa Charter on Human and Peoples' Rights, the Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), and the African Charter on the Rights and Welfare of the Child, among other treaties. Additionally, the KNCHR is a signatory to the Yogyakarta Principles of 2006 which is "a universal guide to human rights which affirm binding international legal standards with which all States must comply."⁸ Kenyan human rights experts were also involved in the development of Additional Principles to the Yogyakarta Principles in 2017, which seek to further clarify international human rights obligations among states to address violence and discrimination against persons on grounds of sexual orientation, gender identity, gender expression and sex characteristics.⁹ KNCHR has also collaborated with the Network of African National Human Rights Institutions (NANHRI) on a project aimed at implementing the provisions of Resolution 275 of 2014 by the ACHPR which address violence and other human rights violations on the grounds of sexual orientation and gender identity.¹⁰ Resolution 275 is the first and only resolution of ACHPR which exclusively addresses LGBTI human rights issues.

The Constitution of Kenya prohibits discrimination under Article 27. Although "sexual orientation" and "gender identity" are not specifically mentioned under Article 27 (4) of the Constitution, which provides grounds under which discrimination is prohibited, this list is not exhaustive, and the High Court has determined that sexual orientation is a protected category under the Kenyan Constitution.¹¹ Additionally, the Constitution provides for a range of human rights protections that are relevant to LGBTI persons including the rights to life, human dignity, freedom and security of the person, privacy, freedom of expression, freedom of association, economic and social rights, family, and fair administrative action.

However, the implementation of these constitutional provisions is hampered by the lack of political will by the government as well as the belief that a constitutional ban on homosexuality exists, based on a reading of Article 45 (2) of the Constitution.¹² Article 45 (2) of the Constitution states that every adult "every adult has the right to marry a person of the opposite sex, based on the free consent of

the parties." While this is not an outright ban on same-sex marriage, the High Court in a 2019 case challenging the constitutionality of the country's sodomy laws has argued that Article 45 (2) of the Constitution limits constitutional protections to LGBTI persons in the country, especially on the question of the discriminatory effect of the criminalisation of same-sex conduct.¹³

Perhaps the only area in which the government has shown willingness to extend human rights protection efforts to is on the rights of intersex persons. The Persons Deprived of Liberty Act provides for a definition of "intersex" and sets out basic standards aimed at guaranteeing the rights of intersex persons (among other groups) who are deprived of liberty. For instance, Section 10 (3) of the Act entitles intersex persons on the right to decide the sex of the person by whom they should be searched while Section 12 (3) (e) of the Act entitles intersex persons with the right to be held separate from other persons.

Although the SDGs provide innovative ways for governments to address social and economic inclusion, this remains an unexplored opportunity in Kenya. However, the Kenyan government has not made any LGBTI-specific commitments in relation to the 2030 Agenda for Sustainable Development. For instance, the Kenyan government did not address LGBTI inclusion themes nor provide related data in its Second Voluntary National Review Report on the Implementation of the SDGs.¹⁴

Sources of Data

Government Laws

- The Constitution of Kenya (2010) <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>
- Yogyakarta Principles (2006) http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf
- Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to

8 The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006) http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf (accessed 28 March 2022)

9 Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (2017) http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf (accessed 28 March 2022)

10 Submission to the Independent Expert on Protection against Violence and Discrimination Based On Sexual Orientation and Gender Identity, Kenya National Commission on Human Rights (2019) <https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/Data/KenyaNationalCommissionHumanRights.pdf> (accessed 28 March 2022)

11 Petition No. 440 of 2013, <http://kenyalaw.org/caselaw/cases/view/108412/> (accessed 28 March 2022)

12 Report of the Working Group on the Universal Periodic Review (Kenya), Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Human Rights Council, A/HRC/44/9/Add.1, 6 July 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/163/87/PDF/G2016387.pdf?OpenElement> (accessed 15 April 2022)

13 Petition No. 150 of 2016 Consolidated with Petition No. 234 of 2016 Eric Gitari v Attorney General & another [2016] eKLR <http://kenyalaw.org/caselaw/cases/view/173946/> (accessed 28 March 2022)

14 Second Voluntary National Review Report on the Implementation of the Sustainable Development Goals, State Department for Planning (2020) https://sustainabledevelopment.un.org/content/documents/26360VNR_2020_Kenya_Report.pdf (accessed March 28 2022). In particular, the Kenyan government did not include specific key population data under Indicator 3.3.1 in the report.

Complement the Yogyakarta Principles (2017)
http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

- 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 - ACHPR/Res.275(LV)2014 <https://www.achpr.org/sessions/resolutions?id=322>
- Persons Deprived of Liberty Act, No 23 of 2014 http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PersonsDeprivedofLibertyAct_2014.pdf
- Report of the Working Group on the Universal Periodic Review (Kenya), Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Human Rights Council, A/HRC/44/9/Add.1, 6 July 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/163/87/PDF/G2016387.pdf?OpenElement>

Specific Data

- Prohibition of discrimination on any grounds
- Statutory safeguards on the rights of intersex persons who are deprived of liberty
- International human rights legal safeguards on LGBTI rights

Contextual Analysis

Although constitutional protections in Kenya apply to all persons, and the courts have ruled that these protections extend to LGBTI persons, the lack of legislation enforcing these provisions ensures that they are out of reach for LGBTI persons. Kenyan authorities are opposed to extending constitutional protections, through legislative process or the implementation of international human rights legal provisions, to LGBTI persons. For instance, even though the Kenyan government committed to reforming employment laws to protect LGBTI individuals from discrimination during its UPR in 2016, no active steps were taken to introduce legislation to parliament seeking to reform these laws.¹⁵ The commitment was not reiterated during Kenya's UPR in 2020, in which the government alleged incorrectly that LGBTI individuals did not face discrimination when accessing government services.¹⁶ In statements made as part of its engagement with UPR, the government has not only claimed that no anti-LGBTI discrimination exists but that discrimination in the form of punitive laws such as Section 16 (a) and (c) and Section 165 of the Penal Code are legitimate,

based on the provisions found under Article 45 (2) of the Constitution. The Yogyakarta Principles, which provide crucial guidelines on how to promote and protect LGBTI populations within the international human rights framework, remain under-utilised by government stakeholders, including the KNCHR. Similarly, the 2030 Agenda for Sustainable Development remains an under-utilised platform for interrogating LGBTI inclusion gaps as well as developing solutions to these gaps.

Kenyan LGBTIQ activists have argued in the past that the legalisation of same-sex marriage is not a top priority as a movement. Available information covered in this report points to a high priority placed on other aspects of LGBTI inclusion such as health, employment, housing, economic inclusion and freedom from violence and discrimination. The inclusion of intersex-specific laws is on account of strategic litigation and related advocacy initiatives aimed at addressing some legal gaps when it comes to the rights of this group, as well as the government's willingness to engage on the issue.

Data Gaps & Limitations

No data gaps and limitations.

Synthesised Implications

In addition to the repeal of punitive laws described in the previous section, Kenyan LGBTI CSOs and activists have identified the passing of anti-discriminatory legislation that specifically outlaws discrimination on grounds of sexual orientation, gender identity and expression and sex characteristics as a priority for the movement. Such a law would also outlaw direct and indirect discrimination in employment, education, housing, health, and access to essential services by public and private providers. In-country programming could support such an initiative, including reforms to existing laws (such as, for example, the Employment Act) to bolster constitutional and other legal protections for the LGBTI community.

The KNCHR, through its involvement in strategic litigation efforts aimed at enhancing legal protections on the rights of intersex persons and, subsequently, high-level engagements on reforms, and research on the issue, has become a thought leader on intersex inclusion. The organisation's work has moved intersex rights from the margins to taking centre stage in the way the Kenyan government has addressed sex and sex characteristic diversity. In-country programming could support KNCHR to enhance its capacity further to advocate for legal reforms that guarantee a greater range of rights protections for intersex persons, especially in the realm of birth registration and the issuance of official documentation

¹⁵ Report of the Working Group on the Universal Periodic Review (Kenya), Human Rights Council, A/HRC/44/9/Add.1, A/HRC/29/10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/070/40/PDF/G2007040.pdf?OpenElement> (accessed 15 April 2022)

¹⁶ Report of the Working Group on the Universal Periodic Review (Kenya), Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Human Rights Council, A/HRC/44/9/Add.1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/163/87/PDF/G2016387.pdf?OpenElement> (accessed 15 April 2022)

with intersex-specific gender markers. Additionally, KNCHR could be supported to replicate this success in its work with the larger LGBTI community and movement, including developing high-quality research on the topic, proposing legal reforms, and using its mandate to ensure decision makers in the Kenyan government are responsive to, inclusive of, the entire LGBTI community. KNCHR could also be supported to integrate LGBTI inclusion in the areas of the implementation of protective laws at treaty, constitutional and legislative levels. In the case of integration of LGBTI inclusion within the framework of fulfilling international human rights obligations, one of the main mandates of the KNCHR, the Yogyakarta Principles, including the Additional Principles developed in 2017, serve as an important knowledge resource in this regard.

Although the LGBTI movement has set its own priorities for the short and medium term, IGI programming could assist in crystallising “agreed upon legal reform objectives” as has been noted in the IGI Namibia Baseline Report.¹⁷ Such support would be especially important to the LGBTI community in terms of taking stock of the successes and failure of almost two decades of active engagement on this issue as well as opportunities and threats to this work in the short to medium term.

COUNTRY INDICATOR 3: Official policies/ plans/ technical guidance related to SRHR or UHC

Brief Description

Kenya does not have standalone policies, plans and technical guidance on SRHR that address LGBTI inclusion needs and priorities. However, some policies do exist that mention or address some SRHR-related needs and priorities for some sections of the LGBTI community, particularly men who have sex with men and transgender persons who are identified as part of key populations.¹⁸ The 2018 to 2023 Kenya Health Sector Strategic plan, which lays out the strategies and approaches for achieving UHC by 2022 but does not address LGBTI inclusion needs, including mentioning previous target

groups for health policy, planning and technical guidance interventions such as key populations.¹⁹ Additionally, the Kenya Health Sector Strategic Plan does not incorporate equality or non-discrimination in setting out the underlying principles for the achievement of UHC in the country.

The Kenya AIDS Strategic Framework II (KASF II) recommends the integration and linking of HIV prevention and treatment with SRHR programmes including STIs and contraceptive services, viral hepatitis, cancers, non-communicable diseases (NCDs), other chronic diseases and nutrition.²⁰ Additionally, key population networks are mentioned as implementing partners for the KASF II, with SRHR services included in the recommended HIV prevention packages for key populations.

The National Guidelines for HIV/STI Programming with Key Populations developed by National AIDS and STI Control Programme (NAS COP) in 2014, seek to ensure the delivery of quality HIV-prevention interventions to key populations, including men who have sex with men and transgender persons, in line with the Kenya AIDS Strategic Programme.²¹ The Policy Analysis and Advocacy Decision Model for Services for Key Populations in Kenya, published by the National AIDS Control Council (NACC) in 2014, assessed the situation and legal framework, and gave recommendations on ways of integrating key population needs in the provision of HIV and AIDS services.²²

The Policy for the Prevention of HIV Infections Among Key Populations in Kenya (2016), a joint publication by the NACC and NAS COP, specifically identifies strategies and approaches to facilitate the generation and synthesis of key population data for programming purposes; address barriers to scaling-up comprehensive key populations programming; increase access to comprehensive services for key populations; and to facilitate stakeholder coordination at the national and county levels.²³ This policy was followed by the publication of the National Implementation Guidelines for HIV and STI Programming Among Young Key Populations by the Ministry of Health in 2018.²⁴ This policy aims to provide guidance on the implementation of HIV programming that targets young key populations; advocate to include young key

17 UNDP (2021). Inclusive Governance Initiative: Namibia Baseline Report, <https://www.africa.undp.org/content/dam/rba/webelong/igi-namibia-baseline-report.pdf> (accessed 15 April 2022)

18 Kenya Health Policy: Towards Attaining the Highest Standard of Health (2014 – 2030), Ministry of Health, http://publications.universalhealth2030.org/uploads/kenya_health_policy_2014_to_2030.pdf (accessed 15 April 2022)

19 Kenya Health Sector Strategic Plan: Transforming Health Systems: Achieving Universal Health Coverage by 2022, Ministry of Health, <https://www.health.go.ke/wp-content/uploads/2020/11/Kenya-Health-Sector-Strategic-Plan-2018-231.pdf> (accessed 15 April 2022)

20 Kenya AIDS Strategic Framework II: Sustain Gains, Bridge Gaps and Accelerate Progress, Ministry of Health, https://nacc.or.ke/wp-content/uploads/2021/01/KASFII_Web22.pdf (accessed 15 April 2022)

21 National Guidelines for HIV/STI Programming with Key Populations, NAS COP, <https://www.icop.or.ke/wp-content/uploads/2016/10/KP-National-Guidelines-2014-NAS COP.pdf> (accessed 15 April 2022)

22 Policy Analysis and Advocacy Decision Model for Services for Key Populations In Kenya, National AIDS Control Centre https://www.healthpolicyproject.com/pubs/744_KenyaMSMDecisionModelReportFORMATTEDfinal.pdf (accessed 15 April 2022)

23 Policy for the Prevention of HIV Infections Among Key Populations in Kenya, National AIDS Control Council & NAS COP, <https://hivpreventioncoalition.unaids.org/wp-content/uploads/2020/02/Policy-for-Prevention-of-HIV-Infections-among-Key-Population-in-Kenya-June-2016-A5.pdf> (accessed 15 April 2022)

24 National Implementation Guidelines for HIV and STI Programming Among Young Key Populations, NAS COP, <https://www.iavi.org/phocadownload/userupload/National%20Implementation%20Guidelines%20for%20HIV%20and%20STI%20Programming%20among%20YKPs%202018.pdf> (accessed 15 April 2022)

populations in HIV response; as well as accelerate and scale HIV programming among young key populations.

Kenya's Fast-Track Plan to End HIV and AIDS among Adolescents and Young People, developed by the NACC in 2015, also addresses the needs of young key populations, particularly young men who have sex with men.²⁵ As part of its objectives to reduce new HIV infections, reduce AIDS related deaths and reduce stigma and discrimination among adolescents and young people, the plan identifies the scale up of key population services as per existing guidelines as a priority intervention.

The second edition of the Education Sector Policy on HIV and AIDS calls for the development of guidelines that can empower parents and caregivers to address sexual and reproductive health issues as well as the provision of appropriate information to learners living with HIV on how to deal with their sexuality and reproductive health needs.²⁶

Additionally, the second edition of the National Guidelines for Provision of Adolescent and Youth Friendly Services includes treatment of adolescents with equality, respect, privacy, and confidentiality as part of the recommended characteristics of youth friendly services, but the policy itself does not mention LGBTI adolescents as potential beneficiaries for the guidelines, including young key populations.²⁷

The second edition of the Kenya School Health Policy lists equipping learners with sustainable skills and competencies including age-appropriate sexual reproductive health information as one of its objectives and strategies.²⁸ However, the policy does not mention or address the needs of LGBTI learners, including persons who may be categorised as young key populations.

The 2015 National Adolescent Sexual and Reproductive Health Policy mentions respect for human rights and fundamental freedoms as one of the principles underlining its implementation.²⁹ Although the policy refers to adolescent key populations, no strategies or approaches are identified for addressing their needs.

Sources of Data

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- Kenya AIDS Strategic Framework II (KASF II) https://nacc.or.ke/wp-content/uploads/2021/01/KASFII_Web22.pdf
- Policy for the Prevention of HIV Infections Among Key Populations in Kenya <https://hivpreventioncoalition.unaids.org/wp-content/uploads/2020/02/Policy-for-Prevention-of-HIV-Infections-among-Key-Population-in-Kenya-June-2016-A5.pdf>
- National Guidelines for HIV/STI Programming with Key Populations <https://www.icop.or.ke/wp-content/uploads/2016/10/KP-National-Guidelines-2014-NASCOP.pdf>
- National Implementation Guidelines for HIV and STI Programming Among Young Key Populations <https://www.iavi.org/phocadownload/userupload/National%20Implementation%20Guidelines%20for%20HIV%20and%20STI%20Programming%20among%20YKPs%202018.pdf>
- Fast-Track Plan to End HIV and AIDS among Adolescents and Young People <https://reliefweb.int/report/kenya/kenyas-fast-track-plan-end-hiv-and-aids-among-adolescents-and-young-people>
- Education Sector Policy on HIV and AIDS https://www.usaid.gov/sites/default/files/documents/1860/Final_policy_HIV_and_AIDS_2013.pdf
- National Guidelines for Provision of Adolescent and Youth Friendly Services http://guidelines.health.go.ke:8000/media/National_guidelines_for_provision_of_youth_friendly_services.pdf
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- National Adolescent Sexual and Reproductive Health Policy https://www.popcouncil.org/uploads/pdfs/2020RH_NationalSchoolReEntryGuidelines.pdf
- Policy Analysis and Advocacy Decision Model for Services for Key Populations in Kenya https://www.healthpolicyproject.com/pubs/744_KenyaMSMDecisionModelReportFORMATTEDfinal.pdf

25 Fast-Track Plan to End HIV and AIDS among Adolescents and Young People, National AIDS Control Council, <https://reliefweb.int/report/kenya/kenyas-fast-track-plan-end-hiv-and-aids-among-adolescents-and-young-people> (accessed 15 April 2022)

26 Education Sector Policy on HIV and AIDS, Ministry of Education, Science and Technology, https://www.usaid.gov/sites/default/files/documents/1860/Final_policy_HIV_and_AIDS_2013.pdf (accessed 15 April 2022)

27 National Guidelines for Provision of Adolescent and Youth Friendly Services (Second Edition), Ministry of Health, <https://faces.ucsf.edu/sites/g/files/tkssra4711/f/YouthGuidelines2016.pdf> (accessed April 15 2022)

28 Kenya School Health Policy (Second Edition), Ministry of Health & Ministry of Education, https://www.ncikenya.or.ke/documents/KENYA%20SCHOOL%20HEALTH%20POLICY%20BOOK%20_20_11_2018.pdf (accessed April 15 2022)

29 National Adolescent Sexual and Reproductive Health Policy, Ministry of Health https://www.popcouncil.org/uploads/pdfs/2015STEPUP_KenyaNationalAdoISRHPolicy.pdf (accessed April 15 2022)

Specific Data

Official policies, plans and technical guidance related to SRHR or UHC.

Contextual Analysis

Kenya has witnessed slow progress on the establishment and implementation of official plans, policies, and technical guidance on SRHR, with key legislative proposals stalling in parliament due to lack of support from legislators. Additionally, the flagship policy on the achievement of UHC does not address LGBTI inclusion needs, including the UHC priorities of key populations, a group whose needs have increasingly been incorporated into such policies, plans and technical guidance. This lack of inclusion could be attributed to increasing unwillingness by the government to acknowledge distinct health needs and priorities for Kenyans on account of SOGIESC.

Data Gaps & Limitations

No data gaps and limitations.

Synthesised Implications

In-country programming could support technical and other forms of support, as well as capacity enhancement efforts geared towards addressing ways of elevating LGBTI inclusion priorities during future updates to the above-described policies. This programming should be directed towards health sector actors, the KNCHR as well as LGBTI CSOs with the aim of ensuring participation of the two latter stakeholders in all aspects of the policy development process. This recommendation is in recognition of the fact that some of the policies, plans and technical guidance, such as the Kenya Health Sector Policy, will soon be coming up for review.

COUNTRY INDICATOR 4: Official policies and plans on sexual education

Brief Description

Although Kenya was one of the countries that signed the Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern

Africa (ESA), which acknowledges that all forms of discrimination, including against “marginalised and key populations, undermines their rights and dignity,” the commitments made under the ESA to “ensure quality comprehensive sexuality education and youth-friendly sexual and reproductive health services” have not been fulfilled.³⁰ The second edition of the Education Sector Policy on HIV and AIDS was meant to signal the Kenyan ministry of education’s intentions to review the life skills education curriculum and other subjects to enhance the provision of age appropriate CSE as well as provide a safe non-discriminatory workplace and learning environment.³¹ Additionally, the second edition of the National Guidelines for Provision of Adolescent and Youth Friendly Services identifies the provision of these services without discrimination, including discrimination against key populations as essential to the provision of adolescent and youth friendly services.³² The second edition of the Kenya School Health Policy provides for mechanisms for the provision of “values and life skills” as a key component of a comprehensive school health program, and mentions the need to “equip learners with age appropriate sexual reproductive health information to help them deal with vulnerabilities associated with adolescence” as a strategy for safeguarding learning from GBV as well as equipping them with sustainable skills and competences.³³ The policy also identifies equality and non-discrimination as a guiding principle for its implementation. The 2015 National Adolescent Sexual and Reproductive Health Policy identifies the contribution “to increased access to ASRH information and age-appropriate comprehensive sexuality education” and addressing “the special SRHR-related needs of marginalised and vulnerable adolescents” as key objectives.³⁴ The policy also identifies respect for human rights and fundamental freedoms, including freedom from discrimination as well as the need for “responsiveness to varying sexual and reproductive health needs of adolescents” as key principles for its implementation.

Sources of Data

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- Kenya School Health Policy https://www.ncikenya.or.ke/documents/KENYA%20SCHOOL%20HEALTH%20POLICY%20BOOK%20_20_11_2018.pdf

30 Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern African (ESA), <https://healtheducationresources.unesco.org/sites/default/files/resources/ESACommitmentFINALAffirmedon7thDecember.pdf> (accessed April 15 2022)

31 Education Sector Policy on HIV and AIDS, Ministry of Education, Science and Technology

32 National Guidelines for Provision of Adolescent and Youth Friendly Services

33 Kenya School Health Policy

34 National Adolescent Sexual and Reproductive Health Policy

- National Adolescent Sexual and Reproductive Health Policy https://www.popcouncil.org/uploads/pdfs/2015STEPUP_KenyaNationalAdolSRHPolicy.pdf

Specific Data

Education, adolescent and youth-focused, and school health policies and plans that cover sexual education.

Contextual Analysis

Kenya does not have official policies and plans solely dedicated to sexual education.³⁵ However, policies on adolescent SRH services, education and training, education sector policy, youth-friendly service provision, school health policy, HIV and AIDS coordination at the local level, do address sexual education to some extent.³⁶ Additionally, many policies outline specific actions on the part of duty bearers, particularly the ministries of education and health, to enable the implementation of these policies and plans, actions that are yet to be taken. Key is the commitment by the government to either develop a standalone comprehensive sexuality education policy or a life skills education policy with specific comprehensive sexuality teachings. Some reference to key populations, a term that was defined to include men who have sex with men and transgender persons, was made but specific recommendations and/or commitments on how to include young key populations were not outlined.

Data Gaps & Limitations

No data gaps and limitations.

Synthesised Implications

Kenya's patchwork of policies and plans covering sexual education do not address the specific needs of LGBTI learners in the country. There is need for the inclusion of LGBTI learners' needs and priorities in the design of teachings around equality and non-discrimination, sexual diversity, violence on SOGIESC grounds including bullying, and LGBTI sexual and reproductive health needs among other topics. Comprehensive sexuality education is a controversial topic in Kenya, with anti-CSE mobilization contributing significantly to the difficulties faced by the government when it comes to the development and implementation of a CSE standalone policy or life skills training policy that addresses CSE.³⁷ A key stakeholder interviewee noted that LGBTI CSOs have been reticent to work on young LGBTI inclusion, considering the sensitivity of the topic and the risk of being accused of "recruiting"

or "grooming" them. This approach, though helping to shield LGBTI CSOs from these accusations, has enabled anti-CSE movements to "take over" this issue, risking even greater harm on young LGBTI persons. For instance, the Minister of Education made remarks in 2022 justifying the practice of school expulsions and other disciplinary actions against primarily high school students accused of same-sex conduct.³⁸ With the lack of specific and clearly enumerated policies and plans covering young LGBTI needs as part of CSE or life skills training, utterances by high level government officials gain even greater authoritative significance, exacerbating vulnerabilities against this group.

COUNTRY INDICATOR 5: Parliamentary speeches/ parliamentarians

Brief Description

LGBTI inclusion issues were discussed numerous times by the National Assembly of Kenya from 2019 to date. An exhaustive review and analysis of the Senate Hansard from 2019 to date shows that LGBTI inclusion themes were not discussed by the Kenyan Senate.

- *June 20, 2019 Public Petition on an Inquiry into LGBTQI activities in Kenya - National Assembly Debates*

The petition, which sought to inquire into funding sources for LGBTQI rights organizations, was presented by Jennifer Shamalla MP and was read into the record. The petition mentions constitutional provisions which the MP believes oppose LGBTQI rights, including activities by LGBTQI CSOs and their supporters. In addition to requiring key information from the NGO Coordination Board, the petition also sought to have hearings in which the views of the Inter-Religious Council of Kenya (IRCK) on LGBTQI issues were to be elicited. The Speaker of the National Assembly ordered the petition referred to the Justice and Legal Affairs Committee of the National Assembly.

- *September 12, 2019, Extension of Period for Consideration of Specified Public Petition, National Assembly Debates*

The Chair of the Justice and Legal Affairs Committee of Parliament (William Cheptumo MP) tabled a motion to extend the period of consideration of a public petition that was forwarded to the committee by 90 days. The public petition, which had been tabled by Jennifer Shamalla MP and forwarded to the Justice and Legal Affairs Committee

35 Sidze EM et al., From Paper to Practice: Sexuality Education Policies and Their Implementation in Kenya, New York: Guttmacher Institute, 2017, <https://www.guttmacher.org/report/sexuality-education-kenya> (accessed 15 April 2022)

36 Sidze EM et al., From Paper to Practice: Sexuality Education Policies and Their Implementation in Kenya

37 Sidze EM et al., From Paper to Practice: Sexuality Education Policies and Their Implementation in Kenya

38 CS Magoha On Gay Students: I'm Not Against Homosexuals But They Should Be Day Scholars, Citizen Digital, February 14 2022, <https://www.citizen.digital/news/cs-magoha-on-gay-students-im-not-against-homosexuals-but-they-should-be-day-scholars-n292417> (accessed 15 April 2022)

for consideration in June 2019, sought a parliamentary inquiry on “funding of the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex (LGBTQI) agenda by foreign organisations in Kenya.”

The Committee Chair noted that some efforts to carry out the investigations had already taken place, including outreach to the CEO of the NGO Coordination Board, the Inter-Religious Council of Kenya, the Law Society of Kenya, among other groups. In explaining why the Committee was unable to conclude its consideration of the petition within the 60-day time period, the Chair cited other pressing business by parliament. William Cheptumo MP also stated that the “faith-based organizations are quite concerned,” as a justification for the request for an extension. Aden Duale MP, the Majority Leader, opposed the extension, citing that parliament “had no moral authority to discuss something that is contrary to the scriptures and the constitution.” In opposition to an extension, MPs were recorded saying that the petition was “dead on arrival.” John Mbadi MP also reiterated the controversial nature of the inquiry in opposing the extension, describing discussions about gays and lesbians as being “satanic” and “devilish.” Kimani Ichung’wa supported the extension, stating that it would be unfair to all the stakeholders involved, including the Kenyan public. Ichung’wa also alluded to the possibility that the extension of the mandate was opposed by parties who do not want funding sources for the LGBTQI movement to be disclosed. Abdullswamad Nassir described LGBTQI issues as “ungodly and unconstitutional,” implying in addition that parliament had no right to discuss issues that are unconstitutional. The motion for an extension was defeated.

- *November 6, 2019, Convening of Nairobi Summit on International Conference on Population and Development (ICPD) By GOK/UNPF*

During debate over a proposal for engagement with MPs within the parliament’s chambers on the themes of the ICPD, the Majority Leader (Aden Duale MP) opposed such an engagement, alleging that some MPs who were opposed to LGBTQI rights had not been accredited to attend the conference. Aden Duale MP rejected calls for discussions on LGBTQ issues in the parliament’s chambers, threatening to remove persons who discuss these issues by force from the chambers. He was joined by Junet Nuh MP, Olago Aluoch MP, Jimmy Angwenyi MP, Abdullswamad Nassir MP, Omboko Milemba MP and John Mbadi MP, who also rejected any calls to discuss LGBTQ issues in parliament’s chambers. Clement Kigano MP added to the debate by alluding to the fact hosting a meeting to discuss homosexuality in parliament would be grounds for the Speaker’s removal.

On her part Jennifer Shamalla MP clarified that she was not “bashing” LGBTQI persons but that she opposed the community’s clamor for “specific rights.” The parliamentarian also stated that she had evidence that she had been denied accreditation to the conference.

On her part, Millie Odhiambo-Mabona MP drew correlations between the alleged exclusion of Jennifer Shamalla from the ICPD to the exclusion of gay and lesbian issues from being discussed in parliament. Additionally, she spoke of the increasing influence of the US-based right wing movement in Kenya.

- *November 13, 2019, Approval of Nominees For Appointment To The National Cohesion And Integration Commission - National Assembly Debates*

During debate on the approval of nominees for appointment to the National Cohesion and Integration Commission, Chris Wamalwa alluded to the recently concluded ICPD conference where the issue of comprehensive sexuality education was discussed, decrying the possibility of children as young as eight years old being included as part of the CSE program. Thanking the president for his refusal to sign onto the 12 action points identified at the outcome of the conference, the parliamentarian identified CSE and “gayism and lesbianism” as examples of neo-colonialism in Kenya. He also alluded to the president’s statements in 2015 at a joint press conference with US President Barack Obama in which he described LGBTQI issues as a non-issue. The parliamentarian mischaracterised President Kenyatta’s statements as being opposed to same-sex marriage which was not discussed during the joint press conference. The parliamentarian also characterised Article 45 as instituting a constitutional ban on homosexuality.

Chris Wamalwa’s comments were reiterated by David Ole Sankok, who stated that, “you cannot have children through a relationship of gayism and lesbianism.” The parliamentarian added that no words for “homosexual” exist in various languages in the country, congratulated the president for rejecting calls to adopt some action points that were identified during the ICPD and reiterated calls for MPs not to participate in the conference. Jimmy Angwenyi made statements seemingly addressed to the trans community by stating that, “I am not prepared to support anybody who says a man can be a woman and a woman can be a man. We must respect God’s creation.” He also added that he would not support LGBTQ issues that were canvassed during the recently concluded ICPD conference, stating that, “That is why I did not attend this conference which is around here telling us that you can support gayism, lesbianism or lesbian, gay, bisexual, transgender and queer (LGBTQ). We cannot support that. Over my dead body!”

- *March 4, 2020, International Women’s Day - National Assembly Debates*

During this session, MPs debated the theme of the 2020 IWD (“Each for Equal”), Dr Robert Pukose MP stated that the theme should not “interfere” with religious beliefs and teachings. The MP also posed a question on whether support of the IWD theme means that parliament supports “homosexuality and lesbianism.”

- *March 10, 2020, Representation of Special Interest Groups Laws (Amendment) Bill (2019)*

Millie Odhiambo-Mabona MP, while debating the Representation of Special Interest Groups Laws (Amendment) Bill, raised the need to include intersex people as a group covered by the act. She described intersex persons as “people born with two gender organs” and cites some challenges that intersex persons could face when vying for political office as a justification for their inclusion in the bill.

- *November 3, 2020, Adoption of Sessional Paper No. 2 of 2019 on the National Policy on Gender and Development - National Assembly Debates*

Kuria Kimani MP acknowledged the results of the 2019 census that saw Kenya become the first country to tally intersex persons in Africa, citing the need to consider intersex in gender and development policies.

- *February 23, 2021, The Refugees Bill - National Assembly Debates*

During this session, MPs debated clause 19 of the proposed bill (now enacted) that sought to provide for expulsions of refugees and their families on grounds of breach of public morality, regardless of whether this breach is related to the claim for asylum. Justification for the passage of these clauses was made by Peter Kaluma MP who specifically cites the case of LGBTI refugees based in Kakuma refugee camp. Millie Odhiambo-Mabona MP contested the inclusion of the public morality clause on the basis that this is not mentioned as a cause for the rejection of an asylum claim by the 1951 Geneva Convention. As a compromise, the phrase “under the law” was added to sub-clause (2) of clause 19 of the bill.

- *February 25, 2021, Consideration of President’s Reservations to the Employment (Amendment) Bill - National Assembly Debates*

Swarup Mishra supported the removal of clauses on surrogacy from the bill, citing the risk of “international gay adoption” if the law is passed as is.

- *March 11, 2021, The Law of Succession (Amendment) Bill - National Assembly Debates*

Peter Kaluma proposed amendments to Section 29 (a) of the Law of Succession Act to bring the provision in line with the definition of “spouse” under the Marriage Act. The lawmaker cited the risk of the provisions of the Law of Succession Act applying to same-sex couples as the reason for his proposed amendment. The lawmaker specifically cited his wish to exclude same-sex couples for benefiting from the Law of Succession Act as the main reason for his proposal.

- *June 15, 2021, Demise of Jakoyo Midiwo - National Assembly Debates*

During a session commemorating the passing of a parliamentarian, Dr. Eseli Simiyu MP described the deceased MP as follows: “Jakoyo is the man because he is not running after men, he is running after women, so he is not a gay.” This “joke” which was repeated during the session, had previously been made in the wake of accusations that Jakoyo Midiwo frequented Nairobi’s sex work district known as Koinange Street.

- *November 24, 2021 - Community Groups Registration Bill, National Assembly Debates*

During debates over the Community Groups Registration Bill, Josphat Kabinga moved to include the word “immoral” on the list of grounds for which the application for registration of community groups can be rejected. The MP stated that this was a way to prevent groups that “promote immorality” from being registered. The motion was passed. If the Bill is passed in its current state, it could be used to prevent the registration of LGBTI community groups.

- *December 2, 2021, Considered Ruling Sought Constitutionality Of The Proceeds Of Crime And Anti-Money Laundering (Amendment)*

While discussing amendments to an anti-money laundering bill, the house veered off topic to debate homosexuality. Dr Patrick Musimba MP makes reference to LGBTI rights issues as an example of cases in which Kenya exercises its right to choose which international treaties to ratify and which ones not to. He also mentions remarks by President Uhuru Kenyatta that LGBTI issues were not a priority for the country.

- *Feb 15, 2022, Approval of Nominees for Appointment as Chairperson and members of KNCHR - National Assembly Debates*

During this session, Peter Kaluma MP made note of intersex issues, and described intersex persons as belonging to a “third gender.” Seemingly alluding to other groups and identities under the LGBTI umbrella, he describes intersex persons as people who “are born that way” and cannot “choose who they are.”

In congratulating and supporting the nomination of Dr Dennis Nyongesa, who openly identifies as intersex, to the KNCHR, John Kiarie MP also described intersex persons as belonging to a third gender, describing intersex issues as an emotive one for people who cannot distinguish intersex from gays and lesbians. The MP also described intersex persons as “people out of a fault that is not their own are born in a certain condition” highlighting the medical procedures and mutilations that intersex persons are exposed to as a way of correcting their sex characteristics.

- *March 22, 2022, Second Reading of The Children Bill - National Assembly Debates*

During this session, Millie Odhiambo-Mabona MP called for amendment to the clause 24 (3) of the bill, describing the characterisation of intersex persons as having “a disorder of sex development” as discriminatory. The MP went on to provide a definition of intersex persons as “having two organs occurring at the same time.” The MP also distinguished intersex persons from gay, lesbian and transgender persons. To stress the problematic nature of the clause in question, the MP compared the characterisation in the provision as being akin to references to mentally incapacitated persons as “idiots and imbeciles” in older Kenyan laws. Stephen Mule MP supported the bill, stating that it is a way of addressing the adoption of “gayism and lesbianism” through social media, coercion and recruitment.

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- February 25, 2021, Consideration of President’s Reservations to the Employment (Amendment) Bill - National Assembly Debates, <http://parliament.go.ke/sites/default/files/2021-03/Hansard%20Report%20-%20Thursday%2C%2025th%20February%202021%28P%29.pdf>
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Specific Data

Statements by Members of the National Assembly on topics and themes related to LGBTI inclusion.

Contextual Analysis

Most discussions and debates by parliamentarians concerning LGBTI inclusion themes involved the use of threats, stereotypes, or misinformation. Many of the parliamentarians who made remarks about LGBTI persons spoke against them. Such statements clearly impede LGBTI inclusion efforts, especially in the areas of legislative reforms. Additionally, anti-LGBTI remarks were made in the context of key activities and developments inside and outside parliament touching on SRHR, gender equality, women's empowerment, and children's rights. For example, MPs were opposed to engaging with the ICPD 25 that took place in Nairobi, threatening to take severe actions such as ejecting persons from parliament as well as removing the speaker, if LGBTI inclusion themes were discussed during a proposed engagement between parliamentarians and organisers of the ICPD. Additionally, many parliamentarians falsely interpreted key constitutional provisions, particularly Article 45 of the Constitution, as effectively banning homosexuality and/or same-sex marriage. This, coupled with the refusal of MPs to debate topics concerning LGBTI issues, even in cases where such a debate would lead to outcomes that are favourable to their anti-LGBTI rights priorities, is a significant impediment to LGBTI inclusion.

In all, only one MP showed any willingness to accommodate the needs of LGBTI persons, mostly intersex persons, in the crafting of laws and policies.

Data Gaps & Limitations

No data gaps and limitations.

Synthesised Implications

Many MPs are either hostile towards or lack adequate knowledge regarding LGBTI inclusion. In-country programming could support capacity enhancement efforts targeting parliamentarians, including capacity enhancement for KNCHR and LGBTI CSOs to engage in legislative policy advocacy efforts. More resources should be dedicated to analysing parliamentary activities touching on LGBTI inclusion to further contextualise parliamentary discourse when it comes to this issue. This is especially considering that some key developments on LGBTI inclusion, such as the tabling and discussions on an Anti-Homosexuality Bill in 2014, fell outside the scope of the baseline study. Lastly, mapping exercises seeking

to identified allies and opponents on LGBTI inclusion, including potential collaborators outside parliament, should be included as part of in-country programming.

COUNTRY INDICATOR 6: Court judgements/ judges

Brief Description

To date, superior courts of the Kenyan judiciary (composed of the High Court, Court of Appeal, and the Supreme Court) have handled or are currently handling cases dealing with transgender inclusion in the provision of health services, freedom of association, intersex rights, the discriminatory effect of anti-homosexuality laws, among other issues related to LGBTI inclusion.

In 2014, the High Court ruled in favour of a trans rights activist who had been prevented by the government from registering a non-governmental organisation.³⁹ In coming to its decision, the court found that the rejection of the activist's request to register an organisation amounted to a violation her right to fair administrative action. The case was followed by a similar one in 2015, in which the High Court ruled in favour of an LGBTI activist who had been prevented from registering an organisation on the grounds that it contained the words "gay and lesbian."⁴⁰ In coming to its decision, the High Court found that Article 27 (4) of the constitution protected persons on grounds of sexual orientation and that the refusal to register the organisation was in violation of this provision as well as the right to freedom of association under Article 36 of the Constitution. This decision was upheld at the Court of Appeal, which decided the case on a 3-2 majority decision.⁴¹ However, the Attorney General's office appealed this decision once again to the Supreme Court, where the case is currently being heard. Prior court decisions have ordered the government agency in charge of national examinations to change the name and remove the gender marker in a trans woman's academic certificates, arguing that the refusal to change these details amounted to a violation on the right to dignity and was unreasonable, unjustified, and unfair.⁴² The government once again appealed the decision and lost, with the Court of Appeal deciding the case on similar grounds.⁴³

In 2018, the Court of Appeal found the practice of forced anal examinations as a means of "proving" that two persons had engaged in adult, consensual and private

39 Republic v Non-Governmental Organizations Co-ordination Board & another ex-parte Transgender Education and Advocacy & 3 others [2014] eKLR, <http://kenyalaw.org/caselaw/cases/view/100341/> (accessed 28 March 2022)

40 Petition No. 440 of 2013, <http://kenyalaw.org/caselaw/cases/view/108412/> (accessed 28 March 2022)

41 Civil Appeal No. 145 of 2015, <http://kenyalaw.org/caselaw/cases/view/170057/> (accessed 28 March 2022)

42 JR Miscellaneous Application 308a of 2013 Republic v Non-Governmental Organizations Co-ordination Board & another ex-parte Transgender Education and Advocacy & 3 others [2014] eKLR, <http://kenyalaw.org/caselaw/cases/view/100341/> (accessed 28 March 2022)

43 Civil Appeal 355 of 2014 Kenya National Examinations Council v Republic & 2 others [2019] eKLR, <http://kenyalaw.org/caselaw/cases/view/178310/> (accessed 28 March 2022)

same-sex conduct was found to be unconstitutional, effectively banning the practice.⁴⁴

Certain court decisions, such as in the case of *Baby 'A' & Another v Attorney General & 2 Others*, have contributed meaningfully to law and policy reforms.⁴⁵ In this case, the High Court ordered, among other things, the creation of a policy that would address the legal status of intersex persons, even though the court found that the government had not violated the rights of intersex children. The *Baby A* case as it is known, contributed to increased awareness on the rights of intersex persons in the country, with specific legislative and policy interventions such as the inclusion of intersex-focused approaches in the 2019 National Census.

Other strategic litigation attempts have not been as successful. For example, in 2019, the High Court upheld the country's anti-homosexuality law, finding that these laws did not violate the constitution.⁴⁶ The case is currently under appeal. In another case, the High Court found that the Kenya Film Classification's Board decision not to permit the screening of a film that had same-sex themes to be in line with constitutional provisions.⁴⁷ In an attempt by a trans activist to compel the government to develop and implement National Guidelines for the Management of Gender Identity Disorders through the process of judicial review, the High Court held that there was no parent legislation to which the said guidelines would be anchored.⁴⁸

Sources of Data

National Council for Law Reporting (Kenya Law) Case Law Database <http://kenyalaw.org/caselaw/>

Specific Data

LGBTI inclusion issues dealt with by the judiciary of Kenya.

Contextual Analysis

Courts have been the main avenue through which the Kenyan LGBTI movement has agitated for its rights. Strategic litigation has been increasingly relied on as an advocacy tactic due to opposition to LGBTI rights by elected officials in the legislature. The passing of the Constitution of Kenya in 2010 brought with it more expansive human rights protections as well as fewer restrictions on *locus standi*. Additionally, reforms aimed

at bolstering judicial independence and competence as well as reforms making it easier for individuals and groups to institute legal proceedings, have also led to greater trust in the judiciary to deliver on its mandate to dispense equal justice. Even in cases where decisions haven't been completely positive, the High Court has approached the needs of the LGBTIQ community from a holistic viewpoint, working to resolve legal and policy challenges within a restrictive legislative environment. For instance, in the *Baby A* case, the court found that the lack of proper registration mechanisms that address the needs of intersex children did not amount to discrimination. The reliance on strategic litigation as a tool for consolidating LGBTI rights protections under Kenyan law has, however, not been without its defeats. Courts have been unwilling to expansively interpret constitutional provisions to more clearly affirm LGBTI rights, creating far reaching precedent. These decisions show the limits of strategic litigation both as a tool for enforcing positive state obligations to promote and protect the rights of LGBTI persons as well as its obligation not to interfere with the enjoyment of rights by this community.

Data Gaps & Limitations

No data gaps and limitations.

Synthesised Implications

Strategic litigation under the new constitutional dispensation in Kenya has brought with it significant gains as well as defeats when it comes to LGBTI inclusion. The practice of appealing decisions that have a positive impact on LGBTI inclusion by government lawyers, led by the Office of the Attorney General, adds delays to the implementation of significant legal developments in human rights. Additionally, negative outcomes of cases may point to knowledge gaps on LGBTI rights issues among the judiciary. In terms of in-country programming, IGI could focus on sensitization targeting judicial actors and representatives from the Office of the Attorney General, especially by developing knowledge products aimed at deepening the understanding of judicial actors in adjudication, appropriate application of a wide range of legal sources, as well as ways of addressing personal biases. Additionally, on the part of the Office of the Attorney General, in-country programming could target the development of litigation guidelines and/or government policy that discourage appeals of human rights related cases in which the judiciary rules in favour

44 *COI & another v Chief Magistrate Ukunda Law Courts & 4 others* [2018] eKLR, <http://kenyalaw.org/caselaw/cases/view/171200/> (accessed 28 March 2022)

45 *Petition No. 266 of 2013 Baby 'A' (Suing through the Mother E A) & another v Attorney General & 6 others* [2014] eKLR, <http://kenyalaw.org/caselaw/cases/view/104234/> (accessed 28 March 2022)

46 *Petition No. 150 of 2016 Consolidated with Petition No. 234 of 2016 Eric Gitari v Attorney General & another* [2016] eKLR <http://kenyalaw.org/caselaw/cases/view/173946/> (accessed 28 March 2022)

47 *Wanuri Kahiu & another v CEO, Kenya Film Classification Board, Ezekiel Mutua & 4 others* [2018] eKLR <http://kenyalaw.org/caselaw/cases/view/158712/> (accessed 28 March 2022)

48 *Misc. Civil Application 263 of 2014 Republic v Cabinet Secretary Ministry of Health & 2 others Ex-Parte Transgender Education and Advocacy (Suing Through Its Officials) Audrey Mbugua Ithibu (Chairperson) & 2 others* [2015] eKLR <http://kenyalaw.org/caselaw/cases/view/105454/> (accessed 28 March 2022)

of more rights protections. In-country programming could also aim to enhance the capacity of LGBTI rights organisations to integrate strategic litigation in their work as part of a wide-ranging toolkit of tactics and options relevant to their work.

COUNTRY INDICATOR 7: Official reports

Brief Description

KNCHR has been a leader when it comes to documenting LGBTI inclusion issues in its research reports. For example, its 2012 report on SRHR was the first to document the needs of LGBTI persons when it comes to accessing SRH services.⁴⁹ The report documented discrimination and stigma, limited access to services, violence and harassment, lack of adequate and appropriate information, intolerance, affordability issues, and cultural norms and practices as some of the barriers facing LGBTI persons seeking SRH services. The report is mentioned here to contextualise the work of the KNCHR on LGBTI issues to date.

In 2018, the Kenya Law Reform Commission (KLRC) led the development of the Taskforce Report on Policy, Legal, Institutional and Administrative Reforms Regarding the Intersex Persons in Kenya. The report, which was drafted by a multi-sectoral group of state and non-state actors as part of the implementation of the *Baby A* decision discussed previously. The report provides a comprehensive overview of the intersex rights situation in the country, including the Kenyan legal framework, religious perspectives on intersex issues in the country, population size estimates for the intersex community in the country, as well as the lived realities of intersex persons in Kenya. In terms of recommendations, the report proposed legislative reforms aimed at the inclusion of a specific gender marker for intersex persons; the expeditious provision of official documentation, including flexible legislative and administrative procedures for amending sex markers in these documents; reforms to laws on the deprivation of liberty to provide for separate cells for incarcerated intersex persons; public health sector reforms to facilitate the attainment of the highest attainable standard of health for intersex persons; the roll out of public education, awareness

raising and sensitization initiatives on intersex issues among the public as well as among intersex persons and their communities; collection of accurate and verifiable statistics; and the development and review of social protection mechanisms related to the thematic needs of intersex persons as a way of guaranteeing their inclusion in this regard. A similar report by the KNCHR in 2018 also addressed the human rights situation of intersex person in Kenya, making recommendations along similar lines to the taskforce report.⁵⁰ The KNCHR report, however, is distinct in that it also provides information on best practices adopted in other countries to provide for the rights of intersex persons to registration, to be free from discrimination, to live a life without fear, among other protections.

KNCHR has also published a report about LGBTI human rights defenders.⁵¹ The report is distinct in that it covers areas previously not documented as having active LGBTI CSO and HRD participation.⁵² The report recommends the repeal of Sections 162 (a) and (c) and 165 of the Penal Code; the domestication of international standards, guidelines, and best practices on HRD protection; the enactment of comprehensive equality and non-discrimination that provides for protections on the grounds of SOGIE; capacity enhancement of the KNCHR to address the unique needs of LGBTI HRDs; as well as police reforms to enhance their capability and willingness to protect LGBTI HRDs.

A report by a presidential taskforce established to investigate the situation regarding mental health in the country found that LGBTI people faced challenges when accessing mental health services such as accessibility challenges as well as discrimination from mental health service providers.⁵³ The report recommended integration of LGBTI needs in policies, plans and guidelines on mental health service provision in the country; training of health-care workers on non-discriminatory care services as well as the provision of psychosocial support services.

Sources of Data

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49 Realising Sexual and Reproductive Health Rights in Kenya: A myth or reality? Kenya National Commission on Human Rights, 2012 http://www.knchr.org/portals/0/reports/reproductive_health_report.pdf (accessed 15 April 2022)

50 Equal in Dignity and Rights: Promoting the Rights of Intersex Persons in Kenya. Kenya National Commission on Human Rights, 2018, www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights_Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323 (accessed 15 April 2022)

51 Report of the Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding the Intersex Persons in Kenya. Office of the Attorney General of the Republic of Kenya, 2018, www.klrc.go.ke/images/TASKFORCE-REPORT-on-INTERSEX-PERSONS-IN-KENYA.pdf (accessed 15 April 2022)

52 The Undefended Defenders: The Situation of Human Rights Defenders Working Towards Addressing Violence Based on Sexual Orientation, Gender Identity and Expression (SOGIE) in Kenya: A Focus on Garissa, Kajiado and Kisii Counties. Kenya National Commission on Human Rights, 2021, www.knchr.org/Portals/0/KNCHR_The_Undefended_Defender_B5_Final.pdf (accessed 15 April 2022)

53 Mental Health and Wellbeing, Towards Happiness and National Prosperity: A Report by the Taskforce on Mental Health in Kenya. Ministry of Health, 2020, www.pdokkenya.org/uploads/8/0/2/8/80287644/taskforce_on_mental_health_report_web_1_.pdf (accessed 15 April 2022)

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- Ministry of Health. Mental Health and Wellbeing, Towards Happiness and National Prosperity: A Report by the Taskforce on Mental Health in Kenya. Ministry of Health, 2020, www.pdokenya.org/uploads/8/0/2/8/80287644/taskforce_on_mental_health_report_web__1_.pdf
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Specific Data

Official reports from state organs dealing with LGBTI inclusion and covering themes to do with intersex rights, LGBTI HRDs and CSO, and mental health.

Contextual Analysis

Starting with its landmark report on SRHR in 2012, which was developed in the aftermath of a public inquiry on the issue, the KNCHR has continued to document LGBTI inclusion issues from a standpoint that acknowledges that LGBTI rights cannot be affirmed without repealing punitive laws and enacting protective ones. Few other state entities have been willing to document LGBTI inclusion issues in their work, with the overwhelming focus of engagement by state organs being in the realm of HIV and AIDS programming. Though the taskforce on mental health did address LGBTI inclusion issues in this area, a positive development in the efforts to contextualise LGBTI inclusion needs over a wider range of themes, the report did not address root causes of mental health challenges among LGBTI persons in the areas of criminalization and wider societal violence and discrimination. Two key reports on intersex rights point to the government's willingness to engage on the issue. However, key recommendations in both the intersex taskforce report and the KNCHR intersex rights reports, such as the need to reform registration laws to allow intersex persons to have unique gender markers, have not been addressed

by the legislature, meaning that one of the key root causes of intersex rights violations in the country remains unaddressed.

Data Gaps & Limitations

No data gaps and limitations.

Synthesised Implications

In-country programming should consider enhancing the capacity of state organs to implement LGBTI-related findings and recommendations, especially those related to law reform aimed at addressing the right of intersex persons to be legally registered and provided with official identity documents. KNCHR should be provided with technical and other forms of support aimed at mainstreaming the findings and recommendations of its reports and other relevant reports which address LGBTI inclusion themes in a positive manner to target sectors, including law enforcement, the legislature as well as state organs in the executive branch.

COUNTRY INDICATOR 8: Political parties /platforms

Brief Description

Kenya is a multi-party democracy with the Jubilee Party of Kenya (Jubilee) in power. Jubilee has no published official position on LGBTI issues. The National Super Alliance (NASA) Coalition, which was officially dissolved into its constituent parties in 2021, also has no published position on LGBTI issues. Other main political parties, including the Wiper Party, the Orange Democratic Movement (ODM), the United Democratic Alliance (UDA) and the Kenya African National Union (KANU) also do not have published official positions on LGBTI issues.

In 2015, an LGBTI activist who had previously run for elected office in 2012, formed the Equity and Equality Party (EEP).⁵⁴ The EEP sought “to provide and promote equitable economic development and good governance” at local and national levels in line with the Constitution of Kenya.⁵⁵ Although documents show that the party was recruiting members in the lead up to the 2017 Kenya General Elections, it is not listed as one of the 88 registered political parties in the country.⁵⁶

It should be noted however that some parties do include a commitment to human rights and non-discrimination in the political platform, albeit without any references to LGBTI inclusion. For example, the 2017 manifesto of the Orange

54 Kenya's First Openly Gay Politician Forms Party, Kuchu Times, September 29, 2015 <https://www.kuchutimes.com/2015/09/kenyas-first-openly-gay-politician-forms-party/> (accessed 15 April 2022)

55 Do Not Miss the Opportunity to Join this Party, Equality and Equity Party, http://www.kuriafoundation.or.ke/adminpanel/uploads/92416-why_join_equality_and_equality_party.pdf (accessed 15 April 2022)

56 Fully Registered Political Parties, Office of the Registrar of Political Parties, https://www.orpp.or.ke/images/PDFdocuments/REGISTER-OF-PARTICULARS-FULLY-REGISTERED_PARTIES-2022.pdf (accessed 15 April 2022)

Democratic movement committed the party to passing laws that would implement constitutional provisions on non-discrimination.⁵⁷ The manifesto of the Communist Party of Kenya also outlines the party's support for equality and non-discrimination, but without specific approaches on how to achieve these aims.⁵⁸ Lastly, the Ukweli Party requires all aspirants seeking their party's nomination to sign a pledge committing not to "practice or condone any forms and acts of discrimination, racism, sexism, xenophobia, prejudice, hatred, bigotry against any individual or group in Kenya."⁵⁹

Sources of Data

- Pamphlet, Why Join the Equity and Equality Party? http://www.kuriafoundation.or.ke/adminpanel/uploads/92416-why_join_equity_and_equality_party.pdf
- ODM Manifesto https://odm.co.ke/wp-content/uploads/2021/09/odm_manifesto.pdf
- Communist Party of Kenya Manifesto <https://www.comunistpartyofkenya.org/documents/archived/MANIFESTO%20OF%20THE%20COMMUNIST%20PARTY%20OF%20KENYA%202019.pdf>
- Ukweli Party Nominations Pledge of Commitment https://ukweliparty.org/docs/UP_pledge_of_commitment.pdf
- Key Stakeholder Interviews

Specific Data

Ruling party and opposition party manifestos that lay out commitments to human rights, equality, and non-discrimination.

Contextual Analysis

The ruling Jubilee Party, the main opposition parties and even less mainstream political parties do not have a platform that takes LGBTIQ inclusion into account. The Equity and Equality Party, which was founded by an openly gay LGBTIQ rights activist, may have had a pro-LGBTIQ platform but this is hard to determine due to data gaps and limitations outlined below. Most Kenyan parties are centre-right, espousing a conservative social ideology that privileges the notion of the family as the basic societal unit, traditional gender norms and opposition to cultural liberalism manifested by expansive women's and LGBTIQ rights.

Although not official party policy, many mainstream political leaders have also voiced their opposition or apathy towards LGBTIQ rights and inclusion. For instance, President Uhuru Kenyatta, who leads the Jubilee Party, called LGBTIQ rights a "non-issue" in 2015 during a televised press conference with US President Barack Obama.⁶⁰ He once again described gay rights as an issue of "no importance" to Kenyans during a 2018 interview, although hinting that his personal views on the matter may differ from those of most Kenyans.⁶¹ On his part, Raila Odinga, who led the now disbanded NASA Coalition and now leads the ODM, said that men and women found engaging in homosexual acts would be arrested.⁶² He later denied making those statements.⁶³ In 2015, William Ruto, the leader of the recently formed UDA party, warned that there was "no room" for LGBTIQ persons in Kenya.⁶⁴ In a March 2022 interview, he reiterated that his Christian background teaches against homosexuality but if elected president, the Constitution and local laws would be the guiding principle.⁶⁵ Other prominent politicians, such as Esther Passaris who represents Nairobi County in the Senate, has openly supported LGBTIQ rights on social media, facing backlash for doing so.⁶⁶

Previous research on the topic, adopting a continental African perspective, has shown that many politicians

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- 57 Deepening Reforms for Equity and Social Justice: Our Plan for Government (2013 – 2017), Orange Democratic Movement, https://odm.co.ke/wp-content/uploads/2021/09/odm_manifesto.pdf (accessed 15 April 2022)
- 58 Manifesto of the Communist Party of Kenya, Communist Party of Kenya <https://www.comunistpartyofkenya.org/documents/archived/MANIFESTO%20OF%20THE%20COMMUNIST%20PARTY%20OF%20KENYA%202019.pdf> (accessed 15 April 2022)
- 59 Form 3: Nominations Pledge of Commitment, Ukweli Party, https://ukweliparty.org/docs/UP_pledge_of_commitment.pdf (accessed 15 April 2022)
- 60 Kenyatta: Gay rights is a non-issue for Kenya, Al Jazeera, 25 July 2015, <https://www.aljazeera.com/news/2015/7/25/kenyatta-gay-rights-is-a-non-issue-for-kenya> (accessed 15 April 2022)
- 61 President: Gay rights 'of no importance' in Kenya, April 20, 2018, CNN YouTube Channel, <https://www.youtube.com/watch?v=IwTqU-RZLHQ> (accessed 15 April 2022)
- 62 Odinga Remarks Spark Persecution Fears for Kenya's Gay Community, 29 November 2010, VOA, <https://www.voanews.com/a/odinga-remarks-spark-persecution-fears-for-kenyas-gay-community-111057574/156941.html> (accessed 15 April 2022)
- 63 Raila denies gays' arrest order, 2 December 2010, Nation, <https://nation.africa/kenya/news/politics/raila-denies-gays-arrest-order-747866> (accessed 15 April 2022)
- 64 'No Room for Gays' in Kenya, Says Deputy President William Ruto, 4 May 2015, NDTV, <https://www.ndtv.com/world-news/no-room-for-gays-in-kenya-says-deputy-president-william-ruto-760438> (accessed 15 April 2022)
- 65 Ruto's take on the safety of the LGBT community in Kenya, 4 March 2022, The Star, <https://www.the-star.co.ke/news/2022-03-04-rutos-take-on-the-safety-of-the-lgbt-community-in-kenya/> (accessed 15 April 2022)
- 66 KOT bash Passaris for allegedly supporting same-sex marriage, The Standard, 27 May 2019, [https://www.standardmedia.co.ke/ureport/article/2001327221/kot-bash-passaris-for-allegedly-supporting-same-sex-marriage](https://www.standardmedia.co.ke/adblock?u=https://www.standardmedia.co.ke/ureport/article/2001327221/kot-bash-passaris-for-allegedly-supporting-same-sex-marriage) (accessed 15 April 2022)

adopt homophobic speech during times of crisis in their political careers, especially when they are unpopular.⁶⁷

The existence of interest by LGBTI activists to engage in the political process by running for public office was notable, considering that the activist in question had initially run for office before deciding to establish a political party. However, key stakeholder interviews noted that security as well as lack of funding and other forms of support for LGBTI candidates are some of the main impediments to even greater participation in politics.

Data Gaps & Limitations

Some data gaps and limitations were encountered. As 2022 is an election year in Kenya, many websites have removed earlier versions of their manifestos from the internet. Additionally, the reliance of this indicator on *published* party platforms and manifestos was also limiting, especially considering the prevalence of anti-LGBTI among the Kenyan political class. A few mainstream national political leaders' comments on LGBTI issues were added to address this limitation.

Synthesised Implications

Political parties are unwilling to include LGBTI inclusion proposals in their official platforms and published manifestos. However, more parties continue to be willing to include human rights as part of their platforms. Mainstream national level politicians have histories of making anti-LGBTI remarks. However, many of these remarks have since been tempered, clarified and in some cases rejected by their speakers. This might point to increasing political sensitivity towards LGBTI rights by political elites, fearing alienating key western partners who are increasingly making LGBTI inclusion demands. In-country programming could support work by the KNCHR and other relevant stakeholders to create awareness on LGBTI inclusion issues as part and parcel of duty bearers' mandates as well as sanction anti-LGBTI hate speech. The latter is especially important due to willingness by state actors to criminalise as well as take preventative measures against ethnic, gender and other forms of hate speech. In-country programming could also support LGBTI organisations to develop their skills including outreach, research, documentation, and campaigning skills, as a way of enhancing LGBTI CSO capacity to engage in political advocacy. Support to LGBTI activists interested in entering politics, including connecting them with organisations that offer mentorship, technical skills training, among other forms of support, should also be considered.

OUTCOME 2: Capacity of LGBTIQ activists and allies to sensitise and influence relevant decision-makers and to hold authorities to account

COUNTRY INDICATOR 9: Cross-movement joint initiatives to influence and/or holding authorities to account

Brief Description

There are a few cross-movement joint initiatives currently active in Kenya. For example, the Gay and Lesbian Coalition of Kenya (GALCK) encompasses over 30 LGBTI organisations from across the country, working on a wide range of issues including HIV and AIDS services, LGBTI safety and security, as well as advocacy and human rights. The Nyanza Rift Valley and Western Kenya LGBTI Network (NYARWEK) is also a coalition of organisations from the region working on similar LGBTI inclusion issues. Additionally, GALCK and NYARWEK are partners who have established the Integrated SOGIE Community Online Platform (ICOP), a web-based portal with mobile web functionality aimed at enhancing meaningful LGBTI engagement and ownership in research. Both organisations are also members in the G10 research engagement, a coalition of 13 organisations formed in 2014 which established a 2016 to 2018 roadmap for "enhancing and sustaining meaningful research collaboration between the SOGIESC community, researchers and donors" including some state agencies who engage with key populations such as the National AIDS and STIs Control Programme (NASCOPI).

The Key Populations Consortium of Kenya, a coalition of key population led CSOs founded in 2015 with the aim of comprehensively addressing and promoting the health, human rights, and socio-economic wellbeing of key populations in the country, works closely with LGBTI CSOs (who form part of its membership) to advocate for LGBTI inclusion in HIV, AIDS and STI programming in the country.⁶⁸

Right Here Right Now (RHRN), a platform of CSOs founded in 2016 with the aim of enhancing the promotion and protection of the SRHR of young people and currently in its second iteration, saw the participation of the GALCK during its first iteration as well as the participation by the

67 Mwikya, K, Unnatural and Un-African: Contesting queer-phobia by Africa's political leadership, Feminist Africa, https://feministafrica.net/wp-content/uploads/2019/10/standpoints_-_unnatural_and_un-african-contesting_queer-phobia_by_africagcos_political_leadership.pdf (accessed 15 April 2022)

68 Key Population Consortium of Kenya Facebook Page, <https://www.facebook.com/kpconsortium/> (accessed 15 April 2022)

National Gay and Lesbian Human Rights Commission (NGLHRC) in its second iteration.⁶⁹

Strategic litigation efforts also point to cross-movement joint initiatives to hold authorities to account. According to key stakeholder interviewees, a prime example was the strategic litigation at the High Court which challenged the criminalisation of same-sex conduct and saw the participation of LGBTI CSOs, mainstream human rights CSOs, and the KNCHR.

Sources of Data

- GALCK website <https://www.galck.org>
- ICOP website <https://www.icop.or.ke>
- Key Population Consortium of Kenya Facebook Page, <https://www.facebook.com/kpconsortium/>
- Network for Adolescent and Youth of Africa website <https://nayakenya.org>
- Key stakeholder interviews

Specific Data

- Websites and strategy documents describing cross-movement joint initiatives to influence and/or holding authorities to account.

Contextual Analysis

The existence of cross-movement joint initiatives points to interest among LGBTI CSOs to pool resources and consolidate efforts towards common goals and priorities. Cross-movement joint initiatives between LGBTI CSOs and CSOs from wider movements were in most cases anchored on specific initiatives, such as strategic litigation.

Data Gaps & Limitations

Some data gaps and limitations were encountered. Many cross-movement joint activities are not formalised through agreements that are publicly available, and documentation of these activities is limited due to the sensitive nature of the engagements and collaborations. Additionally, some key stakeholder interviewees were reticent to discuss these collaborations in depth, for reasons of sensitivity of these relationships mentioned above. However, some documentation does exist, and some key stakeholder interviewees were willing to discuss their participation in cross-movement joint activities.

Synthesised Implications

In-country programming should consider mapping and documenting cross-movement joint initiatives to identify

underserved areas that could benefit from such initiatives. Support for capacity enhancement with the aim of promoting meaningful LGBTI engagement in research, such as the G10 roadmap, should be provided with technical and other support with the aim of bolstering this area of work. Additionally, in-country programming should consider replicating these joint initiatives in other areas of LGBTI inclusion and supporting LGBTI leadership at every stage of such engagements.

COUNTRY INDICATOR 10: LGBTIQ activists involved in processes related to broader rights, development, and gender equality issues

Brief Description

There is some direct involvement by LGBTI activists and CSOs in wider rights, development, and gender equality but these initiatives are not well documented. Key stakeholder interviewees noted the participation of LGBTI activists and CSO in efforts to ensure police accountability for extra-judicial killings and violence against HRDs; in protest actions against GBV, including violence against women; anti-corruption and governance initiatives and activities, among other areas. Additionally, some LGBTI CSO representatives who participated in these activities noted efforts aimed at supporting other causes, such as making financial and charitable contributions to non-LGBTI initiatives and campaigns.

Some key stakeholder interviewees noted some unwillingness by CSOs and leaders of broader movements to publicly engage with LGBTI CSOs and activists on these issues, citing the fear of backlash or association of these broader movements with the still controversial issue of LGBTI inclusion. In other cases, some broader CSOs, especially in the areas of gender equality, outrightly reject working with LGBTI CSOs and activists, citing religious, cultural, or moral teachings or by expressing disinterest or unwillingness in integrating LGBTI inclusion in their work.

Sources of Data

- Key Stakeholder Interviews

Specific Data

- Involvement of individual LGBTI activists in broader rights movements including on gender equality, governance, and rights issues.
- Reticence by some mainstream organisations to work with or have affiliation with LGBTI CSOs for fear

69 Right Here Right Now II (RHRN II), <https://nayakenya.org/right-here-right-now-ii/> (accessed 15 April 2022)

of both internal and external backlash.

Contextual Analysis

Many LGBTI rights activists are politically active and motivated to create change within their communities. LGBTI CSOs in principle support broader and progressive rights and governance issues including gender equality, anti-corruption, and inclusive development. However, many LGBTI activists and CSOs are reticent to engage with these broader movements out of fear of being rejected by such movements. These fears are not unfounded, as some organisations, especially in the gender equality sector, are opposed to LGBTI rights outright, or are unwilling or disinterested in integrating LGBTI inclusion in their work. Although this is changing, considering that broader movements are slowly expanding their understanding of human rights, gender equality and development to include LGBTI populations, LGBTI inclusion issues are difficult to integrate in Kenya's regimented CSO sector. This has led to the alienation of LGBTI issues from broader issues. However, some key stakeholders noted that youth-led or women-led organisations, including start-up CSOs, were seemingly more likely to integrate LGBTI inclusion into their work from the start. An example given was Feminists in Kenya, a youth-led feminist movement organisation that had integrated LGBTI inclusion themes into its work.⁷⁰

Data Gaps & Limitations

Lack of documentation on involvement of LGBTI activists and CSOs in broader rights, development and gender equality issues made it difficult to assess the level of depth and history of any such engagements. These gaps and limitations were mitigated partly by relying on key stakeholder interviews.

Synthesised Implications

Many opportunities exist for LGBTI activists and CSO to be involved in broader rights, development, and gender equality issues. Interviews by key stakeholders point to a two-sided reticence by both LGBTI activists and CSOs and "mainstream" CSOs to engage with each other. In-country programming could enhance the capacity of the KNCHR to bring together LGBTI and non-LGBTI stakeholders in a bid to establish collaborations between these camps. Additionally, in-country programming could also support mapping of LGBTI CSOs, their allies and supporters, and potential allies and supporters, with the aim of identifying points of engagement and collaboration amongst these organisations. Lastly, in-country programming could support the capacity of LGBTI activists and CSOs to integrate broader issues into their work, including ways

of conducting outreach to non-LGBTI activists and CSOs working on similar issues.

COUNTRY INDICATOR 11: Allies from other movements involved in LGBTI inclusion processes

Brief Description

Some allies from other movements are involved in LGBTI inclusion initiatives and projects, especially on topics related to equality and non-discrimination, HIV and AIDS programming, and SRHR. These include both CSOs and individual activists. In 2019, a Kenyan LGBTI activist published a book titled *Rafiki Zetu: Kenyan LGBTIQ Stories, As Told by Allies*, an anthology featuring articles, poems, short stories, and a play by Kenyans who identify as straight but are supportive of LGBTIQ rights.⁷¹ The book provides some account of the work done by allies, spanning from individual to organisational efforts, to support LGBTI inclusion.

Organisations such as the KNCHR, the Kenya Human Rights Commission (KHRC), Defenders Coalition, the Kenya Ethical Legal Network (KELIN), NEPHAK, WOFAK, Katiba Institute, the Trust for Indigenous Culture and Health (TICAH), the Kenya Chapter of the International Commission of Jurists (ICJ Kenya), Amnesty International Kenya, NAYA, Family Health Options Kenya (FHOK), and Kituo Cha Sheria, among others, were identified by key stakeholders as allies who had integrated working with LGBTI CSOs and activities, thereby serving the human rights needs of LGBTI persons. Additionally, some grassroots and community-based organisations, including organisations working on social justice, economic rights, and governance issues were identified as being sympathetic to and understanding of LGBTI inclusion, and as accepting capacity enhancement engagements on LGBTI inclusion within their spaces.

Sources of Data

- Key stakeholder interviews
- *Rafiki Zetu: Kenyan LGBTIQ Stories, As Told by Allies* <https://kumbukumbu.co.ke/?p=190>

Specific Data

Key stakeholder interviews discussing the history and extent of the involvement of CSO and individual allies in LGBTI inclusion. Publication containing recollections and other information by allies involved in LGBTI inclusion in Kenya.

⁷⁰ Feminists in Kenya website, <https://feministsinkkenya.com> (accessed 15 April 2022)

⁷¹ #RafikiZetu: A book about gay Kenyans by straight Kenyans, KumbuKumbu, 17 March 2020, <https://kumbukumbu.co.ke/?p=190> (accessed 15 April 2022)

Contextual Analysis

Allies for LGBTI inclusion have been active in the movement ever since LGBTI rights became a salient issue in Kenya in the early 2000s. Mostly drawn from human rights, equality, non-discrimination and SRHR CSOs, these allies have supported LGBTI inclusion in their own movements and platformed LGBTI voices in their own spaces and networks. Documentation on the work of allies for LGBTI inclusion is scarce, making it difficult to assess the extent of their engagement on these issues as well as any challenges they may encounter from this work. This is especially the case when it comes to efforts by allies to influence positive change in public views regarding LGBTI inclusion in their own families, workplaces, and communities. Additionally, it was difficult to assess why some organisations and not others were involved in LGBTI inclusion efforts. Some key stakeholders speculated that some organisations were either unwilling to engage with LGBTI CSOs and activists or had not had an opportunity to meet with LGBTI CSOs and activists.

However, allies in organisations such as the KNCHR have spearheaded a greater appreciation of LGBTI inclusion issues into the organisation, leading to ground-breaking research, advocacy, and policy reform campaigning. However, other ways of allyship such as the establishment of ally associations (e.g., ally groups) as well as participating in public LGBTI advocacy initiatives such as marches, are yet to emerge in the country.

Key stakeholders worried that in many organisations, involvement in LGBTI inclusion efforts was on account of individuals in these organisations who are sympathetic to this issue, as opposed to concerted efforts to institutionalise and integrate LGBTI inclusion in programming. There was some disagreement among key stakeholders on whether KNCHR fell into this category of organisations.

Data Gaps & Limitations

Limited data exists on the extent of the activities of allies for LGBTI inclusion in Kenya, though this is slowly changing with the publication of *Rafiki Zetu* mentioned above, for example. Limited documentation of these activities also means that it is difficult to contextualise the work of allies, their links with LGBTI activists and CSOs and the impact of their work. This challenge was however addressed through the key stakeholder interviews.

Synthesised Implications

Opportunities exist for the growth of allies for LGBTI inclusion in Kenya, especially considering the role allies can play to influence positive change in perceptions and attitudes on LGBTI inclusion in their communities. In-country programming could support efforts towards deeper collaboration between allies and LGBTI activists and CSOs. Additionally, in-country programming could enhance the capacity of supporters of LGBTI inclusion

within the KNCHR to have a more prominent voice and ability to influence positive change across the organisation. Examples of proposed initiatives include support for the hiring of an LGBTI thematic lead at KNCHR, the organisation's participation in key calendar dates for the LGBTI movement including IDAHOBIT, TDOV, TDOR, World AIDS Day, Pride Months etc. Such support could also be extended to other allies for LGBTI inclusion. In-country programming should also support the work of LGBTI activists and CSOs seeking to deepen advocacy links with allies for LGBTI inclusion.

OUTCOME 3: Inclusion, participation, representation, and influence of diverse African LGBTIQ populations and their allies in relevant policy and decision-making

COUNTRY INDICATOR 12: Involvement of LGBTI population in policy development processes

Brief Description

Involvement of LGBTI persons in policy development in Kenya is mostly restricted to HIV and AIDS policy planning and implementation. For instance, key populations are identified as stakeholders in strategies and approaches discussed under Indicators 3 (official policies/ plans/ technical guidance related to SRHR) and 4 (official policies/ plans on sexual education) above. Key stakeholders who had been involved in these processes also confirmed the participation of LGBTI CSOs, LGBTI activists and both. The involvement of intersex rights organisations in the development of both the intersex taskforce report and the KNCHR intersex reports, documentation that is meant to directly influence efforts towards intersex inclusion through legal reforms, is another example of LGBTI CSOs and activists engaging in policy development processes.

Key stakeholder interviews also pointed to involvement of LGBTI population in attribute contributions and input by LGBTI CSOs and activists ongoing policy development process at the sub-national (county) level. For instance, LGBTI CSOs and activists are currently involved in the development of the Mombasa County GBV Policy.

Sources of Data

- Kenya AIDS Strategic Framework II (KASF II) <https://nacc.or.ke/kenya-aids-strategic-framework-kasf-ii/>

- Policy for the Prevention of HIV Infections Among Key Populations in Kenya <https://hivpreventioncoalition.unaids.org/wp-content/uploads/2020/02/Policy-for-Prevention-of-HIV-Infections-among-Key-Population-in-Kenya-June-2016-A5.pdf>
- National Guidelines for HIV/STI Programming with Key Populations <https://www.icop.or.ke/wp-content/uploads/2016/10/KP-National-Guidelines-2014-NASCOP.pdf>
- National Implementation Guidelines for HIV and STI Programming Among Young Key Populations <https://www.iavi.org/phocadownload/userupload/National%20Implementation%20Guidelines%20for%20HIV%20and%20STI%20Programming%20among%20YKPs%202018.pdf>
- Fast-Track Plan to End HIV and AIDS among Adolescents and Young People https://reliefweb.int/sites/reliefweb.int/files/resources/Kenya_Fast_Track_Plan_to_End_Adolescents_AIDS_and_Young_People.pdf
- Policy Analysis and Advocacy Decision Model for Services for Key Populations in Kenya https://www.healthpolicyproject.com/pubs/744_KenyaMSMDecisionModelReportFORMATTEDfinal.pdf
- National Guidelines for Provision of Adolescent and Youth Friendly Services http://guidelines.health.go.ke:8000/media/National_guidelines_for_provision_of_youth_friendly_services.pdf
- National Adolescent Sexual and Reproductive Health Policy https://www.popcouncil.org/uploads/pdfs/2015STEPUP_KenyaNationalAdoISRHPolicy.pdf
- Report of the Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding the Intersex Persons in Kenya. Office of the Attorney General of the Republic of Kenya, 2018 <https://www.knchr.org/Portals/0/INTERSEX%20TASKFORCE%20FREPORT-Abridged%20Version.pdf>
- Equal in Dignity and Rights: Promoting the Rights of Intersex Persons in Kenya. Kenya National Commission on Human Rights, 2018 https://www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights_Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323
- Key Stakeholder Interviews

Specific Data

- Official policies, plans and technical guidance related to SRHR or UHC that attribute contributions and input by LGBTI CSOs and activists.
- Official reports from state organs dealing with LGBTI inclusion and covering themes to do with intersex rights, LGBTI HRDs and CSO, and mental health attribute contributions and input by LGBTI CSOs and activists.
- Key stakeholder interviews mentioning LGBTI CSOs and activist involvement in policy development processes.

Contextual Analysis

Most LGBTI CSO and activist involvement in Kenya in the past decade has contributed to the development of HIV and AIDS policies, plans and technical guidance, followed by SRHR and sexual education policies, plans and technical guidance. Involvement in the latter has been more limited, however. The involvement of intersex CSOs and activists in the development of reports aimed at further contextualising the human rights situation of intersex prior to legislative and other reforms is also notable.

Key stakeholders interviewed as part of this study noted the exclusion of LGBTI CSOs and activists in certain policy development processes, such as the development of the Draft National Policy on Family Promotion & Protection, which is currently ongoing.⁷² The key stakeholders interviewed regarding this draft policy worried that it would be used to further exclude LGBTI persons from exercising their right to a family. Additionally, some key stakeholders doubted the effectiveness and efficacy of the policies previously outlined, with one interviewee pointing out that organisations with whom some of these policies processes took place were unwilling to defend them during the Repeal 162 litigation campaign at the High Court. Lastly, some key stakeholders expressed interest in engaging in the legislative processes but acknowledged that their participation in these forums could invite backlash and even regression in terms of LGBTI inclusion. None of the key stakeholders had engaged in public participation exercises during the development of a law at either the national or sub-national levels.

Engagement by LGBTI CSOs and activists in policy development processes at county level is a new area of collaboration that, even though nascent and not well documented, offers even more opportunities for engagement going forward.

72 Draft National Policy on Family Promotion and Protection, Ministry of Labour and Social Protection, <https://www.socialprotection.go.ke/wp-content/uploads/2020/04/FINAL-Family-policy-Dec-2019.pdf> (accessed 15 April 2022)

Data Gaps & Limitations

There are some data gaps and limitations. For instance, due to the limited number of key stakeholders who were identified for this activity, it is difficult to know the full extent of LGBTI CSO and activist involvement in policy development processes at the sub-national (county) level.

Synthesised Implications

In-country programming should consider enhancing the capacity of state organs to implement the findings of their policies as well as bolster continued LGBTI CSO and activist participation in that regard. Additionally, KNCHR, which has published a guidance on how policy processes can incorporate human rights principles⁷³, should have this work expanded with a view of providing even greater oversight powers over these processes as well as mapping policy development processes at both national and sub-national level. In-country programming should also consider enhancing the capacity of LGBTI CSOs networks to engage in both national and sub-national policy processes, with the aim of maximising opportunities for LGBTI inclusion in this regard.

COUNTRY INDICATOR 13: Coordinated advocacy and policy messaging amongst LGBTI groups (to influence law, policies, or programming)

Brief Description

Coordinated advocacy and policy messaging amongst LGBTI groups to influence laws, policies and programming exist in Kenya. For example, GALCK, NYARWEK and the Key Populations Consortium have established systems and protocols for coordination and policy messages across themes such as HIV and AIDS programming, safety and security, advocacy, and research, according to key stakeholders and organisational websites. Platforms such as ICOP and the G10 research engagement described previously also enable member organisations to coordinate research activities geared towards influencing laws, policies, and programming. Additionally, LGBTI CSOs and activists also coordinate advocacy and policy messaging on a needs basis. Examples given in the key stakeholder interviews include during the Repeal 162 campaign, as well as coordinating social media messaging on a needs basis. Some key stakeholders noted that such coordination had decreased over the past two years, attributing this to burnout and the refocusing of organisational priorities during the COVID-19 pandemic.

Sources of Data

- Key stakeholder interviews.
- GALCK website <https://www.galck.org>
- ICOP website <https://www.icop.or.ke>
- G10 Research Engagement: A 3 Year Roadmap for Action for Sexual Orientation Gender Identity and Expression (SOGIE) Engagement in Research (2016/17 -2018/2019). ICOP, 2016, www.icop.or.ke/wp-content/uploads/2016/09/G10-Research-Engagement-Road-Map-201617---201819.pdf

Specific Data

- Websites, research strategies and key stakeholder interviews showing coordinated advocacy and policy messaging amongst LGBTI groups (to influence laws, policies, or programming).

Contextual Analysis

Coordinated advocacy and policy messaging amongst LGBTI groups to influence laws, policies and programming in Kenya has been a core element of LGBTI movement organising since its founding in the mid 2000s. Coalitions, which have in-built systems for coordinated advocacy and policy messaging, seem to be in the best place when it came to the sustainability of these engagements, based on the key stakeholder interviews. Most of this coordination was on a needs basis, or in relation to developments that have a movement-wide impact, such as the campaign to repeal laws on same-sex conduct. The slow-down of coordination among LGBTI CSOs and activists over the last two years is a notable concern, especially considering the difficulty of restarting these forms of coordination.

Data Gaps & Limitations

Some data gaps and limitations were encountered. Although some key stakeholders mentioned the existence of written agreements formalising this coordination, none of those are publicly available for scrutiny and it is difficult to know their extent.

Synthesised Implications

In-country programming should consider enhancing the capacity of LGBTI CSOs and activists to reenergise previous coordination on advocacy and policy messaging, including possible capacity building exercises on ways of building sustainable systems for this. A mapping exercise of all LGBTI CSOs - with the aim of aiding these

73 Guidelines for a Human Rights-Based Approach to Public Policy and Law Making at the National and County Levels, Kenya National Commission on Human Rights, 2017, <https://www.knchr.org/Portals/0/GeneralReports/Guidelines%20for%20HRBA%20To%20Public%20Policy%20and%20Law%20Making.pdf?ver=2018-06-06-183235-460> (accessed 15 April 2022)

organisations identify each other, network, and establish coordination systems for policy and advocacy messaging, among other activities - should also be considered as part of in-country programming efforts.

COUNTRY INDICATOR 14: Coordinated advocacy and policy messaging between LGBTI groups and other development actors (to influence law, policies, or programming)

Brief Description

Coordinated advocacy and policy messaging between LGBTI groups and other development actors exist. Participants in the key stakeholder interviews mentioned collaborations between and among LGBTI actors and development actors such as the UNHCR, UNDP, foreign embassies who fund Kenyan government programmes on LGBTI inclusion under the Kenya SOGIE Forum. Specific policy messaging examples include in the lead up to, during and after the publication of the decision by the High Court finding that Section 162 (a) and (c) and 165 of the Penal Code did not violate the constitution. From the stakeholder interviews, other coordinated advocacy and policy messaging were documented, including in the lead up to Kenya's universal periodic review (UPR) at the Human Rights Council as well as prior visits by high level foreign dignitaries such as US President Barack Obama's visit to Kenya in 2015.

Sources of Data

- Key Stakeholder Interviews

Specific Data

- Coordinated advocacy and policy messaging between LGBTI groups and other development actors aimed at influencing law, policies, and programming in the areas of anti-discrimination, national and foreign policy, human rights policy, and refugee policy.

Contextual Analysis

The relative freedom in which civil society organisations operate, the role of Kenya as a diplomatic hub for east and central Africa as well as the Kenyan government's

interest in being recognised as a human rights leader in the continent, has created opportunities and spaces for coordinated advocacy and policy messaging between LGBTI groups and other development actors. Important avenues to discuss LGBTI inclusion, based on the key stakeholder interviews, seem to be limited by a range of factors including diplomatic and foreign policy considerations, the need to maintain good relationships with the Kenyan government, and lack of willingness to intervene in emerging LGBTI inclusion trends among other factors.

Data Gaps & Limitations

The existence of coordinated advocacy and policy messaging between LGBTI groups and other development actors is not publicly documented, considering the sensitive nature of these relationships.

Synthesised Implications

Coordinated advocacy and policy messaging between LGBTI groups and other development actors is an under-explored aspect of LGBTI inclusion efforts in the country, based on the findings of the key stakeholder interviews. In-country programming may intervene by consolidating ways of working, communities of practice, reliance on action points and commitments, among other approaches aimed at leveraging the networks, relationships and aspirations of the stakeholders participating in these forms for coordinated advocacy and policy messaging. Examples include publication of press statements on LGBTI inclusion issues, diplomatic advocacy efforts on LGBTI inclusion, increased financial and other forms of support for LGBTI inclusion, among other efforts.

COUNTRY INDICATOR 15: Official policies/ strategies per sector (poverty, gender equality, health, justice, education)

Brief Description

Most official policies or strategies in the areas of poverty, gender equality, health, justice, and education that address LGBTI inclusion, other than those discussed previously, do not address specific LGBTI inclusion needs and priorities. KNCHR's strategic plan does not mention LGBTI inclusion priorities, save for intersex rights work.⁷⁴ The Strategic Plan of the National Gender and Equality Commission (NGEC) also does not provide for LGBTI inclusion priorities, strategies, or approaches.⁷⁵

74 Kenya National Commission on Human Rights Strategic Plan 2018 – 2023, <https://www.knchr.org/Portals/0/StrategicReports/Strategic%20Plan%202018-2023.pdf?ver=2018-08-21-105400-580> (accessed 15 April 2022)

75 National Gender and Equality Commission Strategic Plan 2019 – 2024, <https://www.ngeckkenya.org/Downloads/NGEC-Strategic-Plan-2019-2024.pdf> (accessed 15 April 2022)

The Kenya Health Policy (2014 to 2030) identifies inclusiveness, non-discrimination, social accountability, and gender equality as some of the principles for its implementation.⁷⁶ The policy also identifies the reduction of unsafe sexual practices among key populations as a policy objective geared towards minimising exposure to health risk factors. The strategic plan of the Office of the Attorney General and the Department of Justice identifies equality and fairness and the commitment to undertake and recognise and promote the rights of and be impartial to all stakeholders and serve all without discrimination as one of its core values.⁷⁷ No specific action points on addressing LGBTI inclusion needs are mentioned in the strategic plan. More worryingly, a draft National Policy on the Prevention, Response and Protection from Unlawful Sexual Acts and the Administration of Justice in Sexual Offence Matters fails to adopt a consent-based definition of unlawful sexual acts, and includes sodomy, without providing a definition of this act, in its list of unlawful sexual offences.⁷⁸ The policy, however, does not include section 162 (a) and (c) and 165 of the Penal Code in its list of offences ostensibly covered under its draft policy.

The National Education Sector Strategic Plan (2018 to 2022) outlines some equality, non-discrimination, and inclusion priorities, but does not address specific LGBTI inclusion concerns.⁷⁹

Sources of Data

- KNCHR Strategic Plan <https://www.knchr.org/Portals/0/StrategicReports/Strategic%20Plan%202018-2023.pdf?ver=2018-08-21-105400-580>
- NGEK Strategic Plan <https://www.ngekenya.org/Downloads/NGEK-Strategic-Plan-2019-2024.pdf>
- Kenya Health Policy (2014 to 2030) http://publications.universalhealth2030.org/uploads/kenya_health_policy_2014_to_2030.pdf
- National Education Sector Strategic Plan <https://www.education.go.ke/images/NESSP/NESSP-2018-2022.pdf>
- Office of the Attorney General and Department of Justice Strategic Plan <https://statelaw.go.ke/wp-content/uploads/2020/11/OAGDOJ-Strategic-Plan-9-7-2020.pdf>
- Draft National Policy on the Prevention, Response and Protection from Unlawful Sexual Acts and the Administration of Justice in Sexual Offence Matters

<https://statelaw.go.ke/wp-content/uploads/2021/12/Sexual-Offences-Policy-2021.pdf>

Specific Data

- Official policies/ strategies per sector (poverty, gender equality, health, justice, education) showing minimal or no specific mention of LGBTI inclusion needs and priorities.
- Draft official policy by the Office of the Attorney General pointing to potential discriminatory effect vis-à-vis LGBTI inclusion if the document is approved.

Contextual Analysis

The lack of official policies and strategies in the areas of poverty, gender equality, justice and education are in line with the segmented approach the government has taken when dealing with LGBTI inclusion needs and priorities. It is clear from the research that the government is only willing to engage with LGBTI inclusion themes almost exclusively in the case of HIV and AIDS programming. The national Health Policy only identifies key populations through a prism of reducing unsafe sexual practices and proposes no specific programming catering to key populations and the LGBTI community in general beyond this. The HIV and AIDS programming policies, plans and technical guidance identified in this report serve to supplement as opposed to complement the national Health Policy. Additionally, policies that may touch on areas that directly affect LGBTI populations, such as the draft National Policy on the Prevention, Response and Protection from Unlawful Sexual Acts and the Administration of Justice in Sexual Offence Matters, seek to entrench approaches and strategies that further criminalise LGBTI persons, in this case the adoption of a consent-based definition of unlawful sexual offences.

Data Gaps & Limitations

There are some data gaps and limitations. No recent strategies and approaches on poverty eradication were found.

Synthesised Implications

In-country programming may consider supporting national policy making initiatives related to LGBTI inclusion needs and priorities, especially during reviews and updates to these policies. Capacity enhancement efforts should be extended to KNCHR as a way integrating LGBTI inclusion

76 Kenya Health Policy (2014 to 2030), http://publications.universalhealth2030.org/uploads/kenya_health_policy_2014_to_2030.pdf (accessed 15 April 2022)

77 Office of the Attorney General and Department of Justice Strategic Plan, <https://statelaw.go.ke/wp-content/uploads/2020/11/OAGDOJ-Strategic-Plan-9-7-2020.pdf> (accessed 15 April 2022)

78 Draft National Policy on the Prevention, Response and Protection from Unlawful Sexual Acts and the Administration of Justice in Sexual Offence Matters <https://statelaw.go.ke/wp-content/uploads/2021/12/Sexual-Offences-Policy-2021.pdf> (accessed 15 April 2022)

79 National Education Sector Strategic Plan <https://www.education.go.ke/images/NESSP/NESSP-2018-2022.pdf> (accessed 15 April 2022)

priorities in its strategic plan, in a bid to contextualise its LGBTI rights work within larger organisational goals and strategies. Additionally, the KNCHR's capacity to contribute meaningfully to policy development processes by government agencies should also be bolstered, considering its mandate in this regard. Capacity enhancement efforts should be extended to NGECC to consider working on LGBTI inclusion issues as part of its mandate. The first step may be sensitization and awareness raising endeavours targeting this organisation. In-country programming should also support LGBTI CSOs and activists to engage in the development of national policies, as a means of expanding the range of LGBTI-relevant policy areas in the country.

OUTCOME 4: Use of African ideas, evidence and innovations that support LGBTIQ-inclusive governance and related work

COUNTRY INDICATOR 16: Country-specific knowledge products related to LGBTI inclusion

Brief Description

Most LGBTI rights organisations have developed knowledge products on LGBTI inclusion over the years. These knowledge products include research aimed at specific advocacy objectives, documentation of LGBTI rights abuses, training materials on a wide range of themes (rights education and awareness, intersection between religion and LGBTI rights, and sector-specific and thematic reports). Work by civil society organisations and other groups covers topics such as LGBTI economic inclusion, efforts to address LGBTI inclusion issues in educational settings, the relationship between LGBTI inclusion efforts in Kenya and those happening internationally, among others. Academic research on LGBTI inclusion in Kenya also exists with material covering dynamics within the LGBTI movement, LGBTI health (including mental health), LGBTI-specific research methods, LGBTI refugee rights, MSM research and advocacy engagement, advocacy and outreach targeting religious figures opposed to LGBTI inclusion, the link between policing and LGBTI inclusion, among other topics. Annex I provides a list of knowledge resources (part of the Annotated Bibliography that supplements this baseline report) that can be used for training on LGBTI inclusion.

Sources of Data

See Annex I, a bibliography of Kenya-specific knowledge products on LGBTI inclusion that can be used for training.

Specific Data

- Research reports by CSOs
- Peer reviewed journal articles
- Research strategies and guidelines developed by LGBTI CSOs
- Pocketbooks
- Frequently asked questions (FAQ) sheets
- Practitioner guides on LGBTI inclusion developed by CSOs
- Government agency reports
- Academic theses and dissertations
- Grey (non-peer reviewed) articles
- News articles

Contextual Analysis

Relatively high rates of academic, media and organisational freedoms in Kenya have led to a lot of research and documentation of themes and topics related to LGBTI inclusion. This affords a great deal of knowledge products on LGBTI inclusion that can be used for training targeting a wide range of actors and stakeholders and spanning both grey and peer reviewed materials. Some of the knowledge products also target LGBTI persons themselves, providing information on how to safeguard and advocate for their own rights and those of other LGBTI persons.

Data Gaps & Limitations

No data gaps and limitations.

Synthesised Implications

Abundance of knowledge products on LGBTI inclusion does not translate to the application and use of these products in the work of LGBTI CSOs and their partners and allies. However, it is notable that many of these resources exist in the public domain and are easily accessible. In-country programming can support efforts towards the application of these products in LGBTI inclusion programming by KNCHR, UNDP, LGBTI CSOs and their partners and allies. An example of such support can be through the establishment of communities of practice that aim to incorporate and apply this research in LGBTI inclusion programming. Additionally, in-country

programming can support the synthesis of thematic research for the purposes of its application in LGBTI inclusion efforts.

ANNEX I: Bibliography of country-specific knowledge products related to LGBTI inclusion (with a specific emphasis on products that can be used for training)

1. Arcus Foundation, and IRANTI. *Data Collection and Reporting on Violence Perpetrated Against LGBTQI Persons in Botswana, Kenya, Malawi, South Africa and Uganda*. Arcus Foundation/ IRANTI, 2019, www.arcusfoundation.org/wp-content/uploads/2020/04/Iranti-Violence-Against-LGBTQI-Persons-in-Botswana-Kenya-Malawi-South-Africa-Uganda.pdf

This report analyses violence perpetrated against LGBTQI persons in five countries: Botswana, Kenya, Malawi, South Africa, and Uganda, making use of both quantitative and qualitative data from these countries. Noting the disparities in the documentation of violence against LGBTQI persons, characterised by lack of systems aimed at collecting this important information in a coordinated way, the report makes recommendation to guide future data collection efforts. These include linking violence against LGBTQI persons to broader systemic violence; establishing and bolstering sustainable documentation and data collection projects; engaging the state's roles and capacities when it comes to data collection; holding the state accountable with research-based and data driven evidence; addressing existing gaps in data collection; and establishing systems that promote a coordinated and networked data collection approach.

2. Arudi, Laurah. 'Dynamics of LBQ Women in Africa on Issues of Violence and Access to Justice: Can the Women's Movement Be More Involved?' *Bumi! A Journal on African Women's Experiences*, 1 Apr. 2020, http://osisa.org/wp-content/uploads/2020/04/Buwa-X_2020_APR30.pdf

Noting the "evident alienation of lesbian, bisexual and queer (LBQ) women's issues in inclusive and intentional advocacy by the women's rights movement," this article "analyses the dynamics of LBQ women" in work aimed at addressing violence and access to justice, a main pillar of work by larger women's rights movement. The article provides an assessment of the laws and policies that address the rights and activities of women human rights defenders and then pivots to analyse areas of mutual interest between mainstream and LBQ women human rights defenders. In conclusion, the author notes that despite progress made in the women's movements, its continued movement building work through a frame of "patriarchal and heteronormative forces" continues to be a big impediment to their effectiveness.

3. Bhattacharjee, Parinita, et al. 'Can a National Government Implement a Violence Prevention and Response Strategy for Key Populations in a Criminalised Setting? A Case Study from Kenya'. *Journal of the International AIDS Society*, vol. 21, no. S5, 2018. *Crossref*, <https://doi.org/10.1002/jia2.25122>

The article seeks to assess how the national government, in the case of Kenya, can implement violence prevention and response strategies for key populations in a criminalised setting. The authors in this article use Key Populations to include female sex workers (FSWs), men who have sex with men (MSM) and people who inject drugs (PWID). The article points towards increased cases of violence meted upon these groups which violates their human rights, places them at risk of contracting HIV and even bars access to services. By examining trends and responses to violence, the case for addressing this violence by the national government in the face of criminalization for these groups behavior, include creating an enabling environment to promote wellbeing and safety for Key Populations, critical to achieving goals for HIV prevention programmes.

4. Bourne, Adam, et al. 'Experiences and Challenges in Sexual Health Service Access among Men Who Have Sex with Men in Kenya'. *Global Public Health*, 2021, pp. 1–12. *Crossref*, <https://doi.org/10.1080/17441692.2021.1987501>

Abstract: Men who have sex with men (MSM) in Kenya bear a heavy burden of HIV/STIs and are a priority population in the national HIV/AIDS response, yet remain criminalised and stigmatised within society. HIV pre-exposure prophylaxis (PrEP) offers an opportunity to significantly impact the HIV epidemic, as does the concept of U=U, whereby those who are living with HIV and on treatment are not infectious when their viral load has been suppressed so as to be undetectable. However, the value of such innovations will not be realised without sufficient understanding of, and respect for, the sexual health service provision needs of MSM. This paper describes findings from 30 in-depth interviews with MSM living in Nairobi that explored engagement with sexual health service providers, barriers to

access and perceived opportunities to improve service design and delivery. Findings indicate concern relating to the professionalism of some staff working within public hospitals as well as feelings that many sexual health services were not considered safe spaces for the discussion of MSM-specific sexual behaviour. Diverse views were expressed relating to comfort in public, community and private sexual health services as well as how these are and should be organised.

5. Casteleyn, Liselot. *Challenging Queer African Narratives: A Case Study of LGBTIQ Activism in Nairobi as a Local Nuance to (Trans)National Queer Narratives*. Ghent University, 2019, https://libstore.ugent.be/fulltxt/RUG01/002/791/446/RUG01-002791446_2019_0001_AC.pdf

This body of work explores (trans)national narratives of queer Africa, inconsistency with representations of African culture as anti-queer. The author uses Nairobi as a case study to bring forward local queer narratives countering erasure in different sectors and dominant western ideals. The research finds evidence of queerness in pre-colonial Kenya, which was suppressed by British colonial rule, grounding the need to re-imagine narratives away from Western understanding of gender and sexuality, as well as enable queering of African narratives and give power back to local LGBTQ communities.

6. Crowell, Trevor A., et al. 'Involvement of African Men and Transgender Women Who Have Sex with Men in HIV Research: Progress, but Much More Must Be Done'. *Journal of the International AIDS Society*, vol. 23, no. S6, 2020. Crossref, <https://doi.org/10.1002/jia2.25596>

Due to a generalised perception of the HIV epidemic in Africa, the author recognises the exclusion of the impact of the virus on sexual and gender minority populations. Focusing on men who have sex with and transgender women, the work finds this demographic vulnerable to higher prevalence of HIV exacerbated by discriminatory policies, stigma and under-allocation of medical resources.

7. East African Trans Health Network. *Nilinde Nisife: How Safety and Security Affects Access to Health & HIV Services Among ITGNC Persons in East Africa*. EATHAN, 2018, www.galck.org/wp-content/uploads/2021/03/Nilinde-Nisife.pdf

The authors of this article using data from intersex, trans and gender non-conforming (ITGNC) communities, assesses the impact of safety and security on accessing health and HIV services among ITGNC persons in East Africa. Stigma, violence and discrimination towards ITGNC persons has alienated and excluded them from health and HIV programming, further augmenting visibility for sexual minorities. Despite falling under the LGBT umbrella, ITGNC persons have been disarrayed, with other focus groups being prioritised despite evidence of higher risk among this group. The article, like other similar research conducted, underscores the need to target diversity of identities in offering interventions and safeguarding their human rights.

8. Gay and Lesbian Coalition of Kenya, et al. *G10 Research Engagement: A 3 Year Roadmap for Action for Sexual Orientation Gender Identity and Expression (SOGIE) Engagement in Research (2016/17 -2018/2019)*. ICOP, 2016, www.icop.or.ke/wp-content/uploads/2016/09/G10-Research-Engagement-Road-Map-201617---201819.pdf

The research explores how sexual orientation and gender identity and expression (SOGIE) for the LGBTIQ + community can be emboldened for better community participation and ownership, by building on community led research initiatives extrapolating from past and current research. The research envisions richer and sustainable collaboration and partnerships in the LGBTIQ + community on grounds of SOGIE.

9. ---. 'Know Your Rights'. *Gay and Lesbian Coalition of Kenya*, 2 Dec. 2016, www.galck.org/know-your-rights

With a focus on human rights, the article gives an in-depth understanding to thematic areas for promoting LGBTIQ + rights. The article uses addressing injustices as the pivotal point of understanding human rights directly applying to LGBTIQ + persons. By availing information on legality, legitimacy and security, the organization seeks to safeguard and uphold the rights of the LGBTIQ + community.

10. ---. *LGBTQ SRHR Frequently Asked Questions*. Nairobi, Gay and Lesbian Coalition of Kenya, 2019, www.galck.org/wp-content/uploads/2021/03/LGBTQ-SRHR-Frequently-Asked-Questions.pdf

The report encompasses common asking points for LGBTQ persons navigating every day, with a focus on sexual and reproductive health for lesbian, bisexual and queer women. The findings indicate efforts by LGBTQ organizations to safeguard and protect their human rights, including partnering with LGBTIQ organizations to widen the scope of address issues affecting their community.

11. ---. *Rainbow Childhoods*. Gay and Lesbian Coalition of Kenya/ CPC Learning Network, Columbia University Mailman School of Public Health, 2021, www.galck.org/wp-content/uploads/2021/02/Rainbow-Childhoods-.pdf

This research encompasses a collection of stories and research narrating the lives of Kenyan LGBTIQ+ persons and their childhoods. The domination of western produced research and stories have shadowed local and individual experiences of LGBTQ persons with gender and sexuality. The contributors seek to expand the understanding of childhood LGBTQ experiences, covering a nation-wide geographic scope to broaden the knowledge on the Kenyan LGBTQ experience. They seek to enrich the available material and discourse on gender and sexual minorities in Kenya simultaneously increasing capacity for civil service organizations and other stakeholders in the LGBTQ community.

12. ---. *Research on the Lived Experiences of LBQ Women in Kenya*. Gay and Lesbian Coalition of Kenya, 2016, www.galck.org/wp-content/uploads/2021/03/Research-on-the-lived-experiences-of-LBQ-women-in-Kenya.pdf

This report by the Gay and Lesbian Coalition of Kenya seeks to amplify the lives and experiences of lesbian, bisexual and queer women, who are highly marginalised with an aim to achieve more social, economic and political freedom for them. In attempting to illuminate the unique experiences, a common theme of discrimination based on identity and resistance towards expression and self-actualization of LBQ women is explored underscoring the importance of acknowledging their daily experiences. The report recommends initiatives aimed at improving security, providing economic opportunities and establishing and improving social spaces in order to improve efficacy and inclusivity for lesbian, bisexual and queer (LBQ) women.

13. Gay and Lesbian Coalition of Kenya and Defenders Coalition. *Safety and Protection Guide for Lesbian, Gay, Bisexual and Queer Persons (LGBQ), Sexual Orientation Gender Identity and Expression (SOGIE) HRDs and Human Rights Organizations Working on SOGIE Issues in Kenya*. Gay and Lesbian Coalition of Kenya/ Defenders Coalition, 2020, www.galck.org/wp-content/uploads/2021/03/Safety-Protection-Guide-in-Kenya.pdf

This safety and protection guide an overview of the law pertaining to LGBTIQ persons in the country, important contact information for LGBTIQ persons and activists at risk, tips on risk management as well as information on maintaining digital security.

14. Harper, Gary W., Jessica Crawford, et al. 'Mental Health Challenges and Needs Among Sexual and Gender Minority People in Western Kenya'. *International Journal of Environmental Research and Public Health*, vol. 18, no. 3, 2021, p. 1311. Crossref, <https://doi.org/10.3390/ijerph18031311>

The authors, researchers from the University of Michigan in collaboration with Kenyan LGBTQ civil society organizations, conducted a study evaluating the mental health challenges and needs of sexual and gender minorities in Western Kenya. Working with a range of sexual orientation and gender identity groups, their findings pointed towards high levels of psychological distress, post-traumatic stress disorder and significant levels of depressive symptoms. The authors also used metrics such as violence and substance use to analyze the mental strain from socio-cultural and structural discrimination. The research finds that there is a need to develop and provide culturally appropriate mental health services for this population, using trauma informed principles as well as utilise community and policy level interventions. The research also encouraged political prioritization of sexual and gender minorities' mental health for sustainable change.

15. ---. 'Mental Health Challenges and Needs among Sexual and Gender Minority People in Western Kenya'. *International Journal of Environmental Research and Public Health*, vol. 18, no. 3, 2021, p. 1311. Crossref, <https://doi.org/10.3390/ijerph18031311>

Abstract: Sexual and gender minority (SGM) people in Kenya face pervasive socio-cultural and structural discrimination. Persistent stress stemming from anti-SGM stigma and prejudice may place SGM individuals at increased risk for negative mental health outcomes. This study explored experiences with violence (intimate partner violence and SGM-based violence), mental health outcomes (psychological distress, PTSD symptoms, and depressive symptoms), alcohol and other substance use, and prioritization of community needs among SGM adults in Western Kenya. Methods: This study was conducted by members of a collaborative research partnership between a U.S. academic institution and a Kenyan LGBTQ civil society organization (CSO). A convenience sample of 527 SGM adults (92.7% ages 18-34) was recruited from community venues to complete a cross-sectional survey either on paper or through an online secure platform. Results: For comparative analytic purposes, three sexual orientation and gender identity (SOGI) groups were created: (1) cisgender sexual minority women (SMW; 24.9%), (2) cisgender sexual minority men (SMM; 63.8%), and (3) gender minority individuals (GMI; 11.4%). Overall, 11.7% of participants reported clinically significant levels of psychological distress, 53.2% reported clinically significant levels of post-traumatic stress disorder (PTSD) symptoms, and 26.1% reported clinically significant levels of depressive symptoms. No statistically significant differences in clinical levels of these mental health concerns were detected across SOGI groups. Overall, 76.2% of participants reported ever using alcohol, 45.6% home brew, 43.5% tobacco, 39.1% marijuana, and 27.7% miraa or khat. Statistically significant SOGI group differences on potentially problematic substance use revealed that GMI participants were less likely to use alcohol and tobacco daily; and SMM participants were more likely to use marijuana daily. Lifetime intimate partner

violence (IPV) was reported by 42.5% of participants, and lifetime SGM-based violence (SGMV) was reported by 43.4%. GMI participants were more likely than other SOGI groups to have experienced both IPV and SGMV. Participants who experienced SGMV had significantly higher rates of clinically significant depressive and PTSD symptoms. Conclusions: Despite current resilience demonstrated by SGM adults in Kenya, there is an urgent need to develop and deliver culturally appropriate mental health services for this population. Given the pervasiveness of anti-SGM violence, services should be provided using trauma-informed principles, and be sensitive to the lived experiences of SGM adults in Kenya. Community and policy levels interventions are needed to decrease SGM-based stigma and violence, increase SGM visibility and acceptance, and create safe and affirming venues for mental health care. Political prioritization of SGM mental health is needed for sustainable change.

16. Jauregui, Juan C., et al. 'Experiences of Violence and Mental Health Concerns Among Sexual and Gender Minority Adults in Western Kenya'. *LGBT Health*, vol. 8, no. 7, 2021, pp. 494–501. *Crossref*, <https://doi.org/10.1089/lgbt.2020.0495>

Purpose: Sexual and gender minority (SGM) populations throughout Kenya as well as other sub-Saharan African countries face systemic discrimination and substantial human rights violations, yet scant literature documents the potentially harmful mental health effects of these experiences. This study sought to understand the relationship among experiences of violence, social support, and mental health among SGM adults in Kenya. Methods: Members of a local LGBT community-based organization collected survey data in Western Kenya from October 2017 to April 2018, recruiting 527 SGM participants through an array of community outreach methods. Respondents in this cross-sectional study completed a survey regarding their mental health and other psychosocial factors. Multiple linear regression analyses were conducted to assess associations between experiences of violence (SGM violence and intimate partner violence [IPV]) and mental health outcomes (depressive symptoms and post-traumatic stress symptoms [PTSSs]) and to examine the potential moderating effect of social support on these relationships. Results: Relative to those who had never faced violence, participants who experienced IPV and/or violence based on their sexual orientation, gender identity, or gender expression (SGM violence) reported significantly higher levels of depressive symptoms and PTSSs. Emotional support was associated with lower levels of PTSSs. Social support did not moderate the relationship between SGM violence and mental health symptoms. Conclusions: These findings suggest that there may be a relationship between experiences of violence and poor mental health among SGM Kenyans. More studies are needed to better understand SGM-specific risk factors for poor mental well-being among SGM people in Kenya and the types of interventions that may help mitigate these challenges.

17. Kenya National Commission on Human Rights. *Equal in Dignity and Rights: Promoting the Rights of Intersex Persons in Kenya*. Kenya National Commission on Human Rights, 2018, www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights_Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323

The report provides a holistic view of the lived realities of intersex persons in Kenya, noting the human rights situation, law and legal gaps, policies and policy gaps and case law on the rights of intersex persons in the country. The report also addresses socio-cultural and religious beliefs regarding intersex persons in the country and provides recommendations on enhancing the rights protections of this group in the country.

18. ---. *The Undefended Defenders The Situation of Human Rights Defenders Working Towards Addressing Violence Based on Sexual Orientation, Gender Identity and Expression (SOGIE) in Kenya: A Focus on Garissa, Kajiado and Kisii Counties*. Kenya National Commission on Human Rights, 2021, www.knchr.org/Portals/0/KNCHR_The_Undefended_Defender_B5_Final.pdf

Using the Resolution 275 of the ACHPR as a starting point, this report looks into the situation of LGBTIQ human rights defenders in three counties of focus in Kenya. The report tracks the law and policy situation when it comes to LGBTIQ HRDs in the country, negative perceptions on LGBTIQ rights and work to support expansion of these rights in the country, the lived realities of LGBTIQ human rights defenders, as well as recommendations to the government.

19. Koske, Nicole Treyson, and Tomasz Milej. 'The Right to Privacy under the Constitution of Kenya and the Criminalisation of Consensual Sex between Same-Sex Adults'. *African Human Rights Law Journal*, vol. 21, no. 1, 2021. *Crossref*, <https://doi.org/10.17159/1996-2096/2021/v21n1a18>

The article analyzes how the right to privacy as enshrined in article 31 of the Constitution of Kenya 2010, is bounded by provisions of the Kenyan Penal Code (sections 162 and 165) which criminalises consensual sex between partners of the same sex. The authors advance that the constitution impedes the state from imposing upon individual moral choices given that it does not bring harm to any other parties. In line with having a democratic society, the article suggests that the decision to question morality on consensual sex between adults should be left to the concerned individuals. As with

other authors, the article concludes that there's a failure by the judiciary in misinterpreting the constitution by failing to uphold the right to privacy for LGBT persons in Kenya.

20. Kuria Foundation for Social Enterprise. *Can LGBT+ Persons Use Powers of Attorney to Protect Their Relationships?* Kuria Foundation for Social Enterprise, 2020, https://kuriafoundation.or.ke/publications/Power%20of%20Attorney_for_LGBT+_Persons.pdf

This legal brief discusses the possibility of the use of power of attorney as a means of protecting same-sex relationships in Kenya, which are not provided for under the law.

21. ---. *Dignified and Healthy Ageing – A KFSE Approach*. Kuria Foundation for Social Enterprise, 2021, www.kuriafoundation.or.ke/publications/AgeingInterventions-KFSEApproach.pdf

The report summarises human rights issues that may face the ageing Kenyan LGBTIQ population and proposes ways in which the government, civil society organisations, enterprises and intergovernmental agencies can address this problem.

22. ---. *Economic Inclusion and Empowerment of LGBTQ+ People in Kenya*. Kuria Foundation for Social Enterprise, 2020, https://kuriafoundation.or.ke/publications/ECONOMIC_INCLUSION_LGBTQ.pdf

This report aims to contribute to a small but growing body of literature on the legacy of repressive laws against sexual minorities and policy lacuna towards gender minorities, and their impact on economic outcomes of LGBTQ+ persons. The report also aims at highlighting intervention areas that different stakeholders can take to reduce poverty and improve the economic welfare of Kenyan LGBTQ+ citizens.

23. ---. *KFSE Impact Investment Prospectus*. Kuria Foundation for Social Enterprise, 2021, www.kuriafoundation.or.ke/KFSE_Impact_Investing_Prospectus.pdf

This prospectus scopes opportunities for promoting LGBTIQ inclusion through impact investing in the country.

24. Mbithi, Kelvin, and Vallarie Yiega. 'Removing Kenya's Futile Blanket Ban on Homosexual Content in Films to Stimulate Human Rights, Social, Individual and Economic Development'. *Unpublished*, 2021. SSRN, <https://doi.org/10.2139/ssrn.3746773>

The author denotes the importance of removing the blanket ban on LGBTQ+ content in film. The research grounds its arguments on the impacts of criminalizing homosexuality on the economic growth, individuals and businesses in the country. While violating the constitutional freedoms of LGBTQ+ people, the ban, besides informing further discrimination and stigmatization, curtails human rights, social, individual and economic development. The author recommends the use of adult restrictions on homosexual content on top of removing the blanket ban.

25. Mbote, David Kuria, Esther Mombo, Zablon Bundi Mutongu, Anthony Mkutu, et al. 'Facing Our Fears: The Impact of a 4-Day Training Intervention to Reduce Negative Perspectives on Sexual and Gender Minorities among Religious Leaders in Kenya'. *The Journal of Sex Research*, 2021, pp. 1–12. Crossref, <https://doi.org/10.1080/00224499.2021.1908942>

The author evaluates the efficacy of training interventions to reduce negative perspectives of religious leaders in Kenya, towards sexual and gender minorities. The research finds success in increased acceptance of LGBTQ persons and gender diversity with more positivity towards gender and sexual minorities. Such initiatives are key to reversing the negative status quo for sexual and gender minorities held up by religion's expression of doctrinal orthodoxy.

26. Mbote, David Kuria, Theo G. M. Sandfort, et al. 'Kenyan Religious Leaders' Views on Same-Sex Sexuality and Gender Nonconformity: Religious Freedom versus Constitutional Rights'. *The Journal of Sex Research*, 2016, pp. 630–41, <https://doi.org/10.1080/00224499.2016.1255702>

The research evaluating the predominantly negative attitudes and strong views on same-sex sexuality and gender non-conformity among religious leaders, finds that intergroup-based contact interventions have success in changing religious leaders' outlook on sexual and gender minorities and secure their health and overall human rights, reducing stigma, discrimination and violence faced by these groups.

27. Mbote, David Kuria, Esther Mombo, Zablon Bundi Mutongu, Chris Alaro, et al. 'Religious Fundamentalism and Attitudes towards Sexual and Gender Minorities and Other Marginalised Groups among Religious Leaders in Kenya'. *Pastoral Psychology*, vol. 70, no. 2, 2021, pp. 167–78. Crossref, <https://doi.org/10.1007/s11089-021-00942-9>

The research takes account of religious fundamentalism among religious leaders in Kenya. It finds that bias towards sexual and gender minorities in relation to religious fundamentalism was positively, socially distancing gay men and lesbian women and viewed negatively when accepting of sexual orientations and gender diversities.

28. Micheni, Murugi, et al. 'Health Provider Views on Improving Antiretroviral Therapy Adherence Among Men Who Have Sex with Men in Coastal Kenya'. *AIDS Patient Care and STDs*, vol. 31, no. 3, 2017, pp. 113–21. *Crossref*, <https://doi.org/10.1089/apc.2016.0213>

The authors investigate challenges specific to men who have sex with men (MSMs) in adhering to antiretroviral therapy adherence (ART) in a setting where same sex conduct is criminalised. Using critical clinical staff sensitivity training, trained MSM peer navigators and stigma reduction in the community as interventions, the research finds success in these to improve adherence and health outcomes for MSM.

29. Moore, Hester KV. 'Lessons From LGBTIQ Refugee-Led Community-Based Organisations'. *Forced Migration Review*, vol. 58, 2018, pp. 67–69, www.fmreview.org/economies/moore

This body of work examines the efforts of humanitarian agencies to maximise access to services for LGBTQ refugees. Through partnerships in community based protection, community based organizations combine economic activities with pressing legal, psychological and medical issues to cement a holistic response to self-reliance and wellbeing of refugee communities.

30. ---. "The Atmosphere Is Oppressive": Investigating the Intersection of Violence with the Cisgender Lesbian, Bisexual, and Queer Women Refugee Community in Nairobi, Kenya'. *LGBTI Asylum Seekers and Refugees from a Legal and Political Perspective*, 2018, pp. 323–36. *Crossref*, https://doi.org/10.1007/978-3-319-91905-8_16

The author, in analysing experiences of lesbian, bisexual and queer women discovers the interaction of this group with violence in various forms. Calling attention to risks that LBQ refugees experience, targeted programming with focus on individual vulnerability preserves the safety and dignity of this group.

31. Moore, Hester KV, and Waruiru Beth. *Challenges Related to LGBTIQ+ Refugees and Shelter in Urban Contexts*. RefugePoint, 2020, www.refugepoint.org/wp-content/uploads/bsk-pdf-manager/2020/02/ShelterChallenges_Moore.pdf

This research reviews the plight of city dwelling LGBTQ+ refugees in search of safe shelter. This has exposed them to continuous cycles of displacement, violence, exploitation and abuse, coupled with economic and social vulnerabilities exacerbating rampant housing insecurities. Enhanced protective social networks especially for city dwelling queer refugees enable them to negotiate safe shelters and imagine better conditions for themselves. The arguments for city dwelling are backed anonymity status accorded by dwelling in the city especially for refugees substandard living conditions seen as a better trade in.

32. Musyoki, Helgar, et al. 'A Decade and beyond: Learnings from HIV Programming with Underserved and Marginalised Key Populations in Kenya'. *Journal of the International AIDS Society*, vol. 24, no. S3, 2021. *Crossref*, <https://doi.org/10.1002/jia2.25729>

This body of work elaborates on obstacles and successes in achieving HIV targets and emphasises on the need to widen scope of Key Populations. The authors encourage scaling up quality programmes for key populations while including more demographics deserving attention as key populations to attain global HIV targets.

33. Namubiru, Lydia, et al. 'Hospitals across East Africa Offer Controversial Anti-Gay Counselling'. *openDemocracy*, 2 July 2022, www.opendemocracy.net/en/5050/hospitals-east-africa-controversial-anti-gay-counselling

This investigation, covered over a period of 6 months, exposes the existence of health facilities in Kenya, Tanzania and Kenya that offer SOGIE-SC change efforts (also known as "conversion therapy").

34. Namubiru, Lydia, and Khatondi Soita Wepukhulu. 'Exclusive: US Christian Right Pours More than \$50m into Africa'. *openDemocracy*, 29 Oct. 2020, www.opendemocracy.net/en/5050/africa-us-christian-right-50m

This investigative journalism report exposes funding of US\$54 in social conservative causes by US Christian groups. The funds supported efforts against LGBTIQ rights protections and expansion of SRHR services and education efforts including comprehensive sexuality education, abortion, and contraceptives.

35. National Gay and Lesbian Human Rights Commission. 'Guide to Your Rights: Know Your Rights as an LGBTQI Person in Kenya'. National Gay and Lesbian Human Rights Commission, www.nglhrc.com/guide-to-your-rights. Accessed 22 Mar. 2022

The guide is a summary of rights guaranteed under Articles 49 and 50 of the Constitution of Kenya. These articles of the constitution are also annotated and emphasised in bold to provide additional clarity. A link to the entire constitution online is also provided.

36. ---. *Pocket Paralegal Resource Manual: A Guide for Easy Reference to the Kenyan Law Regarding the Rights of LGBTQI and Gender Nonconforming Persons*. Nairobi, National Gay and Lesbian Human Rights Commission, 2017, <http://static1.squarespace.com/static/581a19852994ca08211faca4/t/58d2d5162994ca29b799f7d4/1490212121039/PP+Resource+Manual+2.pdf>

Described as a “guide for easy reference to the Kenyan law regarding the rights of LGBTIQ and gender nonconforming persons,” the Pocket Paralegal Resource Manual provides information that may be used to offer free legal advice to LGBTIQ persons facing a violation of human rights.

37. Ngunjiri, Mbuthia, et al. 'Teachers Actions to Curb Homosexuality Activities in Secondary Schools in Nakuru County, Kenya'. *Journal of Advances in Education and Philosophy*, 2019, <https://doi.org/10.21276/jaep.2019.3.8.1>

This study aimed at investigating actions teachers take against students involved in disciplinary actions related to “homosexual activities” while in the school setting. Using qualitative data analyses, including surveys targeting high school students, it was found that 76.5% of survey participants “observed that sexual orientation is an issue of concern in their schools.” Some of the strategies used by teachers to address this issue included shaming students involved in these disciplinary actions as well as expulsions (55%), suspension from school (17%) as well as referrals to guidance and counselling services among others. The study recommends the total implementation of sex and sexuality education to allow for healthy discussions between teachers and students on these topics; increasing reliance on guidance and counselling to address homosexuality-related disciplinary issues among students as opposed to harsher sanctions as well as greater capacity enhancement targeting teachers in the area of sex and sexuality studies, including training on sexual orientation.

38. Ogwindo, Sharon. *In Who's Best Interest? A Critique of the Ban on Homosexuals from Adopting Children Under Kenyan Law*. Diss. University of Nairobi, 2019, http://erepository.uonbi.ac.ke/bitstream/handle/11295/108808/Ogwindo%20_In%20Who's%20Best%20Interest-a%20Critique%20of%20the%20Ban%20on%20Homosexuals%20From%20Adopting%20Children%20Under%20Kenyan%20Law.pdf?sequence=1

This master's degree dissertation seeks to examine the basis for the ban on homosexuals from adopting children under Kenyan law; to investigate the constitutionality of this ban; to provide a comparative analysis with South Africa on the question of gay adoptions and make recommendations on affirming the rights of homosexuals to adoption why advancing the best interest of the child. The publication notes that public morality, religious beliefs and political rhetoric have contributed to the ban on homosexuals from adoption. Recommendations are made to political leaders; religious leaders; legislators; the judiciary; the media; and civil society organisations working on human rights.

39. Open for Business. *The Economic Case for LGBT+ Inclusion in Kenya*. Open for Business, 2019, <https://drive.google.com/file/d/1qBeumxNW55O99ib4ITJ0TorycHYScGw5/view>

This publication provides an analysis on the economic costs of LGBT+ exclusion in Kenya. Among other statistics, the publication notes that LGBT+ discrimination costs Kenya between 0.2% to 1.7% of its GDP in the form of poor health outcomes, reduced tourism and lower productivity.

40. Organization for Refuge, Asylum & Migration (ORAM) and Rainbow Railroad. *The Challenges Facing LGBTQI+ Refugees in Kakuma Refugee Camp, Kenya*. ORAM/ Rainbow Railroad, 2021, www.rainbowrailroad.org/wp-content/uploads/2021/10/Rainbow-Railroad-and-ORAM-Report-on-Kakuma-2021.pdf

This report covers key informant surveys conducted on 58 residents of Kakuma Refugee Camp who identified themselves as lesbian, gay, bisexual and transgender. The aim of the study was to assess the lived experiences of LGBTI persons in Kakuma, the challenges faced by LGBTI refugees and asylum seekers living in the camp and recommendations to a wide range of stakeholders including the government of Kenya and the UNHCR.

41. Pincock, Kate. 'UNHCR and LGBTI Refugees in Kenya: The Limits of “Protection”'. *Disasters*, vol. 45, no. 4, 2021, pp. 844–64. *Crossref*, <https://doi.org/10.1111/disa.12447>

Noting the “dearth of scholarship on LGBTI refugees’ experiences in first countries of asylum in the Global South,” the author argues that the framing of “protection by the UNHCR and other practical restrictions on the implementation of this protection made, leave LGBTI refugees unsafe.” To address the needs of LGBTI refugees in Kenya, the lived experiences of this group must not only be understood, but the recognition that protection is a “limited and problematic way to comprehend the relationship between LGBTI refugees and the UNHCR” must be recognised as well.

42. RefugePoint. *Disaggregating LGBTIQ Protection Concerns: Experiences of Refugee Communities in Nairobi*. RefugePoint, 2018, www.refugepoint.org/wp-content/uploads/bsk-pdf-manager/FINAL_LGBTIQ_07122018_web_33.pdf

This paper “examines humanitarian agencies’ experiences working with the LGBTIQ refugee community in Nairobi” and argues for “the disaggregation of protection approaches according to respective queer refugee communities.” Noting “the distinct protection concerns of Lesbian, Bisexual, and Queer (LBQ), Men who have Sex with Men (MSM), trans*, intersex, and Unaccompanied Minor (UAM) communities,” the paper “concludes that agencies can more effectively empower queer refugee communities by moving away from applying group methodologies to LGBTIQ persons.”

43. Rhodes III, Perry. *AFRICAN NGO STRATEGIES ON LGBT RIGHTS: FRAMES THAT IMPACT LEGISLATION*. Diss. San Francisco State University, 2020, <https://scholarworks.calstate.edu/downloads/47429g34k>

In analyzing differences in outcomes between Kenya’s and Botswana’s cases for the overturning of anti-LGBT legislation, the author evaluates the strategies and tactics utilised by Non Governmental Organizations (NGOs) and their utility in determining the outcomes of the judgements. The author underscores that a key element in promoting or eroding LGBT rights was in the methods applied by NGOs in these countries to train their high court judges. The research distinguishes that a state-centric framing of goals in these cases pointed towards favourable judicial outcomes as opposed to human-right framing which spoke directly to the plight of the affected LGBT community. The upholding of Kenya’s case pointed towards the nation-state framing of the constitution even in human rights considerations.

44. Shangani, Sylvia, Becky Genberg, et al. ‘Sexual Prejudice and Comfort to Provide Services to Men Who Have Sex with Men Among HIV Healthcare Workers in Western Kenya: Role of Interpersonal Contact’. *AIDS and Behavior*, vol. 26, no. 3, 2021, pp. 805–13. *Crossref*, <https://doi.org/10.1007/s10461-021-03440-4>

Expanding on previous work on sexual prejudice among healthcare providers and again men who have sex with men (MSM) in Western Kenya, this article sought to examine “associations between healthcare workers’ sexual prejudice and their comfort to provide care to MSM.” The study also “assessed the moderating role of workers’ prior interpersonal contact with MSM” in examining this association. The study found that “sexual prejudice was negatively associated with comfort to provide care to MSM. It recommended revisions to medical education and training to stress positive forms of interpersonal contact with MSM; involvement of MSM in educational efforts aimed at dispelling myths, misinformation and anxiety among healthcare providers; and further development and implementation of evidence-based educational interventions as ways of promoting greater comfort among these providers when providing care to MSM.

45. Shangani, Sylvia, Violet Naanyu, et al. ‘Stigma and Healthcare-Seeking Practices of Men Who Have Sex with Men in Western Kenya: A Mixed-Methods Approach for Scale Validation’. *AIDS Patient Care and STDs*, vol. 32, no. 11, 2018, pp. 477–86. *Crossref*, <https://doi.org/10.1089/apc.2018.0101>

This study “examined the reliability and validity of measures of stigma and satisfaction with healthcare providers,” among men who have sex with men in Western Kenya. Additionally, the study aimed at exploring “how stigma influences and relates to satisfaction with healthcare providers.” The study found that “men who identifies as homosexual reported higher mean scores of enacted stigma and distrust of healthcare providers” compared to men who identified as heterosexual or bisexual. The authors recommended “specific efforts to address judgmental attitudes among healthcare providers” with the aim of ensuring that these healthcare professionals provide MSM-specific services “even when there is marked conflict with personally held moral views.”

46. Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding the Intersex Persons in Kenya. *Report of the Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding the Intersex Persons in Kenya*. Office of the Attorney General of the Republic of Kenya, 2018, www.klrc.go.ke/images/TASKFORCE-REPORT-on-INTERSEX-PERSONS-IN-KENYA.pdf

The Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya was appointed by the Attorney General of Kenya on 26th May 2017. It was tasked with compiling comprehensive data regarding the number, distribution and challenges of Intersex persons; undertaking a comprehensive literature review based on a comparative approach to care, treatment and protection of Intersex persons; examining the existing policy, institutional, legislative, medical and administrative structures and systems governing Intersex persons; recommending comprehensive reforms to safeguard the interests of Intersex persons; developing a prioritised implementation matrix

clearly stating the immediate, medium and long term reforms governing the Intersex persons; and undertaking any other activities required for the effective discharge of its mandate. The report was delivered in December 2018.

47. Vries, Daniel H. de, et al. 'Collaboration between Key Populations in a Global Partnership for Health and Human Rights: Lessons Learned from "Bridging the Gaps"'. *Global Public Health*, vol. 14, no. 8, 2018, pp. 1125–38. *Crossref*, <https://doi.org/10.1080/17441692.2018.1549399>

This study reflected "on how partners collaborated in a complex alliance of over 100 different NGOs, representing and supporting three key populations – lesbian, gay, bisexual and transgender (LGBT) people, sex workers and people who use drugs – working across 16 countries." The authors note that partnerships within a larger funding structure; a shared human rights context characterised by violence, discrimination and stigma; and an intersectional understanding of overlapping, intersecting and layered identities and struggles, were major contributors to collaborations while identity politics, stigma and time constraints major barriers. To address these barriers and bolster the benefits of these collaborations, the authors recommend the enhancement of engagements between collaborators, including funding for this enhanced engagement; cross disciplinary understanding of similar lived experiences (e.g., such as framing human rights in a medical agenda), and the recognition of implicit differences.

48. Wekesa, Seth. *A Constitutional Approach to the Decriminalisation of Homosexuality in Africa : A Comparison of Kenya South Africa and Uganda*. Diss. University of Pretoria, 2016, <https://repository.up.ac.za/handle/2263/56992>

This Law Doctorate (LLD) thesis "critically examines how the rights to equality human dignity and privacy guaranteed in the Kenyan and Ugandan Constitutions can be used to construct a constitutional argument for the decriminalisation of same-sex sexual conduct in both countries." The South African example of decriminalisation followed by the enactment of constitutional protections on grounds of sexual orientation is also discussed. The report also makes specific recommendations targeted to the Kenyan and Ugandan parliaments, the political classes of both countries, governments, civil society organisations, the gay and lesbian community and continental and international treaty bodies and mechanisms.

49. ---. 'Decriminalisation of Homosexuality in Kenya: Prospects and Challenges'. *Protecting the Human Rights of Sexual Minorities in Contemporary Africa*, Pretoria University Law Press, 2017, pp. 79–108, <https://www.pulp.up.ac.za/edited-collections/protecting-the-human-rights-of-sexual-minorities-in-contemporary-africa>

This chapter discusses the prospects of the decriminalisation of consensual, adult and private same-sex conduct in Kenya. The author argues for the decriminalisation of same-sex conduct based on 5 constitutional principles: (a) The constitutional duty of the state to respect the rights of the vulnerable and marginalised; (b) equality and non-discrimination; (c) human dignity; (d) the right to privacy; and (e) the incorporation of international law into Kenya's domestic law. After discussing the origins of Kenya's anti-sodomy laws and the current status of gay and lesbian rights in the country, the author breaks down the 5 constitutional principles mentioned above, providing textual and case law analyses in arguing in favour of decriminalisation. The author concludes by stating that decriminalisation is essential for enhancing human rights protections on gays and lesbians, while acknowledging that negative public perceptions against this group is a major hurdle.

50. ---. 'Gay Rights Exclusion: An Economic Perspective on Gay Rights in Kenya and Uganda'. *East African Law Journal*, 2019, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/easfrilaj2019&div=7&id=&page=>

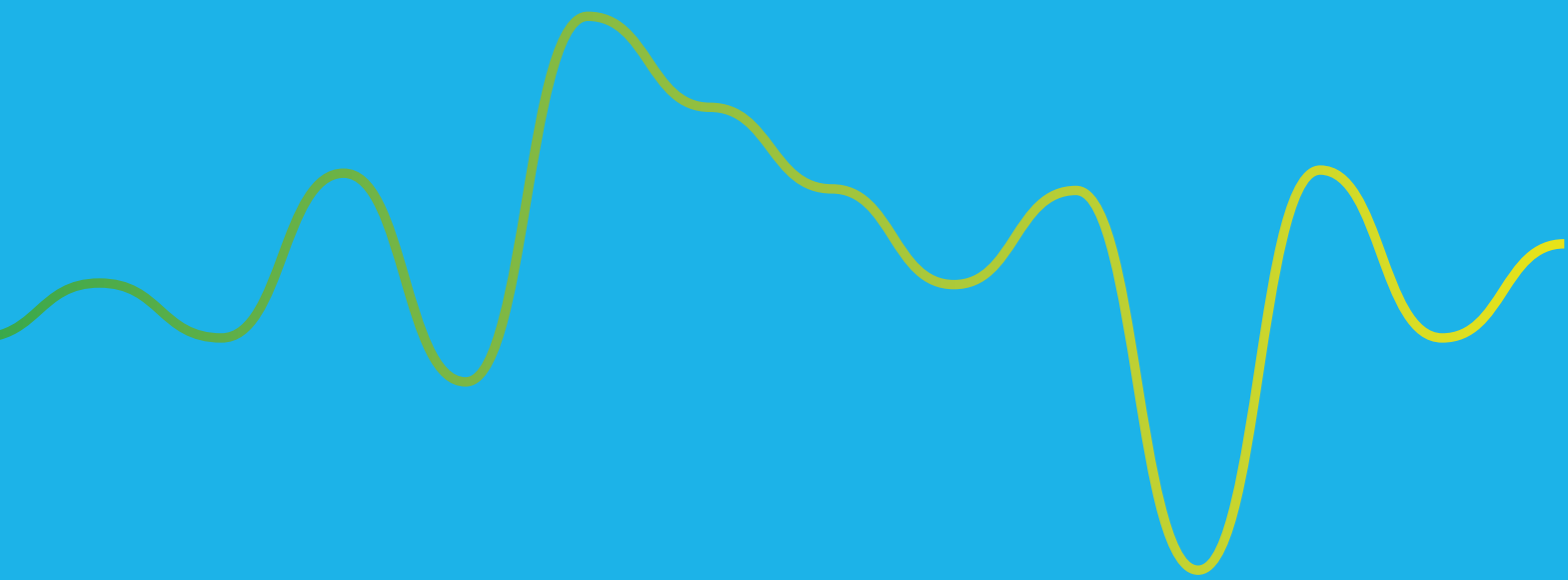
This paper discusses the economic impact of discrimination on grounds of sexual orientation, finding that cases of discrimination at school, at work and when accessing health has significant economic effects on gays and lesbians who experience them but the larger economy as a whole. The author then goes ahead to make an economic case for the protection of gay rights, noting benefits both for the larger economy as well as individual gays and lesbians as well.

51. Woensdregt, Lise, and Lorraine Nencil. 'Taking Small Steps: Sensitising the Police through Male Sex Workers' Community-Led Advocacy in Nairobi, Kenya'. *Global Public Health*, 2021, pp. 1–13. *Crossref*, <https://doi.org/10.1080/17441692.2021.1954681>

Examining an under reviewed perspective to sex workers' political agencies, the research positions police sensitization as a key factor in reimagining the dynamics of police-sex worker relationships. Addressing police violence and changing power dynamics between the two groups advances a wider range of issues such as health, rights and social justice. A special focus on male sex workers has been done to address the most common form of sex-worker police violence in Nairobi.

52. Zaidi, Sidra S., et al. 'Women Who Have Sex with Women in Kenya and Their Sexual and Reproductive Health'. *LGBT Health*, vol. 3, no. 2, 2016, pp. 139–45. *Mary Ann Liebert, Inc.*, <https://doi.org/10.1089/lgbt.2014.0121>

The research makes a case for inclusion of women who have sex with women (WSWs) in research to understand their sexual and reproductive health tendencies. This is contrary to previous research prioritizing on the health of men who have sex with men (MSMs). Like other sexual minorities, the author finds that women who have sex with women were found to be at risk for negative sexual and reproductive health outcomes requiring that their health concerns are included in national health policy programs.



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