



Home Office

Country Policy and Information Note **Kenya: Sexual orientation and gender** **identity**

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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Policy guidance

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1. Introduction

1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state and/or non-state actors because of the person's actual or perceived sexual orientation and/or gender identity.

1.2 Points to note

1.2.1 This note provides policy guidance on the general situation of gay men, lesbians, bisexuals and transgender persons – referred hereafter collectively as 'LGBT persons', though the experiences of each group may differ.

1.2.2 Where a claim by a man falls to be refused, it must be certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 unless the decision maker is satisfied that the claim is not clearly unfounded, as Kenya is listed as a designated state in respect of men only.

1.2.3 Decision makers must also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#) and [Gender Identity Issues in Asylum Claims](#).

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2. Consideration of Issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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2.2 Particular social group

2.2.1 LGBT persons in Kenya form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.

2.2.2 Although LGBT persons in Kenya form a PSG, this is not sufficient to be recognised as a refugee. The question is whether the particular person will face a real risk of persecution on account of their membership of a PSG.

2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.3 Assessment of risk

a. General points

2.3.1 Decision makers must establish whether or not the person, if returned to Kenya, will live freely and openly as a LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why.

2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution or serious harm, then they may not have a well-founded fear of persecution or serious harm. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.

2.3.3 But if a material reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well-founded.

2.3.4 For further guidance, see the [Asylum Instruction on Sexual Identity Issues in the Asylum Claim](#).

b. State treatment

2.3.5 Same-sex sexual activity between men is criminalised with a penalty of up to 21 years in prison, but it is not clear if there have been any convictions. Sources suggest that the law on “unnatural offences” is rarely applied and there have only been two recent reported cases of its use, one of which was dismissed and the other still ongoing at the time of publication. The law, however, does not make specific mention of women or transgender persons. On two occasions in 2014, members of parliament proposed anti-gay bills but to date there have been no further developments (see [Legal context](#)).

2.3.6 The government has stated that it will not decriminalise same-sex conduct, but it has also committed to review the penal code to align it with the constitution and to adopt an anti-discrimination law providing protection, irrespective of a person’s sexual orientation or gender identity (see [State treatment](#)).

2.3.7 Following an April 2015 high court ruling that the National Gay and Lesbian Human Rights Commission was entitled to register with the government as an NGO, the government has permitted some LGBT advocacy organisations to register and undertake activities. The government has appealed this ruling, but no judgement has been made at the time of publication and the high court ruling still stands (see [State treatment](#)).

2.3.8 The police do not generally target and prosecute LGBT persons and there have been few, if any, convictions for same-sex sexual activity. The police arrested some LGBT persons but this is usually followed by their release

shortly afterwards. The police have also reportedly harassed LGBT persons, or those believed to be so, and have subjected some to blackmail and rape. Public order laws have been used by the police as a means to arrest LGBT persons, especially those working in the sex industry. There have, however, also been some occasions where the police have protected LGBT persons against mob attack (see [State treatment](#)).

- 2.3.9 In general the evidence available does not establish that LGBT persons are likely to be subject to persecution or serious harm by the state (see [State treatment](#)).

c. Societal treatment

- 2.3.10 Societal attitudes are generally intolerant of LGBT persons, even though one recent survey reported that 53% of Kenyans do not agree that homosexuality should be considered a crime. The same survey also indicated that 46% of people had no concerns about their neighbour being gay or lesbian. LGBT persons are vulnerable to harassment, blackmail, intimidation, and discrimination in employment, education, housing and accessing healthcare. LGBT people have also been victims of individual acts of violence although there are few reported incidents in recent years (see [Societal treatment](#)).
- 2.3.11 While religious leaders generally express homophobic views, some have welcomed LGBT persons into their congregations. The media is taking an increasing interest in LGBT issues; sometimes reporting objectively although some media have also published anti-LGBT opinion pieces (see [Societal treatment](#)).
- 2.3.12 LGBT NGOs are generally able to function relatively freely, with a vibrant social movement in some parts of Kenya, and reports that societal attitudes to LGBT persons are gradually beginning to change as they work extensively throughout the country to promote awareness and respect for LGBT people. A LGBT NGO leader has stated that Kenya is less intolerant to members of the gay community compared to some of its neighbours (see [Societal treatment](#)).
- 2.3.13 The size, location and openness of an LGBT 'community' in Kenya is unclear, although sources indicate that there is a LGBT community in parts of Nairobi where people are able to express their sexual/gender identities with some freedom (see [Societal treatment](#)).
- 2.3.14 In general the level of discrimination and abuse faced by LGBT persons from non state actors is not such that it will reach the level of being persecutory or otherwise inhuman or degrading treatment.
- 2.3.15 For further information on assessing risk, see [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.4 Protection

- 2.4.1 Where the person's fear is of persecution or serious harm at the hands of the state, they will not be able to avail themselves of the protection of the state.

- 2.4.2 Where the person is at risk from a non-state actor, decision makers must assess whether effective protection is available in relation to the particular circumstances and profile of the person. Any past persecution or past lack of effective protection may indicate that effective protection would not be available in the future but is not determinative. The onus is on the person to demonstrate that protection is not available.
- 2.4.3 The attorney general has said that it is not government policy to discriminate against persons based on their sexual orientation and gender identity, and that Kenya would pass legislation to protect LGBT people from discrimination. However, at the time of publication, such laws have not been enacted. The police have reportedly responded to some cases of violence against LGBT persons by refusing to take statements, or provide assistance, but there have also been incidences where the police have provided protection. The police force is frequently seen as being ineffective in providing assistance generally, although there is some evidence to indicate LGBT persons have received more assistance than other vulnerable groups (see [State treatment, Arrests and prosecutions for same-sex activity](#) and [Police protection against violent attacks](#)).
- 2.4.4 A number of LGBT NGO groups are active and provide support to LGBT persons, and may be able to assist in accessing protection (see [NGO activities](#) and [Police protection against violent attacks](#)).
- 2.4.5 For further information on assessing the availability of state protection, see [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.5 Internal relocation

- 2.5.1 Where the threat is from the state, internal relocation is not a viable option.
- 2.5.2 While societal intolerance is prevalent throughout the country, relocation may be relevant and reasonable where the threat from a non-state actor is localised. Decision makers must take into account the person's individual circumstances, with the onus on the person to demonstrate they cannot relocate.
- 2.5.3 Internal relocation is not viable if it depends on the person concealing their sexual orientation and/or gender identity in the proposed new location for fear of persecution.
- 2.5.4 For further guidance on internal relocation, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#)

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2.6 Certification

- 2.6.1 Kenya is listed as a designated state under section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only.
- 2.6.2 However, where a claim made on the basis of the person's sexual orientation is refused, it is unlikely to be certifiable as 'clearly unfounded' because in general the claim when taken at its highest is unlikely to be so clearly without substance that it is bound to fail.
- 2.6.3 For further guidance on certification, see the [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#)

3. Policy summary

- 3.1.1 Same-sex sexual activity is criminalised for men; there is no specific reference in the law to women or transgender persons. There have been few, if any, convictions under the anti-LGBT laws.
- 3.1.2 The police sometimes arrest and detain some LGBT persons, particular those involved in sex work, but generally release them shortly afterwards. There are also reports of police harassment, intimidation and physical abuse of LGBT persons whilst in custody. However, LGBT persons are in general not likely to be at risk of persecution or serious harm from the state.
- 3.1.3 While societal intolerance and discrimination occurs, and occasional violence, such treatment does not generally amount to a real risk of persecution or serious harm. Each case needs to be considered on its individual merits, with the onus on the person to demonstrate that they would be at risk on return.
- 3.1.4 Effective state protection is likely to be available and the onus is on the person to show that they are unable to seek and obtain it.
- 3.1.5 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person.
- 3.1.6 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded'.

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4. Legal context

4.1 The penal code

4.1.1 The laws relating to same-sex activity are contained in Chapter XV of the Kenyan Penal Code [revised 2014]:

'162. Unnatural offences

Any person who—

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony and is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

- (i) the offence was committed without the consent of the person who was carnally known; or
- (ii) the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.

163. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.

164. Deleted by Act No. 3 of 2006, Second Sch.

165. Indecent practices between males

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, is guilty of a felony and is liable to imprisonment for five years.¹

4.1.2 The United States State Department, Country Reports on Human Rights Practices for 2016, (USSD report 2016), published on 3 March 2017, stated:

¹ Government of Kenya, National Council for Law Reporting, Kenyan Penal code (revised 2014 edition), <http://kenyalaw.org/lex/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/P/Penal%20Code%20Cap.%2063%20-%20No.%2010%20of%201930/docs/PenalCode81of1948.pdf> Date accessed 9 January 2017

'The constitution does not explicitly protect LGBT persons from discrimination on the basis of sexual orientation or gender identity. The penal code criminalizes "carnal knowledge against the order of nature," which is interpreted to prohibit consensual same-sex sexual activity and specifies a maximum penalty of 14 years' imprisonment if convicted. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years' imprisonment if convicted.'

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4.2 Lesbians

- 4.2.1 A 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated: 'Sections 162 and 165 [of] the Kenyan Penal Code, while not making explicit reference to sexual conduct between males, have consistently been interpreted as criminalising same-sex intimacy between men. These laws continue in force today.'
- ³
- 4.2.2 The ERT submission to the United Nations Human Rights Council also stated '...while same-sex conduct between women is not interpreted as prohibited under the Penal Code, lesbians – like gay men – face considerable prejudice and discrimination, in part because of stigma associated with the criminalisation of same-sex relationships.'
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4.3 Transgender persons

- 4.3.1 The Astraea Lesbian Foundation for Justice 2015 report 'LGBTI Kenya Landscape Analysis of Political, Economic & Social Conditions' [ALFJ 2015 report] noted:
- '...trans* rights advocates have made some headway pursuing change through the courts. In 2013, Alexander Ngugi Nthungi was awarded 200,000 Kenyan Shillings (US\$2,300) in damages after the police stripped her to determine her gender identity. A rather progressive legal argument, the judge's ruling stated that, "whatever Nthungi's choice was in relation to his mode of dressing and regardless of the fact that he perceived himself as a woman, he still retained his inherent worth and dignity to which all humans are entitled."
- 'In another set of crucial wins for trans* rights activists and the broader LGBTI movement, the High Court issued two landmark rulings on behalf of

² United States State Department 'Country Reports on Human Rights Practices for 2016', Kenya section, 3 March 2017, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265266.htm> Date accessed 6 March 2017

³ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, para 15, https://www.upr-info.org/sites/default/files/document/kenya/session_21_-_january_2015/ert_-_the_equal_rights_trust.pdf Date accessed: 30 September 2015

⁴ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, para 15, https://www.upr-info.org/sites/default/files/document/kenya/session_21_-_january_2015/ert_-_the_equal_rights_trust.pdf Date accessed: 25 September 2015

the group Transgender Education and Advocacy (TEA) in 2014. In the first case, TEA had sued the Kenyan government's Non-Governmental Organizations Coordination Board because it had refused to grant the organization official status. The Board had argued that the documents of the three transgender women listed in the application were invalid because their names did not match their gender. But the High Court issued a forceful ruling on TEA's behalf, declaring that the three women had legally changed their names; that the Board had denied the group's constitutional right to freedom of assembly; and that the Board acted in a manner that was "unfair, unreasonable, unjustified and in breach of the rules of natural justice." The court ordered the Board to register TEA and provide compensation for legal costs.

'Within three months of this victory, in a separate case, the High Court ordered the Kenya National Examinations Council (KNEC) to amend the academic certificate of TEA leader Audrey Mbugua to reflect her name and remove a male gender marker.

['*trans is used to refer to the entire range of possible gender identities, including but not limited to transgender, transsexual and transvestite and many specific to local cultures and contexts.']*⁵

See also [paragraph 6.1.6](#)

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4.4 Challenge to the law

4.4.1 The USSD 2016 report noted:

'In April [2015] the National Gay and Lesbian Human Rights Commission (NGLHRC) filed Petition 150 of 2016 challenging the constitutionality of these penal codes. In May a coalition of human rights organizations filed a petition challenging the constitutionality of the same penal code provisions based on violence, the fear of violence, and documented human rights violations against citizens.'⁶

4.4.2 Anna Dubuis, a freelance journalist living in Nairobi, in an article of 9 May 2016 on Vice news, reported that the National Gay and Lesbian Human Rights Commission (NGLHRC), is working on a case currently filed in the country's high court that could remove criminal punishment for adults who engage in homosexual activity altogether:

"Those laws degrade the inherent dignity of affected individuals by outlawing their most private and intimate means of self-expression," the petition states.

⁵ LGBT Global Development Partnership, Kenya LGBT Landscape Analysis of Political, Economic and Social Conditions, 2015 (page 6).

http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 22 February 2017

⁶ United States State Department 'Country Reports on Human Rights Practices for 2016', Kenya section, 3 March 2017, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265266.htm> Date accessed 6 March 2017

'It is the first time that anyone has directly challenged the ban, with lawyer and NGLHRC leader Eric Gitari saying he closed the office after filing the case over fears of a backlash from members of the public, but returned ten days later to find no threats or violence had taken place.

"We wanted to monitor the public reaction, and not put our staff at risk, but the reaction has not been as expected. We thought there would be backlash but there has been none," he said.

'The news barely made headlines in local media, and the social media reaction has been negligible. Next month, proceedings in the High Court will begin, though the appeals process means it could take up to five years for an outcome...

'The case brought by NGLHRC revolves around a challenge to Section 162 of Kenya's penal code — a piece of legislation introduced in the 19th century during British colonial rule in East Africa. Under the heading "unnatural offenses," it condemns anyone who has "carnal knowledge of any person against the order of nature."⁷

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4.5 The impact of Uganda's "Anti-Homosexuality Act" on Kenya

4.5.1 The Astraea Lesbian Foundation for Justice 2015 report 'LGBTI Kenya Landscape Analysis of Political, Economic & Social Conditions' [ALFJ 2015 report] noted:

"The impact of Uganda's anti-homosexuality law was felt throughout the region. LGBTI issues were catapulted to the forefront of public and political debate, and LGBTI people were suddenly at heightened risk of violence and discrimination.

'Kenyan LGBTI activists reported a dramatic increase in LGBTI rights violations following the passage of Uganda's law...

'Uganda's anti-homosexuality law has also inspired similarly reactionary legislation in Kenya and neighboring countries.

'In 2014, for example, the Republican Liberty Party in Kenya proposed its own anti-LGBTI legislation calling for life imprisonment or public stoning to death. In August 2014, the Kenyan Parliament's Committee on Justice and Legal Affairs found the bill unconstitutional, though activists say it succeeded in contributing to a heightened climate of fear among LGBTI Kenyans.

'Although opportunistic legislation similar to Uganda's has not made serious advancements in Kenya, and Uganda's own law was overturned on technical grounds, increased hostility towards LGBTI people throughout the region has forced Kenya's LGBTI movement to shift resources and strategies to protect lives and defend human rights gains. Today, LGBTI organizations are strengthening their ability to track and respond to human rights abuses

⁷ Vice news, Kenya Could Become the Next Country in Africa to Legalize Homosexuality, 9 May 2016. <https://news.vice.com/article/kenya-could-become-the-next-country-in-africa-to-legalize-homosexuality>
Date accessed 10 January 2017

nationwide and placing greater emphasis on the importance of collaboration, rebooting efforts like the national Gay and Lesbian Coalition of Kenya (GALCK).⁸

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5. State treatment and attitudes

5.1 Government position

- 5.1.1 A 'Guardian' article, 'Homophobia in Kenya: is a change going to come?', dated 29 June 2015, quoted Kenya's deputy president William Ruto's speech at a church service in Nairobi: "We would stand with religious leaders to defend our faith and our beliefs. We would not allow homosexuality in our nation, as it violates our religious and cultural beliefs". The deputy president's views may seem outlandish, but sadly reflect the felling [sic] of a large percentage of the population.'⁹
- 5.1.2 The Independent reported on former US President Obama's July 2015 meeting with President Kenyatta when Obama spoke about the cause of gay rights, comparing the plight of homosexuals to the battle against slavery and segregation in the USA. He said he was "painfully aware of the history when people are treated differently under the law." Kenyatta responded, saying "that while Kenya and the US share some values - democracy, value for families, entrepreneurship - there were "some things that we must admit we don't share. I repeatedly say that for Kenyans today the issue of gay rights is really a non-issue. We want to focus on other areas...maybe once, like you, have overcome some of these challenges, we can begin to look at other ones, but as of now the fact remains that this issue is not really an issue that is at the foremost minds of Kenyans and that is a fact."¹⁰
- 5.1.3 The Human Rights Watch report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', published in September 2015, stated:
- 'Unlike leaders elsewhere in Africa that have deployed homophobia in bids for political capital, Kenyan President Uhuru Kenyatta, like his predecessor, Mwai Kibaki, has largely maintained silence in public debates around LGBT rights. Only in July 2015 did Kenyatta first publicly comment on LGBT rights in the context of a visit from US President Barack Obama, calling gay rights a "non-issue," in an apparent effort to avoid heated debate...Deputy President William Ruto has repeatedly, both before and after being elected

⁸ LGBT Global Development Partnership, Kenya LGBT Landscape Analysis of Political, Economic and Social Conditions, 2015 (page 6).

http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 22 February 2017

⁹ 'The Guardian', 'Homophobia in Kenya: is a change going to come?', 29 June 2015, <http://www.theguardian.com/global-development-professionals-network/2015/jun/29/homophobia-in-kenya-nairobi-prejudice-acceptance>, Date accessed: 20 August 2015

¹⁰ The Independent, Kenya President Uhuru Kenyatta clashes with President Obama on LGBT equality: 'Gay rights is really a non-issue', 27 July 2015 <http://www.independent.co.uk/news/people/kenya-president-uhuru-kenyatta-clashes-with-president-obama-on-lgbt-equality-gay-rights-is-really-a-10418267.html> Date accessed 22 February 2017

to his current position, expressed views that amount to homophobia. Before assuming the vice presidency, Ruto, as a member of parliament, led the campaign opposing Kenya's progressive new constitution in 2010, claiming that the constitution's equality provisions would legalize same-sex marriage. During a 2013 vice-presidential debate, Ruto compared homosexuals to "dogs." Following the court judgment compelling the NGO Board to register the National Gay and Lesbian Human Rights Commission, Ruto stated during a church service in May 2015 that, "There is no room for gays and those others in Kenya." When the US Supreme Court ruled in favor of marriage equality in June 2015, Ruto condemned the ruling at another church service, saying, "We hear that America has legalized homosexuality and other dirty things."

'On two occasions in 2014, members of parliament proposed harsh anti-gay bills. To date, nothing has come of their proposals.

'In Kwale County, Governor Salim Mvurya made homophobic remarks following the arrests of the two men on charges of same-sex conduct. According to media reports, he referred to homosexuality as "un-African."¹¹

5.1.4 The United States State Department 'Country Reports on Human Rights Practices for 2014', published on 25 June 2015, stated: 'During the year an "antigay" caucus was formed in parliament, although its only action was to inquire why the government had not taken stronger action against LGBT individuals and organizations. The National Assembly majority leader stated that homosexuality was as serious an issue as terrorism but resisted calls for new anti-LGBT legislation.'¹² CPIT was unable, in sources consulted, to find any further information about the actions of the caucus.

5.1.5 The Human Rights Watch (HRW) report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', further stated:

'The Kenyan government has adopted a nuanced position on LGBT rights...the colonial-era Penal Code prohibits same-sex conduct, but successive parliaments have declined to follow in the footsteps of neighboring countries that have enacted new, even harsher legislation. The law on "unnatural offenses" is rarely applied, though the February 2015 arrests in Kwale constitute a worrying exception. Senior government officials, with the exception of the deputy president, rarely make openly homophobic or transphobic statements. But they have also shown little leadership in guiding the Kenyan public toward greater understanding and respect for LGBT people. Police respond to some acts of violence, but turn a blind eye to others; at times, police and county law enforcement officials exploit LGBT people's vulnerability to commit crimes against them, including rape. While statements such as President Uhuru Kenyatta's claim that LGBT rights is a

¹¹ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, Background pages 12-13, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 6 January 2016

¹² United States State Department 'Country Reports on Human Rights Practices for 2014', Kenya section, 25 June 2015, (section 6), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370>, Date accessed: 13 August 2015

“non-issue” could be interpreted as a rejection of fellow politicians’ efforts to legislate homophobia, they may also be construed as indifference toward ongoing violence and discrimination on the grounds of gender identity or sexual orientation.

‘During the January 2015 Universal Periodic Review process at the UN Human Rights Council in Geneva, the Kenyan government rejected a series of recommendations to decriminalize same-sex conduct. However, it accepted two recommendations that could go a long way toward improving respect for the human rights of LGBT people. These included: to “review its Penal Code to align it with the constitution,” and to “adopt a comprehensive antidiscrimination law affording protection to all individuals, irrespective of their sexual orientation or gender identity.” Because Kenya’s constitution upholds the right to privacy and the right to non-discrimination, a proper review of the Penal Code would likely find that sections 162, 163, and 165, which prohibit consensual same-sex conduct between adults, are out of step with the constitution.’¹³

5.1.6 The same report noted:

‘The Kenya National Commission on Human Rights, a governmental body, took a bold step in recommending the decriminalization of same-sex conduct. Other government bodies with mandates related to equality and the implementation of the constitution, including the National Gender and Equality Commission and the Attorney General’s Office, should adopt similar positions.’¹⁴

5.1.7 The report continued:

‘The Kenyan government has generally respected LGBT activists’ right to freedom of expression, but there have been some efforts to stifle them... The Ministry of Health, in particular through NACC and NASCOP, has carved out a position in which it is perceived as an ally to the LGBT community. In February 2014, when anti-gay legislators called on the government to arrest gays, civil society activists asked health minister James Macharia to make a statement in support of LGBT rights. Macharia did so, pointing out that criminalization of same-sex conduct inhibits access to health services, stressing the government’s responsibility to provide health services to all, and calling for a more sober debate. KEMRI, [Kenya Medical Research Institute] itself a government body, stressed in an interview with Human Rights Watch that Kenya is making rapid strides on addressing HIV among MSM, and that the simple fact that the government does not interfere in its work with MSM is already a positive starting point. A Patients’ Rights Charter, published by the Ministry of Health in 2013, states that all patients

¹³ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p57, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

¹⁴ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p 58, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

have the “right to be treated with respect and dignity,” although it is not uniformly upheld.

‘Through their participation in trainings offered by civil society organizations and health agencies such as NASCOP, and ongoing dialogue with organizations such as PEMA Kenya, the police have taken initial steps toward improving their respect for LGBT rights. However, in an interview with Human Rights Watch in September 2014, a high-ranking Mombasa police official denied allegations of police abuse of male sex workers.’¹⁵

5.1.8 The ALFJ 2015 report noted:

‘In January 2015, in response to a United Nations recommendation that Kenya decriminalize homosexuality and adopt legal protections for LGBTI people, Kenya’s attorney general, Githu Muigai, declared, “It is not Government policy to discriminate against persons based on their sexual orientation and gender identity.” He also said Kenya would pass legislation to protect LGBTI people from discrimination. While activists pointed to Kenya’s criminalization of same-sex conduct as evidence to the contrary, Attorney General Muigai’s statements may signal an increased openness on the part of his office to engage in efforts to establish of legal protections.’¹⁶

5.1.9 On 5 October 2016 Justice Wanjiru Karanja of the Court of Appeal said that ‘homosexuality will eventually be accepted in Kenya though it would take years’:

“I don’t want to create the impression that if a Lesbian Gay Bisexual Transgender Queer case is brought to me, I’d handle it as such, but Kenyans need to be heard. The Constitution provides for the protection of human rights. Let us understand them first.”

‘She also said there should be no controversy surrounding intersex people, since this “is biological”. “It’s not something they brought upon themselves. The courts have a responsibility to guide us through this.”¹⁷

See also [Government recognition of LGBT NGOs](#) and [NGO activities](#).

5.1.10 A Guardian article of 23 February 2017 reported that Kenya is one of the few East African nations that have provided homes, permanently or temporarily, to LGBT refugees. It featured an interview with Dennis Nzioka, a founding member of the Gay and Lesbian Coalition of Kenya:

“At the height of the movements in 2014, we recorded 400 LGBT refugees...Kenya is less intolerant to members of the gay community compared to some of her neighbours. Although there isn’t a clear

¹⁵ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, pages 58-59, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 6 January 2016

¹⁶ Astraea Lesbian Foundation for Justice, LGBTI Kenya Landscape Analysis of Political, Economic & Social Conditions, (page 11) 2015 http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 10 January 2017

¹⁷ Nairobi News, ‘Judge says Kenyans will accept homosexuals, but it will take time.’ 6 October 2016. <http://nairobinews.nation.co.ke/news/judge-says-kenyans-will-accept-homosexuals-will-take-time/> Date accessed 10 January 2017

government policy with regard to the LGBT community, organisations working primarily in this space have been left to thrive,” Nzioka says. “There is no harassment of staff, nor the shaming of those who have come out as gay.”¹⁸

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5.2 Arrests and prosecutions for same-sex activity, police violence and harassment

5.2.1 The USSD reports covering events in 2015 and 2016 noted that the police used the laws relating to same-sex activity to detain people, particularly those suspected of prostitution, but released them shortly afterward. Neither reported prosecutions of LGBT persons under specific anti-LGBT laws for same-sex sexual activity.^{19 20}

5.2.2 The USSD 2016 report also noted:

‘LGBT organizations reported police more frequently used public order laws (e.g., disturbing the peace) than same-sex legislation to arrest LGBTI individuals. Police frequently harassed, intimidated, or physically abused LGBTI individuals in custody...

‘Violence and discrimination against LGBT individuals was widespread. According to a 2015 HRW and Persons Marginalized and Aggrieved report, LGBTI individuals were especially vulnerable to blackmail and rape by police officers and individuals who used LGBTI websites to locate victims. Human rights and LGBTI rights organizations noted victims were extremely reluctant to report abuse or seek redress due to fear of violence against them or arrest.’²¹

5.2.3 Human Rights Watch (HRW), in a July 2016 report, Dignity Debased Forced Anal Examinations in Homosexuality Prosecutions, noted:

‘The law on “unnatural offenses” is rarely applied in cases involving consensual sex between adults. Only two cases are known to Human Rights Watch. One, filed in 2012 in Kifili, was dismissed in May 2015 for lack of evidence. The other case, filed in Kwale County in February 2015, is

¹⁸ The Guardian, On the run from persecution: how Kenya became a haven for LGBT refugees, 23 February 2017 <https://www.theguardian.com/global-development-professionals-network/2017/feb/23/on-the-run-from-persecution-how-kenya-became-a-haven-for-lgbt-refugees> Date accessed 6 March 2017

¹⁹ United States State Department ‘Country Reports on Human Rights Practices for 2015’, Kenya section, 13 April 2016, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2015/af/252693.htm> Date accessed: 9 January 2017

²⁰ United States State Department ‘Country Reports on Human Rights Practices for 2016’, Kenya section, 3 March 2017, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265266.htm> Date accessed 6 March 2017

²¹ United States State Department ‘Country Reports on Human Rights Practices for 2016’, Kenya section, 3 March 2017, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265266.htm> Date accessed 6 March 2017

ongoing, and marks the only case known to Human Rights Watch in which forced anal examinations have been used in Kenya.²²

- 5.2.4 Anna Dubuis, a freelance journalist living in Nairobi, in an article of 9 May 2016 on Vice news, spoke to NGLHRC leader Eric Gitari:

‘According to the Kenyan government, 595 cases were prosecuted under Section 162 between 2010 and 2014, though Gitari and his team found that most of them were cases of bestiality and rape — crimes currently seen as comparable to consensual gay sex in the eyes of the law.

‘In reality, Gitari says, the law is rarely enforced against homosexual activity, with only one person convicted since 2011.’²³

- 5.2.5 The Human Rights Watch report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, published in September 2015, stated:

‘It is unclear whether anyone has ever been convicted for consensual adult same-sex relations in Kenya. According to a list produced by former Inspector General of Police David Kimaiyo in 2014, over 500 people were convicted of “unnatural offenses” between 2010 and 2014. The National Gay and Lesbian Human Rights Commission (NGLHRC) conducted an initial analysis of the list and found that it conflated cases of bestiality and rape with cases allegedly involving consensual sex, all of which are categorized under the “unnatural offenses” provisions in the Penal Code. At the time of writing, NGLHRC had not yet determined whether there were in fact any convictions on the record based on consensual same-sex conduct.

‘Human rights organizations report occasional cases in which LGBT people are arrested, often due to complaints from neighbors, or on the initiative of law enforcement officials seeking bribes. In most cases, they are released within a matter of days...Charges against gay men and transgender women on the grounds of sex work are more common.’²⁴

- 5.2.6 The 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated: ‘Though there have been few prosecutions under any of these Penal Code provisions in recent years, 18 gay men interviewed by ERT reported being harassed by police seeking to blackmail or extort money from them.’²⁵

- 5.2.7 The Human Rights Watch report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, stated:

²² HRW Dignity Debased Forced Anal Examinations in Homosexuality Prosecutions, July 2016 https://www.hrw.org/sites/default/files/report_pdf/globalgbtanalexams0716web.pdf Date accessed 22 February 2017

²³ Vice news, Kenya Could Become the Next Country in Africa to Legalize Homosexuality, 9 May 2016. <https://news.vice.com/article/kenya-could-become-the-next-country-in-africa-to-legalize-homosexuality> Date accessed 10 January 2017

²⁴ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, page 17-18, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 8 October 2015

²⁵ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, (paragraph 15) <http://www.refworld.org/country,...KEN,,54c0f1444,0.html>, Date accessed: 30 September 2015

'LGBT people, too—particularly those who are engaged in sex work—face abuses at the hands of the police...Like female sex workers, male and trans sex workers are subjected to sexual abuse and extortion at the hands of police officers and county government law enforcement officials, known in Kiswahili slang as makanjoo (singular—kanjoo). Among the 39 interviewees who sometimes engaged in sex work, 15 reported cases in which police officers or makanjoo threatened to arrest them if they refused sex...County government law enforcement officials—a separate entity from the police—also rape and abuse male sex workers.'

- 5.2.8 The BBC news reported in June 2016 that a Kenyan High Court had dismissed a case challenging the legality of anal tests as proof of homosexuality:

'Two men, who say Kenyan police forced them to undergo the procedure to prove they had had gay sex, launched the case, calling for the tests to be declared unconstitutional.

"There was no other way evidence could have been obtained," ruled Mombasa judge Mathew Emukule...

'The judge dismissed claims by the two men that they were sexually discriminated against and that the tests were tantamount to torture.

"I find no violation of human dignity, right to privacy and right to freedom of the petitioners," he said.'

- 5.2.9 NGLHRC leader Eric Gitari said it was the first case of forced anal testing that he had heard of, but knew of other cases in which men have been saved from the humiliating procedure at the last minute after doctors refused to carry it out²⁸.

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5.3 Police protection against violent attacks

- 5.3.1 The Human Rights Watch (HRW) report, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', published in September 2015, stated:

'Police play an ambiguous role. In some cases, they have protected LGBT people from mob violence—a role that is recognized and appreciated by LGBT activists on the coast—but they have not brought the perpetrators of violence to book. In other cases, they have outright failed in their responsibility to protect: refusing assistance to victims because of their presumed gender identity or sexual orientation, conducting arbitrary arrests,

²⁶ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, II. Failure to Protect: Mob Attacks and Individual Acts of Violence on the Coast pages 32-33, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 8 October 2015

²⁷ BBC News, Kenya's 'gay tests' ruled legal, 16 June 2016, <http://www.bbc.co.uk/news/world-africa-36548225> Accessed 10 January 2017

²⁸ Vice news, Kenya Could Become the Next Country in Africa to Legalize Homosexuality, 9 May 2016. <https://news.vice.com/article/kenya-could-become-the-next-country-in-africa-to-legalize-homosexuality> Date accessed 10 January 2017

or even perpetrating violence themselves... Many LGBT victims of violence believe they have no recourse, and that the police are just as likely to persecute them as to protect them.’²⁹

5.3.2 The HRW report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, also stated:

‘Police and other law enforcement officials have an obligation to provide assistance to LGBT people who are victims of crime, but do not always act accordingly. LGBT people are not unique in being denied adequate protection by the Kenyan police. Human Rights Watch has documented inadequate police protection in the case of terrorist attacks, interethnic violence, and other cases of serious violence. In some ways, LGBT people fare better with the police than other vulnerable groups... Too often, however, police on the coast have responded to cases of violence against LGBT individuals by treating the victims with stigma and discrimination, refusing to take statements or to provide assistance... Most LGBT people we interviewed reported being afraid of the police, and were unwilling to even attempt to file complaints.’³⁰

5.3.3 A ‘Voice of America’ report, ‘LGBT Activist: Kenya More Tolerant, but Still Not Safe’, dated 8 May 2015, cited Kenyan lawyer Eric Gitari of the National Gay and Lesbian Human Rights Commission as stating that “that although rare, outbreaks of violence against homosexuals do still occur.” “One of our clients was stabbed with a bottle in his chest. And despite being stabbed with a bottle the police still arrested him instead of saving him, and charged him with sodomy,” he said.’³¹

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5.4 Healthcare

5.4.1 The HRW report of September 2015 observed:

‘Health specialists concur that discrimination, violence, and criminal laws against LGBT people constitute a barrier to the effective prevention and treatment of HIV and AIDS... On Kenya’s coast, violence and discrimination against LGBT people have had a clear impact on HIV programming. In three of the mob attacks described above, violence or threats of violence from residents and local religious leaders caused health providers serving MSM to temporarily or permanently close their doors or shut down workshops. Even when the targets of attacks are individuals and not institutions, HIV

²⁹ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, pages 2-3, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 6 January 2016

³⁰ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, pages 30-31, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 8 October 2015

³¹ ‘Voice of America’, ‘LGBT Activist: Kenya More Tolerant, but Still Not Safe’, 8 May 2015, <http://www.voanews.com/content/kenya-more-tolerant-but-still-not-safe/2760019.html>, Date accessed: 28 September 2015

prevention programming and adherence to treatment for HIV-positive people are adversely affected...Laws prohibiting same-sex conduct may also serve as a deterrent to health providers who might otherwise become engaged in HIV prevention efforts among key populations.’³²

5.4.2 The same report also noted that:

‘Kenya’s Ministry of Health is generally considered an ally in the struggle for LGBT equality. It has collaborated with civil society organizations to train healthcare providers on understanding and being sensitive to LGBT health issues. The National AIDS & STI Control Programme (NASCO) under the Ministry of Health, in particular, takes violence and discrimination against LGBT people seriously and integrates rights initiatives into its programming. Most of the training programs have been implemented in Mombasa and Kilifi counties. The recent anti-gay violence and arbitrary arrests in Kwale [in 2015] signal the need to expand such programming to that county. NGO training of government officials.’³³

5.4.3 A December 2016 article on the Gay and Lesbian Coalition of Kenya (GALCK) website noted:

‘For those living with HIV [in Kenya], the stigma and discrimination are compounded especially in public health facilities. Consequently, some LGBQ people prefer to manage their healthcare through nutrition instead of visiting public health facilities because most health care providers in public hospitals are known for breaching their privacy and confidentiality by exposing the sexual orientation of their patients and to other colleagues at the facilities. The health care providers are usually not friendly and hardly understand them.

“Many LGBQ people buy these products from the streets because the sellers are friendlier than workers in public health facilities,” said Kevin [a gay man living with HIV aids]. He believes that unfriendly health workers are a major barrier to the LGBQ people accessing healthcare services.

‘He believes that many LGBQ people shy away from public hospitals for fear of ridicule and prejudice, and unless this discrimination and stigma are addressed new HIV infections among gay men are likely to increase.’³⁴

5.4.4 Although without direct reference to LGBT persons, the USSD 2016 report noted:

‘The government, along with international and NGO partners, made progress in creating an enabling environment to combat the social stigma of HIV and

³² Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p 39, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

³³ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p 41, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

³⁴ GALCK, The Plight of Gays While Seeking Healthcare Services in Kenya, 16 December 2016. <https://www.galck.org/the-plight-of-gays-while-seeking-health-care-services-in-kenya/> Date accessed 7 March 2017

AIDS and to address the gap in access to HIV information and services. For example, the government launched treatment guidelines for sex workers and injected drug users in collaboration with key stakeholders. The government and NGOs supported a network of at least 5,488 counseling and testing centers providing free HIV/AIDS diagnosis. Diagnosis of other sexually transmitted infections was available through hospitals and clinics throughout the country. Because of social stigma, many citizens avoided testing for HIV/AIDS. According to its website, the First Lady's Beyond Zero Campaign to stop new HIV infections led to the opening of 46 mobile clinics across the country.'³⁵

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5.5 Government recognition of LGBT NGOs

5.5.1 The USSD reports of both 2015 and 2016 stated that 'Authorities permitted LGBT advocacy organizations to register and conduct activities. There were reports, however, that some organizations registered under modified platforms to avoid denial of registration by the government.'^{36 37}

5.5.2 The 2016 report also noted:

'In 2015 the High Court ruled in favor of the NGLHRC in a case challenging the government's refusal to register LGBTI advocacy and welfare organizations. The NGLHRC sought court intervention after unsuccessfully trying since 2012 to register under the Nongovernmental Organizations Coordination Act. The court ruled that refusing to register the organization was an infringement on constitutionally protected freedom of association. The government's appeal remained pending as of October 25 [2015]. The Court of Appeal ruled on May 20 [2016] that the High Court's judgment stood in the interim.'³⁸

5.5.3 Anna Dubuis, a freelance journalist living in Nairobi, in an article of 9 May 2016, on Vice news, reported that the National Gay and Lesbian Human Rights Commission (NGLHRC) is openly flying a rainbow flag from its building, 'just a stone's throw from the president's official residence in Nairobi'.³⁹

³⁵ United States State Department 'Country Reports on Human Rights Practices for 2016', Kenya section, 3 March 2017, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265266.htm> Date accessed 6 March 2017

³⁶ United States State Department 'Country Reports on Human Rights Practices for 2015', Kenya section, 13 April 2016, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2015/af/252693.htm> Date accessed: 9 January 2017

³⁷ United States State Department 'Country Reports on Human Rights Practices for 2016', Kenya section, 3 March 2017, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265266.htm> Date accessed 6 March 2017

³⁸ United States State Department 'Country Reports on Human Rights Practices for 2016', Kenya section, 3 March 2017, (section 6), <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265266.htm> Date accessed 6 March 2017

³⁹ Vice News, Kenya Could Become the Next Country in Africa to Legalize Homosexuality, 9 May 2016 <https://news.vice.com/article/kenya-could-become-the-next-country-in-africa-to-legalize-homosexuality> Date accessed 10 January 2017

See also [government position](#) and [NGO activities](#)

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6. Societal treatment

6.1 Societal attitudes

6.1.1 The IGLA-RIWI [International LGBTI Association and a global survey technology company] 2016 Global Attitudes Survey on LGBTI people in partnership with LOGO [entertainment brand inspired by the LGBT community] noted that, in Kenya:

- 53% of people didn't agree that being LGBTI should be a crime
- 46% of people had no concerns about their neighbour being gay or lesbian⁴⁰

6.1.2 The ILGA report 'State-Sponsored Homophobia, A World Survey Of Sexual Orientation Laws: Criminalisation, Protection And Recognition', updated to October 2016, considered laws versus lived experience and concluded: 'Conversely, one might conclude that being LGBT in India, Kenya, and Lebanon is impossible given that these countries have criminal prohibitions on same-sex sexual activity and gender non-conformity. But vibrant social movements have emerged that are improving the quality of life for LGBT people in those countries.'⁴¹

6.1.3 The UN Committee on Economic, Social and Cultural Rights noted in its concluding observations of April 2016 its concern that 'lesbian, gay, bisexual, transgender and intersex persons are stigmatized and socially excluded, as well as discriminated in gaining access to social services, particularly health-care services.'⁴²

6.1.4 A 'Guardian' article, 'Homophobia in Kenya: is a change going to come?', dated 29 June 2015, noted that societal attitudes towards gay people are slowly changing:

'Last year, the popular night club Club Envy, which is perceived as friendly by the gay community, was raided by local police leading to the arrest of more than 40 patrons. During the same period a prominent politician Adan Duale, while speaking in parliament said homosexuality is a crime as serious as terrorism in modern day Kenya...Now, however, there are finally signs of change...It is no longer unheard of to meet a same sex couple at both high- and low-end Nairobi night clubs, or for public figures to come out and speak up on gay rights...LGBTI activists can now be seen on prime-time TV

⁴⁰ The ILGA-RIWI 2016 Global Attitudes Survey On LGBTI People In Partnership With Logo http://ilga.org/downloads/07_THE_ILGA_RIWI_2016_GLOBAL_ATTITUDES_SURVEY_ON_LGBTI_PEOPLE.pdf Date accessed 8 March 2017

⁴¹ ILGA State-Sponsored Homophobia, A World Survey Of Sexual Orientation Laws: Criminalisation, Protection And Recognition,(P.27) updated to October 2016 http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf Date accessed 8 March 2017

⁴² UN Committee on Economic, Social and Cultural Rights, Concluding observations on the combined second to fifth periodic reports of Kenya, 6 April 2016, paragraph 21, http://www.ecoi.net/file_upload/1930_1460636706_q1606900.pdf, Date accessed: 21 March 2017 ,

advocating for their rights. Mainstream newspapers are dedicating space to the LGBTI debate. In some parts of the capital, there is commendable co-existence between heterosexuals and homosexuals.’⁴³

- 6.1.5 A 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated:

‘Moreover, while same-sex conduct between women is not interpreted as prohibited under the Penal Code, lesbians – like gay men – face considerable prejudice and discrimination, in part because of stigma associated with the criminalisation of same-sex relationships. In addition, testimony gathered by ERT indicated that the LGBTI community experience discrimination in accessing healthcare, education and employment, with the continued existence of these laws again being a key causal factor.’⁴⁴

- 6.1.6 The ALFJ 2015 report noted that ‘There are signs of progress that signal a cultural shift in favour of LGBTI rights’:

‘Today, many LGBTI individuals have supportive families of origin, families of choice, and religious and cultural communities. The increased visibility and presence of LGBTI people have also created communities of mutual care and support. In Nairobi and Kisumu, a few LGBTI-friendly faith institutions are slowly emerging. In a recent interview, Audrey Mbugua, an activist with the group Transgender Education and Advocacy, lauded changes in Kenya’s social environment: “A huge section of the society now understand[s] what transgender is. In my local village a new term was born ‘manzi chali.’ For me it is a moment of pride since it shows that our society is trying to accommodate the concept of third gender....”’⁴⁵

- 6.1.7 The Human Rights Watch report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, published in September 2015, stated:

‘Much of the virulent homophobic discourse in Kenya comes from religious leaders. Not all religious leaders express homophobic views; some have welcomed LGBT individuals into their congregations and spoken out on their behalf. But the number of incidents of homophobic rhetoric and acts seems to greatly outweigh the number of LGBT friendly acts from religious leaders.

‘Leaders from both the Council of Imams and Preachers of Kenya (CIPK, a Muslim organization headquartered in Mombasa) and the National Council of Churches of Kenya (NCCCK) incited violence against LGBT people in Mtwapa in 2010..., spreading rumors of a “gay wedding” and pledging to “flush out gays.” The same year, Christian leaders overwhelmingly opposed the new

⁴³ ‘The Guardian’, ‘Homophobia in Kenya: is a change going to come?’, 29 June 2015, <http://www.theguardian.com/global-development-professionals-network/2015/jun/29/homophobia-in-kenya-nairobi-prejudice-acceptance>, Date accessed: 20 August 2015

⁴⁴ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, <http://www.refworld.org/country,...KEN,,54c0f1444,0.html>, Date accessed: 25 September 2015

⁴⁵ LGBT Global Development Partnership, Kenya LGBT Landscape Analysis of Political, Economic and Social Conditions, 2015. (page 9) http://www.astraeaoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 22 February 2017

constitution on the grounds that it purportedly legalized homosexuality and abortion. In 2012, religious leaders condemned the Kenya National Commission on Human Rights for its stance in support of the decriminalization of same-sex conduct.

'The Kenya Muslim National Advisory Council (KEMNAC), chaired by Sheikh Juma Ngao of Mombasa, has called for the resignation of, and apologies from, the few government officials who have publicly supported the rights of LGBT people. In 2014, KEMNAC reportedly accused gay rights activists of "propagating evil," while Ngao described LGBT people as "sick." Following the passage of the Anti-Homosexuality Act in Uganda in 2014, Sheikh Mohamed Khalifa of the Council of Imams and Preachers of Kenya (CIPK) urged President Kenyatta to "be supportive of [Ugandan President] Yoweri Museveni and support enactment of laws to prevent spread of homosexuality." Religious leaders have a particularly strong influence on the coast; as documented in Section II below, they have played a significant role in inciting violence against LGBT people. One imam in Mombasa advised Human Rights Watch not to underestimate the power of religious leaders to sway the masses: "If we say kill, they kill."

'Religious leaders have opposed recent advances by LGBT civil society groups. The Kenya Christian Professionals Forum (KCPF)—a group founded in opposition to Kenya's 2010 constitution, and in favor of "a legal and social environment that is supportive of Biblical values"—made submissions as an interested party opposing the National Gay and Lesbian Human Rights Commission's High Court petition on the right to register with the NGO Board. The National Council of Churches of Kenya described the ruling in favor of NGLHRC as being "in bad taste," and expressed support for KCPF's appeal of the ruling.'⁴⁶

- 6.1.8 Eric Gitari, the NGLHRC leader, talking to Anna Dubuis on Vice News in May 2016, said that:

'... the country's capital city provides something of a welcome haven of greater acceptance to the LGBT community — although problems persist even there':

"Nairobi allows us to be anonymous. Everyone minds their own business," he says. "There have been cases of rape and violence and physical assault, but the fact that it is not systematic [and] widespread shows it is not comparable to our neighbors, like Uganda."⁴⁷

- 6.1.9 In an interview in the Guardian in February 2017, Dennis Nzioka, founding member of the Gay and Lesbian Coalition of Kenya, said 'Kenya is less

⁴⁶ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, pages 13-15, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 7 January 2016

⁴⁷ Vice News, Kenya Could Become the Next Country in Africa to Legalize Homosexuality, 9 May 2016 <https://news.vice.com/article/kenya-could-become-the-next-country-in-africa-to-legalize-homosexuality> Date accessed 10 January 2017

intolerant to members of the gay community compared to some of her neighbours.⁴⁸

- 6.1.10 Neela Ghosal, the Human Rights Watch senior researcher on LGBT rights, reported on a presentation given on 12 February 2016 in Nairobi by the Gay and Lesbian Coalition of Kenya (GALCK) of its new report, "Research on the Lived Realities of Lesbian, Bisexual and Queer Women in Kenya." CPIT has used this article from the Huffington Post as it has been unable to access the original report.

'Many of the stories [in the GALCK report] center around family, including abuse when families discover queer women's sexuality. Rose, in Kisumu, described how her brother literally threw her out of the house, grabbing her by the throat and accusing her of being Satanic. Another brother threatened to turn her in to the police. Crimes as grave as rape may also take place in the family sanctum: in a 2012 case, a woman committed suicide "after her parents had held her hostage and had organized to have an older male family member rape her repeatedly in an effort to impregnate her and 'cure' her."

'Meanwhile, LBQ women cope with familial and societal pressures around creating their own families. Some are pushed into marriage with men. Others struggle to find creative ways to bear or raise children with their female partners in a context in which adoption is prohibited by law to anyone who is "a homosexual," and medically-supported artificial insemination is out of economic reach for most women.

'The more public abuses tend to be tied to social policing of rigid gender norms in Kenya, and GALCK found that women who are "masculine presenting" are most at risk of violence. So are women living "in lower middle class and lower class neighborhoods where people interact more intensively with each other than in high-class areas, and where social ties are geared more towards cohesion and control." The story of Leila, a butch lesbian, in the Kasarani neighborhood of Nairobi, is illustrative. She was publicly stripped by motorcycle taxi ("boda boda") drivers while walking to school...

'One impact of rights abuses among LBQ women is high levels of "stress-related problems, such as depression, insomnia and anxiety." GALCK found that that as a result of accumulated stress and depression, "a large part of 'lesbian culture' in the larger cities in Kenya consists of heavy drinking and drug abuse." Mental health and substance abuse services are scarce and difficult to access for all Kenyans, and LBQ women face the additional burden of identifying the rare providers who will help them without judging their sexuality or gender identity.⁴⁹

⁴⁸ The Guardian, On the run from persecution: how Kenya became a haven for LGBT refugees, 23 February 2017 <https://www.theguardian.com/global-development-professionals-network/2017/feb/23/on-the-run-from-persecution-how-kenya-became-a-haven-for-lgbt-refugees> Date accessed 6 March 2017

⁴⁹ Huffington Post, Lesbian, Bisexual and Queer Women Speak Out in Kenya, 20 February 2016. http://www.huffingtonpost.com/neela-ghosal/lesbian-bisexual-and-queer_b_9280166.html Date accessed 10 January 2017

6.2 Influence of the media

6.2.1 The Human Rights Watch report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', published in September 2015, stated:

'Attitudes toward LGBT people in Kenya are also influenced by the media. A health worker who conducts outreach to MSM in Mombasa told Human Rights Watch: "The media at some point is always the center point of stigma." A gay man in Mombasa agreed: "The media has been the biggest hurdle. What we do in our bedrooms should never be a part of anyone's media report."

'While some national media outlets address LGBT issues objectively, others resort to sensationalist tactics and scandal-mongering. In May 2015, the Weekly Citizen, a gossip tabloid, posted an article claiming to unveil Kenya's "Top Gays." Although a number of those listed were openly gay activists, others were private individuals for whom the Weekly Citizen piece constituted a grave violation of their right to privacy, regardless of whether or not they are actually gay.

'The Standard, one of Kenya's largest dailies, claimed in 2014 that Kenyan human rights groups "[fear] losing Western aid if they support anti-homosexuality legislation," denying the agency of these groups in supporting human rights for LGBT people. In February 2015, the Standard filed a sensational piece preposterously claiming that gays were attacked at a funeral in Watamu (Malindi County) because they were engaged in "gay rituals" during the burial, including attempting to have sex at the deceased's graveside. (According to a rights activist from Kilifi, funeral attendees threatened to attack the group simply for being gender non-conforming.) The piece was subsequently removed from the Standard's website, but only after the damage, in shaping readers' perceptions of gay "deviance," had already been done.'⁵⁰

6.2.2 The ALFJ 2015 report noted:

'The media has also begun to play a more positive role in raising the visibility of LGBTI people, and frequently features debates and news about LGBTI rights. Amidst the rise of pro-criminalization political statements following the Ugandan Anti-Homosexuality Act, journalists increasingly questioned politicians' anti-LGBTI rhetoric—a reflection of LGBTI activists' progress in promoting responsible coverage of LGBTI issues. Activists also say coverage can be poorly researched—portraying sexual orientation and gender identity as a "lifestyle choice"—or worse, a vehicle for fuelling bias against LGBTI communities. But more sympathetic stories have appeared in recent years—enough so that the National Gay and Lesbian Human Rights

⁵⁰ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, pages 15-16, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf. Date accessed: 7 January 2016

Commission's annual Gay and Lesbian Awards now includes a prize for journalists' responsible coverage.'⁵¹

6.2.3 Anna Dubuis, writing on Vice news in May 2016, reported:

'It was in Nairobi that a pro-gay music video was filmed earlier this year, a remix of Macklemore's 2012 hit Same Love.

'When it appeared on YouTube, the Kenya Film Classification Board (KFCB) tried to make Google take it down, with KFCB Chief Executive Ezekiel Mutua claiming the content threatened to turn people into "Sodom and Gomorrah." While Google refused to remove the video, it agreed to post a warning for Kenyan viewers flagging it as "potentially inappropriate." The makers of the video added a line to its description warning "This video contains imagery and a message that may be unnecessarily offensive to some."

'But in tweeting its outrage, along with a link to the offending video, the KFCB inadvertently gave it a massive boost, helping to take the video from a couple of hundred views to over a quarter of a million.

'While the song has been upheld as a success for the gay rights movement in Kenya, reactionary comments on the YouTube page indicate the battle still has a long way to go.

'The abuse also made its way to one of the actors who starred in the video, who has not come out to his family and friends, and says he was inundated with abusive messages and threats of violence on his phone and social media.

"I blocked the numbers and changed my privacy settings. They were really disturbing me," he told VICE News, requesting to remain anonymous. "Sometimes I do fear walking around. I'm pretty scared."⁵²

6.2.4 Human Rights Watch, in its report, World Report 2017 - Kenya, 12 January 2017, noted, 'The Kenya Film Classification Board overstepped its jurisdiction in asking YouTube to remove a locally produced video addressing same-sex relationships, prohibiting a lesbian speed-dating event, and attempting to ban a podcast with alleged lesbian content.'⁵³

6.2.5 The ALFJ 2015 report also noted that:

'In 2014, the Nairobi-based arts collective NEST released "Stories of Our Lives," a film that features five fictional vignettes based on the real lives of LGBTI Kenyans. Shortly after its world premiere at the Toronto Film Festival, the Kenyan Film Classification Board banned the film in Kenya, censoring it

⁵¹ LGBT Global Development Partnership, Kenya LGBT Landscape Analysis of Political, Economic and Social Conditions, 2015. (page 9) http://www.astraeaoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 22 February 2017

⁵² Vice News, Kenya Could Become the Next Country in Africa to Legalize Homosexuality, 9 May 2016 <https://news.vice.com/article/kenya-could-become-the-next-country-in-africa-to-legalize-homosexuality> Date accessed 10 January 2017

⁵³ Human Rights Watch, World Report 2017 - Kenya, 12 January 2017, https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf Date accessed 16 January 2017

for “obscenity, explicit scenes of sexual activities and (for promoting) homosexuality, which is contrary to...national norms and values.”⁵⁴

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6.3 Societal violence

- 6.3.1 The Human Rights Watch (HRW) report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, published in September 2015, stated:

‘On the coast, a series of homophobic and transphobic attacks, fueled by the rhetoric of extremist religious leaders, has created an ongoing undercurrent of insecurity. In at least six instances between 2008 and 2015, groups have attacked or threatened to attack LGBT people or health workers serving the LGBT community. Few government officials have condemned the attacks, and police—while in some cases protecting victims from the immediate threat of violence—have not arrested anyone for participating in or inciting these attacks.

‘LGBT people are also victims of individual acts of violence, including assault and rape. Most victims whom we interviewed said they simply do not report crimes to the police, believing that the police will not help them or, worse, might arrest them.’⁵⁵

- 6.3.2 For details of reported homophobic attacks between 2010 and 2015, see the Human Rights Watch 2015 report, ‘[The Issue is Violence - Attacks on LGBT People on Kenya’s Coast](#)’, pages 19-38.

- 6.3.3 A Thomson Reuters Foundation report, ‘Kenya: Homophobic Mobs Attack LGBT People in Kenya With Impunity - Report’, dated 28 September 2015, stated:

‘Homophobic mobs have repeatedly attacked lesbian, gay, bisexual and transgender (LGBT) people in Kenya but police are unwilling to even attempt to bring the perpetrators to justice, rights groups said on...Violence against LGBT people is common in the east African nation, but victims fear reporting hate crimes to the police who, in turn, often refuse to pursue their cases...“Religious leaders have often been at the forefront of inciting violence against LGBT people,” Neela Ghoshal, a researcher with HRW, told the Thomson Reuters Foundation, referring to both Christians and Muslims.’⁵⁶

- 6.3.4 The organisation Erasing 76 Crimes stated in a December 2015 article that: ‘In the wake of several preachers’ anti-homosexuality sermons earlier this

⁵⁴ Astraea Lesbian Foundation for Justice, LGBTI Kenya Landscape Analysis of Political, Economic & Social Conditions, (page 9) 2015 http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 10 January 2017

⁵⁵ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, page 19, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 8 October 2015

⁵⁶ Thomson Reuters Foundation, ‘Kenya: Homophobic Mobs Attack LGBT People in Kenya With Impunity - Report’, 28 September 2015, <http://allafrica.com/stories/201509280135.html>, Date accessed: 3 December 2015

year in west Kenya, four men attacked a gay street vendor, raped him, and set his home on fire...Wasike did not report the rape to police for fear that, if he did so, he would face further stigma and possible arrest for being gay.’⁵⁷

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6.4 NGO activities

6.4.1 The HRW report of September 2015 stated that:

‘PEMA Kenya and Tamba Pwani have both developed training programs aimed at sensitizing religious leaders, police, and health workers on issues related to sexual orientation and gender identity, and PEMA Kenya has also trained members of the judiciary and media professionals. Organizations are also exploring the possibility of providing training for motorcycle taxi drivers, an influential constituency within urban street culture. Most of the training programs have been implemented in Mombasa and Kilifi counties. The recent anti-gay violence and arbitrary arrests in Kwale signal the need to expand such programming to that county.’⁵⁸

6.4.2 The Astraea Lesbian Foundation for Justice November 2016 report ‘LGBTI Kenya Landscape Analysis of Political, Economic & Social Conditions’ noted how Kenya’s LGBTI movement has diversified and grown:

‘Voices of Women in Western Kenya (VOWWEK), based in Kisumu, is a queer-inclusive women’s organization that works with local communities and public officials, like police, to promote awareness about and respect for LGBTI rights. VOWWEK worked painstakingly throughout Western Kenya to raise rural leaders’ sensitivity toward sexual orientation and gender identity issues, and above all the importance of protecting LGBTI individuals, especially women, from violence. These efforts—which are paying off—are even more vital since the 2010 Kenya Constitution decentralized power, resources, and judicial mechanisms to rural communities.

‘In 2014, for example, VOWWEK brought together eight village elders, eight chiefs, and four policewomen to participate in a forum about LGBTI women’s rights. The group discussed gender-based violence in their villages, including relevant legal protections, informal justice systems, leadership, and conflict resolution. While participants acknowledged LGBTI people lived in their communities, they blamed them for moral decay and vowed to uphold cultural norms; the police officers also referenced Kenya’s penal code, which criminalizes same-sex relationships and highlighted the Ugandan government’s new, stiffer approach. Still, VOWWEK noted a shift over the course of the training; in the end, everyone agreed that violence against LGBTI women based on gender identity or sexual orientation would be treated as a crime, and that victims would require their support. After the training,

⁵⁷ Erasing 76 Crimes, ‘After Kenyan anti-gay sermons, anti-gay rape and arson’, 11 December 2015 <http://76crimes.com/2015/12/11/after-kenyan-anti-gay-sermons-anti-gay-rape-and-arson/>, Date accessed: 5 February 2016

⁵⁸ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p 43, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

VOWWEK stayed closely engaged with the village chiefs, and opinion leaders and set up a paralegal training for LGBTI women to help each other get justice. They note that at least two chiefs have become change agents in their communities, actively solving conflicts related to violence against LGBTI women.’⁵⁹

6.4.3 The same report noted:

‘As the movement’s public profile grows, LGBTI organizations are establishing a growing number of private, safe spaces for LGBTI individuals, offering psychological and social support in order that they and the larger movement can thrive. Kenya’s LGBTI activists are also addressing internal challenges, working to diversify the movement’s leadership and priorities; confront tensions that stem from generational, economic, and regional divides; strengthen networks and ensure national efforts adequately address issues important to, and include the voices of rural LGBTI communities and urban areas in addition to Nairobi.’⁶⁰

6.4.4 Levis Nderitu, co-founder of Sullivan Reed, an organization in Nairobi that specializes in the economic and social empowerment of LGBT people, explained in a post of 9 December 2016 that with funding from the International HIV/AIDS Alliance’s Rapid Response Fund they had opened a safe house for LGBT people and linked many of them to LGBT-friendly health services. They are also using funding to develop a mobile app to enable people to find LGBT-friendly services near them.⁶¹

6.4.5 [The Gay and Lesbian Coalition of Kenya \(GALCK\)](#) stated ‘As the National umbrella body for SOGIE community organizations, GALCK represents LGBQ voices from across Kenya.’

6.4.6 The National Gay and Lesbian Human Rights Commission (NGLHRC) stated it ‘will engage with the potent elements of law, culture and politics to advance the full participation, equality and inclusion of LGBTIQ individuals in the Kenyan democratic state.’⁶² It has a blog site: <https://nqlhrc.wordpress.com/>.

6.4.7 See also [government position](#) and [government recognition of LGBT NGOs](#).

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⁵⁹ Astraea Lesbian Foundation for Justice, LGBTI Kenya Landscape Analysis of Political, Economic & Social Conditions, (page 10) 4 November 2016 http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 10 January 2017

⁶⁰ Astraea Lesbian Foundation for Justice, LGBTI Kenya Landscape Analysis of Political, Economic & Social Conditions, (page 10) 4 November 2016 http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf Date accessed 10 January 2017

⁶¹ Key Population Hero: Addressing stigma and discrimination among LGBT people in Kenya, 9 December 2016 <https://linkagesproject.wordpress.com/2016/12/09/key-population-hero-addressing-stigma-and-discrimination-among-lgbt-people-in-kenya/> Date accessed 23 January 2017

⁶² Africa Rise, National Gay and Lesbian Human Rights Commission <http://www.africarise.org.uk/content/support/national-gay-and-lesbian-human-rights-commission> Date accessed 7 March 2017

Version control and contacts

Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then [email the Country Policy and Information Team](#).

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Clearance

Below is information on when this note was cleared:

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- valid from **23 March 2017**

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