



# Kenya: Query response on the situation and treatment of the LGBTQI+ community

January 2024

(Country of Origin Information [COI] between 1<sup>st</sup> January 2020 and 15<sup>th</sup> December 2023)

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## A. Explanatory Note

### Background

This report presents Country of Origin Information (COI) on Kenya focusing on issues identified to be of relevance in refugee status determination for Kenyan nationals of the LGBTQI+ community.

The COI presented in this report is illustrative but not exhaustive of the information available in the public domain, nor is it determinative of any individual human rights or asylum claim. All sources are publicly available and a direct hyperlink has been provided.

A list of sources and databases consulted is also provided in this report, to enable users to conduct further research and source assessments. Research concentrated on events that took place between 1<sup>st</sup> January 2020 and 15<sup>th</sup> December 2023. All sources included in this report were accessed between November 2023 and the beginning of January 2024.

The following reports, which post-date the cut-off point have been included given that they address issues of relevance for this report:

- The Standard, [Vandals break into LGBTQ-linked group offices, destroy property](#), 22 December 2023
- Erasing 76 Crimes, [Killer of Kenyan lesbian sentenced to 30 years](#), 23 December 2023

Note that on occasion reports published during the reporting period cite sources which pre-date the cut-off for research. These have been included where they address issues of relevance and the footnotes for these sources have been cited within the document to clearly indicate their publication date.

### Disclaimer

This document is intended to be used as a tool to help to identify relevant COI and the COI referred to in this report can be considered by decision makers in assessing asylum applications and appeals. While we strive to be as comprehensive as possible, no amount of research can ever provide an exhaustive picture of the situation. It is therefore important to note that the absence of information should not be taken as evidence that an issue, incident or violation does not exist. **This report is also not a substitute for individualised case-specific research and therefore this document should not be submitted in isolation as evidence to refugee decision-making authorities.** Whilst every attempt has been made to ensure accuracy, the authors accept no responsibility for any errors included in this report.

## B. List of Sources

Not all of the sources listed here have been consulted for each issue addressed in the report. Additional sources to those individually listed were consulted via database searches. This non-exhaustive list is intended to assist in further case-specific research. To find out more about an organisation, view the 'About us' tab of a source's website.

### Databases

[Asylos's Research Notes \[subscription only\]](#)

[EUAA COI Portal](#)

[European Country of Origin Information Network \(ECOI\)](#)

[Immigration and Refugee Board of Canada – Responses to Information Requests](#)

[Relief Web](#)

[UNHCR Refworld](#)

### Media

[African Arguments](#)

[All Africa](#)

[Al Jazeera](#)

[The East African](#)

[Edge Media Network](#)

[Equal Eyes](#)

[Global Gayz](#)

[The Guardian](#)

[ILGA monitor](#)

[Inter Press Service](#)

[The New Humanitarian \(Africa\)](#)

[Reuters](#)

[Pink News](#)

### Sources

[76 Crimes](#)

[Afro Barometer](#)

[Africa Center for Strategic Studies](#)

[African Commission on Human and Peoples' Rights](#)

[African Human Rights Coalition](#)

[African Studies Centre Leiden](#)

[Article 19](#)

[Bertelsmann Stiftung – BTI Transformation Index](#)

[CIVICUS](#)

[Civil Rights Defenders](#)

[Commonwealth Equality Network](#)

[EASO's List of sources in its report 'Researching the situation of lesbian, gay, and bisexual persons \(LGBT\) in countries or origin'](#)

[Equal Rights Trust](#)

[Freedom House \(Kenya\)](#)

[Frontline Defenders](#)

[Gay and Lesbian Coalition of Kenya \(galck+\)](#)

[Global Action for Trans Equality \(GATE\)](#)

[Human Dignity Trust \(Kenya\)](#)

[Human Rights Watch \(Kenya\)](#)

[Institute for Human Rights and Development in Africa](#)

[International Bar Association](#)

[International Centre for Prison Studies](#)

[International Commission of Jurists](#)

[International Federation for Human Rights \(Africa\)](#)

[International Lesbian, Gay, Bisexual and Trans and Intersex Association \(ILGA\)](#)

[ILGA Database](#)

[International Service for Human Rights](#)

[InterPride](#)

[Kaleidoscope Trust](#)

[Kenya Human Rights Commission](#)

[National Gay And Lesbian Human Rights Commission \(NGLHRC\)](#)

[Organization for Refuge, Asylum & Migration \(ORAM\)](#)

[Outright International](#)

[Pew Research Center](#)

[Sexual Rights Initiative](#)

[Social Science Research Network](#)

[United Nations Committee Against Torture](#)

[United Nations Committee on Economic, Social and Cultural Rights](#)

[United Nations Committee on the Elimination of Discrimination Against Women](#)

[United Nations Independent Expert on sexual orientation and gender identity](#)

[United Nations News Centre](#)

[United Nations Office of the High Commissioner for Human Rights \(OHCHR\) \(Kenya\)](#)

[United Nations Secretary General reports](#)

[United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context](#)

[United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions](#)

[United Nations Special Rapporteur on extreme poverty and human rights](#)

[United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#)

[United Nations Special Rapporteur on the right to education](#)

[United Nations Special Rapporteur on the situation of human rights defenders](#)

[United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#)

[United Nations Special Rapporteur on violence against women, its causes and consequences](#)

[United Nations Women](#)

[United States Department of State \(Annual human rights reports\)](#)

## I. Background and Introduction

In 2019, the Kenyan Ministry of Health published the results of a key population mapping exercise in selected counties to improve the planning, design, implementation, and evaluation of HIV prevention services among key populations.<sup>1</sup> The report noted with regards to men who have sex with men (MSM) and transgender populations:

The size estimation exercise identified 2,153 MSM hotspots across 30 counties in Kenya. [...] The estimates of MSM in the mapped hotspots in 30 counties on a normal day ranged from 14,066 to 23,488, with the mean being 18,777. Peak-day estimates of MSM ranged from 24,704 to 40,455, with the mean being 32,580. [...]

Of the 30 mapped counties, nine counties collectively had 80% (26,637/32,580) of the estimated MSM, six counties collectively had 80% (9,446/11,807) of the estimated MSWs, and seven counties collectively had 80% (2,361/2,949) of the estimated MSM below the age of 18. [...]

Thirty of Kenya's 47 counties were mapped for MSM. A total of 2,153 hotspots were mapped, the greatest share of which were in Nairobi (368/2,153, 17%), followed by Kisumu (313/2,153, 15%) and Machakos (268/2,153, 12%). Overall, 32,580 MSM were estimated, with Nairobi county accounting for 31% (10,209/32,580) of the size estimate, followed by Kilifi (2,868/32,580, 9%) and Mombasa (2,855/32,580, 9%). [...]

This exercise also estimated the size of the transgender population in 34 counties. Implementing partners generally do not identify hotspots as exclusively transgender individuals, hence the FSW and MSM hotspots were evaluated for the presence of transgender individuals, and, if present, the transgender population subgroup was separately enumerated. The size estimation exercise identified 1,218 transgender hotspots across 34 counties in Kenya. [...] Nairobi county accounted for 25% (1,064/4,305) of the estimated transgender population in the 34 counties. The other counties with large shares of the transgender population are Bungoma, which had 12% (518/4,305), Mombasa, which had 10% (435/4,305) and Kilifi, which had 8% (341/4,305). Ten counties collectively have 82% (3,525/4,305) of the estimated transgender population in the mapped counties.<sup>2</sup>

A 2020 Kenya National Commission on Human Rights (KNCHR) submission to the UN Periodic Review stated that the Kenya National Bureau of Statistics "through continuous interventions from the Commission included the sex marker "I" to cater for intersex persons during the 2019 Kenya Population and Housing Census which indicated that Kenya has a population of 1524 intersex persons".<sup>3</sup>

In January 2021, Human Rights Watch released its annual report on the human rights situation in 2020, stating on Kenya that "Intersex groups celebrated Kenya's November 2019 census results, the first in

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<sup>1</sup> Republic of Kenya Ministry of Health, [Key Population Mapping and Size Estimation in Selected Counties in Kenya: Phase 1 Key Findings](#), April 2019

<sup>2</sup> Republic of Kenya Ministry of Health, [Key Population Mapping and Size Estimation in Selected Counties in Kenya: Phase 1 Key Findings](#), April 2019

<sup>3</sup> Kenya National Commission on Human Rights (KNCHR), [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

Africa to include data on intersex populations. Lack of awareness, stigma, and inconsistency in asking respondents' sex means data on intersex populations may not have been adequately captured".<sup>4</sup>

In 2021, the Kenyan government published a set of twelve commitments "to accelerate national efforts to end gender-based violence and female genital mutilation".<sup>5</sup> The commitments did not make specific reference to the treatment of women in Kenya owing to their sexuality or gender identity but the report contained a situational analysis which stated that "Harmful gender norms, which rigidly define and enforce gender roles, and support the right of men over women's bodies and sexuality, perpetuate GBV".<sup>6</sup>

In a June 2022 article by Al Jazeera on the healthcare experiences of queer men in Kenya, it was noted that: "While there is no comprehensive data on the exact number of gay people in Kenya, the Gay and Lesbian Coalition of Kenya (GALCK) estimates it to be at 1.3 million – about two percent of the population. Strict government laws against homosexuality mean that the organisation cannot carry out a comprehensive census, according to Kelly Kigera, an administrator at GALCK".<sup>7</sup>

A May 2023 joint report by the National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International noted that:

Official data on the number of LGBTI asylum seekers and refugees hosted in Kenya is not publicly available. However, according to UNHCR estimates there are about 250-300 self-declared LGBTI individuals in Kakuma and Kalobeyei refugee camps in north-west Kenya; about 50 self-declared LGBTI individuals are in Dadaab refugee camp in the north-east; and 900-1,000 self-declared LGBTI asylum seekers and refugees are residing in urban and peri-urban areas around Kenya.<sup>33</sup><sup>8</sup>

33 Interview with UNHCR spokesperson, 19 July 2022. UNHCR, UNHCR Statement on the situation of LGBTIQ+ refugees in Kakuma camp, 25 March 2021, <https://www.unhcr.org/ke/19859-unhcr-statement-on-the-situation-of-lgbtqi-refugees-in-kakuma-camp.html>.

ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, in their November 2023 updated report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, noted that:

Negative social attitudes in Kenya extend beyond sexual orientation to encompass gender identity and expression. Hostile political climates, lack of family acceptance, and cultural marginalisation all contribute to anti-transgender and intersex stigma. This systematic discrimination results in the denial of opportunities, exclusion from society, and outright violence. Due then to issues of increased

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<sup>4</sup> Human Rights Watch, [World Report 2021: Events of 2020](#), 13 January 2021, p. 394

<sup>5</sup> UN Women, [Kenya's platform for action revealed ahead of Generation Equality Forum](#), 4 June 2021

<sup>6</sup> Republic of Kenya, [Generation Equality Forum: Kenya's roadmap for advancing gender equality and ending all forms of gender based violence and female genital mutilation by 2026](#), 2021

<sup>7</sup> Al Jazeera, [Kenyan queer men risk health amid homophobia in public hospitals](#), 2 June 2022

<sup>8</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, ["Justice like any other person" – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p. 17

homelessness, family rejection, or the need to work in the underground economy, trans and gender-diverse people have higher levels of interaction with police.<sup>9</sup>

### Slurs and derogatory language

A May 2023 joint report by the National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International made reference to the word 'shoga', "a Swahili derogatory slang term for 'gay' or 'lesbian' used by state and non-state actors in homophobic attacks."<sup>10</sup>

## II. Legal Framework

### a. Legislation

#### i. Constitution

In December 2020, ILGA World produced a global legislation overview update on state-sponsored homophobia. The report specified that there are no laws in Kenya with regards to protection against discrimination based on sexual orientation (constitutional protection, broad protection, employment, hate crime, incitement, banning conversion therapy), and no legal recognition of same-sex marriages, civil unions, joint adoption, or second parent adoption.<sup>11</sup> The ILGA Database page for Kenya also confirmed that the "Constitution of Kenya does not explicitly include "sexual orientation", "gender identity", "gender expression" or "sex characteristics" as protected grounds of discrimination".<sup>12</sup>

The Kenyan newspaper, The Standard, confirmed in a February 2022 article that "the Constitution does not recognize same-sex marriages".<sup>13</sup>

The March 2022 submission of Redress and the NGLHRC to the UN Committee Against Torture ahead of Kenya's third periodic report outlined the following background:

6. In Kenya, the Constitution provides that individuals shall not be discriminated against on the basis of sex and case law has stated that, on a case-by-case basis, this may include sexual orientation. However section 162 of the Penal Code<sup>3</sup> (unnatural offences) criminalises acts "against the order of nature", which have been interpreted by the High Court as including anal sex.<sup>4</sup> Further, section 165 of the Penal Code<sup>5</sup> (indecent practice between males) criminalises any act of "gross indecency" between male individuals. These offences carry a penalty of up to fourteen (s. 162) and five years of imprisonment (s. 165).

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<sup>9</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 80

<sup>10</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, ["Justice like any other person" – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p.6

<sup>11</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [State-Sponsored Homophobia 2020: Global Legislation Overview Update](#), December 2020, p. 325

<sup>12</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>13</sup> The Standard, [Board bans 'Baadhai Do' film, says it flouts law and values](#), 14 February 2022

7. These discriminatory offences were challenged on the basis of their unconstitutionality in *EG v Attorney General* (NGLHRC recognised as interested party). Nonetheless, in 2019 the High Court of Kenya dismissed the case, ruling that such offences did not violate any constitutional right, including the rights to privacy, and to freedom and security of person, when read in conjunction with the right to marry only a person of the opposite sex (Art. 45(2)). The High Court considered that if acts described in those sections of the Penal Code were legal, it would result in same-sex couples being allowed to live together as a couple and “such relationships, whether in private or not, formal or not would be in violation of the tenor and spirit of the Constitution... therefore, decriminalizing the impugned provisions would indirectly open the door for unions among persons of the same sex.”<sup>6</sup> This decision is under appeal at the time of stating this submission.<sup>7</sup><sup>14</sup>

3 Section 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.

4 Kenya Penal Code, 2012. See also Kenya Court of Appeal at Nairobi, Non-Governmental Organisations Co-ordination Board v. EG & 5 Others [2019] (NGO Co-ordination Board v. EG), Civil Appeal No. 145 of 2015, 2019; High Court of Kenya at Nairobi, EG & 7 others v. Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae) [2019] (EG v. Attorney General), Petition No. 150 of 2016, 2019, para. 271.

5 Section 165. 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.

6 EG v. Attorney General, paras. 296-297.

7 Human Dignity Trust, ‘Eric Gitari & Others v. Attorney General Kenya (2019)’, 2019.

Al Jazeera reported in June 2022 on the experiences of queer men in public hospitals in Kenya, setting out that:

The Kenyan constitution guarantees every citizen the right to healthcare access without discrimination but healthcare workers continue to violate this provision, especially as gay men stay silent for fear of harassment or stigma. [...]

“Even if the law does not allow same-sex relationships, the constitution gives every citizen the right to access quality healthcare and that is what we are pushing for,” said [Peter] Njane [director of Ishtar MSM, a gay rights organisation].<sup>15</sup>

In July 2022, the Gay and Lesbian Coalition of Kenya (galck+), following a research project in partnership with Outright International, produced a report on conversion practices in the country, noting that:

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<sup>14</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya’s Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, p. 2

<sup>15</sup> Al Jazeera, [Kenyan queer men risk health amid homophobia in public hospitals](#), 2 June 2022

Beyond being discriminatory, the provisions on criminalization [of same-sex sexual conduct] violate Article 28 of the Kenyan Constitution on human dignity, Article 29 (a) (c) (d) and (f) of the Constitution on freedom and security of persons, and Article 31 of the Constitution on privacy, by infringing on the right to dignity and privacy of the individual. [...]

In addition, Article 25 (a), 29(d) of the Constitution, 2010 and Section 7 and 8 of the Prevention from Torture Act, 2017, which contain provisions against the offence of torture or cruel, inhuman and degrading treatment or punishment, are violated by the enforcement of the relevant Penal Code provisions.<sup>16</sup>

The 2022 US Department of State (USDOS) Kenya report on human rights practices, published in March 2023, observed that: “The constitution does not explicitly protect LGBTQI+ persons from discrimination based on sexual orientation, gender identity or expression, or sex characteristics, nor does it recognize LGBTQ+ individuals, couples, or their families”.<sup>17</sup>

Article 19 further explained that “While Kenya’s constitution makes no direct reference to LGBTQ+ individuals nor their rights, it provides for inclusivity and equality for all”.<sup>18</sup>

The Los Angeles Blade reported in March 2023 on a resolution in Kenya to ban public discussions of LGBTQ+ issues, stating that:

Kenya’s parliament has overwhelmingly passed a motion for the government to enforce an immediate ban on “public discussion, reporting and distribution” of LGBTQ+ content in the country.

It passed on Wednesday, despite some legislators raising concerns that it is a threat to the freedom of expression, information and the media protected under the Kenyan Constitution.

Owen Baya, an MP from the ruling United Democratic Alliance party who also serves as National Assembly’s deputy majority leader, termed the motion “controversial” and questioned why it was allowed for debate in the House, even though it violates the law.

“The republic of Kenya is governed by the Constitution. How can we prohibit freedom of speech? Freedom of speech, reporting and distribution of information are constitutional rights even if same-sex relations are illegal in Kenya,” Baya said.

The [Article 33](#) of the Constitution under the freedom of expression requires every person to respect the rights and reputation of others.

Section 2 of the same Article 33, however, curtails freedom of speech when it amounts to war propaganda, incitement to violence, hate speech and advocacy to hatred such as ethnic incitement, vilification of others or incitement to cause harm.

Article 32, which Baya also cited, provides the right to freedom of conscience, religion, thought, belief and opinion in addition to [Article 34](#) which guarantees the freedom and independence of electronic, print, and all other types of media.

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<sup>16</sup> Gay and Lesbian Coalition of Kenya (galck+), [Shame Is Not a Cure: So-Called Conversion “Therapy” Practices in Kenya](#), 14 July 2022, p. 16

<sup>17</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>18</sup> Article 19, [Kenya: Murder of LGBTQ+ activist must prompt urgent reform](#), 6 February 2023

The sponsor of the anti-gay motion, Mohamed Ali, an MP from the ruling party and a celebrated investigative journalist, in response argued that publicizing homosexuality, which is outlawed in the country, violates the constitution that only recognizes marriage between a man and a woman.

“The constitution gives us the freedom of expression, but not about gay and lesbianism which are unlawful practices in Kenya,” Ali said.<sup>19</sup>

The May 2023 joint report by NGLHRC and Amnesty International noted that:

The Constitution of Kenya protects the rights to freedom of expression (Article 33), association (Article 36) and peaceful assembly (Article 37) for everyone in Kenya. It therefore protects the right of LGBTI refugees to demonstrate, picket and petition relevant authorities on issues that affect them. In February 2023 Kenya’s Supreme Court confirmed the constitutional right of everyone in Kenya to freedom of association, without discrimination on grounds of sexual orientation.<sup>207</sup><sup>20</sup>

207 BBC World, Kenya wrong to ban LGBT rights groups from registering - Supreme Court, 24 February 2023, <https://www.bbc.com/news/world-africa-64491276>.

In September 2023, The Daily Nation Africa provided an update on the court case around the NGLHRC’s right to register earlier that year, which had called into question the constitutionality of not allowing the organisation to be formally recognised, explaining:

Ten years ago, Kenya's NGO Coordinating Board refused to register the NGLHRC, claiming it 'promotes same-sex behaviour'.

But in February this year, the Supreme Court said the board was wrong to stop NGLHRC's registration, allowing it to be formally recognised as an organisation. [...]

In February, by a majority of three judges against two, the court was of the view that the board's refusal of the registration of a nongovernmental organisation (NGO) seeking to champion the rights of LBGTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer or Questioning) persons in Kenya was discriminatory.

Justices Philomena Mwilu (Deputy Chief Justice), Smokin Wanjala and Njoki Ndung’u said it would be unconstitutional to limit the right to associate, through denial of registration of an association, purely on the basis of sexual orientation. [...]

[...] the Supreme Court said thr [sic] decision was discriminatory, in view of provisions of Section 27(4) of the Constitution. The said provisions say the “State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth”. [...]

The court, however, pointed out that all persons, whether heterosexual, lesbian, gay, intersex or otherwise, will be subject to sanctions if they contravene existing laws, including Sections 162, 163 and 165 of the Penal Code.

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<sup>19</sup> The Los Angeles Blade, [Kenyan MPs approve resolution to ban public discussions of LBGTQ+ issues](#), 24 March 2023

<sup>20</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p. 47

In addition, the court determined that use of the word “sex” under Article 27(4) of the Constitution does not connote the act of sex per se but refers to the sexual orientation of any gender, whether heterosexual, lesbian, gay, intersex, or otherwise.<sup>21</sup>

The ILGA Database page for Kenya stated that “In September 2023, reports revealed that MP Kaluma proposed a constitutional amendment to limit the definition of “sex” to the “biological distinctions established at birth”.”<sup>22</sup>

In October 2023, Erasing 76 Crimes similarly reported that:

At present, the Kenyan constitution bars the government from discriminating on the basis of sex. (Specifically, Article 259 (4) declares that “The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”)

In many cases, Kenyan officials, including the attorney general, interpret “sex” as including sexual orientation and gender identity, which means that lesbian, gay, bisexual and transgender Kenyas are protected from government discrimination. Kaluma wants to change that through a constitutional amendment.<sup>23</sup>

## ii. Criminal code

In ILGA World’s updated report on state-sponsored homophobia in 2020, it summarised for Kenya that: “The Penal Code (1930), as amended by Criminal Law (Amendment) Act (2003), prescribes under Section 163 a prison sentence of up to 14 years for consensual “carnal knowledge of any person against the order of nature”. Section 165 also prescribes a 5-year sentence for men found guilty of ‘gross indecency’”.<sup>24</sup>

The third edition of ILGA World’s Trans Legal Mapping Report, published in September 2020, gave the following details on relevant provisions in Kenya’s penal code:

Legislation: Penal Code 1948 (as amended by Act No.5 of 2003).<sup>95</sup>

Quote/details: Section 153, Male person living on earnings of prostitution or soliciting.

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any public place persistently solicits or importunes for immoral purposes, is guilty of a felony.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he satisfies the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

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<sup>21</sup> The Nation, [Supreme Court reaffirms LGBTQ right to associate](#), 13 September 2023

<sup>22</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>23</sup> Erasing 76 Crimes, [Fight for LGBTQ rights in Kenya: 1 win in court, 2 new threats in parliament](#), 2 October 2023

<sup>24</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [State-Sponsored Homophobia 2020: Global Legislation Overview Update](#), December 2020, p. 117

Section 154, Woman living on earnings of prostitution or aiding, etc., prostitution.

Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a felony.

Section 162, Unnatural offences.

Any person who:

(a) has carnal knowledge of any person against the order of nature; or

[...]

(c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony is liable to imprisonment for fourteen years.

Section 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.

Section 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.

Section 182, Idle and disorderly persons.

The following persons –

(a) every common prostitute behaving in a disorderly or indecent manner in any public place;

[...]

(d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;

(e) every person who without lawful excuse publicly does any indecent act;

(f) every person who in any public place solicits for immoral purposes;

shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.

Section 382, Personation in general.

Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

[DE FACTO CRIMINALISATION]

Situation: Kenyan law does not directly criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people are indirectly criminalised (de facto criminalisation).<sup>96</sup> The criminalisation of adult consensual same-sex sex and conduct, sex-work,<sup>97</sup> impersonation,<sup>98</sup> and public order laws are used to subject transgender and gender diverse people to harassment<sup>99</sup> and arbitrary, search, arrest and detention, although charges are often not laid.<sup>25</sup>

95 <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>

96 Kenyan police practices consistently sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

97 Most arrests in relation to sex work are based on municipal by-laws across the country that criminalise sex work.

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<sup>25</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Trans Legal Mapping Report: Recognition Before the Law](#), September 2020, pp. 35-37

98 East Africa Trans & Advocacy Network et al, The Human Rights Situation, Case Law, and Research on Protections on Grounds of Sexual Orientation, Gender Identity, and Expression in the Republic of Kenya, 2017, <https://www.khrc.or.ke/publications/178-the-human-rightssituation-case-law-and-research-on-protections-on-grounds-of-sexual-orientation-gender-identity-and-expression-in-the-republicof-kenya/file.html>

99 A.N.N v Attorney General [2013] eKLR In the High Court of Kenya at Nairobi, [https://transgender.or.ke/wpcontent/uploads/2017/09/Petition\\_240\\_of\\_2012.pdf](https://transgender.or.ke/wpcontent/uploads/2017/09/Petition_240_of_2012.pdf)

In May 2021, the UN Human Rights Committee published its concluding observations on the fourth periodic report of Kenya regarding the International Covenant on Civil and Political Rights. The Committee stated that it was concerned over “Sections 162 and 165 of the Penal Code criminalizing same-sex relations, and the High Court ruling in 2019 that declared those provisions to be constitutional”.<sup>26</sup>

The May 2022 UN Committee Against Torture’s concluding observations on the third periodic report of Kenya welcomed the adoption of the Registration of Persons (Amendment) Act of 2019, providing for the legal recognition of intersex persons but expressed its concern about “(a) Sections 162 and 165 of the Penal Code criminalizing same-sex relations, and the High Court ruling in 2019 that declared those provisions to be constitutional”, recommending that these provisions of the Penal Code be amended.<sup>27</sup>

The 2023 joint report by NGLHRC and Amnesty International noted that:

Kenyan national legislation criminalizes same-sex relations.<sup>34</sup> In 2019, after groups petitioned the High Court arguing that the Penal Code’s criminalization of same-sex conduct violates the constitutional rights to equality, non-discrimination, human dignity, security, privacy and health, the court unanimously ruled that Sections 162 and 165 do not violate the Constitution.<sup>35</sup> The UN High Commissioner for Human Rights and human rights defenders widely condemned the ruling, especially with regards to equality and non-discrimination.<sup>36</sup> The petitioners are appealing the ruling before the Supreme Court.<sup>28</sup>

34 Section 162 of the Penal Code criminalizes “carnal knowledge against the order of nature”, with a penalty of 14 years’ imprisonment. Section 163 penalizes with seven years’ imprisonment attempts to commit the offence set out in Section 162. Section 165 prohibits acts of “gross indecency” between men, or the procurement or attempted procurement of such acts, with five years’ imprisonment. The Kenya Penal Code, [kenyalaw.org/lex/actview.xql?actid=CAP.%2063](http://kenyalaw.org/lex/actview.xql?actid=CAP.%2063)

35 Human Rights Watch (HRW), Kenya Court upholds archaic anti-homosexuality-laws, <https://www.hrw.org/news/2019/05/24/kenya-court-upholds-archaic-anti-homosexuality-laws>

36 United Nations High Commissioner for Human Rights, Bachelet dismayed by Kenyan High Court Decision upholding criminal sanctions for same-sex relations, 24 May 2019, <https://www.ohchr.org/en/press-releases/2019/05/bachelet-dismayed-kenyan-high-court-decision-upholding-criminal-sanctions>; Amnesty International Kenya statement on court decision regarding LGBTQ rights , 27 May 2019, <https://www.amnestykenya.org/amnesty-international-kenya-statement-on-court-decision-regarding-lgbtq-rights-24-may-2019/>

<sup>26</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights Concluding observations on the fourth periodic report of Kenya](#), 11 May 2021, paragraph 12

<sup>27</sup> UN Committee Against Torture, [Concluding observations on the third periodic report of Kenya](#), 30 May 2022, paragraphs 43 and 44

<sup>28</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p. 19

Amnesty International summarised that:

in Kenya, articles 162, 163 and 165 of the Criminal Code criminalize same-sex sexual acts through provisions outlawing ‘carnal knowledge against the order of nature’ and ‘gross acts of indecency between men’.<sup>14</sup> These provisions were introduced by the British colonial powers in 1930s and were subsequently retained after independence.<sup>29</sup>

[...] 14 Amnesty International, *Making Love a Crime* (previously cited), pp. 83-84; See also: ILGA World, Database: Kenya, <https://database.ilga.org/kenya-lgbti> (accessed on 31 May 2023); Amnesty International, “Justice like any other person” – Hate crimes and discrimination against LGBTI refugees (Index: AFR 32/6578/2023), 19 May 2023, Kenya: “Justice like any other person” - Hate crimes and discrimination against LGBTI refugees - Amnesty International.

### iii. Other relevant legislation affecting LGBTQI+ persons

The 2020 the Kenya National Commission on Human Rights (KNCHR) submission to the UN Periodic Review stated that “there exists legal and policy gaps providing recognition for persons whose gender identity does not conform to the sex assigned during birth and for those who wish to change their gender markers in government issued documentation contributing to discrimination and ill treatment of sexual and gender minorities”.<sup>30</sup> The same source further noted that: “The reporting period has seen to the courts making progressive pronouncements protecting the rights of persons of diverse sexual orientation and gender identity Kenya”, citing the following cases:

- (i) COI & another versus Chief Magistrate Ukunda Laws Courts and 4 Others<sup>24</sup>. The Court of Appeal in Mombasa declared forced anal examination as unconstitutional on account that its amounts to torture and violates the rule against self-incrimination;
- (ii) Eric Gitari versus the Non-Governmental Organizations Co-ordination Board & 4 Others<sup>25</sup>. The High Court quashed a decision by NGO Coordination Board which rejected an application for registration of an NGO named Gay and Lesbian Human Rights Commission on account that the Penal Code criminalizes same sex conduct. The decision of the high court was upheld by the Court of Appeal.<sup>26</sup>
- (iii) Republic versus Kenya National Examinations Council and another exparte Audrey Mbugua Ithibu<sup>27</sup>. The court upheld the right of transgender persons to government issued documentation that bore their desired name with the gender marker removed.<sup>31</sup>

24 (2018) e KLR available at <http://kenyalaw.org/caselaw/cases/view/150781/>

25 (2015) e KLR available at <http://kenyalaw.org/caselaw/cases/view/108412/>

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<sup>29</sup> Amnesty International, [Colonialism and Sexual Orientation and Gender Identity: Submission To The Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity](#), 15 June 2023, p. 6

<sup>30</sup> Kenya National Commission on Human Rights (KNCHR), [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

<sup>31</sup> Kenya National Commission on Human Rights (KNCHR), [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

26 Non-Governmental Organizations Co-ordination Board versus EG & 5 Others [2019] e KLR available at <http://kenyalaw.org/caselaw/cases/view/170057/>.

27 (2014) e KLR available at <http://kenyalaw.org/caselaw/cases/view/101979/>.

The same source also described that: “The law in Kenya recognizes only two sex dichotomies—that is male and female”.<sup>32</sup> The source went on to explain how intersex persons are recognised in national legislation and policy:

The Persons Deprived of Liberty Act recognizes intersex persons and further gives an intersex person the right to decide the sex of the person by whom they should be searched. Intersex Persons have also been recognised [sic] in the National Police Service Standing Orders under Chapter 15 which provides that intersex persons shall choose the sex of the officer to conduct any body searches and shall be confined separately from the male and female inmates.

The High Court in the R.M case and Baby ‘A’ case<sup>30</sup>, upheld the rights of intersex persons to non-discrimination and affirmed their right to protection from torture, cruel, inhuman and degrading treatment by holding that intersex persons are protected under Article 27 (4) of the Constitution. The Court also underscored the need for empirical data on intersex persons in Kenya to inform relevant reforms to address challenges faced by intersex persons as a marginalised group.

A progressive move towards the protection of rights of intersex persons is the establishment by the Attorney General of the Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya.<sup>31</sup>

The Taskforce found out that for a majority of the intersex persons the recorded sex conflicts with the self- recognized sex. The birth certificates make it difficult for intersex persons to acquire Identity cards (ID)<sup>32</sup>. Due to this, intersex persons continue to face discrimination in health, education, social and economic sectors.

In 2017, the 11th Parliament in through the National Assembly Committee on Administration and National Security deliberated on a petition filed by concerned citizens regarding the recognition of intersex persons and directed the Registrar of persons, the Kenya National Bureau of Statistics (KNBS) and the Ministry of Health to provide statistics for all the intersex persons by ensuring that such statistics are captured in the national census and other socioeconomic surveys to facilitate planning.<sup>33</sup>

30 Baby ‘A’ (Suing through the Mother E A) & another v Attorney General & 6 others [2014], eKLR) available at <http://kenyalaw.org/caselaw/cases/view/104234/>.

31 Intersex Taskforce formed on 26th May 2017 vide Gazette Notice No. 4904 of 2017; Term further extended vide Kenya Gazette Vol CXIX-No. 165 Notice No. 10810 of 2018.

32 The Intersex Taskforce Report available at <https://www.knchr.org/Portals/0/FINAL%20INTERSEX%20TASKFORCE%20REPORT.pdf>.

33 Report on the Consideration of a Petition filed by concerned citizens Regarding Recognition of Persons with Gender Disorder Conditions (National Assembly, May 2007)

The third edition of ILGA World’s Trans Legal Mapping Report, published in September 2020, gave the following details on relevant legislation in Kenya:

<sup>32</sup> Kenya National Commission on Human Rights (KNCHR), [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

<sup>33</sup> Kenya National Commission on Human Rights, [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

Name change: Possible. By deed poll.

Legislation: Registration of Documents (Change of Name) Regulations, 1967.

Quote/details: By using Form 1 in the Schedule of the Regulations (a deed poll), a person may change their name in Kenya. Once all legal requirements have been concluded, the applicant registers the deed poll at the Principal Registry in Nairobi or the Coast Registry.

The Registrar shall, after registration, cause the deed poll to be advertised in the Kenya Gazette. This acts as a notification to the general public of the change of name. A fee of Sh 500 is payable for the deed poll presented for registration.<sup>93</sup>

Although theoretically all identity documents can be changed, in practice transgender people have faced challenges when seeking to change their name.

In 2017, the High Court of Kenya ordered the Principal Registrar of Persons to grant 5 transgender people's applications to change their names in their identity documents. The 5 individuals brought the case after the office of the Principal Registrar of Persons repeatedly failed to effect the necessary changes.<sup>94</sup>

Gender marker change: Possible, with unclear requirements.

Legislation: Court application.

Documents amended: Kenya Certificate of Secondary Education (KCSE), possibly National Identity Card, birth certificate and passport.

Conditions for gender marker change: In the 2014 case of Republic v Kenya National Examinations Council & another Ex-Parte Audrey Mbugua Ithibu [2014] eKLR, a trans woman successfully applied to the High Court of Kenya to change her name and remove her male gender marker from her secondary school certificate.

In coming to its decision, the court referred to evidence it received of the applicant's "Gender Identity Disorder" and the medical treatment she was receiving for it, the Indian case of NALSA v Union of India (2014), including its discussion of human dignity and how it intertwines with the development of a nation, and finally a Kenyan individual's Constitutional and inherent right to human dignity.

In terms of the certificate itself, the court observed that there was no law that required the certificates to bear gender markers, examinations in Kenya were not administered and marks were not awarded based on gender, and removing the marker did not dilute the quality of the certificate.

Accordingly, in cases where the law does require a gender marker in a document, the process to amend the gender marker is unclear.<sup>34</sup>

With regards to laws used against transgender and gender diverse people, the same source noted the following: "In states such as [...] Kenya impersonation, misrepresentation, and fraud laws are used against transgender and gender diverse people. For example, under these laws, transgender and gender diverse people whose gender expression is perceived as not conforming to strict societal norms on gender or the gender recorded in their official documents are considered to be misrepresenting themselves, impersonating another or attempting to commit theft and fraud".<sup>35</sup>

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<sup>34</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Trans Legal Mapping Report: Recognition Before the Law](#), September 2020, p. 35

<sup>35</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Trans Legal Mapping Report: Recognition Before the Law](#), September 2020, p. 15

According to Article 19, “Trans people have historically suffered discrimination, and in Kenya there are no statutory provisions relating to transgender rights. If there have been some court rulings in favour of transgender rights, such as the right to change names appearing on legal documents, it remains unclear as to whether these rulings constitute substantive law on the issue of changing legal gender”.<sup>36</sup>

ILGA World’s updated state-sponsored homophobia report in 2020 stated on Kenya that “Section 12 of the Film and Stage Plays Act (Act No. 34) (effective 1963) restricts the exhibition of films according to the discretion of the Kenya Film Classification Board. According to the Board’s Classification Guidelines (2012), films with themes that “promote or glamorise” a homosexual lifestyle” are either age-restricted (18+) or banned”.<sup>37</sup>

In its 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, an NGO in special consultative status, with the Eagles for Life, Sign Ishara, and Oasis Research, noted that “Although Kenya has taken some steps towards implementing and adopting a more comprehensive anti-discrimination law, the State party has to date taken no specific actions to provide protection on the basis of sexual orientation and gender identity”.<sup>38</sup>

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya’s third periodic report noted that:

24. An important step made by the State [...] (mentioned by Kenya’s government report to this Committee) is the Persons Deprived of Liberty Act, which was enacted in 2014. The Act provides key protections to detained persons in Kenya, including the right of intersex persons to decide the sex of the person by whom they are to be searched.<sup>34</sup> However, the Act fails to protect transgender persons or persons of non-conforming gender. The Act also states that an “intrusive search or search in or around a concealed body cavity” should be done in private and “with due regard to personal safety and health”, and that these searches should be carried with decency and dignity.<sup>35</sup> Though this provides some protection against forced anal examinations, further amendments are needed to prohibit all anal examinations without explicit consent and to reflect the High Court’s finding that the practice, when forced, violates constitutional principles of dignity and security (including freedom from torture and ill-treatment). Further training and implementation on the application on this provision is also needed, since reports document the continued practice [...].

25. The Persons Deprived of Liberty Act also requires that authorities ensure, for instance, that intersex persons are detained separately from others, presumably to protect them from violence, harassment and discrimination by other inmates.<sup>36</sup> Yet, this provision does not refer to other LGBTIQ+ persons and should

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<sup>36</sup> Article 19, [Kenya: LGBTIQ+ rights must be championed by civil society](#), 17 May 2022

<sup>37</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [State-Sponsored Homophobia 2020: Global Legislation Overview Update](#), December 2020, p. 147

<sup>38</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 6*

be amended accordingly.<sup>37</sup> There are also instances where, instead of being placed in a separate cell for protection, LGBTIQ+ persons have been inappropriately transferred to psychiatric centres.<sup>38<sup>39</sup></sup>

34 The Persons Deprived of Liberty Act, 2014, s 10(3).

35 Ibid, ss 10(4) and (5).

36 Ibid, s 12(3)(e).

37 See case pending at the Mombasa Law Courts, Case No. SO E 093/2021, regarding the need to detain gay and bisexual men and men who have sex with men separately for their protection. This is also highlighted in an upcoming Legal Aid Report by NGLHRC.

38 This is also highlighted in an upcoming Legal Aid Report by NGLHRC.

Reuters explained the details of the Family Protection Bill, stating that: “Gay sex is punishable by at least 10 years in jail under the proposed Kenyan law, while "aggravated homosexuality", which includes gay sex with a minor or disabled person or when a terminal disease is passed on, brings the death penalty”.<sup>40</sup>

The May 2022 UN Committee Against Torture’s Concluding observations on the third periodic report of Kenya stated that it “welcomes the adoption of the Registration of Persons (Amendment) Act of 2019, which provides for the legal recognition of intersex persons”.<sup>41</sup>

In August 2022, the Washington Blade reported on the intersex rights law taking effect in Kenya, stating that:

A new law that took effect late last month in Kenya has granted equal rights and recognition to intersex people

Intersex people are now recognized as Kenya’s third gender with an ‘I’ gender marker in response to the Children Act 2022. Kenya is the first African country that has granted the intersex community this universal right.

The new law requires intersex children to be treated with dignity and have equal access to basic services like medical treatment and education, in addition to social protection services as a special need. It also requires the accomodation of intersex children in child protection centers and other facilities.

Courts are also required to consider the needs of intersex children who are on trial — including the calling of an expert witness — before they issue any ruling. The law further stipulates that anyone can be a foster parent without restrictions of gender, age or marital status.

It also protects intersex children from so-called sex normalization surgeries, and such procedures will only be done with a doctor’s recommendation. Those who violate the law will face at least three years in jail and a fine of at least \$5,000. [...]

The Births and Deaths Registration Act under the new law’s Section 7 (3) “shall take measures to ensure correct documentation and registration of intersex children at birth.” [...]

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<sup>39</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya’s Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, p. 6

<sup>40</sup> Reuters, [Insight: Kenya could follow Uganda as East African nations wage war on LGBT rights](#), 27 June 2023

<sup>41</sup> UN Committee Against Torture, [Concluding observations on the third periodic report of Kenya](#), 30 May 2022, paragraph 43

Wakonyo, who also chaired the Intersex Persons Implementation Coordination Committee and was named the International Court of Justice's 2020 jurist of the year, describes the law's enactment as a historic moment because of its comprehensive definition of an intersex person.

It defines an intersex child as "a child with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary of female or male due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns which could be apparent before, at birth, in childhood, puberty or adulthood." [...]

"Defining an intersex from a child's perspective while taking care of many aspects and not just the physical notion of being intersex is the best practice because in future they don't find themselves in the state of gender confusion between males and females like the current situation," stated Wakonyo.

This provision essentially protects intersex persons from being deprived of their constitutional rights of gender recognition under the country's Bill of Rights.

Veronica Mwangi, the deputy director at [Kenya's National Commission on Human Rights](#), that helped secure the law's implementation, said it addresses issues for which the intersex community has been fighting for years.

"It is very progressive and we are glad about the gains because it provides for the existence of the intersex which all state actors have to accept. Full implementation is what we now need to focus on," she said. [...]

Intersex rights groups had initially petitioned the courts for a total ban of surgeries on intersex children unless they were a medical emergency.

Wakonyo backs the provision for a doctor's approval on grounds that the surgeries will only be done "in the best interest of the intersex child, informed consent of the parents and the participation of the child depending on the age." Wakonyo and other activists say the relaxation of the requirements for adopting intersex children not only seeks to end the problem of neglect and abandonment but also the stigma that has left some to die by suicide.

The law safeguards adoptive parents' rights and parental responsibility and intersex children from child labor, online exposure and other forms of exploitation.

"Intersex children who are just like other children will no longer be killed at birth because of their gender ambiguity," said Wakonyo.

Despite the law's huge benefits for the intersex community, Wakonyo notes it is a "very significant foundation" for the group because gender-specific accommodations in social gatherings and facilities remain needed.

Another historic win for intersex Kenyans this year was the Kenyan National Commission on Human Rights' decision to hire an intersex commissioner.

"Dr. Dennis Wamalwa applied as an intersex (person), interviewed as an intersex (person), and the shortlist comprised male, female, and 'I' gender for intersex. He emerged (at the) top and his intersex friends and associates came to witness his swearing," stated Wakonyo, who also served as a Kenyan National Commission on Human Rights commissioner.<sup>42</sup>

Freedom House stated in its 2023 Freedom in the World report for Kenya, that "In July, the government enacted the Children Act 2022, which provides intersex children with legal recognition and equal access to services".<sup>43</sup>

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<sup>42</sup> The Washington Blade, [Landmark intersex rights law takes effect in Kenya](#), 8 August 2022

<sup>43</sup> Freedom House, [Freedom in the World 2023: Kenya](#), 10 March 2023

In galck+'s July 2022 report, it noted the following with regards to conversion "therapy" practices and Kenyan law:

Despite the fact that the 2010 Constitution of Kenya<sup>50</sup> and the 2017 Prevention of Torture Act afford all Kenyans the freedom from torture and cruel, inhuman or degrading treatment or punishment and imposes penalties on those who commit or induce cruel, inhuman or degrading treatment or punishment; Kenya has no legal or policy provisions to address so-called conversion "therapy" in any form.<sup>51</sup>

While more research needs to be done on conversion "therapy" in Kenya, there is a clear link between anti-homosexuality legislation, the societal attitudes that support such laws, and the prevalence of conversion "therapy" programs. Generally, homophobic contexts are fertile ground for practices that may be termed conversion "therapy" because there are no regulations to protect LGBTIAQ+ people and criminalization silences open discussions of discrimination and violence against LGBTIAQ+ people. The criminalization of same-sex conduct may further embolden perpetrators and practitioners of so-called conversion "therapy" as survivors have clear reasons to fear reprisals, including criminal charges by state authorities if abuses are reported.<sup>44</sup>

50 Constitution of Kenya, Article 25 (a) and 29 (d).

51 Choice for youth and Sexuality, "Conversion Therapy" (Choiceforyouth.org, December 18, 2019) Available at: <https://www.choiceforyouth.org/assets/CT-Submission-CHOICE-for-Youth-and-Sexuality--Partners.pdf>.

For their 2022 submission to the UN Committee against Torture, the Advocates for Human Rights, The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic noted about the new Refugees Act, signed into law by Kenyan President Kenyatta on 17 November 2021, repealing the previous Refugees Act of 2006:

13. With regard to LGBTI asylum seekers, the bill does not clearly state protection measures towards this community. One concern is that asylum applications could be denied and applicants removed from Kenya for violation of Kenyan law,<sup>14</sup> which could impact LGBTI refugees, if they were found to be in violation of the laws criminalizing same sex sexual conduct. Advocates working directly with refugees state that it is difficult to identify an exact number of people who have been deported because of their sexual orientation or gender identity because the Kenyan government does not make this information public.<sup>45</sup>

[...] 14 The Refugees Bill 2019, cl. 23(5) ("A person who has submitted an application for refugee status shall be under obligation to abide by all the laws of Kenya . . . failure to which the Commissioner shall have powers to strike them out of the asylum process and advi[s]e the Cabinet Secretary to remove them from Kenya subject to the applicable immigration laws.").

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<sup>44</sup> Gay and Lesbian Coalition of Kenya (galck+), [Shame Is Not a Cure: So-Called Conversion "Therapy" Practices in Kenya](#), 14 July 2022, p. 17

<sup>45</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [KENYA Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Rights of LGBTI Persons, 73rd Session of the Committee against Torture \(19 Apr 2022 - 13 May 2022\)](#), 18 March 2022, p. 5

Similarly, the May 2023 joint report by the NGLHRC and Amnesty International, documenting human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya, noted the following relevant pieces of legislation:

Kenya is the only country in the East and Horn of Africa that offers asylum to individuals who seek protection because of their sexual orientation, gender identity and/or expression and sex characteristics. [...]

Amnesty International and NGLHRC are also concerned that Section 19(2) of the 2021 Refugees Act allows the government to expel refugees and asylum seekers on grounds of “public order” or “public morality”. Using the provision to expel LGBTI asylum seekers or refugees would be in violation of Kenya’s international law obligations under the principle of non-refoulement and the prohibition of discrimination on grounds of sexual orientation, gender identity and/or expression and sex characteristics. [...]

In April 2023 Hon. Peter Kaluma tabled the Family Protection Bill, a wide-ranging bill fashioned on the Uganda Anti-Homosexuality Act, that seeks to criminalise same-sex relations and restrict sexual and reproductive health rights for Kenyans. The Bill allows for the expulsion of refugees and asylum seekers who violated its provisions.<sup>41</sup> [...]

One provision of the 2021 Refugees Act, read together with the new Bill, is of particular concern, as it may be used to target LGBTI refugees. Section 19(2) of the Refugees Act states that

“a refugee or an asylum seeker engaging in a conduct that is in breach or is likely to result in breach of public order or contrary to public morality under the law irrespective of whether the conduct is linked to his claim for asylum or not, may be expelled from Kenya by an order of the Cabinet Secretary.”<sup>69</sup> [...]

Under Kenyan national law, the burning of houses, physical violence, abuse, sexual and gender related violence, are all are criminal acts for which, if properly investigated by the relevant Kenya Police, and the file submitted to the Department of Public Prosecution, the perpetrators could be charged in a court of law.<sup>200</sup> [...]

The Constitution of Kenya protects the rights to freedom of expression (Article 33), association (Article 36) and peaceful assembly (Article 37) for everyone in Kenya. It therefore protects the right of LGBTI refugees to demonstrate, picket and petition relevant authorities on issues that affect them. In February 2023 Kenya’s Supreme Court confirmed the constitutional right of everyone in Kenya to freedom of association, without discrimination on grounds of sexual orientation.<sup>207</sup><sup>46</sup>

41 Kenya, The Family Protection Bill, 2023, Art. 40, on file with Amnesty International. [...]

69 Kenya, 2021 Refugees Act, Section 19(2). [...]

200 The Office of the Director of Public Prosecutions (ODPP) is the National Prosecuting Authority in Kenya. The Constitution mandates it to prosecute all criminal cases in the country. [...]

207 BBC World, Kenya wrong to ban LGBT rights groups from registering - Supreme Court, 24 February 2023, <https://www.bbc.com/news/world-africa-64491276>.

The 2022 USDOS Kenya report on human rights practices, published in March 2023, observed that “the law does not specifically recognize the rights of LGBTQ+ persons within the areas of housing, employment, education, or healthcare”.<sup>47</sup>

<sup>46</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 7, 9, 19, 23, 46, and 47

<sup>47</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

However, the report did note that “New legislation enshrined the rights of intersex persons to formally identify “intersex” or “I” as the third gender. The law only allows intersex persons identified as male or female at birth to request a change to “I.” While the law recognized biologically different persons, it did not cover or normalize gender-nonconformity or nonbinary designations associated with LGBTQI+ persons”.<sup>48</sup>

It also noted that: “After years of advocacy by the intersex community, during the year the country amended the Children’s Rights Act protecting children from unnecessary harmful genital surgeries”.<sup>49</sup>

In April 2023, the Kenyan newspaper, The Star, reported on the details of a new bill on criminalising homosexuality; it noted that:

Homa Bay Town MP Peter Kaluma has submitted a family protection bill to Parliament.

The bill seeks to criminalize homosexuality, same-sex marriages, and LGBTQ behaviors.

In a statement, Kaluma said that if the bill is passed into law, it will criminalise the promotion, recruitment, and funding of homosexuality and LGBTQ.

"I have submitted the Family Protection Bill to the National Assembly. It seeks to ban comprehensive Sexuality Education (CSE) in Pre-primary, primary and secondary schools education programs," he said.

Kaluma wants sexual health and sexual health rights and education banned.

The bill if passed will uphold the prior rights of parents and guardians to their children’s education.

It will reassert the rights of parents to be informed and to consent to sexuality education, and abortion procedures involving their children.

According to Kaluma, the bill defines sex as the biological state of being male or female observed and assigned at birth.

The MP also wants the state to limit rights to assembly, demonstration, association, expression, belief, privacy, and employment in childcare institutions in respect of homosexual convicts.

The bill further prohibits adoption by homosexuals and proscribes sex acts on animals.

The legislator said the bill if passed will have the penalty imposed under the proposed Act ranges from the imprisonment of at least 10 years to death.

Kaluma has since maintained that homosexuals should be punished because it is illegal in Kenya.<sup>50</sup>

Reuters similarly explained the details of the Family Protection Bill, stating that: “Gay sex is punishable by at least 10 years in jail under the proposed Kenyan law, while "aggravated homosexuality", which includes gay sex with a minor or disabled person or when a terminal disease is passed on, brings the death penalty”.<sup>51</sup>

The Los Angeles Blade reported in March 2023 on a resolution in Kenya to ban public discussions of LGBTQ+ issues, stating that:

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<sup>48</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>49</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>50</sup> The Star, [Details of Kaluma's bill on criminalising LGBTQ](#), 8 April 2023

<sup>51</sup> Reuters, [Insight: Kenya could follow Uganda as East African nations wage war on LGBT rights](#), 27 June 2023

Kenya's parliament has overwhelmingly passed a motion for the government to enforce an immediate ban on "public discussion, reporting and distribution" of LGBTQ+ content in the country.

It passed on Wednesday, despite some legislators raising concerns that it is a threat to the freedom of expression, information and the media protected under the Kenyan Constitution.

Owen Baya, an MP from the ruling United Democratic Alliance party who also serves as National Assembly's deputy majority leader, termed the motion "controversial" and questioned why it was allowed for debate in the House, even though it violates the law. [...]

The sponsor of the anti-gay motion, Mohamed Ali, an MP from the ruling party and a celebrated investigative journalist, in response argued that publicizing homosexuality, which is outlawed in the country, violates the constitution that only recognizes marriage between a man and a woman. [...]

The legislator stated that his motion banning LGBTQ+ publicity is motivated by an increase in homosexuality in the country because of LGBTQ+-specific content in books and in print and broadcast media. [...]

The move to curtail homosexuality is also in response to last month's Supreme Court ruling that granted the LGBTQ+ community the right to register as non-governmental organization. [...]

The judges' decision sparked anger and criticism from religious leaders and politicians, including President William Ruto, who has instructed the attorney general to have it overturned through an appeal.

The motion that lawmakers approved on Wednesday calls for the police and judiciary to enforce it through the Section 162 of the Penal Code that criminalizes consensual same-sex relations with a 14-year jail term and sets the pace for the introduction of an anticipated anti-homosexuality bill that is being drafted.

Opposition MP Peter Kaluma, who sponsored the bill that seeks to further criminalize and punish homosexuality and the promotion of LGBTQ+ activities in Kenya, last month notified the National Assembly Speaker about its introduction in the House.<sup>52</sup>

In June 2023, The Washington Blade reported on a new agreement between Kenya and Netflix Africa ending the streaming of LGBTQ-specific movies in compliance with the country's laws. It noted that:

The agreement allowing Netflix to self-classify movies streamed in Kenya by restricting the LGBTQ-specific content was officially signed in February this year after talks that began in October 2021.

An official at Kenya's film regulator, the Kenya Film Classification Board, told Washington Blade that Netflix has already paid for a films distribution license within the country and it is currently under processing.

"After signing the agreement, they (Netflix) are already developing a classification system that is aligned with the local classification standards so that every film on Netflix will be Kenyan ratings once it is in place," the official said.

The Kenya Film Classification Board considers LGBTQ-specific content under the "restricted category" that is not allowed for broadcast, exhibition and distribution to the public because it glorifies, normalizes, promotes and propagates homosexuality against the law. [...]

Parliament in March approved a resolution banning public discussions of LGBTQ-specific issues, including in the media. The Family Protection Bill, 2023 would impose the death penalty on LGBTQ people and criminalizes the so-called promotion of LGBTQ practices in the country.

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<sup>52</sup> The Los Angeles Blade, [Kenyan MPs approve resolution to ban public discussions of LGBTQ+ issues](#), 24 March 2023

The KFCB [Kenya Film Classification Board] derives powers from the [Films and Stage Act](#) to regulate the exhibition, distribution, possession, or broadcasting of content to the public.<sup>53</sup>

In their Quarterly Mixed Migration Update in July 2023, covering the Eastern and Southern Africa region, the Mixed Migration Centre commented on the following in Kenya:

While Kenya remains the only country in the East Africa region to accept refugees and asylum-seekers persecuted based on their sexual orientation, a newly proposed anti-LGBTQI+ law could put an end to that. The proposed legislation, known as the Family Protection Bill, has been submitted to the Kenyan Parliament for review in April. If passed, it would criminalize the “promotion, recruitment and funding of homosexuality”, including same-sex marriages and “homosexual behaviours”. The law would have severe implications for already highly vulnerable LGBTQI+ refugees in the East Africa region, with no country remaining open to receive those seeking protection on grounds of sexual orientation. In addition, the onward movements of LGBTQI+ refugees and migrants, out of Uganda, Kenya and the wider East Africa region, should be anticipated, generating a need for resettlement and alternative legal migration pathways to countries farther afield.<sup>54</sup>

In their subsequent quarterly update, published in October 2023, the Mixed Migration Centre provided the following information: “During this quarter, the Kenyan Parliament was still to consider the Family Protection Bill 2023, which could further aggravate the precarious situation for LGBTQI+ refugees and asylum seekers in the country, including the hundreds of new arrivals from Uganda. The new bill proposes a 50-year jail term for “non-consensual same-sex acts”, while it also aims to “ban homosexuality, same-sex unions and LGBTQI+ activities and campaigns”.”<sup>55</sup>

Reuters explained in an October 2023 article that “Current laws in Kenya allow people to change their names and gender on official identification but only if they have undergone gender reassignment surgery - a rare procedure in the country”.<sup>56</sup>

ILGA World, in their November 2023 report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, noted on Kenya that:

[...] in March the National Assembly passed a resolution to enforce an immediate ban on the “public discussion, reporting and distribution” of matters relating to SOGIESC issues.<sup>477</sup> A few days later, in April 2023, MP Peter Kaluma submitted a so-called “family protection” bill to the National Assembly. If passed, the bill would ban SOGIESC advocacy and organising, comprehensive sexuality education at all schooling levels, and gender-affirming medical care for trans persons. It would reportedly also expand the existing 14-year penalty for same-sex acts to “life imprisonment or death”. Even publicly identifying as a member

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<sup>53</sup> The Washington Blade, [Netflix stops streaming LGBTQ-specific movies in Kenya](#), 21 June 2023

<sup>54</sup> Mixed Migration Centre, [Quarterly Mixed Migration Update: Eastern and Southern Africa | Egypt and Yemen, QUARTER 2 2023](#), 26 July 2023, pp. 7-8

<sup>55</sup> Mixed Migration Centre, [Quarterly Mixed Migration Update: Eastern and Southern Africa | Egypt and Yemen, QUARTER 3 2023](#), 25 October 2023, p. 7

<sup>56</sup> Reuters, [FEATURE-Rejected by banks, Kenyan LGBTQ+ entrepreneurs turn to loan sharks](#), 16 October 2023

of the LGBTQI+ community or wearing Pride colours could be penalised under the law, while asylum seekers and refugees of diverse-SOGIE could face expulsion from the country.<sup>478</sup> <sup>57</sup>

477 “MPs back motion against gays, lesbians“, The Star, 16 March 2023; “Kenyan MPs approve resolution to ban public discussions of LGBTQ issues“, Washington Blade, 27 March 2023.

478 “Peter Kaluma Proposes Bill to Criminalise Promotion of LGBTQ in Kenya“, Tuko, 24 February 2023; “Details of MP Kaluma’s Anti LGBTQ Bill“, Nairobi News, 13 March 2023; “How an LGBTQ court ruling sent Kenya into a moral panic“, Aljazeera, 15 March 2023; “MP Kaluma submits anti LGBTQ bill to Parliament“, Kenya Broadcasting Corporation, 8 April 2023; “Homa Bay MP Peter Kaluma Submits Bill To Parliament Seeking To Criminalize LGBTQ“, Digital Citizen, 8 April 2023; “Kenya, nuova legge omofoba contro i rifugiati LGBTQIA+“ [Kenya, new homophobic law against LGBTQIA+ refugees], Gay.it, 28 April 2023.

The ILGA Database page for Kenya states that, to the best of their knowledge, “civil unions or marriage are not legally available for same-sex couples in Kenya” and “neither joint adoption nor second parent adoption are legally available for same-sex couples in Kenya”.<sup>58</sup> Regarding legal gender recognition, the same page stated that, to the best of their knowledge, “laws in force in Kenya do not allow for gender marker change in identification documents” and that name change is nominally possible<sup>59</sup>, giving the following further information:

Name change is possible according to the Registration of Persons Act (1998) and Registration of Name Act (2010), though the change will be publicised by the Registrar in the Kenya Gazette. Theoretically, all identity documents can be changed, but in practice transgender and gender-diverse people have faced challenges when seeking to change their names.

There was reportedly a High Court judgement in 2014 where the Court found that the Registrar was at fault for not allowing five trans persons to change their names. In July 2019 the Court of Appeals upheld the 2014 judgement in Civil Appeal No. 355 of 2014 (2019). The Court of Appeals ruled that a trans woman should have been allowed to change her name and not have her gender marker on her Kenyan Certificate of Secondary Education (KCSE).

Despite this jurisprudence seemingly verifying that gendered name changes are possible, there has been no amendment discussed to make this explicit in the law.<sup>60</sup>

With regards to restrictions of non-vital medical interventions aimed at modifying the sex characteristics of intersex minors without their free, prior and full informed consent, the ILGA Database stated:

In 2022, Kenya adopted the Children Act (Law No. 29) (2022). The act defines "intersex child" as a “child with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in

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<sup>57</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [\*Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions\*](#), Second edition, 30 November 2023, p. 81

<sup>58</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>59</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>60</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

the common binary of female or male due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood.”

Article 21 specifies that “an intersex child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services.”

Article 23 prohibits “organ change or removal in case of an intersex child” if it is performed without “advice of a medical geneticist.”

Article 26 prescribes to accommodate intersex children deprived of liberty in separate facilities.

Article 64 stipulates that “the child protection units” established at every police station should have separate sections for intersex children.

Article 95 obliges the Children’s Court to have particular regard for the fact of a child being intersex. Part XII of the act creates a separate category of “a child in need of care and protection” that includes a child who “has been or is likely to be subjected to ... intersex genital mutilation,” as well as “a child who is intersex and is subjected to or likely to be subjected to discriminatory treatment or abuse.

In February 2023, MP George Peter Kaluma introduced the Family Protection Bill (2023), which would ban gender affirming care with at least 10 years of imprisonment for medical practitioners. This includes puberty blockers, hormone therapy and surgeries to affirm one's perceived gender. Note this bill explicitly excludes surgeries performed on intersex individuals that “are born with a genetically or biochemically verifiable disorder of sex development, including, but not limited to, XX disorder of sex development or XY disorder of sex development, sex chromosome disorders, XX or XY sex reversal and ovotesticular disorders”.

In June 2023, the Intersex Persons Implementation Coordination Committee (IPICC) presented the draft Intersex Persons Bill (2023), fulfilling their task assigned by Kenya’s national human rights commission in August 2019. The bill’s Article 11(1)(b) ensures that intersex individuals are protected from “intrusive and involuntary medical testing, treatment, or procedures that may have long-term negative consequences”. Additionally, Article 11(3) outlines guidelines for healthcare providers and the Cabinet Secretary of Health to develop “protocols on surgical and hormonal or other interventions that constitute medical emergencies necessary to avoid serious, urgent and irreparable harm to an intersex person”, along with other programs and requirements for appropriate medical care for intersex persons.<sup>61</sup>

ILGA World’s Intersex Legal Mapping Report, published in December 2023, added the following details on relevant legislation for intersex people in Kenya:

In 2014, Kenya passed Persons Deprived of Liberty Act No. 23 (2014), which regulates the deprivation of liberty conditions. Article 2 of the act contains a controversial definition of “intersex” as “a person certified by a competent medical practitioner to have both male and female reproductive organs”. Article 10 provides intersex people with the right to choose the sex of a person who would conduct a body search on them. Article 12 specifies that intersex persons deprived of liberty should be held separate from other persons.<sup>62</sup>

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<sup>61</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>62</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Intersex Legal Mapping Report: Recognition Before the Law](#), 13 December 2023, p. 78

The ILGA Database page for Kenya summarised that, to the best of their knowledge, laws in force in Kenya do not offer protection against discrimination based on “sexual orientation”, “gender identity”, “gender expression” or “sex characteristics” in the provision of goods and services, in healthcare, in education, in employment, or in housing.<sup>63</sup> The page also states that, to the best of ILGA World’s knowledge, laws in force in Kenya “neither aggravate penalties for crimes committed on the basis of “sexual orientation”, “gender identity”, “gender expression” or “sex characteristics” nor do they explicitly consider such crimes as “hate crimes””; and “do not prohibit incitement to hatred, violence or discrimination on the basis of “sexual orientation”, “gender identity”, “gender expression” or “sex characteristics””.<sup>64</sup>

## b. Implementation

### i. Arrests

*For information on court cases in relation to the legal status of NGOs, see VI., Treatment of LGBTQI+ Organizations and Human Rights Defenders, a. Government recognition of LGBTQI+ NGOs and for information on the arrests of human rights defenders, see section VI., b. State treatment of LGBTQI+ activists or those supporting their case or those perceived as such.*

#### 2020

NGLHRC’s 2019/2020 Annual Legal Aid Report, covering the period from July 2019 to July 2020, noted that “State officials have continuously acted ultra vires by arbitrarily arresting LGBTQ+ persons without charging and arraigning them in court and threatening them with section 162 of The Penal Code. [...] There have been a few media reports on LGBTQ+ persons arrested on the grounds of repeal 162”.<sup>65</sup>

In August 2020, Mwakilishi, a Kenyan diaspora news site, reported that police in Kakamega were holding two men accused of being in a gay relationship “The two were apprehended and booked to Kakamega police station. Kakamega OCPD [Officer Commanding Police Division] David Kabena said the two will be arraigned in court once an investigation into the matter is complete”.<sup>66</sup>

The National Transgender Advocacy Network of Kenya (NTAN), including the local organisations Trans\*Alliance Kenya and Jinsiangu Kenya, published a report in 2020 on the national transgender discrimination survey in Kenya. It commented on abuse by police and within the criminal justice system, stating that: “Nearly a third (31%) of transgender and intersex people had been arrested and

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<sup>63</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>64</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>65</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, p. 9

<sup>66</sup> Mwakilishi, [Kenya Police Arrest Two Suspected Kenyan Gay Lovers](#), 21 August 2020

incarcerated with a vast majority (83%) jailed under six months, 8% jailed up to one year, 6% jailed up to three years and 2% jailed between five to ten years”.<sup>67</sup>

## 2021

NGLHRC’s 2020/2021 Annual Legal Aid Report, covering the period of June 2020 to June 2021, noted that:

Restrictions of movement created exacerbated risk of abuse during street controls, with reports of selective arrests; [...] arbitrary detentions and a general increase in mistreatment in the public sphere. [...] There have been quite a number of cases of police raids and arbitrary arrests in a number of refugee safehouses. [...]

State officers have continuously acted ultra vires by arbitrarily arresting LGBTQ+ persons without charging and arranging them in court and threatening them with section 162 of The Penal Code.

State officers have continuously [sic] harassed, blackmailed and extorted queer persons while threatening to charge them with the provisions of section 162 and 165 of the Penal Code.<sup>68</sup>

The 2021 submission to the UN Human Rights Committee from the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that:

LGB individuals interviewed for this report described frequent persecution and arrests of LGB individuals by law enforcement officials. A common pattern emerged from the interviews in which LGB individuals were arrested because of their sexual orientation, but charged for other crimes like loitering, gambling or simply detained without a formal charge. In one instance, an MSM27 man was attacked by a law enforcement officer because he was walking late at night with his partner. He stated, “He gave me a slap I will never forget. They have never been friendly to us.”<sup>28</sup> A common experience among the LGB individuals interviewed for this report was for law enforcement officials to pressure them for bribes in exchange for their release, in large part because there were no official charges to bring against them.<sup>69</sup>

27 Men who have sex with men

28 Interview with Participant, Migori, Kenya, Jan. 8, 2019.

The same source further highlighted: “While sections 162-165 of Kenya’s Penal Code do not criminalize LGBTI identities, they do criminalize same-sex sexual conduct. Even the vocabulary of the legal provisions is vague because it does not define what “unnatural carnal knowledge” constitutes. Therefore, much police officers and government officials have much discretion in their interpretation of the provisions. They often arrest LGBTI individuals under these provisions of the Penal Code based solely

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<sup>67</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, p. 7

<sup>68</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2020/2021 Annual Legal Aid Report](#), 2021, pp. 2-3, 26

<sup>69</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 1*

on their own perceptions of sexual conduct”.<sup>70</sup> Moreover, “LGBTI individuals in Kenya experience widespread violations of their right to life, liberty, and security. In 2015, for example, two men in Kenya were arrested and charged with committing “unnatural” offenses and the trafficking of ‘obscene material’.”<sup>71</sup>

In a November 2021 Oral Statement on the challenges faced by LGBTI refugees in Kakuma refugee camp in Kenya, Amnesty International stated that “LGBTI activists who have been vocal in expressing concerns from the LGBTI community have faced threats and intimidation and their life are threatened. [...] Some LGBTI activists have also been arbitrarily arrested and detained by the security officials in the camp”.<sup>72</sup>

The May 2023 joint report by the NGLHRC and Amnesty International reported on incidents in 2021 stating that:

Kenyan police and other authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism, while LGBTI refugees detained in relation to protests about the treatment of LGBTI people in Kakuma camp have described being subjected to serious abuses in detention [...].

In mid-August 2021 LGBTI refugees reported a fire incident caused by petrol thrown at their shelters.<sup>126</sup> The following day, the police detained Isabel and three other LGBTI refugees, accusing them of having planned the fire incident. The group was released the following day. At the time of stating, no further investigation has been conducted involving them and no charge has been pressed against them. Isabel believes that they have been singled out by the police because of their activities for the LGBTI community in Kakuma.<sup>127</sup> [...]

Amnesty International and NGLHRC are particularly concerned about reports of serious abuses of LGBTI refugees in detention, after they were arrested in relation to protests about the treatment of LGBTI individuals in Kakuma camp. [...]

In May 2021, several LGBTI refugees were arrested after protesting in front of the UNHCR compound [...]. Edwin, a gay man, was charged and taken to prison, where he stayed for two and a half months.<sup>73</sup>

126 Phone interview with Daniel, 18 August 2021.

127 Phone interview with Isabel, Kakuma camp, 24 August 2021.

## 2022

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture noted that:

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<sup>70</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 13*

<sup>71</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 19*

Footnote 19 cited: Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya’s Coast* (United States: Human Rights Watch, September 2015)

<sup>72</sup> Amnesty International, [Oral statement on the situation of refugees in Africa at the 69th Ordinary Session of the African Commission on Human and Peoples’ Rights](#), 25 November 2021, p. 2

<sup>73</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 9, 34, and 35

Acts of violence perpetrated by State and non-State actors against LGBTIQ+ persons in Kenya include arbitrary detention [...]. [...]

In the context of such criminalisation [of same-sex conduct], LGBTIQ+ persons face increased risks of arbitrary arrests and detention [...]. [...]

Arbitrary arrests, extortion and violence in police custody. Arbitrary arrests with the intent to extort are disproportionately carried out against LGBTIQ+ persons in Kenya.<sup>74</sup>

The 2022 USDOS Kenya report on human rights practices noted that “LGBTIQ+ organizations reported police more frequently used general public-order laws (for example, disturbing the peace) to arrest or harass LGBTIQ+ individuals”.<sup>75</sup>

ILGA World, in their November 2023 report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, documented the following arrest in 2022:

In November 2022, law enforcement officials in Migori County arrested an individual who appears to be a trans woman, although they were reported in the media as a “crossdresser” and a “female impersonator”. The incident occurred when the individual in question was passing by the Awendo police station and was stopped by a female officer. According to a police statement, the officer found their appearance to be “suspiciously masculine”. After some questioning from the officer, the victim was asked to undress and present their National Identification Card. After it was found that their ID had a male gender-marker and name, the victim was arrested. [...] The detainee was subsequently removed from the station and transported to the Migori County Criminal Investigation Officer's office for further processing. The Sub-County police commander told the press that the authorities would seek to “determine why the man has been dressed as a woman. We want him checked out to see if he is truly transgender, as he claims”.<sup>497</sup><sup>76</sup>

<sup>497</sup> This source contains personal names or images and has thus been redacted to protect the safety of those involved. If you require access to this source for corroboration or for COI Research purposes, please reach out to [research@ilga.org](mailto:research@ilga.org).

## 2023

In August 2023, queersOfKakuma, a group of LGBTI+ activists living in Kakuma refugee camp, together with members of migration-control.info, released a report about ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp. It stated: “police officers can, themselves, be violent towards LGBTI+ asylum seekers and refugees. [...] QueersOfKakuma have also spoken of unfair arrestations: *“Before we were sixty but four of us are in prison. They were imprisoned for nothing. They*

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<sup>74</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya’s Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 1-3

<sup>75</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>76</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 83

*are in prison, we failed to collect money to get them out. Now it's two months. We don't have money, it's two thousand dollars for the people in prison.”<sup>77</sup>*

## 1. Entrapment

### 2020

The 2020 Kenya National Commission on Human Rights’ submission to the UN Periodic Review stated that “Persons of diverse sexual orientation and gender identity face challenges including killings, physical violence, stigma and exclusion from family, expulsion for workplaces, learning institutions, blackmail, extortion, denial of work, housing and poor access to healthcare”<sup>78</sup>, citing a 2018 press release it had issued.<sup>79</sup>

### 2021

In its 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, with the Eagles for Life, Sign Ishara, and Oasis Research noted in relation to section 162 and 165 of Kenya’s Penal Code that “police officers utilize the existing legal provisions to harass LGBTI individuals more often than to prosecute them”, citing a 2015 Human Rights Watch report.<sup>80</sup>

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic submitted a parallel report on the rights of LGBTI citizens and non-citizens in Kenya to be considered in connection with the 2021 fourth periodic report of Kenya on its compliance with the International Covenant on Civil and Political Rights. It noted that: “Reports from local community members indicate instances of LGBTI refugees being arbitrarily arrested and extorted for sexual acts and financial payments”.<sup>81</sup> The same source described the following incident:

In compliance with COVID19 restrictions, a safe house in Nairobi suburbs sheltering 30 refugees split into two houses of 15 each. Despite abiding by restrictions, the safe-houses were still subjected to police raids.<sup>113</sup> Caitlyn Lubega detailed a raid of her home by police where police searched her bedroom drawers

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<sup>77</sup> [queersOfKakuma and migration-control.info, \*Ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp, Kenya\*, 25 August 2023](#)

<sup>78</sup> Kenya National Commission on Human Rights, [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

<sup>79</sup> Kenya National Commission on Human Rights, [Press Release on International Day against Homophobia, Biphobia, and Transphobia \(IDAHOBIT\)](#), 17 May 2018

<sup>80</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 12*

Footnote 15 cited: Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya’s Coast* (United States: Human Rights Watch, September 2015).

<sup>81</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, p. 18

and discovered lubricant.<sup>114</sup> The police then arrested Lubega and her roommate and gave them the option to either “buy their freedom” or be charged with sex crimes, using the lubricant as evidence.<sup>115</sup>

111 Max Bearak, “‘We Were So Ready’: LGBT Refugees in Kenya Live in Fear as Global Resettlement is Put on Hold”, Washington Post, 26 May 2020, available [https://www.washingtonpost.com/world/africa/kenyacoronavirus-lgbt-refugees-resettlement/2020/05/26/3550cd0c-83ef-11ea-81a3-9690c9881111\\_story.html](https://www.washingtonpost.com/world/africa/kenyacoronavirus-lgbt-refugees-resettlement/2020/05/26/3550cd0c-83ef-11ea-81a3-9690c9881111_story.html).

112 Ibid.

113 Ibid.

114 Ibid.

115 Ibid.<sup>82</sup>

A Guardian article in January 2022 explored the experiences of ‘catfishing’ by LGBTQ Kenyans the previous year, stating that:

One day after work last month, Tom Otieno\* went to a shopping centre in Nairobi to pick up groceries before heading home. He got a call from someone he had been chatting to for a week on Grindr, a social networking app for gay, bi, trans and queer people. The man had already tried ringing several times during the day while Otieno was with colleagues and was keen to meet.

Otieno, 29, mentioned where he was but said that he did not want to see the man. Then, as he was heading to his car, he got another call. As he answered it, someone approached him and said they were a police officer. Seconds later, two other officers joined him and surrounded Otieno.

“One of them had this envelope,” he says. “He was getting papers out of the envelope and looking at them and then at me. I saw it was a chat [from Grindr] and I saw my face on it. I knew I had been set up.”

The police asked him to get in their car to “help with an investigation”. Otieno refused and they accused him of having sex with a minor and started getting violent. “One tried to cuff me by force. Then he punched me on the chest and bent me over the car bonnet.”

Otieno agreed to go with them as long as they did not handcuff him. Once in the car, he realised they were taking a longer route to the station and started to panic.

“I felt I was going to die. A few months ago, I heard a transgender person was found dead and word went round that it was the police,” he says.

Tom refused to hand over his phone to the police, even though they asked, because he knew he had done nothing wrong and they had not officially arrested him. He started to call friends, one of whom got in touch with a lawyer from the National Gay and Lesbian Human Rights Commission (NGLHRC). She rang Otieno and said she would meet him at the police station.

Once the police knew a lawyer was involved, they took Otieno to the station but not before threatening him and demanding money to “make everything go away”.

Otieno’s experience on social media sites or dating apps of being “catfished” – as using a fake identity to lure someone online is known – by people intending to extort money is common among members of the LGBTQ+ community in Kenya.

With section 162 of the colonial-era penal code criminalising sexual acts deemed “unnatural”, there are fertile grounds for the practice to thrive. Activists want social media companies to take action to stamp out the extortion. [...]

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<sup>82</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, p. 19

According to Gateru [executive director of NGLHRC], cases of blackmail and extortion are increasing, methods are becoming more sophisticated, and while this type of crime used to be limited to Nairobi, it has now spread to other areas of the country.

Exact figures on its prevalence are hard to come by and Gateru estimates that only about 10% of cases are reported. The NGLHRC legal aid centre has dealt with 679 such cases since its inception in 2013. Other LGBTQ+ organisations in the country say they have anecdotal evidence of thousands of such cases.

Otieno, who works in finance, was aware enough of his rights that he questioned the police officers' actions and rebuffed their efforts to extort bribes from him. Once he arrived at the station and met his lawyer, the minor the police claimed had wanted to press charges against him was suddenly unavailable. Otieno was not arrested or charged.

Many other members of the LGBTQ+ community have ended up in dire situations after being catfished on social media and dating sites. Lawyers and caseworkers have reported cases where people have been beaten so severely that they required hospital treatment and some almost died. Others have been raped and robbed at gunpoint. Many have been forced to empty their bank accounts and pay bribes amounting to tens of thousands of pounds to their blackmailers. Perpetrators include police officers, but also other officials and members of the public.

Bruno Shioso, speaking for the National Police Service, says these claims are "suspicious".

"Police don't stalk citizens on social media. I don't understand what the motivation would be," he claims.

Kelly Kigera, of the emergency security response team at the Gay and Lesbian Coalition of Kenya, says blackmailers approach members of the LGBTQ+ community online, sometimes using "cute" fake pictures, to chat and gain their trust before arranging to meet. Sometimes they will take compromising pictures or videos, which they use to threaten to expose their victim's sexual orientation.

Other people report police officers storming into their homes, threatening them with prosecution under section 162. Kigera adds: "They take your phone, contacts, passwords. They see other gay men you've been talking to, and trace them using other platforms."

The pandemic has made everything worse, says Gateru: "There has been such a loss of income and livelihoods from within the community and some people have resorted to these means to try to make a living for themselves." [...]

In Nairobi, Otieno is still recovering from his ordeal. Friends have since told him similar stories of abuse and extortion.<sup>83</sup>

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture noted that:

In the context of such criminalisation [of same-sex conduct], LGBTIQ+ persons face increased risks of arbitrary arrests and detention [...], extortion by police officers [...]. [...]

*Arbitrary arrests, extortion and violence in police custody.* Arbitrary arrests with the intent to extort are disproportionately carried out against LGBTIQ+ persons in Kenya. NGLHRC has dealt with 679 cases of blackmail and extortion since 2014 but there is anecdotal evidence among local organisations of thousands of such cases. In 2021, instances of extortion by undercover police officers who lured LGBTIQ+ persons through a dating app illustrate the extent of the effort and creativity employed to practice extortions against this group.<sup>84</sup>

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<sup>83</sup> The Guardian, ['I'd been set up': the LGBTQ Kenyans 'catfished' for money via dating apps](#), 4 January 2022

<sup>84</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 2-3

13 Sarah Johnson, 'I'd been set up': the LGBTQ Kenyans 'catfished' for money via dating apps, The Guardian, 4 January 2022.

## 2022

*No information was found amongst the sources consulted on entrapment in 2022.*

## 2023

The May 2023 joint report by the NGLHRC and Amnesty International documented hate crimes, discrimination, and other human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya between 2018 and February 2023 noting that:

Abuse of the rights of LGBTI people is widespread and well documented, including physical violence, death threats, harassment by state officials, stigma, expulsion from educational institutions, blackmail, extortion, poor access to health care and medical research abuse.<sup>85</sup>

37 Aljazeera, "Kenyan queer men risk health amid homophobia in public hospitals", June 2022, <https://www.aljazeera.com/features/2022/6/2/homophobia-in-kenyan-public-hospitals-pushes-queer-men-to-danger>; Kenya Human Rights Commission, The Outlawed Amongst Us, A Study of the LGBTI Community's Search for Equality and Non-Discrimination in Kenya, 2011, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html> [...]

## 2. Mistreatment in investigations

*This section should be read in conjunction with section III., c. [Harassment and violence](#) and VI. a. [Investigation and prosecution of crimes against LGBTQI+ individuals](#).*

## 2020

NGLHRC's 2019/2020 Annual Legal Aid Report, covering the period from July 2019 to July 2020, noted that "Following NGLHRC successful litigation in Petition 56 of 2016, the court banned use of forced anal testing as a means of establishing the offence under section 162 of the Penal Code, Cap 63, and Laws of Kenya, cases of forced anal examinations were not reported. However, in 2019/2020, the legal team has received a few cases of forced anal examinations that are conducted by the state".<sup>86</sup>

## 2021

In its 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, with the Eagles for Life, Sign Ishara, and Oasis Research noted in relation to section 162 and 165 of Kenya's Penal

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<sup>85</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, ["Justice like any other person" – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p.19

<sup>86</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, p. 9

Code that: “They threaten LGBTI individuals and use violence to extract confessions”.<sup>87</sup> The same source further described:

Police also use violence against LGBTI individuals in detention. One client of The Advocates, a gay man, was meeting with other LGBTI activists in a restaurant when police barged in and arrested them, telling them they were “evil.” One police officer hit the client on the back of the neck with an AK47 pistol. The officers took him and his friends to a detention center, where a police officer sexually assaulted and verbally abused the client due to his sexual orientation. The police officer justified his actions, claiming “this is what you wanted.” Ultimately, the client fled Kenya for fear of further abuse and being outed to his family.<sup>29</sup><sup>88</sup>

29 Interviews with clients of The Advocates (2015-2018). On file with authors

In June 2021, Jinsiangu released a statement on the International Day Against Homophobia, Biphobia, and Transphobia, observing that: “ITGNC [intersex, transgender and gender non-conforming people] persons are often constructed as criminals, cursed, deviant, immoral and devil worshipers and a shame. [...] Such contexts present themselves in [...] access to protection by the Law. A practical example is usually seen through cases such as public stripping and forced stripping during arbitrary arrests by Law enforcement”.<sup>89</sup>

The 2021 USDOS Kenya report on human rights practices noted that “NGOs reported police frequently harassed, intimidated, or physically abused LGBTIQ+ individuals in custody. They also reported police threatened gay men while in custody with forced anal examinations, which were outlawed in 2018”.<sup>90</sup>

## 2022

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture noted that:

12. *Arbitrary arrests, extortion and violence in police custody.* Arbitrary arrests with the intent to extort are disproportionately carried out against LGBTIQ+ persons in Kenya. NGLHRC has dealt with 679 cases of blackmail and extortion since 2014 but there is anecdotal evidence among local organisations of thousands of such cases. [...]

13. In other cases, where lawyers were not involved, victims of this type of extortion have suffered severe beatings by both police officers and members of the public, sometimes requiring hospital treatment.<sup>14</sup> [...] Forced anal examinations, despite being ruled unconstitutional as mentioned above, also continue to be practiced.<sup>16</sup>

14. Furthermore, threats of outing LGBTIQ+ persons to their family or wider community are also practiced in the context of police custody. These threats tend to be effective due to the stigmatisation and ostracization faced by the LGBTIQ+ community. [...]

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<sup>87</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 21*

<sup>88</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 23*

<sup>89</sup> Jinsiangu, [Int'l Day Against Homophobia Biphobia & Transphobia \(IDAHOBIT\) 2021](#), 14 June 2021

<sup>90</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

15. *Violence in detention facilities*. LGBTIQ+ persons also face discrimination and multiple forms of violence, often amounting to torture or CIDTP [cruel, inhuman or degrading treatment or punishment], in detention settings [...]. [...]

24. An important step made by the State [...] (mentioned by Kenya's government report to this Committee) is the Persons Deprived of Liberty Act, which was enacted in 2014. The Act provides key protections to detained persons in Kenya, including the right of intersex persons to decide the sex of the person by whom they are to be searched.<sup>34</sup> However, the Act fails to protect transgender persons or persons of non-conforming gender. The Act also states that an "intrusive search or search in or around a concealed body cavity" should be done in private and "with due regard to personal safety and health", and that these searches should be carried with decency and dignity.<sup>35</sup> Though this provides some protection against forced anal examinations, further amendments are needed to prohibit all anal examinations without explicit consent and to reflect the High Court's finding that the practice, when forced, violates constitutional principles of dignity and security (including freedom from torture and ill-treatment). Further training and implementation on the application on this provision is also needed, since reports document the continued practice [...].

25. The Persons Deprived of Liberty Act also requires that authorities ensure, for instance, that intersex persons are detained separately from others, presumably to protect them from violence, harassment and discrimination by other inmates.<sup>36</sup> Yet, this provision does not refer to other LGBTIQ+ persons and should be amended accordingly.<sup>37</sup> There are also instances where, instead of being placed in a separate cell for protection, LGBTIQ+ persons have been inappropriately transferred to psychiatric centres.<sup>38</sup><sup>91</sup>

13 Sarah Johnson, 'I'd been set up': the LGBTQ Kenyans 'catfished' for money via dating apps, *The Guardian*, 4 January 2022.

14 Ibid. [...]

16 NGLHRC, 'July 2019/July 2020 Legal Aid Report', 2020, p. 24 (para. 15.2). See also NGLHRC, '2018/2019 Legal Aid Brief', p. 4. [...]

34 The Persons Deprived of Liberty Act, 2014, s 10(3).

35 Ibid, ss 10(4) and (5).

36 Ibid, s 12(3)(e).

37 See case pending at the Mombasa Law Courts, Case No. SO E 093/2021, regarding the need to detain gay and bisexual men and men who have sex with men separately for their protection. This is also highlighted in an upcoming Legal Aid Report by NGLHRC.

38 This is also highlighted in an upcoming Legal Aid Report by NGLHRC.

NGLHRC's 2022 annual report stated that:

The Legal Team noted with concern that the State and state actors continue to use laws and legal procedures to silence and cause harm toward LGBTIQ+ persons in Kenya. Progressive court judgements are treated as suggestions rather than legally binding orders. For example, the Court of Appeal in Mombasa issued orders in 2018 against forced anal examinations, however this practice continues to be used as a means of blackmail and extortion by police officers and public officials in a bid to scare,

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<sup>91</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 3-4 and 6

undermine and torture LGBTIQ+ individuals suspected of having adult consensual same-sex/gender conduct in private.<sup>92</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, noted that: “NGOs reported police frequently harassed, intimidated, or physically abused LGBTIQ+ individuals in custody. They also reported police threatened gay men while in custody with forced anal examinations, which were outlawed in 2018”.<sup>93</sup>

### 2023

A BBC News article stating on the decision of the supreme court to allow LGBT rights groups to register in February 2023 noted that “The ruling comes at a time when homophobic rhetoric has been rising in Kenya. [...] Members of the LGBTIQ+ community have been harassed by police, subjected to body examinations to ‘prove’ gay sex”.<sup>94</sup>

## ii. Treatment in detention facilities

*For further relevant information also consult section II., b., i, 2. [Mistreatment in investigations](#).*

### 2020

The National Transgender Advocacy Network of Kenya (NTAN), including the organisations Trans\*Alliance Kenya and Jinsiangu Kenya, published a report in 2020 on the national transgender discrimination survey in Kenya, within which it commented on abuse by police and within prison: “Transgender and intersex people serving jail term also reported harassment (61%) by other inmates, 23% reported physical assault or attack, 11% reported sexual assault, and 5% reported being denied hormonal treatment impacting negatively on their physical, mental, and emotional well-being”.<sup>95</sup>

The 2020 USDOS Kenya report on human rights practices, published in March 2021, noted that “NGOs reported police frequently harassed, intimidated, or physically abused LGBTI individuals in custody”.<sup>96</sup>

### 2021

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic’s report on the rights of LGBTI citizens and non-citizens in Kenya noted that “there are also reports of cases where individuals have been arrested and subsequently prevented

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<sup>92</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2022 Annual Report](#), 2023, p. 18

<sup>93</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>94</sup> BBC News, [Kenya wrong to ban LGBT rights groups from registering - Supreme Court](#), 24 February 2023

<sup>95</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, p. 7

<sup>96</sup> US Department of State (USDOS), [2020 Country Reports on Human Rights Practices: Kenya](#), 30 March 2021

from contacting anyone outside the detention facility and people who have been routinely held longer than the 24-hour maximum”.<sup>97</sup>

In June 2021, Jinsiangu, a Kenya-based NGO, released a statement on the International Day Against Homophobia Biphobia & Transphobia, observing that: “ITGNC [intersex, transgender and gender non-conforming people] persons are often constructed as criminals, cursed, deviant, immoral and devil worshipers and a shame. [...] Such contexts present themselves in [...] access to protection by the Law. A practical example is usually seen through cases such as public stripping and forced stripping during arbitrary arrests by Law enforcement”.<sup>98</sup>

The May 2023 joint report by the NGLHRC and Amnesty International reported on 2021 incidents, noting that:

Kenyan police and other authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism, while LGBTI refugees detained in relation to protests about the treatment of LGBTI people in Kakuma camp have described being subjected to serious abuses in detention, including being intentionally exposed to rape and sexual violence by other detainees. [...]

Amnesty International and NGLHRC are particularly concerned about reports of serious abuses of LGBTI refugees in detention, after they were arrested in relation to protests about the treatment of LGBTI individuals in Kakuma camp. In particular, the organizations are extremely concerned about the practice of putting LGBTI detainees in the same cell as male detainees,<sup>134</sup> as well as about the allegations that the police intentionally exposed LGBTI refugee activists to rape and sexual violence by other detainees because of their sexual orientation, gender identity and/or expression and sex characteristics. [...]

In May 2021, several LGBTI refugees were arrested after protesting in front of the UNHCR compound [...]. Edwin, a gay man, was charged and taken to prison, where he stayed for two and a half months. He told researchers that the other inmates recognized him, as they had seen on TV news about LGBTI refugees protesting. He said that he was targeted because of this, repeatedly beaten and raped.<sup>136</sup>

In August 2021 police arrested Isabel and three other LGBTI refugees, accusing them of faking an arson attack [...]. She told researchers:

*“While taking us into the cell, the police was signalling to the other detainees that they were bringing people who pretend to be ladies. When we got into the cell, the other detainees started slapping us. They threatened us with a broken mirror, saying that they wanted to ‘do it’ with us in the way LGBTI people do it. We were forced to ‘do it’ at night. It was a very long night.”*<sup>137</sup><sup>99</sup>

<sup>134</sup> While the Kenya Police Service Standing Orders recognize that intersex person shall be detained in a separate cell from male and female detainees, it does not have provision or indications on how to detain a transgender person. [...]

<sup>136</sup> Interview with Edwin, Kakuma town, 8 September 2021.

<sup>137</sup> Phone interview with Isabel, 24 August 2021.

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<sup>97</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, p. 18

<sup>98</sup> Jinsiangu, [Int'l Day Against Homophobia Biphobia & Transphobia \(IDAHOBIT\) 2021](#), 14 June 2021

<sup>99</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 9 and 35

The 2021 USDOS Kenya report on human rights practices noted that “NGOs reported police frequently harassed, intimidated, or physically abused LGBTQI+ individuals in custody. They also reported police threatened gay men while in custody with forced anal examinations, which were outlawed in 2018”.<sup>100</sup>

## 2022

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture noted that:

12. *Arbitrary arrests, extortion and violence in police custody.* Arbitrary arrests with the intent to extort are disproportionately carried out against LGBTQI+ persons in Kenya. [...]

13. In other cases, where lawyers were not involved, victims of this type of extortion have suffered severe beatings by both police officers and members of the public, sometimes requiring hospital treatment.<sup>14</sup> [...] Forced anal examinations, despite being ruled unconstitutional as mentioned above, also continue to be practiced.<sup>16</sup>

14. Furthermore, threats of outing LGBTQI+ persons to their family or wider community are also practiced in the context of police custody. These threats tend to be effective due to the stigmatisation and ostracization faced by the LGBTQI+ community. [...]

15. *Violence in detention facilities.* LGBTQI+ persons also face discrimination and multiple forms of violence, often amounting to torture or CIDTP [cruel, inhuman or degrading treatment or punishment], in detention settings [...]. [...] NGLHRC has also received reports of violence against gay and bisexual men and men who have sex with men perpetrated by other prisoners.<sup>21</sup> [...]

24. An important step made by the State [...] (mentioned by Kenya’s government report to this Committee) is the Persons Deprived of Liberty Act, which was enacted in 2014. The Act provides key protections to detained persons in Kenya, including the right of intersex persons to decide the sex of the person by whom they are to be searched.<sup>34</sup> However, the Act fails to protect transgender persons or persons of non-conforming gender. The Act also states that an “intrusive search or search in or around a concealed body cavity” should be done in private and “with due regard to personal safety and health”, and that these searches should be carried with decency and dignity.<sup>35</sup> Though this provides some protection against forced anal examinations, further amendments are needed to prohibit all anal examinations without explicit consent and to reflect the High Court’s finding that the practice, when forced, violates constitutional principles of dignity and security (including freedom from torture and ill-treatment). Further training and implementation on the application on this provision is also needed, since reports document the continued practice [...].

25. The Persons Deprived of Liberty Act also requires that authorities ensure, for instance, that intersex persons are detained separately from others, presumably to protect them from violence, harassment and discrimination by other inmates.<sup>36</sup> Yet, this provision does not refer to other LGBTQI+ persons and should be amended accordingly.<sup>37</sup> There are also instances where, instead of being placed in a separate cell for protection, LGBTQI+ persons have been inappropriately transferred to psychiatric centres.<sup>38</sup><sup>101</sup>

14 Ibid [Sarah Johnson, ‘I’d been set up’: the LGBTQ Kenyans ‘catfished’ for money via dating apps, The Guardian, 4 January 2022.]. [...]

<sup>100</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

<sup>101</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya’s Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 3-4 and 6

16 NGLHRC, 'July 2019/July 2020 Legal Aid Report', 2020, p. 24 (para. 15.2). See also NGLHRC, '2018/2019 Legal Aid Brief', p. 4. [...]

21 See Case No. SO E 093/2021, pending at Mombasa Law Courts. [...]

34 The Persons Deprived of Liberty Act, 2014, s 10(3).

35 Ibid, ss 10(4) and (5).

36 Ibid, s 12(3)(e).

37 See case pending at the Mombasa Law Courts, Case No. SO E 093/2021, regarding the need to detain gay and bisexual men and men who have sex with men separately for their protection. This is also highlighted in an upcoming Legal Aid Report by NGLHRC.

38 This is also highlighted in an upcoming Legal Aid Report by NGLHRC.

The 2022 USDOS Kenya report on human rights practices, published in March 2023, noted that "NGOs reported police frequently harassed, intimidated, or physically abused LGBTQI+ individuals in custody. They also reported police threatened gay men while in custody with forced anal examinations, which were outlawed in 2018".<sup>102</sup>

### 2023

*No information was found amongst the sources consulted on treatment of the LGBTI community in detention in 2023.*

### iii. Prosecutions and convictions under laws that are deployed against the LGBTQI+ community

*This section should be read in conjunction with section II., b., [i. Arrests](#).*

### 2020

*No information was found amongst the sources consulted on prosecutions and convictions under laws that were deployed against the LGBTQI+ community in 2020.*

### 2021

In July 2021, the Immigration and Refugee Board of Canada produced a response to information request on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya. With regards to implementation of the law and prosecutions, the report stated:

In an interview with the Research Directorate, a representative of Persons Marginalized and Aggrieved in Kenya (PEMA Kenya) [5] indicated that the law criminalizing sexual acts between individuals of the same sex is used by police to extort LGBT people and that if LGBT individuals do not "give in to extortion/blackmail" they will be charged with the law criminalizing same-sex sexual acts (PEMA Kenya 12 July 2021).

The PEMA Kenya representative noted that "there is not a major case that has gone through of a person who was charged under this law" (PEMA Kenya 12 July 2021). Similarly, in an interview with the Research Directorate, representatives of Jinsiangu [6] indicated that no one has been prosecuted under sections

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<sup>102</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

162 and 165 (Jinsiangu 9 July 2021). In contrast, the human rights defender indicated that the *Penal Code* is enforced and individuals are "consistently" prosecuted under sections 162 and 165 (Human rights defender 30 June 2021).

In correspondence with the Research Directorate, the Executive Director of Kenya Youth Development and Education Support Association (KYDESA) [7] stated that laws criminalizing sexual acts between persons of the same sex have been "applied to consensual relationships of [persons of diverse SOGIE], and the laws cut across every part of the country" (KYDESA 23 June 2021). The Jinsiangu representatives indicated that these laws are used to create "barriers to inclusion in society" (Jinsiangu 9 July 2021). The human rights defender stated that the *Penal Code* "gives a free pass for the mistreatment of LGBT individuals" and that "there is no way the state can in turn protect LGBT individuals" (Human rights defender 30 June 2021).<sup>103</sup>

[5] Persons Marginalized and Aggrieved in Kenya (PEMA Kenya) is an NGO that aims to "advance[e] the human rights of gender and sexual minorities, specifically in Mombasa" (PEMA Kenya n.d.).

[6] Jinsiangu is a Kenya-based NGO that "seeks to ensure the lives and wellbeing of [Intersex, Transgender, and Gender-Non-Conforming (ITGNC)] persons" (Jinsiangu n.d.).

[7] Kenya Youth Development and Education Support Association (KYDESA) is a Kenya-based NGO that promotes the health and rights of the lesbian, gay, and bisexual communities in Nakuru County (GALCK n.d.a).

The May 2023 joint report by the NGLHRC and Amnesty International reported that: "In May 2021, several LGBTI refugees were arrested after protesting in front of the UNHCR compound [...]. Edwin, a gay man, was charged and taken to prison, where he stayed for two and a half months".<sup>104</sup>

## 2022

For its 2022 submission to the UN Committee against Torture, the Advocates for Human Rights (along with The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic) observed that: "police officers utilize the existing legal provisions to harass LGBTI individuals more often than to prosecute them".<sup>105</sup>

## 2023

ILGA World, in their November 2023 report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, remarked that: "the real numbers are often obscured by the

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<sup>103</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

<sup>104</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, ["Justice like any other person" – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p. 35

<sup>105</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [KENYA Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Rights of LGBTI Persons, 73rd Session of the Committee against Torture \(19 Apr 2022 - 13 May 2022\)](#), 18 March 2022, p. 6

fact that many in Kenya are not charged under provisions against same-sex sexual activity, but are often instead charged with “drunkenness, loitering, solicitation, impersonation or prostitution”<sup>106</sup>.

The same source documented that:

According to the Centre for Minority Rights and Strategic Litigation (CMRSL), two men charged in 2021 with committing an “unnatural offence” per Section 162 (c) of the Penal Code went to trial on 24 October 2022. The trial was postponed to 19 January 2023, though. According to CMRSL social media statements, the Office of the Director of Public Prosecutions (ODPP) withdrew charges against the two men around 13 September 2023.<sup>495</sup>

The CMRSL also indicated that two trans women were tried from 3 October to 7 November 2022 for “indecent practices between males”, per Section 165 of the Penal Code.<sup>496</sup><sup>107</sup>

495 “Court Update – Msa Mcso. No. E088 of 2021 – R vs DM & Anor”, CMRSL, 26 October 2022; CMRSL, Facebook Update, 13 September 2023 (accessed: 14 September 2023).

496 “CMRSL/LT/04/2022: Litigation Update”, CMRSL, 7 October 2022.

### III. Treatment by State Actors

#### a. Public statements by government officials

##### 2020

*No information was found on public statements issued by government officials in 2020 amongst the sources consulted.*

##### 2021

NGLHRC recorded in 2022 that: “On December 30th 2021, in Kisumu County, Education Cabinet Secretary said, ‘children who are homosexual and lesbian ... must go to day schools close to their homes. The CS [Cabinet Secretary] stated that this move would “protect the greater majority of learners’.”<sup>108</sup>

##### 2022

A Voice of America (VOA) News article in January 2022 reported that: “A group of Kenyan LGBT students protested Thursday against a Cabinet minister’s recent suggestion they be banned from boarding

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<sup>106</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 80

<sup>107</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 83

<sup>108</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [Statement on Discriminatory Utterances Made by Education Cabinet Secretary George Maqoha](#), 17 May 2022

schools. [...] They were armed with placards that denounced a suggestion by the Cabinet secretary for education, George Magoha, that homosexual students be barred from boarding schools”.<sup>109</sup>

In February 2022, NGLHRC released a statement on a speech made by Kenyan Education Cabinet Secretary on LGBTIQ+ learners in Kenya, noting that:

On February 14th 2022, in Nairobi County, Education Cabinet Secretary is quoted as saying, "I said if you are a homosexual in a boarding school and you are hopping from a bed of another student to another, your rights end there." This quote was part of a more extensive speech where he uses homophobic and stigmatizing language to give context to his discrimination, homophobia, biphobia and transphobia of LGBTIQ+ students in his comments from December 30th, 2021. Worryingly, the CS has now added sexualization of LGBTIQ+ children to his repertoire.

Since his last utterances, the CS continues to violate Article 10 (2b), Article 27(4) and Article 28 of the Constitution of Kenya.<sup>110</sup>

The May 2023 joint report by the NGLHRC and Amnesty International also stated that:

Political and religious leaders have entrenched the climate of impunity for crimes against LGBTI people by openly opposing and verbally attacking their rights. In February 2022, for example, the Minister of Education suggested that LGBTI students be barred from boarding schools.<sup>40</sup><sup>111</sup>

[...] 40 VOA, Kenyan LGBT Students Protest Suggestion They be Banned from Boarding Schools, <https://www.voanews.com/a/kenyan-lgbt-students-protest-suggestion-they-be-banned-from-boarding-schools/6395390.html>.

The Standard published an article in March 2022 on then Deputy President William Ruto’s stance on homosexuality, stating that:

Deputy President William Ruto on Friday stated that his Christian background teaches against homosexuality but if elected president, the Constitution, and the law will be the guiding principle. [...]

“My position as a Christian is that Bible teaches us against homosexuality and related matters, that is me as William Ruto.

“As a public leader and a servant, the constitution and the law in Kenya becomes the guiding principle. Whatever is within the constitution and the law I will respect. So long as everybody is operating within the law and within what’s permissible in the constitution they have nothing to fear because we are a nation governed by the rule of law,” he stated.

Asked whether members of the LGBTQ community will be safe if he is elected the fifth president of Kenya, Ruto maintained that every Kenyan must be subjected to the rule of law and only permissible authorities should take action on those who contravene the law.<sup>112</sup>

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<sup>109</sup> Voice of America (VOA) News, [Kenyan LGBT Students Protest Suggestion They be Banned from Boarding Schools](#), 13 January 2022

<sup>110</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [CS Magoha Should Stop Targeting LGBTIQ+ Learners](#), 15 February 2022

<sup>111</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p. 19

In September 2022, The Washington Blade reported on a statement by then president-elect of Kenya, William Ruto, noting that:

The president-elect of Kenya last week told CNN's Christiane Amanpour that LGBTQ and intersex rights are "not a big issue" in his country.

"We don't want to create a mountain out of a molehill," William Ruto told Amanpour during a Sept. 7 interview. "This is not a big issue for the people of Kenya. When it becomes a big issue for the people of Kenya, the people of Kenya will make a choice." [...]

Amanpour noted to Ruto that outgoing President Uhuru Kenyatta previously said there is "no room for homosexuality in Kenyan society."

Ruto said his predecessor "was spot on." Ruto also noted youth unemployment and hunger are his top priorities.

"That is my concern. That is the focus of the people of Kenya at the moment," said Ruto. "When the issue you have discussed about homosexuality and the rights of LGBT (people) will come, the people of Kenya will make a choice and we will respect the choice of the people of Kenya. For now, Christiane Amanpour, let us focus on the real issues that affect our people."<sup>113</sup>

NGLHRC's 2022 annual report stated that: "Kenya held its General Elections in August 2022. As observed in past general elections, we witnessed politicians use anti-LGBTIQ+ sentiments to garner votes among their electorate. As a result, we documented an upshot of cases regarding breach of privacy and security, hate speech, public outings, attacks and closure of organisations that work toward providing services for LGBTIQ+ persons in Nyeri and Kiambu Counties".<sup>114</sup>

### 2023

In January 2023, galck+ and NGLHRC, along with five other organisations, in a statement on the investigation into the murder of Edwin 'Chiloba' Kiprotich Kiptoo, a Kenyan LGBT+ rights campaigner, noted that: "It is imperative that our leaders and media exercise restraint in their language and actions. Homophobic and hate based rhetoric by leaders and media sensationalization of Edwin Chiloba's murder only serves to incite violence against queer Kenyans".<sup>115</sup>

The Financial Times also reported on the murder of Edwin Chiloba, stating that:

The outcry was far from universal, however, with a number of MPs using the case to vocally express their deep-rooted opposition to LGBT+ rights.

"What could be the reason why God created a man and from him he created a woman so that they can pair and fill the world. Now evil forces are trying to change God's script," said Mishi Mboko, an MP from

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<sup>112</sup> The Standard, [Ruto declares his stand on LGBTQ community in Kenya](#), 3 March 2022

<sup>113</sup> The Washington Blade, [Kenya president-elect says LGBTQ, intersex rights 'not a big issue'](#), 12 September 2022

<sup>114</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2022 Annual Report](#), 2023, p. 18

<sup>115</sup> Gay and Lesbian Coalition of Kenya (galck+), The National Gay and Lesbian Human Rights Commission (NGLHRC), QInitiative, The Initiative for Equality and Non-Discrimination (INEND), Bold Network Africa, Amnesty International, change.org, Kenya, [Joint Statement on the Investigation into the Murder of Edwin 'Chiloba' Kiprotich Kiptoo](#), 10 January 2023

the coastal city of Mombasa. “We aren’t advocating for the killing of LGBT+IA but we can’t entertain their agenda.”

Mohammed Ali, another MP, was equally trenchant. “On this one Democracy my foot! Jail them.”<sup>116</sup>

Similarly, Article 19 condemned the comments of the Kenyan authorities following the murder of activist Edwin Chiloba, stating that: “The news of the murder was met with homophobic reactions in the country, most worryingly from public officials. In a tweet, a member of parliament claimed that being gay or lesbian and engaging in ‘unnatural sexual acts’ is a ‘criminal’ behaviour. Others have called for members of the LGBTQ+ community to be jailed, while the area member of parliament for Kapseret, where Chiloba was murdered, stated that the community does not promote homosexuality and locals should not entertain the ‘lifestyle’”.<sup>117</sup>

In February 2023, The Los Angeles Blade reported on the Kenyan authorities cracking down on international books for youth with gay-specific themes, also stating that:

A senior official from Kenya’s Education Ministry who was not authorized to speak to the press questioned how the children’s books with LGBTQ+ content were stocked in bookshops against the country’s norms and laws.

“The person who ordered the books should have been arrested. Bookshops should strictly stick to the existing rules of operation,” the official said.

He stated that Ruto’s government has already affirmed the position of his predecessor, Uhuru Kenyatta, to not bow to pressure from Western countries to decriminalize consensual same-sex sexual relations.<sup>118</sup>

The Kenyan Capital News site noted in February 2023 that “Yatta Member of Parliament Robert Basil has joined other leaders who are against the legalising of LGBTQ in the country, saying the practise is foreign and doesn't correspond with the country's traditions and laws. MP Basil said allowing it will lead to increased HIV infections in the country, citing a research by Centre for Disease Control which revealed that gay, bisexual, and other men who have sex with men are the population most affected by HIV”.<sup>119</sup>

Nairobi News recorded in March 2023 the details of MP Peter Kaluma’s arguments for his anti-LBGTQ bill as follows:

Homa Bay Town MP Peter Kaluma has defended his push for banning LBGTQ associations, saying it is meant to save humanity from extinction.

The MP said letting such groups register will reduce the population around the globe, which will eventually lead to the extinction of mankind.

He said recognition of the group would lead to same-sex marriages.

He added that such couples could not sire children, thus reducing the population.

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<sup>116</sup> The Financial Times, [Kenyan killing exposes prejudices faced by LGBT+ Africans](#), 19 January 2023

<sup>117</sup> Article 19, [Kenya: Murder of LGBTQ+ activist must prompt urgent reform](#), 6 February 2023

<sup>118</sup> The Los Angeles Blade, [Kenya cracks down on youth books with gay-specific themes](#), 15 March 2023

<sup>119</sup> Capital News, [Kenya: MP Basil Says Legalising Gay Practice Will Lead to Increased HIV Infections](#), 2 March, 2023

“It will reach a time when man will marry a dog. We don’t want to get to a point where instead of multiplying, our population gets down because of mistakes we can prevent now,” Mr Kaluma said. [...]

“Over the period I came out to oppose this, I learnt that there are 23 gender categories including lesbians, gays, bisexual, transgender, queer among others. This is against what religion teaches us that God created man and woman,” he said. [...]

“We do not want a situation where someone refers to himself as a male in the morning and becomes a female in the afternoon. Once you are classified as a male at birth, that will be the final as the law will not allow you to change it,” Mr Kaluma said.<sup>120</sup>

Reuters reported similarly on the bill, quoting the tweet of opposition MP Basalirwa Asuman, who is sponsoring the bill "Homosexuality is a human wrong that offends the laws of Uganda and threatens the sanctity of the family, the safety of our children and the continuation of humanity"<sup>121</sup>

An Al Jazeera article in March 2023 highlighted the increased homophobia in the public space after a February ruling by the Supreme Court that the constitution barred discrimination on the basis of sexual orientation, observing that:

Egged on by news anchors and editors keen to serve up drama and gore in an effort to retain audiences, everyone from President William Ruto to political pundits has been lining up to condemn the court for upholding verdicts by lower courts that the government could not lawfully refuse to register an organisation calling itself the National Gay and Lesbian Human Rights Commission (NGLHRC). [...]

Meanwhile, during a parliamentary session, MP Joshua Kimilu condemned the decision of the court as violating Kenyan law and warned that Kenyan culture can “be ruined by the West”.<sup>122</sup>

Al Jazeera noted in another article following the same ruling that:

President William Ruto and many religious leaders and political pundits have been condemning the court’s conclusion that the constitution barred discrimination on the basis of sexual orientation.

“I am a God-fearing man and whatever happened at the court, even if we respect the court, our culture, values, Christianity and Islam cannot allow women to marry each other, or men to marry fellow men,” local media outlet Citizen TV reports Ruto as saying.” [...]

Meanwhile, during a parliamentary session, MP Joshua Kimilu condemned the court decision as violating the law and warned that Kenyan culture can “be ruined by the West”<sup>123</sup>

Al Jazeera later commented that President Ruto’s “deputy Rigathi Gachagua said the court decision was “Satanic and repugnant to morality and way of justice””.<sup>124</sup>

An article in The Star in March 2023 on a resolution in Kenya to ban public discussions of LGBTQ+ issues noted that:

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<sup>120</sup> Nairobi News, [Details of MP Kaluma’s Anti LBGTO Bill](#), 13 March 2023

<sup>121</sup> Reuters, [FEATURE-LGBTQ+ Kenyans and Ugandans hide from wave of homophobic abuse](#), 14 March 2023

<sup>122</sup> Al Jazeera, [How an LGBTQ court ruling sent Kenya into a moral panic](#), 15 March 2023

<sup>123</sup> Al Jazeera, [Why are Kenya and Uganda cracking down on LGBTQ rights?](#), 23 March 2023

<sup>124</sup> Al Jazeera, [Displaced twice: Gay Ugandans on the run face upheaval in Kenya](#), 29 March 2023

Kitui South MP Rachel Nyamai backed the motion saying stiffer penalties should be set on those circulating information in support of LGBTQIA and those practising the same.

“These are threatening acts that must not be allowed in society,” she said faulting the Supreme Court's decision on recognition of LGBTQIA rights.

“Those who are practising these things start regretting their actions, the debate is gathering steam in villages and are debating this issue because it is being talked about a lot...let us say no.”

Luanda MP condemned the dissemination of information on LGBTQIA saying like thw [the] way God destroyed the Biblical Sodom and Gomorrah over immorality, the county should not allow the same in the country.

“Let us say no to LGBTQIA in this country that is God-fearing, this debate should not be allowed among the country's population,” he said.

Malindi MP Amina Laura backed the motion saying the country's values, culture and traditions frown upon same sex relationships.

“We are saying it is a no go zone. We are a God-fearing country, we say no to LGBTQ,” she said when making contribution to the motion.<sup>125</sup>

The Los Angeles Blade reported in March 2023 on the same issue:

The sponsor of the anti-gay motion, Mohamed Ali, an MP from the ruling party and a celebrated investigative journalist, [...] argued that publicizing homosexuality, which is outlawed in the country, violates the constitution that only recognizes marriage between a man and a woman.

“The constitution gives us the freedom of expression, but not about gay and lesbianism which are unlawful practices in Kenya,” Ali said. [...]

The Education Ministry and the church have also formed a Chaplains Committee chaired by Kenya's Anglican Bishop Jackson Ole Sapit to counter what he describes as the infiltration of homosexuality in schools. The [...]

“We recognize that publishing and distributing homosexual content through the press has serious consequences to the family values and opposite-sex relations that should be protected since the increase in same-sex relations threatens the extinction of human beings in the country,” the motion reads. [...]

U.S. Ambassador to Kenya Meg Whitman came under fire during the debate on the motion because of her recent remarks in defense of the LGBTQ+ and intersex community that she made after she met with a group of activists.

“She should respect our religious beliefs, African and Kenyan culture, and our constitution the way we respect the U.S. Constitution. We won't allow the American culture of gay and lesbianism to rule in Kenya and I ask Whitman to practice the American in the U.S. and the Kenyan culture be left to Kenyans,” Ali said.

The lawmakers also criticized the West, particularly the U.S., for championing LGBTQ+ and intersex rights in what they termed as engaging in serious reengineering of the world order to destroy other people's cultures and humanity.<sup>126</sup>

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<sup>125</sup> The Star, [MPs back motion against gays, lesbians](#), 15 March 2023

<sup>126</sup> The Los Angeles Blade, [Kenyan MPs approve resolution to ban public discussions of LGBTQ+ issues](#), 24 March 2023

In April 2023, The East African reported on the statements of President William Ruto during a tour in Germany:

“We cannot dictate to Germans, Americans, French or Ugandans on what they want to do. That is theirs to choose. As a country, we have taken a position informed by our culture, our tradition, our constitution, and laws,” he argued in the interview.

“In Kenya, the only understanding of relationships around marriage is around men marrying women. That's the context of a relationship that exists in Kenya and in our constitution. We have no issue with people celebrating their issues in America and in other countries for that is their choosing,” he added.<sup>127</sup>

In June 2023, Reuters noted that: “President William Ruto, an evangelical Christian, has criticized a February supreme court decision allowing an LGBT rights group to register as a non-governmental organization. ‘We cannot travel the road of women marrying their fellow women and men marrying their fellow men’, he said at the time”.<sup>128</sup>

The Star documented in October 2023 the statements of Kakamega Governor Fernandes Barasa opposing the move to allow members of the LGBTQ community to form associations and NGOs “‘As leaders in government and in church, we oppose the legalization of homosexuality because it goes against the teachings of the Bible. We know the stand by [sic] the church in our country and we should not go against that,’ Barasa said.”<sup>129</sup>

Erasing 76 Crimes reported in October 2023 on an anti-LGBTQ protest attended by hundreds in Nairobi to protest against the decision made by the court in February to allow the legal registration of a pro-LGBTQ rights organisation. It noted that: “At the rally, National Assembly member Mohamed Ali read a speech criticizing the ‘misleading ruling of the Supreme Court.’ ‘In Kenya, as in other African countries, most customs, cultures and religious traditions consider homosexuality to be wrong, unnatural and ungodly,’ Ali said”.<sup>130</sup>

b. Homophobia and transphobia in government institutions (incl. state-owned media, within the police, in the prison service, in the judiciary)

*For further relevant information consult also sections II., b., [Implementation](#), section III., a. [Public statements by government officials](#), section III., d. [Discrimination](#), and section IV., b. [Representation in media](#).*

## 2020

<sup>127</sup> The East African, [From climate change to LGBTQ, Ruto tests his balancing act](#), 4 April 2023

<sup>128</sup> Reuters, [Insight: Kenya could follow Uganda as East African nations wage war on LGBT rights](#), 27 June 2023

<sup>129</sup> The Star, [Governor Barasa: Homosexuality is against Bible teachings](#), 8 October 2023

<sup>130</sup> Erasing 76 Crimes, [Hundreds oppose LGBTQ people during slanderous Kenyan protest](#), 12 October 2023

Human Rights Watch's annual report on the human rights situation in 2020 noted on Kenya that "In April 2020, the court upheld a Kenya Film Classification Board ban on *Rafiki*, a love story about two young women. At time of stating, activists were appealing both rulings".<sup>131</sup>

ILGA World documented in an October 2020 weekly news bulletin that: "A court in the city of Eldoret, Kenya has directed the prosecution to stop referring to a trans woman by her deadname as her case is being discussed, and to respect her gender identity".<sup>132</sup>

Jinsiangu noted in December 2020 that: "Many trans people exist in a "legal limbo." They may be unable to get the "legal gender" on their identification to match their gender identity, forcing them to utilize an I.D with gender markers that do not match their gender presentation. Their legal gender can have an impact on the state-recognized legitimacy of their identity and relationships as well as their access to services and benefits".<sup>133</sup>

In its shadow report in response to the fourth periodic report on the International Covenant on Civil and Political Rights, the Independent Medico-Legal Unit submitted (in collaboration with several Kenyan NGOs) that "The State has not undertaken any awareness raising efforts on universality of rights including for the LGBTI community in Kenya. Educational campaigns on rights of the LGBTI community have been championed by civil society organizations for example the campaign to #Repeal162because love is human campaign by the National Gay and Lesbian Human Rights Commission".<sup>134</sup>

NTAN, including the organisations Trans\*Alliance Kenya and Jinsiangu Kenya, published a report in 2020 on a recent national transgender discrimination survey in Kenya, commenting on stigma, discrimination, and violence stating that:

Transgender and intersex people were denied equal treatment or service in hospitals (62%), legal aid services (57%), government agencies (55%), restaurants (52%) and by the police (51%). There was also widespread verbal abuse in the public sector with the transport sector presenting the highest rate of verbal harassment or disrespect (63%). Rates of reported assaults included [...] 6% GBV cases in the criminal justice system, and 5% GBV cases by government agencies.<sup>135</sup>

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<sup>131</sup> Human Rights Watch, [World Report 2021: Events of 2020](#), 13 January 2021, p. 394

<sup>132</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [LGBulleTin #172: The week in LGBTI news \(2-8 October 2020\)](#), 9 October 2020

<sup>133</sup> Jinsiangu, [16 Days of Activism 2020](#), 1 December 2020

<sup>134</sup> Independent Medico-Legal Unit (IMLU), [Shadow Report in Response to the Fourth Periodic Report on the International Covenant on Civil and Political Rights \(2013-2020\)](#), 2020, paragraph 82

<sup>135</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, p. 4

Freedom House stated in its Freedom in the World report for Kenya covering events in 2020, that: “There are significant implicit barriers to the participation of non-Christian and LGBT+ people in national politics”.<sup>136</sup>

### 2021

In May 2021 the UN Human Rights Committee published its concluding observations on the fourth periodic report of Kenya regarding the International Covenant on Civil and Political Rights, which noted that “Clause 23 (5) of the Refugee Bill, which compels all individuals who have filed an asylum claim to abide by all laws in Kenya and allows for the cancellation of asylum applications and removal from the State party’s territory of individuals who violate laws. The Committee is particularly concerned that lesbian, gay, bisexual, transgender and intersex refugees and asylum seekers could be subjected to refoulement on the de facto basis of their sexual orientation, given the continued illegality of same-sex relations”.<sup>137</sup>

In the Immigration and Refugee Board of Canada’s July 2021 report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya, it noted:

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association is a Kenya-based NGO that promotes the health and rights of the lesbian, gay, and bisexual communities in Nakuru County] indicated that “various authorities have been sensitized on human rights for LGBTIQ+ persons” and “harassment coming from authorities has therefore greatly reduced” (KYDESA 23 June 2021). The PEMA Kenya representative stated that “there has been some progress with training of the police on gender and sexual diversity by PEMA and other organizations” (PEMA Kenya 12 July 2021). However, the same source noted that “police stations might have changed their perspective on LGBT, but LGBT people are still afraid to go to the police” (PEMA Kenya 12 July 2021).<sup>138</sup>

In October 2021, Rainbow Railroad and the Organization for Refuge, Asylum and Migration (ORAM) published a report on their research into the conditions facing LGBTQI+ asylum seekers and refugees in Kakuma refugee camp in northern Kenya. With regards to homophobia within the security services, the report found:

The respondents painted a picture of unresponsive security services, with over 88 per cent reporting having been denied services by the police. One respondent narrated:  
*“When I arrived at the camp, I was allocated space in Block 1 and provided materials to construct my shelter. On the same day, some other refugees came to my site. I thought they were welcoming me and assisting me to put up my shelter. They spoke to me in Kiswahili but I responded in English. One of them started shouting at me, calling me shoga. They took away my materials and chased me from the location. I*

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<sup>136</sup> Freedom House, [Freedom in the World 2021: Kenya](#), 3 March 2021

<sup>137</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights Concluding observations on the fourth periodic report of Kenya](#), 11 May 2021, paragraph 36

<sup>138</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

*went back to the reception to report my experience. I was referred to the police to record a statement. On getting to the report desk and explaining my situation, the officer manning the desk gave me a reference number and told me to go sort out my problems. He told me he is tired of dealing with homosexuals and I should consider going back to my country.”*

– A 29-year-old Ugandan asylum seeker

Reports of police declining to assist or demanding bribes from the asylum seekers were quite rampant. Most reported not being able to pay the bribes.<sup>139</sup>

Freedom House stated in its Freedom in the World report for Kenya, covering events in 2021, that: “There are significant implicit barriers to the participation of non-Christian and LGBT+ people in national politics.”<sup>140</sup>

The 2021 USDOS Kenya report on human rights practices observed that “Although the country grants refugee status to persons whose persecution is due to sexual orientation or gender expression, some LGBTQI+ refugees continued to face stigma and discrimination. They were often compelled to hide their sexual orientation or gender identity to protect themselves, especially among Somali refugee communities in Dadaab. National organizations working with LGBTQI+ persons offered support to refugees who were LGBTQI+, including access to safety networks and specialized health facilities”.<sup>141</sup>

## 2022

In its 2022 submission to the UN Committee against Torture, the Advocates for Human Rights (along with The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic) noted that: “Sensitization efforts of key law enforcement stakeholders, including police and administrators, about discrimination against LGBTI individuals has largely been left to non-governmental organizations. Further, there are no studies on the impact of existing sensitization programs on stigma and discrimination”.<sup>142</sup>

At a UN Committee Against Torture meeting to consider the report submitted by Kenya, Ms. Chweya of the Kenyan government delegation stated that:

Same-sex relationships were prohibited under sections 162 and 165 of the Penal Code, and article 45 of the Constitution stated that only persons of the opposite sex could marry. In May 2019, a court ruling had rejected petitioners’ claims that the Penal Code provisions were discriminatory because they prohibited private sexual activity between consenting adults, and declared sections 162 and 165 to be constitutional.

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<sup>139</sup> Rainbow Railroad and ORAM (Organization for Refuge, Asylum and Migration), [The Challenges Facing LGBTQI+ Refugees in Kakuma Refugee Camp, Kenya](#), October 2021, p. 24

<sup>140</sup> Freedom House, [Freedom in the World 2022: Kenya](#), 24 February 2022

<sup>141</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

<sup>142</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [KENYA Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Rights of LGBTI Persons, 73rd Session of the Committee against Torture \(19 Apr 2022 - 13 May 2022\)](#), 18 March 2022, p. 7

She wished to emphasize, however, that the Government did not sanction violence and abuse against anyone, including lesbian, gay, bisexual and transgender persons. Everyone, regardless of sexual orientation, was entitled to all legal safeguards, complaint mechanisms and public services, and legislation had been enacted to uphold the principles of equality and non-discrimination. The Government worked with NGOs and development partners to raise awareness of issues related to lesbian, gay, bisexual and transgender persons among the police and prison officers and health-care workers. Police recruits were taught about the Nelson Mandela Rules as part of the training curriculum.<sup>143</sup>

The May 2022 UN Committee Against Torture’s concluding observations on the third periodic report of Kenya stated that under the adoption of the Refugees Act it was “particularly concerned that lesbian, gay, bisexual, transgender and intersex refugees and asylum seekers could be subjected to refoulement on the de facto basis of their sexual orientation and gender identity”.<sup>144</sup>

In November 2022, CIVICUS noted on increased attacks of the LGBTIQ community ahead of the elections in Kenya, commenting that: “The developments around harassment and attacks on members of the LGBTIQ+ community are especially concerning given the apparent lack of political will from previous and current governments to affirm the rights of members of the community”.<sup>145</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, noted that “LGBTQ+ individuals did not participate openly” in the political process, adding “although intersex persons did”.<sup>146</sup>

The report further observed that “Although the country granted refugee status to persons who are persecuted due to sexual orientation or gender expression, some LGBTIQ+ refugees continued to face stigma and discrimination, as well as delays in processing their asylum applications. They were often compelled to hide their sexual orientation or gender identity to protect themselves, especially among Somali refugee communities in Dadaab”.<sup>147</sup>

Freedom House stated in its Freedom in the World report for Kenya, covering events in 2022, that: “There are significant implicit barriers to the participation of non-Christian and LGBT+ people in national politics.”<sup>148</sup>

## 2023

In January 2023, galck+ and NGLHRC, along with five other organisations, in a statement on the investigation into the murder of Edwin ‘Chiloba’ Kiprotich Kiptoo, noted that: “It is imperative that our

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<sup>143</sup> UN Committee against Torture, [Consideration of reports submitted by States parties under article 19 of the Convention, Summary record of the 1900th meeting](#), 5 May 2022

<sup>144</sup> UN Committee Against Torture, [Concluding observations on the third periodic report of Kenya](#), 30 May 2022, paragraph 25

<sup>145</sup> CIVICUS, [High Inflation and Attacks on LGBTIQ on the Spotlight Ahead of Elections](#), 1 November 2022

<sup>146</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>147</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>148</sup> Freedom House, [Freedom in the World 2023: Kenya](#), 10 March 2023

leaders and media exercise restraint in their language and actions. Homophobic and hate based rhetoric by leaders and media sensationalization of Edwin Chiloba's murder only serves to incite violence against queer Kenyans. Online cyber-bullying using religion and culture raises the level of intolerance, hatred and violence against LGBTQ+ individuals".<sup>149</sup>

In February 2023, The Los Angeles Blade reported on the Kenyan government cracking down on international books for youth with gay-specific themes that reportedly targeted teenagers, stating that:

This crackdown follows a public outcry from parents with school-age children and religious officials who are demanding the government to do a thorough audit of books in the market and ban the ones with gay content.

Text Book Centre, one of Kenya's leading bookstores in Nairobi, was ordered to stop selling a controversial teen book from a renowned British publisher that specializes in children's books.

"What's happening to me?" by Usborne publishers sparked outrage among those who feel it lures male teens into LGBTQ+ practices that are illegal.

"It is about a month since we removed the book from our shelves and returned it to the warehouse after the retail manager received an order from the U.K. manager," a manager at Text Book Centre confirmed to the Washington Blade.

Part of the book states "it isn't unusual to fancy someone the same sex as you when you're growing up." It adds, "Usually people go on to have stronger feelings for the opposite sex, but this doesn't always happen."

The book further states that "it's possible to fancy both boys and girls" and then it defines lesbian and gay dating. [...]

A senior official from Kenya's Education Ministry who was not authorized to speak to the press questioned how the children's books with LGBTQ+ content were stocked in bookshops against the country's norms and laws.

"The person who ordered the books should have been arrested. Bookshops should strictly stick to the existing rules of operation," the official said.

He stated that Ruto's government has already affirmed the position of his predecessor, Uhuru Kenyatta, to not bow to pressure from Western countries to decriminalize consensual same-sex sexual relations.<sup>150</sup>

The East African commented in March 2023 that "The anti-gay clamour in Kenya produced a brief and rare consensus between the country's bitterly warring political factions".<sup>151</sup>

The May 2023 joint report by the NGLHRC and Amnesty International documented hate crimes, discrimination, and other human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya between 2018 and February 2023. The report found the following:

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<sup>149</sup> Gay and Lesbian Coalition of Kenya (galck+), The National Gay and Lesbian Human Rights Commission (NGLHRC), QInitiative, The Initiative for Equality and Non-Discrimination (INEND), Bold Network Africa, Amnesty International, change.org, Kenya, [Joint Statement on the Investigation into the Murder of Edwin 'Chiloba' Kiprotich Kiptoo](#), 10 January 2023

<sup>150</sup> The Los Angeles Blade, [Kenya cracks down on youth books with gay-specific themes](#), 15 February 2023

<sup>151</sup> The East African, [In the years ahead, a rainbow flag divide is going to emerge within East Africa](#), 25 March 2023

[...] LGBTI asylum seekers and refugees in Kenya face intersectional discrimination and violence based on their identity as asylum seekers or refugees and their sexual orientation, gender identity and/or expression, and sex characteristics (SOGIESC). They experience discriminatory practices and homophobic and transphobic attitudes from government officials, the police and other service providers, in a social climate characterised by prejudice and discrimination. These are reflected in the homophobic behaviour of officials during registration; delayed refugee status determination; harassment and discriminatory violence, including violent homophobic attacks, threats and intimidation; and extremely limited opportunities for durable solutions such as local integration and third-country resettlement. [...]

Following violent incidents in Kakuma camp, the police reportedly increased police patrols as a measure to increase the security of the LGBTI community. However, in a context where LGBTI people are criminalized, increasing police patrols or resources is not sufficient if there are no other measures in place to tackle systemic homophobia and transphobia, including within the police itself. Our research also collected testimonies of LGBTI asylum seekers and refugees who have faced overt discrimination while reporting to the police the incidents that happen to them. [...]

LGBTI asylum seekers and refugees in Kenya encounter multidimensional problems. On one hand, their experience has been marred by the policies that restrict the rights of all refugees, such as the encampment policy and a legislative environment that makes it hard for them to enjoy fully their legal rights and freedoms. [...] On the other hand, LGBTI asylum seekers and refugees also experience the difficulties encountered by other LGBTI people in Kenya, where cultural stereotypes about sexual orientation and gender identity are exacerbated by the criminalization of same-sex sexual relations. The criminalization of same-sex relations, in particular, significantly influences the attitudes of the general public, the refugee community, public officials and staff of humanitarian organizations [...].

## 2.1 REGISTRATION ISSUES

Most of the asylum seekers and refugees interviewed are seeking protection in Kenya because of their sexual orientation, gender identity and/or expression and sex characteristics. Others are seeking protection on other grounds, including because they do not want to be identified as LGBTI people. Most of those currently in Kakuma arrived in Kenya via Nairobi, where they had registered as asylum seekers with the government. Then, in line with Kenya's strict encampment policy, they were issued with a two-week movement pass to enable them to relocate to the Kakuma refugee camp complex.<sup>43</sup> [...]

In addition to the challenges faced by all asylum seekers and refugees in Kenya, caused by the shortcomings of the asylum registration and refugee status determination processes, LGBTI asylum seekers and refugees face specific challenges, related to their sexual orientation, gender identity and/or expression and sex characteristics.

[...] several of the LGBTI refugees interviewed who registered with the RAS [Refugee Affairs Secretariat] /DRS [Department of Refugee Services] in Nairobi and Kakuma described experiencing homophobic behaviour during the registration process, including because officers made it difficult for them to disclose their sexual orientation, gender identity and/or expression and/or sex characteristics. Because of these issues, some of them did not consider it safe to disclose their sexual orientation, gender identity and/or expression or sex characteristics at the beginning of the registration process, which had a negative knock-on effect throughout the asylum process and limited access to specialised support. Some LGBTI interviewees said they feared the consequences of self-disclosure because same-sex relations are criminalized in Kenya and they did not know what the officers would do with the information.<sup>49</sup> Some of those who decided to disclose their sexual orientation, gender identity and/or expression or sex characteristics during the registration process said officers giggled or made homophobic comments, including using the derogatory term "shoga".<sup>50</sup>

Joseph, a gay man, told the researchers:

*“During my registration I told the RAS officer I had a document showing the challenges I had faced as a gay man in my country. The officer asked: ‘will the government of Kenya be able to take care of you?’. I was afraid, I thought they would take me back to my country. But that was not the case; the officer was just scaring me because I am an LGBTI person”.<sup>51</sup> [...]*

Isabel, a transgender woman, said that during registration, she was afraid to reveal more of her gender identity for fear that she would be arrested and detained. As a result, she was issued with a refugee identity document that indicates that she is of male gender, despite her preference to be considered a female.<sup>54</sup>

Some said they were not given the option to choose an interpreter they were comfortable with during the registration process, which made them reveal their sexual orientation, gender identity and/or expression or sex characteristics to people they were not sure would keep it confidential.<sup>55</sup> Some said interpreters had disclosed their sexual orientation to other refugees.<sup>56</sup> [...]

An additional problem is that the refugee database used in RAS/DRS registration points only recognises male or female as genders. As a result, the database cannot record the gender profile of non-binary LGBTI refugees. [...]

## 2.2 DELAYED REFUGEE STATUS DETERMINATION AND ITS CONSEQUENCES

Most LGBTI refugees interviewed for this report said they had been waiting for years for their refugee status determination interview. Thirty-one of those interviewed had been registered in Kenya for over two years at the time of the interview and their refugee status had still not been determined.<sup>59</sup> [...]

Against the background of lengthy refugee status determination procedures for all asylum seekers, Amnesty International and NGLHRC received credible reports that the refugee status determination process for LGBTI asylum seekers has been specifically delayed for reasons associated with their sexual orientation, gender identity and/or expression and sex characteristics. According to one source, while until about 2018, LGBTI individuals were fast-tracked through the process because they were considered “at risk” under the 2009 Regulations. In the following years, when the number of those claiming asylum because of their sexual orientation, gender identity and/or expression and sex characteristics increased, the RAS/DRS considered that the fast-tracking was a pull factor for other LGBTI individuals in the region to head to Kenya and began to deliberately slow the process for determining refugee status for LGBTI asylum seekers.<sup>66</sup>

Delays in refugee status determination procedures increase the risk of LGBTI individuals needing specific health or other services “falling through the cracks”, i.e. not being properly identified nor referred to specialized services, especially when these individuals have not revealed their sexual orientation, gender identity and/or expression and sex characteristics during registration.<sup>67</sup> [...]

## 3. VIOLENCE AGAINST LGBTI REFUGEES

LGBTI refugees and asylum seekers in Kakuma refugee camp have suffered physical and sexual violence and other serious human rights abuses, including violations of their right to be free from torture and ill-treatment because of their sexual orientation, gender identity and/or expression and sex characteristics. [...]

The systematic and pervasive failure to conduct a prompt, thorough, independent and impartial investigation into allegations of hate crimes and gender-based violence against LGBTI people raise concerns on institutional homophobia and transphobia within the police and other state institutions.<sup>152</sup>

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<sup>152</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 7-9, 18-23, 25-26, 28, and 32-35

37 Aljazeera, “Kenyan queer men risk health amid homophobia in public hospitals”, June 2022, <https://www.aljazeera.com/features/2022/6/2/homophobia-in-kenyan-public-hospitals-pushes-queer-men-to-dangero>; Kenya Human Rights Commission, The Outlawed Amongst Us, A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya, 2011, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html> [...]

43 Some of the LGBTI refugees interviewed for this research arrived in Kenya as young children with their families and have lived in Kakuma since. While they are estranged from their families because of the stigma associated with their sexual orientation, gender identity or gender expression, they are still registered on their families’ documents. They reported facing difficulties registering as asylum-seekers in their individual capacity, with negative consequences on their ability to access services in the camp. For example: interview with Kevin, Kakuma town, 9 September 2021. [...]

49 For example: interview with Martin, gay man, Kakuma town, 9 September 2021. Phone interview with Isabel, 28 August 2022.

50 Interviews with Patrick, Kakuma town, 8 September 2021; Joseph, Kakuma town, 9 September 2021; Sharon, Kakuma town, 10 September 2021.

51 Interview with Joseph, Kakuma town, 9 September 2021. [...]

54 While she revealed her gender identity at a later date, she thought it is not worth it to change her identity documentations. Phone interview with Isabel, 28 August 2022.

55 Interviews with Patrick, Kakuma town, 8 September 2021; Fredrick, Kakuma town, 9 September 2021.

56 Interview with Patrick, Kakuma town, 8 September 2021. [...]

59 In September 2021, Judy, a transgender woman who arrived in Kenya in 2019, still had no information about when and how she will be called for refugee status determination interview. She said she had often called the UNHCR hotline but was told that 2019 arrivals are not being processed yet. Interview with Judy, Kakuma town, 9 September 2021. Likewise, Isabel told the researchers that DRS officials have told her that she will have to wait as she arrived in 2020 and the DRS had not yet started working on LGBTI people who arrived in 2019. Interview with Isabel, Kakuma town, 11 September 2021. [...]

66 Interview with NGO7, 2022. According to UNHCR, “In the past, asylum-seekers with claims of this nature were normally recognised as refugees; however, over the past two years UNHCR has observed that such claims have been increasingly kept on hold without a decision being made. UNHCR continues to advocate with DRS to resolve the pending caseload and to ensure access to asylum for LGBTIQ+ refugees in Kenya.” UNHCR, Briefing Note: LGBTIQ+ Refugees and Asylum-Seekers in Kenya, May 2023, p3, on file with Amnesty International.

67 Interview with NGO6, 2022. [...]

queersOfKakuma and migration-control.info’s August 2023 report about ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp noted:

[...] LGBTI+ asylum seekers and refugees often face verbal and physical violence and humiliation during procedures of registration. They explain that they have endured homophobic and sexist insults during their procedure. Hence, multiple LGBTI+ asylum seekers and refugees have purposefully decided not to disclose their LGBTI+ identity to state officers. This particularly excluded them from the fast-track procedure dedicated to populations “at risk” when it was possible. It also shows the strong distrust of state officers which has grown among the LGBTI+ community. This distrust is similarly caused by bad treatment from the police.<sup>153</sup>

Freedom House reported in its 2023 Freedom on the Net report for Kenya, published in October 2023, that:

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<sup>153</sup> queersOfKakuma and migration-control.info, [Ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp, Kenya](#), 25 August 2023

The government moved towards greater censorship of LGBT+ content online after signing an agreement with Netflix to restrict such content on its platform, and the threat of government surveillance resurfaced after the Supreme Court allowed the Communications Authority (CA) to install a system to collect customer data from service providers. [...]

The penal code criminalizes same-sex sexual activity, and the KFCB [Kenya Film Classification Board] routinely censors LGBT+ content.<sup>74</sup> In February 2023, Netflix signed an agreement to restrict LGBT+ content in Kenya and classify content according to the KFCB's [Kenya Film Classification Board] ratings system. Talks were ongoing with other local streaming services to restrict LGBT+ content available in Kenya.<sup>75</sup> <sup>76</sup>

74 "Governing Laws," Kenya Film Classification Board, accessed July 16, 2018, <http://kfcg.co.ke/about/governing-laws/>; Penal Code Sections 162, 163 and 165 punishes gay relationships with jail terms ranging from 5 to 21 years dependent upon whether relations were consensual. Attorney General, Penal Code Chapter 63. Nairobi: National Council for Law Reporting, 2014.

75 Sam Kisika, "Netflix stops streaming LGBTQ-specific movies in Kenya," Washington Blade, June 21, 2023, <https://www.washingtonblade.com/2023/06/21/netflix-stops-streaming-lgbtq-specific-movies-in-kenya/>.

76 "Kenya bans movies with LGBTQ+ content by streaming platforms," Africanews, September 29, 2022, <https://www.africanews.com/2022/09/29/kenya-bans-movies-with-lgbtq-content-by-streaming-platforms/>.

ILGA World, in their November 2023 report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, noted on Kenya that the "context of criminal enforcement and targeting largely takes place against the backdrop of virulently homophobic political rhetoric or outright State censorship".<sup>155</sup> The report further stated that "since his election, President Ruto seems to have maintained the State's anti-LGBTQ+ stance, in an effort to maintain support from the country's large religious community".<sup>156</sup> The source went on:

Members of the Africa Queer Youth Initiative (AQYI), told ILGA World that:

With the religious affirmation of the homo-hateful remarks by President Ruto, there has been an increase of numbers of LGBTQ+ persons of faith who have been intentionally outed in church. All this is attributed to the political discipleship witnessed in the current regime whose intention is criminalising authentic Queer expression.<sup>473</sup><sup>157</sup>

473 Information supplied to ILGA World by the Africa Queer Youth Initiative.

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<sup>154</sup> Freedom House, *Freedom on the Net 2023: Kenya*, 4 October 2023

<sup>155</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, *Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions*, Second edition, 30 November 2023, p. 81

<sup>156</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, *Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions*, Second edition, 30 November 2023, p. 81

<sup>157</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, *Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions*, Second edition, 30 November 2023, p. 81

The ILGA Database page for Kenya writes that “In March 2023, the Education Cabinet Secretary announced a plan to “prevent LGBTQ+ education” in schools and to install chaplaincies in all schools. According to media outlets, religious leaders will be reportedly included in a new governmental committee, which will be chaired by an Anglican archbishop”.<sup>158</sup>

### c. Harassment and violence

*This section focuses on state-perpetrated harassment and violence. On occasion sources do not indicate the perpetrators, therefore also see section V. Treatment by Non-State Actors, [a. Harassment and violence](#).*

*For further relevant information consult also section II., b., iii. [Treatment in detention facilities](#), section II., b., iv. [Prosecutions and convictions under laws that are deployed against the LGBTQI+ community](#), and section III., c. [Homophobia and transphobia in government institutions](#).*

#### 2020

Reuters published the photographs and stories of members of the LGBT community living in fear of attacks in Kakuma, the Kenyan refugee camp, including the following:

Stephen Sebuuma, another Ugandan refugee in Kakuma, said refugees armed with iron bars, sticks and machetes damaged their houses on three occasions, injuring four adults and two children. “Police insult us instead of helping us,” Sebuuma, 32, told Reuters by phone. [...]

[...] Sebuuma said the police never helped them. “We have written complaints, people have gotten OBs (Occurrence Book reports) from police. So many of them, and police even sometimes chase us, saying ‘we are tired of you,’” he said. [...]

Ugandan refugee Hamza Kakooza shows his artificial teeth that he acquired after police beat him.<sup>159</sup>

Pink News reported in May 2020 on the violent response from police in Kakuma, Kenya to queer refugees protesting, stating that:

Demonstrators were calling on UNHCR organisers for increased camp security after months of being pelted with violence from Kakuma locals and fellow refugees.

After three days of sleeping on the dirt track in thin bedding and plastic containers, with many having not eaten for days, the 150-strong group were confronted by riot police, according to interviews with camp residents and footage seen by PinkNews. [...]

In alarming footage seen by PinkNews, the once still protest flared as smoke engulfed the grounds as riot officers lobbed teargas bombs against the refugees to force them to disassemble.

Adroa [not their real name] said that protesters “were teargassed, beaten and brutally assaulted” by police who then forced the refugees back to the camp.

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<sup>158</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>159</sup> Reuters, [LGBT community living in fear of attacks in Kenyan refugee camp](#), 29 April 2020

Camp leader Sebuuma Stephen claimed that babies as young as five months, a pregnant woman and several asthmatic people were caught in the teargas fumes.

Eight members fainted as a result, Stephen continued, noting that the protesters scattered into surrounding bushes for safety. [...]

Police relocated the refugees to the camp reception after the clash, further footage showed, where at least one LGBT+ asylum seeker was shown spluttering and lying on the ground. [...]

About 11 people who sustained minor injuries were taken to a hospital, treated, and released back to the camp, a UNHCR spokesperson said.<sup>160</sup>

A May 2020 Washington Post article on LGBT refugees in Kenya observed that “the law is used by the police as a pretext to extort and harass members of the LGBT community”.<sup>161</sup> The article also reported on the following:

Discrimination and assaults in the [refugee] camps have driven almost all the LGBT refugees from Uganda to relocate to Nairobi.

Here, they face a quandary: If you are Ugandan and you are a refugee, police assume that you are gay, bisexual or transgender — a criminal under Kenyan law.

This month, police raided a different safe house where half a dozen Ugandan refugees at various stages in the resettlement process live.

“There is no war in Uganda,” Caitlyn Lubega recalled a policeman saying as he rifled through her bedroom’s drawers, where he found lubricant. “You are not a refugee.”

Lubega, 27, who is transgender, said she and a roommate were taken to a police station and told they could either “buy their freedom” or be charged for sex crimes, with the lubricant as evidence. She paid around \$250, she said.<sup>162</sup>

The 2020 KNCHR submission to the UN Periodic Review stated that “Persons of diverse sexual orientation and gender identity face challenges including killings, physical violence, stigma and exclusion from family, expulsion for workplaces, learning institutions, blackmail, extortion, denial of work, housing and poor access to healthcare”<sup>163</sup>, citing a 2018 press release it had issued.<sup>164</sup>

The 2020 All Survivors Project submission to the UN Human Rights Committee stated that “Kenya is one of the few countries in Africa in which refugees are able to claim asylum based on sexual orientation and gender identity. However, SGM [sexual and gender minority] refugees are victims of sexual violence and sexual exploitation, including by the Kenyan security forces”.<sup>165</sup>

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<sup>160</sup> Pink News, [Queer refugees subjected to daily anti-LGBT+ violence say they were ‘teargassed and brutally assaulted’ by police while protesting their plight](#), 8 May 2020

<sup>161</sup> The Washington Post, [‘We were so ready’: LGBT refugees in Kenya live in fear as global resettlement is put on hold](#), 26 May 2020

<sup>162</sup> The Washington Post, [‘We were so ready’: LGBT refugees in Kenya live in fear as global resettlement is put on hold](#), 26 May 2020

<sup>163</sup> Kenya National Commission on Human Rights (KNCHR), [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

<sup>164</sup> Kenya National Commission on Human Rights (KNCHR), [Press Release on International Day against Homophobia, Biphobia, and Transphobia \(IDAHOBIT\)](#), 17 May 2018

<sup>165</sup> All Survivors Project, [Submission to the UN Human Rights Committee 128<sup>th</sup> Session 2-27 March 2020](#), 2020

The 2020 report of NTAN, including the organisations Trans\*Alliance Kenya and Jinsiangu Kenya, on the national transgender discrimination survey in Kenya, commented on abuse by police and within the criminal justice system:

Law enforcement agencies in Kenya have gained a reputation in the transgender and intersex community for arbitrary arrests, physical and sexual assaults and harassment. Nearly a half (43%) of those interacting with police reported being treated disrespectfully.

Over a third, (38%), indicated being harassed. And another 23% reported physical assault and 12% indicated being sexually assaulted by the police. 55% reported being uncomfortable seeking help from the police due to fear of criminalisation laws that target transgender people.<sup>166</sup>

## 2021

The 2021 submission to the UN Human Rights Committee by the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that “LGBTI persons in Kenya report discrimination, violence, lack of protection by law enforcement and government officials, and limited access to services. LGBTI individuals with disabilities and other marginalized identities are particularly at risk for such human rights violations”.<sup>167</sup>

NGLHRC’s 2020/2021 Annual Legal Aid Report on trends among the LGBTQA+ community in the June 2020 to June 2021 period noted that:

Restrictions of movement created exacerbated risk of abuse during street controls, with reports of selective arrests; [...] arbitrary detentions and a general increase in mistreatment in the public sphere. [...]

There have been cases of blackmail and extortion among GSM [gay and other men who have sex with men] community where some GSM collude with the police to extort other queer persons. [...]

There have been quite a number of cases of police raids and arbitrary arrests in a number of refugee safehouses. [...]

State officers have continuously [sic] harassed, blackmailed and extorted queer persons while threatening to charge them with the provisions of section 162 and 165 of the Penal Code.<sup>168</sup>

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic report on the rights of LGBTI citizens and non-citizens in Kenya stated that: “The experience of members of this coalition and interviews carried out for this report also suggest a troubling level of sexual and gender-based violence deserving of the Committees attention. Many LGBTI refugees fleeing to Kenya go to local police stations upon arrival to get transportation and help. Several

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<sup>166</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, p. 7

<sup>167</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 1*

<sup>168</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2020/2021 Annual Legal Aid Report](#), 2021, pp. 3, 25-26

interviewees recounted that refugees are often met with extortion and violence during these interactions".<sup>169</sup>

In May 2021, the UN Human Rights Committee stated that it was concerned over "Reports of lesbian, gay, bisexual, transgender and intersex individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access justice and remedies".<sup>170</sup>

The July 2021 Immigration and Refugee Board of Canada report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya gave the following information, based on interviews with NGO representatives:

In an interview with the Research Directorate, a representative of Persons Marginalized and Aggrieved in Kenya (PEMA Kenya) [5] indicated that the law criminalizing sexual acts between individuals of the same sex is used by police to extort LGBT people and that if LGBT individuals do not "give in to extortion/blackmail" they will be charged with the law criminalizing same-sex sexual acts (PEMA Kenya 12 July 2021). [...]

The Jinsiangu [a Kenya-based NGO that "seeks to ensure the lives and wellbeing of [Intersex, Transgender, and Gender-Non-Conforming (ITGNC)] persons"] representatives stated that "the police are one of the major perpetrators of violence and abuse against LGBTQ individuals" and that LGBTQ individuals are subject to arbitrary arrest and "sexual abuse and degrading treatment by police" (Jinsiangu 9 July 2021). [...]

The Jinsiangu representatives indicated that "LGBTQ individuals who own businesses are subject to extortion by the police" (Jinsiangu 9 July 2021). [...]

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association is a Kenya-based NGO that promotes the health and rights of the lesbian, gay, and bisexual communities in Nakuru County] indicated that "various authorities have been sensitized on human rights for LGBTIQ+ persons" and "harassment coming from authorities has therefore greatly reduced" (KYDESA 23 June 2021). The PEMA Kenya representative stated that "there has been some progress with training of the police on gender and sexual diversity by PEMA and other organizations" (PEMA Kenya 12 July 2021). However, the same source noted that "police stations might have changed their perspective on LGBT, but LGBT people are still afraid to go to the police" (PEMA Kenya 12 July 2021).<sup>171</sup>

[5] Persons Marginalized and Aggrieved in Kenya (PEMA Kenya) is an NGO that aims to "advance[e] the human rights of gender and sexual minorities, specifically in Mombasa" (PEMA Kenya n.d.).

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<sup>169</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, p. 13

<sup>170</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights Concluding observations on the fourth periodic report of Kenya](#), 11 May 2021, *paragraph 12*

<sup>171</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

2022

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya's third periodic report noted that:

2. Forms of violence against LGBTIQ+ persons identified in this submission often, alarmingly, amount to torture and other cruel, inhuman or degrading treatment or punishment (CIDTP). Acts of violence perpetrated by State and non-State actors against LGBTIQ+ persons in Kenya include arbitrary detention, sexual assault, physical assault, forced anal examinations, conversion therapy practices, extortion, and other forms of ill-treatment. [...]

[...] LGBTIQ+ persons face increased risks of arbitrary arrests and detention, direct physical violence upon arrest and in custody, extortion by police officers, societal violence, and also indirect violence due to fear of reporting crimes or seeking support. [...]

10. LGBTIQ+ persons in Kenya are disproportionately affected by State and non-State violence. NGLHRC since the inception of its legal clinic in 2014 has received and responded to approximately 2,707+ cases of violence against LGBTIQ+ Kenyans, and refugees and asylum seekers in Kenya, based on their real or perceived sexual orientation or gender identity. These cases include sexual assault, physical assault, verbal abuse and threats to violence, murder, conversion therapy practices, among others.<sup>9</sup> [...]

12. *Arbitrary arrests, extortion and violence in police custody.* Arbitrary arrests with the intent to extort are disproportionately carried out against LGBTIQ+ persons in Kenya. [...]

13. In other cases, where lawyers were not involved, victims of this type of extortion have suffered severe beatings by both police officers and members of the public, sometimes requiring hospital treatment.<sup>14</sup> [...] Forced anal examinations, despite being ruled unconstitutional as mentioned above, also continue to be practiced.<sup>16</sup>

Furthermore, threats of outing LGBTIQ+ persons to their family or wider community are also practiced in the context of police custody. These threats tend to be effective due to the stigmatisation and ostracisation faced by the LGBTIQ+ community. [...]

15. *Violence in detention facilities.* LGBTIQ+ persons also face discrimination and multiple forms of violence, often amounting to torture or CIDTP, in detention settings, as has been recognised by various UN bodies including the Special Rapporteur on torture (SRT) and this Committee. [...]

There are also reports of exploitation of refugees by the police on account of being LGBTIQ+, leading to increased uncertainty and fear amongst LGBTIQ+ applicants.<sup>24</sup> [...]

DUTY TO PREVENT AND INVESTIGATE LGBTIQ+ VIOLENCE

17. In Kenya, whilst in some cases the police have protected LGBTIQ+ persons from violence, there remain many cases in which the police have either refused to assist LGBTIQ+ individuals or became perpetrators of violence themselves. LGBTIQ+ persons who have attempted to report incidents of violence or crime to the police have been subjected to further verbal or physical abuse, or even arrest, as a result of officers' perception of the victims' sexual orientation or gender identity.<sup>26</sup><sup>172</sup>

14 Ibid [Sarah Johnson, 'I'd been set up': the LGBTQ Kenyans 'catfished' for money via dating apps, The Guardian, 4 January 2022.].

16 NGLHRC, 'July 2019/July 2020 Legal Aid Report', 2020, p. 24 (para. 15.2). See also NGLHRC, '2018/2019 Legal Aid Brief', p. 4. [...]

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<sup>172</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 1-5

24 The Washington Post, ‘We were so ready’: LGBT refugees in Kenya live in fear as global resettlement is put on hold’, 26 May 2020. [...]

26 Human Rights Watch (HRW), ‘The Issue is Violence – Attacks on LGBT People on Kenya’s Coast’ (The Issue is Violence), September 2015; See also NGLHRC, ‘2020/2021 Annual Legal Aid Report’, pp. 12 (para. 42.), 18 (paras 5.1, 5.2, 5.4 and 5.5); ‘July 2019/July 2020 Legal Aid Report’, pp. 21 (para.14.2), 22 (para. 14.3), 23 (para. 14.5) and ‘2018/2019 Legal Aid Brief’, pp. 3, 10-11 (para. 6.2).

The May 2022 UN Committee Against Torture’s concluding observations on the third periodic report of Kenya expressed its concern over “Reports of lesbian, gay, bisexual, transgender and intersex individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access to justice and remedies”.<sup>173</sup>

Al Jazeera noted in a June 2022 article that “Human rights researchers and activists have documented a steady rise of hostility against gay people including harassment by government forces in Kenya, which is still a conservative society. The Kenyan Penal Code criminalises consensual same-sex relationships and marriage, with jail sentences ranging from 5-14 years. Police officers frequently use this to harass and extort gay people who are then forced to bribe their way out of custody”.<sup>174</sup>

The 2022 USDOS Kenya report on human rights practices noted that “LGBTQI+ organizations reported police more frequently used general public-order laws (for example, disturbing the peace) to arrest or harass LGBTQI+ individuals. NGOs reported police frequently harassed, intimidated, or physically abused LGBTQI+ individuals in custody. They also reported police threatened gay men while in custody with forced anal examinations, which were outlawed in 2018”.<sup>175</sup>

## 2023

A BBC News article stating on the decision of the supreme court to allow LGBT rights groups to register in February 2023 noted that “The ruling comes at a time when homophobic rhetoric has been rising in Kenya. [...] Members of the LGBTQI+ community have been harassed by police, subjected to body examinations to “prove” gay sex, and openly insulted on social media and in public spaces”.<sup>176</sup>

The May 2023 joint report by the NGLHRC and Amnesty International documented the hate crimes, discrimination, and other human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya between 2018 and February 2023. With regards to harassment and violence at the hands of state actors, the report found the following:

The findings detailed in the report show that LGBTI asylum seekers and refugees in Kenya face intersectional discrimination and violence based on their identity as asylum seekers or refugees and their sexual orientation, gender identity and/or expression, and sex characteristics (SOGIESC). They experience

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<sup>173</sup> UN Committee Against Torture, [Concluding observations on the third periodic report of Kenya](#), 30 May 2022, paragraph 43

<sup>174</sup> Al Jazeera, [Kenyan queer men risk health amid homophobia in public hospitals](#), 2 June 2022

<sup>175</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>176</sup> BBC News, [Kenya wrong to ban LGBT rights groups from registering - Supreme Court](#), 24 February 2023

discriminatory practices and homophobic and transphobic attitudes from government officials, the police and other service providers, in a social climate characterised by prejudice and discrimination. These are reflected in the homophobic behaviour of officials during registration; delayed refugee status determination; harassment and discriminatory violence, including violent homophobic attacks, threats and intimidation; and extremely limited opportunities for durable solutions such as local integration and third-country resettlement. [...]

Additionally, Kenyan police and other authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism, while LGBTI refugees detained in relation to protests about the treatment of LGBTI people in Kakuma camp have described being subjected to serious abuses in detention, including being intentionally exposed to rape and sexual violence by other detainees. [...]

#### THE SITUATION OF THE LGBTI COMMUNITY IN KENYA

Abuse of the rights of LGBTI people is widespread and well documented, including physical violence, death threats, harassment by state officials, stigma, expulsion from educational institutions, blackmail, extortion, poor access to health care and medical research abuse.<sup>37</sup> [...]

#### 2.1 REGISTRATION ISSUES

[...] several of the LGBTI refugees interviewed who registered with the RAS [Refugee Affairs Secretariat] /DRS [Department of Refugee Services] in Nairobi and Kakuma described experiencing homophobic behaviour during the registration process, including because officers made it difficult for them to disclose their sexual orientation, gender identity and/or expression and/or sex characteristics. [...] Some of those who decided to disclose their sexual orientation, gender identity and/or expression or sex characteristics during the registration process said officers giggled or made homophobic comments, including using the derogatory term “shoga”.<sup>50</sup>

Joseph, a gay man, told the researchers:

*“During my registration I told the RAS officer I had a document showing the challenges I had faced as a gay man in my country. The officer asked: ‘will the government of Kenya be able to take care of you?’. I was afraid, I thought they would take me back to my country. But that was not the case; the officer was just scaring me because I am an LGBTI person”.<sup>51</sup> [...]*

#### 3. VIOLENCE AGAINST LGBTI REFUGEES

LGBTI refugees and asylum seekers in Kakuma refugee camp have suffered physical and sexual violence and other serious human rights abuses, including violations of their right to be free from torture and ill-treatment because of their sexual orientation, gender identity and/or expression and sex characteristics. [...]

The systematic and pervasive failure to conduct a prompt, thorough, independent and impartial investigation into allegations of hate crimes and gender-based violence against LGBTI people raise concerns on institutional homophobia and transphobia within the police and other state institutions. [...]

#### 3.1 VIOLENT ATTACKS, THREATS AND INTIMIDATION

Thirty-one of the refugees and asylum seekers interviewed reported having suffered assaults, threats and intimidation in Kakuma camp, most of them more than once, because of their sexual orientation, gender identity and/or expression and sex characteristics.<sup>85</sup> [...]

The interviewees reported most of these episodes to the police. Police officers recorded the incident in the Occurrence Book and provided a reference number, known as OB number. However, in only one case known to the researchers the police followed up on the report [...]. In all other cases, the police did not provide any information about the investigations or other types of follow-up to the individuals affected. In some cases, the interviewee reported incidents to the police while they were occurring, or provided information that could identify the alleged perpetrator, but the police did not intervene to stop the incident and did not identify any suspect. [...]

### 3.2 IMPUNITY FOR PERPETRATORS OF HATE CRIMES

Fredrick [a gay man] reported that, after the beating he suffered in May 2020, unknown gangs attacked him again, in June and August 2020, and that people threw stones at his house. When he reported these crimes to the police, the police taunted him, calling him “shoga” and laughing at him when he was crying out in pain.<sup>121</sup> [...]

### 3.3 INTIMIDATION OF HUMAN RIGHTS DEFENDERS

Several LGBTI refugees have been active both within the camp and through social media, leading protests and sit-ins at UNHCR offices, supporting survivors of violence and voicing the LGBTI community’s concerns. [...] They reported to the researchers several episodes of harassment and intimidation by Kenyan authorities because of their activism. [...]

In mid-August 2021 LGBTI refugees reported a fire incident caused by petrol thrown at their shelters.<sup>126</sup> The following day, the police detained Isabel and three other LGBTI refugees, accusing them of having planned the fire incident. The group was released the following day. At the time of stating, no further investigation has been conducted involving them and no charge has been pressed against them. Isabel believes that they have been singled out by the police because of their activities for the LGBTI community in Kakuma.<sup>127</sup> [...]

### POLICING PROTESTS OF LGBTI REFUGEES IN KAKUMA REFUGEE CAMP AND SERIOUS ABUSES IN DETENTION

LGBTI refugees reported several incidents of excessive use of force and homophobic abuses during the policing of protests in Kakuma refugee camp, at the hands of both the police and private security guards.<sup>132</sup> For example, Nelson, a gay man, told the researchers that in May 2021 the security personnel at the UNHCR compound beat up LGBTI refugees protesting and told them that they weren’t supposed to be there. The police also showed up and teargassed them. Nelson was hit on the head and ended up in hospital.<sup>133</sup>

Amnesty International and NGLHRC are particularly concerned about reports of serious abuses of LGBTI refugees in detention, after they were arrested in relation to protests about the treatment of LGBTI individuals in Kakuma camp. In particular, the organizations are extremely concerned about the practice of putting LGBTI detainees in the same cell as male detainees,<sup>134</sup> as well as about the allegations that the police intentionally exposed LGBTI refugee activists to rape and sexual violence by other detainees because of their sexual orientation, gender identity and/or expression and sex characteristics. [...]

In August 2021 police arrested Isabel and three other LGBTI refugees, accusing them of faking an arson attack [...]. She told researchers:

*“While taking us into the cell, the police was signalling to the other detainees that they were bringing people who pretend to be ladies. When we got into the cell, the other detainees started slapping us. They threatened us with a broken mirror, saying that they wanted to ‘do it’ with us in the way LGBTI people do it. We were forced to ‘do it’ at night. It was a very long night.”* <sup>137</sup>

37 Aljazeera, “Kenyan queer men risk health amid homophobia in public hospitals”, June 2022, <https://www.aljazeera.com/features/2022/6/2/homophobia-in-kenyan-public-hospitals-pushes-queer-men-to-danger>; Kenya Human Rights Commission, *The Outlawed Amongst Us, A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya*, 2011, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html> [...]

50 Interviews with Patrick, Kakuma town, 8 September 2021; Joseph, Kakuma town, 9 September 2021; Sharon, Kakuma town, 10 September 2021.

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<sup>177</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, *“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees*, 19 May 2023, pp. 7, 19-21, and 33-35

- 51 Interview with Joseph, Kakuma town, 9 September 2021. [...]
- 121 Interview with Fredrick, Kakuma town, 9 September 2021. [...]
- 126 Phone interview with Daniel, 18 August 2021.
- 127 Phone interview with Isabel, Kakuma camp, 24 August 2021. [...]
- 132 Interview with Sharon, Kakuma town, 10 September 2021. In May 2020, the police reportedly used tear gas and batons to disperse a protest by a group of LGBTI refugees outside the UNHCR offices in Kakuma, after the protesters refused to disperse to comply with Kenya's lockdown orders due to the coronavirus pandemic. Ebar, "Kenya LGBT refugee protest ends with tear gas and batons", 6 May 2020, ebar.com/news/news//291830
- 133 Interview with Nelson, Kakuma town, 8 September 2021.
- 134 While the Kenya Police Service Standing Orders recognize that intersex person shall be detained in a separate cell from male and female detainees, it does not have provision or indications on how to detain a transgender person. [...]
- 137 Phone interview with Isabel, 24 August 2021.

Stating also on the ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp, the queersOfKakuma and migration-control.info August 2023 stated:

[...] LGBTI+ asylum seekers and refugees often face verbal and physical violence and humiliation during procedures of registration. They explain that they have endured homophobic and sexist insults during their procedure. Hence, multiple LGBTI+ asylum seekers and refugees have purposefully decided not to disclose their LGBTI+ identity to state officers. This particularly excluded them from the fast-track procedure dedicated to populations "at risk" when it was possible. It also shows the strong distrust of state officers which has grown among the LGBTI+ community. This distrust is similarly caused by bad treatment from the police. [...]

Moreover, police officers can, themselves, be violent towards LGBTI+ asylum seekers and refugees.<sup>178</sup>

#### d. Discrimination

##### i. Access to state-owned housing

*Note that not all sources distinguish between privately owned and state-owned housing. This section only includes information that is specific to state owned housing and therefore should be read against section [V., Treatment by Non-State Actors, i. Access to housing](#) which includes information on access to housing more broadly.*

#### 2020

*No information was found amongst the sources consulted on the LGBTIQ+ community's access to state-owned housing in 2020.*

#### 2021

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic's report on the rights of LGBTI citizens and non-citizens in Kenya stated that: "LGBTI refugees face unique and additional obstacles within a refugee camp. For example, in the

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<sup>178</sup> queersOfKakuma and migration-control.info, [Ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp, Kenya](#), 25 August 2023

Kakuma camp there is a separate physical space for LGBTI refugees. This partition is due to the inability of officials to guarantee the safety of LGBTQI refugees from attacks within the camp. In some cases, LGBTI refugees in Kakuma have been relocated outside of the camp due to safety concerns”.<sup>179</sup>

### 2022

*No information was found amongst the sources consulted on the LGBTIQ+ community’s access to state-owned housing in 2022.*

### 2023

*No information was found amongst the sources consulted on the LGBTIQ+ community’s access to state-owned housing in 2023.*

## ii. Access to and treatment in public health services

*Note that not all sources distinguish between state run and privately run health services. This section also includes information that pertains to access to health services and treatment of LGBGTIQ+ persons in healthcare more broadly.*

### 2020

Jinsiangu reported in January 2020 that transgender people had finally been recognised as a key population affected by HIV and AIDS in Kenya, being people who “experience both increased impact from one or more of the diseases and decreased access to services”.<sup>180</sup> The statement further explained that:

HIV prevention and care programs are often adapted from practices developed for non-transgender men who have sex with men (MSM) or for non-transgender women and gender diverse persons and fail to address the unique structural factors and inequities that increase HIV risk and produce barriers to care among transgender people.

For example, many trans women (especially young adults) experience intersecting discrimination and high rates of trauma, unstable housing, poverty, incarceration, and unemployment, which all negatively impact HIV risk, testing, and continuing care.<sup>181</sup>

At the end of January 2020, Pink News reported on the stabbing of Stephen Sebuuma, a trans Ugandan refugee at Kakuma refugee camp, noting that “they were rushed to clinic seven of an International Rescue Committee hospital, the witness added. However, due to strained supplies, he was

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<sup>179</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, p. 22

<sup>180</sup> Jinsiangu, [Transgender People Finally Recognized As Key Population](#), 14 January 2020

<sup>181</sup> Jinsiangu, [Transgender People Finally Recognized As Key Population](#), 14 January 2020

“administrated paracetamol” and their wounds bandaged. The treatment echoed an earlier incident in which a trans man’s neck was sliced in broad daylight, but medics could only give him paracetamol”.<sup>182</sup>

A February 2020 issue of the Covid-19 Human Rights Monitor by the International Bar Association's Human Rights Institute (IBAHRI) commented on abuse against LGBTQI+ refugees in Kenya, particularly Kakuma refugee camp, stating that “LGBTQI+ refugees are also stigmatised by medical personnel at the camp, who regularly refuse to treat them”.<sup>183</sup>

A VOA News article in November 2020 reporting on increased abuse of Kenya’s LGBTQ community during the Covid-19 pandemic noted that: “Homosexuality is illegal in Kenya and activists say many are afraid to [...] get medical help because of stigma”.<sup>184</sup>

The 2020 report of NTAN, including the organisations Trans\*Alliance Kenya and Jinsiangu Kenya, discussed the results of a baseline study of life experiences and access to health services:

Primary healthcare systems (PHC) remains an important entry point for many transgender and intersex people in Kenya seeking healthcare services with an overwhelming majority (67%) seeking healthcare services in public health and private facilities, and key population clinics and alternative medical provider service delivery points being the least sought. A majority of transgender and intersex Kenyans postponed care: (1) due to finances with Kisumu, Mombasa and Nairobi bearing a disproportionate burden; and (2) due to discrimination and disrespect from providers, with over a half (51%) of transgender people reporting disrespect from providers.

HIV testing and transition related care counselling was the commonest service that transgender people in Kenya access with many unable to access transition-related care.

The study also identified key individual, interpersonal, and structural factors associated with an inability to access transition-related care. This included: (1) transgender and intersex people and their families regularly navigate a myriad of challenges through society including bullying, discrimination, lack of adequate healthcare, disapproval from family and community, and an overall lack of societal understanding; (2) the experience of gender transition has a profound impact on adoption and foster parenting with a majority of transgender Kenyans adopting children of their partners (7%) or children related to them (5%) but few (1%) would adopt children previously unknown to them; (3) 82% of transgender Kenyans had not received any gender-related mental health diagnosis. A majority (58%) of the transgender people suffered from clinical depression, 17% reported suffering from anxiety, 10% reported alcohol use, and 5% reported suicidality.

Over a quarter, (26%) were currently using drugs, 24% had used drugs but were not currently using while 50% were not using drugs; (4) affordability and insurance coverage also limited access to healthcare for transgender and intersex people with an overwhelming majority (72%) lacking health insurance and 28% accessing government subsidised plans (NHIF) and private insurance with Nakuru (95%) and Busia (94%)

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<sup>182</sup> Pink News, [Transphobes stabbed a vulnerable trans refugee in the head in a brutal and bloody attack](#), 30 January 2020

<sup>183</sup> International Bar Association's Human Rights Institute (IBAHRI), [IBAHRI Covid-19 Human Rights Monitor, Issue 13](#), 17 July 2020

<sup>184</sup> Voice of America (VOA) News, [Kenya's LGBTQ Community Faces Increased Abuse During Pandemic](#), 24 November 2020

being disproportionately affected due, in part, to the higher prevalence of unemployment and poverty faced by transgender and intersex people relative to the general population, and a likely product of employment discrimination; and (5) only 10% of transgender and intersex people reported they were HIV positive and 17% indicated they were on treatment and care spotlighting disclosure as the most complex psychosocial challenge facing transgender and intersex people living with HIV and AIDS. 41% of transgender and intersex people were actively engaged in sex work with an average of 1-14 sexual partners in a month with a significant association between HIV prevalence and number of sexual partners.<sup>185</sup>

A 2020 All Survivors Project submission to the UN Human Rights Committee in response to its concluding observations on the fourth periodic report of Kenya regarding the International Covenant on Civil and Political Rights stated that: “Criminalisation of same sex relationship, in addition to being discriminatory, can tacitly encourage violence and can deter survivors of sexual violence from seeking justice or medical and other support for fear of being arrested and prosecuted. This is particularly so for SGM [sexual and gender minority] victims/survivors but also applies to male victims/survivors who may fear being labelled as homosexuals and being prosecuted as such”.<sup>186</sup>

The 2020 USDOS Kenya report on human rights practices noted that “NGOs reported that it was more difficult for marginalized groups, including LGBTQI+ persons, [...] displaced persons, and persons with HIV, to access reproductive health information and services”.<sup>187</sup>

## 2021

In response to the list of issues raised by the UN Human Rights Committee for its consideration of the fourth periodic report, the Kenyan government stated that:

The GOK [Government of Kenya] is aware that stigma is one of the greatest barriers to accessing services for lesbians, gays, bisexuals and transgender (LGBT). Men having sex with men (MSM) who are living with HIV are particularly unlikely to take up services, with a consequent negative impact. Some of the measures taken by the State to address the situation include: sensitization of health care workers to reduce stigmatizing attitudes in healthcare settings; the development and dissemination of population specific and user friendly information; and the promotion of the acceptance of all persons as part of the community for increased service uptake.<sup>188</sup>

For their 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that “day to day realities demonstrate that LGBT

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<sup>185</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, pp. 3-4

<sup>186</sup> All Survivors Project, [Submission to the UN Human Rights Committee 128<sup>th</sup> Session 2-27 March 2020](#), 2020

<sup>187</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

<sup>188</sup> Republic of Kenya, [Replies of Kenya to the list of issues in relation to its fourth periodic report Submitted to UN Human Rights Committee](#), 27 January 2021 Paragraph 33

individuals have been denied public services in hospitals and schools due to their sexual orientation and identity”<sup>189</sup> The same source further noted that:

Interviewees expressed that they faced significant barriers to accessing healthcare. Participants’ experiences with health care providers showcase the barriers that exist as LGB individuals try to access essential services. There was a clear distinction between experiences with public healthcare providers versus private NGOs which provide services to key populations. Although a platform allowing government agencies to work with key populations exists, LGB individuals’ distrust of healthcare professionals may prevent them from attempting to access these services.<sup>40</sup>

Most of the LGB individuals interviewed for this report decided not to disclose their sexual orientation to health care providers because they feared it could affect their treatment. In addition, interviewees expressed fear regarding the lack of privacy for patients and how it could affect their reputation in the community. In one case, an LGB individual stated that “It is impossible, I would feel ashamed. I do not want doctors to start talking about me.”<sup>41</sup> In another case, a gay man changed his name when looking for STI treatment services out of fear of confidentiality issues. It was clear from the interviews that LGB individuals mistrust health care providers, especially providers in public hospitals. Further, some health care providers have reportedly conducted forced anal examinations.<sup>42</sup>

Health care providers refuse to treat LGB individuals because of their sexual orientation. Health care providers often use Section 162-165 of the Penal Code and their religious beliefs to deny services to LGB individuals. In one instance, a gay man decided to go to a public hospital for Pre-Exposure Prophylaxis (PrEP) medication but was refused treatment from the doctors because they stated: “we do not treat people like you here.”<sup>43</sup> Therefore, even though there is a platform in place to work with high-risk populations, LGBTI individuals still risk limited access to services because of ongoing prejudice against them.

Interviewees emphasized the importance of training health care service providers on dealing with LGBTI individuals. Many LGB individuals stated that they would only go to NGOs and civil society organizations for health care services because of the relationship of trust that existed between them. Some of the participants expressed a lack of civil society organizations and NGOs providing direct services, however, specifically in rural areas. Therefore, LGBTI individuals are dependent on the existence of private entities to provide them with adequate access to health services.<sup>190</sup>

40 Levis Nderitu, Key Population Hero: Addressing stigma and discrimination among LGBT people in Kenya, Linkages, Dec. 9, 2016, <https://linkagesproject.wordpress.com/2016/12/09/key-population-hero-addressing-stigma-and-discrimination-among-lgbt-people-in-kenya/>.

41 Interview with participant, Nairobi, Kenya, Jan. 17, 2019.

42 Human Rights Watch, The Issue is Violence: Attacks on LGBT People on Kenya’s Coast (United States: Human Rights Watch, September 2015).

43 Interview with participant, Migori, Kenya, Jan. 8, 2019.

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic’s report on the rights of LGBTI citizens and non-citizens in Kenya, to be

<sup>189</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 34*

Footnote 38 cites: Information received from Kenyan NGO (18 February 2021).

<sup>190</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 35-38*

considered in connection with the 2021 Fourth periodic report of Kenya on its compliance with the International Covenant on Civil and Political Rights, stated that:

[...] continued criminalization aids in perpetuating stigma and is used as a justification for police, health care providers, and local services to discriminate against members of the LGBTI+ community.<sup>14</sup>

14 See, e.g., Eric Mawira Gitari, “The Gay Debate: Decriminalising Homosexuality in Kenya”, The Elephant, 28 February 2019, available at <https://www.theelephant.info/features/2019/02/28/the-gay-debate-decriminalisinghomosexuality-in-kenya/>.<sup>191</sup>

The submission further noted with regards to access to healthcare (not specifying whether it was public or privately run) that:

In a 2019 report demonstrating the evidence of harm and discrimination in Kenya against the LGBTI community, a number of startling statistics were unveiled. For example, 35% of LGBTI people had been called names or been insulted by a healthcare provider due to their SOGIE.<sup>20</sup> The same study found that roughly one third of LGBTI people had been denied healthcare services because of their SOGIE.<sup>21</sup> 59% of LGBTI people had been verbally harassed because of their SOGIE.<sup>22</sup> 44% of LGBTI people had been sexually assaulted in their lifetime,<sup>23</sup> and one in four lesbian women and gay men had been sexually assaulted in the preceding year. <sup>24</sup> Finally, the study found that 53% of LGBTI people had been physically assaulted in their lifetimes.<sup>25</sup> [...]

In addition to continuing stigma and issues of LGBTI access to HIV/AIDs programs, the LGBTI communities face many other issues in access to healthcare, adequate housing, and employment.

Research by the Gay and Lesbian Coalition of Kenya (GALCK) shows that LBQ women were “discriminated against by health care providers or were refused services in government hospitals.

The participants stated that their main concerns were confidentiality and disclosure.”<sup>39</sup> The same study notes that many LBQ women “avoid seeking medical services at all [rather] than risk having their privacy breached by medical professionals.”<sup>40</sup> A recent study with LBQ women refugees in Nairobi further documented stigmatization by health professionals.<sup>41</sup>

[...] LGBTI refugees and asylum-seekers in Kenya face additional obstacles to access to health care because they often lack the necessary legal documentation to access services. A number of studies have documented delays and bureaucratic inefficiencies in processing these necessary documents so that refugees can access health care. Interviews with leaders of community-based organizations confirmed that a central issue for LGBTI individuals was that they would avoid treatment or seeking access to medication in order to protect themselves from potential physical harm and harassment.<sup>192</sup>

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<sup>191</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [\*Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights\*](#), 2021, p. 5

<sup>192</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [\*Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights\*](#), 2021 p.6

20 Alex Müller, Kristen Daskilewicz and the Southern and East African Research Collective on Health, *Are We Doing Alright? Realities of Violence, Mental Health, and Access to Healthcare Related to Sexual Orientation and Gender Identity and Expression in Kenya* (Amsterdam, 2019), p. 37.

21 Ibid.

22 Ibid., p. 38.

23 Ibid., p. 39.

24 Ibid., p. 40.

25 Ibid., p. 38. [...]

39 CAL & GALCK, *Lived Experiences*, p. 29.

40 Ibid.

41 Hester K.V. Moore, ““The Atmosphere is Oppressive”: Investigating the Intersection of Violence with the Cisgender Lesbian, Bisexual, and Queer Women Refugee Community in Nairobi, Kenya”, in *LGBTI Asylum Seekers and Refugees from a Legal and Political Perspective: Persecution, Asylum and Integration*, Arzu Güler, Maryna Shevtsova and Denise Venturi, eds. (Springer, 2019).

The same source also noted that:

In addition to the prevalence of sexual and gender-based violence, rehabilitative services are limited and there are numerous obstacles which diminish access. In Nairobi, there are examples of highly regarded mental health care service providers who are specially trained to care for female and male refugee survivors of sexual violence, including LGBTQTI+ survivors.<sup>76</sup> Unfortunately, community members report that there is not nearly enough coverage in Nairobi given the significant need of the large urban refugee population. Additionally, the services available in the Kakuma camp are also very limited and the challenges for LGBTI survivors seeking care are even greater.<sup>193</sup>

76 One excellent example is the Minnesota-based Center for Victims of Torture, See generally The Center for Victims of Torture, “Innovative New Aftercare Program Helps LGBTI Survivors in Nairobi”, 2018, available at <https://www.cvt.org/sites/default/files/documents/newsletters/CVT18%20NC%20NL%20web%20-%20FINAL%20-%2005.18.2018.pdf>.

A six-month openDemocracy investigation into ‘conversion therapy’ in Kenya, Tanzania, and Uganda in June 2021 found the following:

In Kenya, LVCT Health is an HIV and AIDS care organisation working across the country that says it implements “evidence-informed programs”. Staff at a clinic within its head office in Nairobi offered our undercover reporters ‘treatment’ to change same-sex attraction, claiming that being gay is a “trend” or something men are “trapped” into by others.

An LVCT Health spokesperson said: “We are deeply unsettled by the idea that a staff member would perpetuate this harmful myth” and asserted that “LVCT Health does not and has never supported any form of conversion therapy for LGBTQI people.”

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<sup>193</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [\*Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights\*](#), 2021 p.13

The organisation added in a subsequent email: "This staff's conduct is contrary to our policies and guiding principles [...] we are investigating the matter and will address it conclusively", including "urgent retraining and sensitisation of our staff."<sup>194</sup>

Also commenting on this research in July 2021, openDemocracy stated:

In Kenya, two interviewees described being given hormones (to make a gay man seem more 'masculine', and to limit a trans person's ability to present in their gender). openDemocracy's investigation found that controversial 'treatments' are easy to find across the region – including at health facilities that specifically reach out to gay men.

openDemocracy undercover reporters were told at health facilities in Dar es Salaam, Kampala and Nairobi that being gay is "evil", something "for whites" and a mental health problem; to try "exposure therapy" by employing "a housemaid [you] can get attracted [to]"; and to give a gay teenager a sleeping pill to prevent him from masturbating.<sup>195</sup>

Survivors' testimonies can be found on video [here](#).

An Immigration and Refugee Board of Canada's July 2021 report on situation of persons with diverse sexual orientation and gender identity and expression in Kenya noted:

Sources stated that it is "easier" for individuals of diverse SOGIE to live openly (Jinsiangu [NGO] 9 July 2021; PEMA Kenya 12 July 2021), if they "can financially support themselves" (PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya 12 July 2021) or have "more economic security," for example someone who does not need to take public transit and has private health insurance (Jinsiangu 9 July 2021). [...]

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association] stated that individuals of diverse SOGIE do not face discrimination in employment and education but do face discrimination in accessing housing and healthcare and that "[t]his applies across Kenya," including in Nairobi (KYDESA 23 June 2021). In contrast, the PEMA Kenya representative indicated that "the level of discrimination is going down, but there is still discrimination" in employment, education, housing, and health care (PEMA Kenya 12 July 2021). [...]

The human rights defender [National Gay and Lesbian Human Rights Commission (NGLHRC)] noted that women of diverse SOGIE "have been sterilized at hospitals because they were masculine presenting" (Human rights defender 30 June 2021). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. [...]

The human rights defender indicated that there are no state support services (Human rights defender 30 June 2021). The same source noted that "a lot of support comes from NGOs and civil society organizations, as opposed to the government" (Human rights defender 30 June 2021). The Jinsiangu representatives indicated that most support services are provided by NGOs (Jinsiangu 9 July 2021). The representatives noted that at the national level Jinsiangu has received support from the Ministry of Health and the National Human Rights Commission (Jinsiangu 9 July 2021). The PEMA Kenya representative stated that there are government interventions for men who have sex with men, but that other LGBT individuals are excluded (PEMA Kenya 12 July 2021). Sources indicate that there is a

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<sup>194</sup> OpenDemocracy, [Aid donors to investigate anti-gay 'therapy' revealed by openDemocracy](#), 30 June 2021

<sup>195</sup> OpenDemocracy, ['I was afraid I was going to die': Kenyan survivor of 'conversion therapy'](#), 12 July 2021

government program for intersex and transgender individuals to access treatment for HIV (PEMA Kenya 12 July 2021; Jinsiangu 9 July 2021).<sup>196</sup>

In June 2021, Jinsiangu released a statement on the International Day Against Homophobia Biphobia & Transphobia, observing that ITGNC [intersex, transgender and gender non-conforming people] often face stigmatization and discrimination, and that “[s]uch contexts present themselves in access to health care services where stigma and discrimination is rampant especially with regard to SRHR [sexual and reproductive health and rights]”.<sup>197</sup>

Rainbow Railroad and ORAM’s October 2021 report into the conditions facing LGBTQI+ asylum seekers and refugees in Kakuma refugee camp found, with regards to health services, that:

Among the respondents, 93 per cent reported having required health care services within the last 12 months. All reported having received health services from the health facilities within the camp. The HIV and AIDS services provided at the main hospital under IRC [International Rescue Committee] were the most utilized, with over 70 per cent reporting having visited the facility. The respondents praised the facility for providing LGBTQI+-friendly services, including community outreach services that reached out to members for routine HIV tests and treatment services for those living with HIV. Over 85 per cent reported that they preferred to seek all other health services beyond HIV and AIDS services at the main hospital, since the facility was friendly and provided a stigma-free environment for the LGBTQI+ community in the camp. Respondents reported traveling long distances in order to visit the main hospital. Thirty-four per cent of the respondents reported having been stigmatized in some of the health clinics. This included being referred to as *shoga* (a derogatory Kiswahili term used to refer to homosexuality) either by staff members or other refugees in the waiting room while waiting to see a provider, or some providers just directing them to the main hospital with snide remarks about how they do not entertain LGBTQI+ persons in their facility. Seven per cent of the respondents reported having required health services but did not seek them due to fear of being ridiculed, mainly by fellow refugees or asylum seekers, at the facilities.<sup>198</sup>

For Intersex Awareness Day in October 2021, Jinsiangu noted that “In 2021, intersex people are unable to access the necessary healthcare and legal services that bar majority of them from realizing the full potential of their lives within society. [...] there remains a lot of misconceptions, lack of understanding and proper medical and policy protocols to create an well-being enabling environment for them”.<sup>199</sup>

A 2021 journal article on mental health among sexual and gender minorities in Western Kenya explained that “Limited national data exist on the mental health of LGBTQ people in Kenya, and the scant existing research has primarily been conducted with gay and bisexual men and other men who have sex with

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<sup>196</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

<sup>197</sup> Jinsiangu, [Int'l Day Against Homophobia Biphobia & Transphobia \(IDAHOBIT\) 2021](#), 14 June 2021

<sup>198</sup> Rainbow Railroad and ORAM (Organization for Refuge, Asylum and Migration), [The Challenges Facing LGBTQI+ Refugees in Kakuma Refugee Camp, Kenya](#), October 2021, p. 20

<sup>199</sup> Jinsiangu, [Intersex Awareness Day 2021](#), 28 October 2021

men (GBMSM) and is typically conducted within HIV research projects. [...] Limited data are available on the health-related experiences of lesbian, bisexual and queer women in Kenya”.<sup>200</sup>

The 2021 USDOS Kenya report on human rights practices noted that “NGOs reported that it was more difficult for marginalized groups, including LGBTQI+ persons, [...] displaced persons, and persons with HIV, to access reproductive health information and services”.<sup>201</sup>

## 2022

Jinsiangu reported in February 2022 on lack of information or misinformation about intersex and transgender communities in rural regions in Kenya, including Meru, stating that: “During our engagement, issues of Intersex genital Mutilation arose as it’s still practiced in the county as stated by the chief health officer at the meeting. The doctors in Meru were not yet educated on the dangers/ risks the practice poses on the general well-being of the intersex children and later in their adult lives. The idealized notion that choosing an intersex child’s gender/sex path through surgical interventions is one of the most damaging narratives that exist within the healthcare system”.<sup>202</sup>

In its 2022 joint shadow report submitted to the UN Committee against Torture, the Advocates for Human Rights (along with The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic) noted that: “Health care providers refuse to treat LGB individuals because of their sexual orientation. Health care providers often use Section 162-165 of the Penal Code and their religious beliefs to deny services to LGB individuals”.<sup>203</sup> The submission also stated:

46. A July 2020 report states that the Ministry of Health is “generally considered an ally in the struggle for LGBTI equality,” and highlights the role of the National AIDS & STI Control program in addressing discrimination and violence.<sup>54</sup> It is important to point out, however, that the HIV and AIDS framework highlights interventions targeting men who have sex with men, but not LGBTI interventions.<sup>55</sup>

47. The Ministry of Health is currently working with the transgender community to develop a “National Transgender Health Strategy” and the Government has also committed to support the first National MSM Transgender and Research Conference in Kenya.<sup>56</sup> The Ministry of Health, however, has not yet developed other specific policies related to LGBTI persons.<sup>57</sup>

48. In 2020, the Ministry of Health Taskforce on Mental Health recommended that the Government declare “mental health” a national emergency,<sup>58</sup> but the Taskforce failed to mention LGBTI persons as a

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<sup>200</sup> Gary W Harper, Jessica Crawford, Katherine Lewis, Caroline Rucuh Mwochi, Gabriel Johnson, Cecil Okoth, Laura Jadwin-Cakmak, Daniel Peter Onyango, Manasi Kumar, Bianca D M Wilson, [“Mental Health Challenges and Needs among Sexual and Gender Minority People in Western Kenya”](#), *International Journal of Environmental Research and Public Health*, 18(3), 2021

<sup>201</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

<sup>202</sup> Jinsiangu, [Engaging Meru County Government Officials](#), 14 February 2022

<sup>203</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [KENYA Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Rights of LGBTI Persons, 73rd Session of the Committee against Torture \(19 Apr 2022 - 13 May 2022\)](#), 18 March 2022, p. 12

key population in their strategy or identify gender identity and sexual orientation as factors linked to mental health concerns.<sup>204</sup>

54 Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, Public Health Innovations (Jul. 2020).

55 Information received from Kenyan NGO (18 March 2022).

56 Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, Public Health Innovations (Jul. 2020).

57 Information received from Kenyan NGO (18 March 2022).

58 Mental Health Taskforce urges government to declare mental health a National Emergency, Ministry of Health, (Jul. 7, 2020). <https://www.health.go.ke/mental-health-taskforce-urges-government-to-declare-mental-health-a-national-emergency-nairobi-tuesday-july-7-2020/>.

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya's third periodic report noted that: "In Kenya, there is an overall environment of hostility towards LGBTIQ+ individuals, who commonly suffer harassment and discrimination because of their sexual orientation, gender identity, gender expression and sex characteristics. Such discrimination affects LGBTIQ+ persons in many areas of life, preventing them from exercising fundamental rights, such as healthcare".<sup>205</sup>

Al Jazeera reported in June 2022 on the experiences of queer men in public hospitals in Kenya. It noted that:

In February 2020, Hosea Ndiretu was gang-raped by a group of men while leaving a bar in Nairobi. Within weeks, he realised he had a sexually transmitted infection (STI) and visited a government hospital to seek treatment.

But the 26-year-old business management graduate said his experience there was so horrible it made him develop a phobia of public hospitals.

"I developed anal warts [after the rape] which needed urgent treatment and went to a government health facility because of its affordability," Ndiretu told Al Jazeera. "After explaining my predicament, the doctor asked if I was gay. I answered in the affirmative and he told me that they do not treat 'evil people'."

The doctor asked him to go to pro-gay rights civil society groups instead, Ndiretu said.

At the government hospital where he had sought treatment for gonorrhoea, 35-year-old Francis Onyango says the doctor attending to him called his colleagues into the room to mock him. So he sought solace in church instead.

"My pastor termed my problem as demonic and asked me to plant a 'seed' of \$200 (Ksh 2,000) before he could pray for me. For his prayers to work, he ordered me not to take any form of medication," said the Nairobi-based gym trainer. [...]

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<sup>204</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, Oasis Research, and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [KENYA Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Rights of LGBTI Persons, 73rd Session of the Committee against Torture \(19 Apr 2022 - 13 May 2022\)](#), 18 March 2022, pp. 13-14

<sup>205</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, p. 1

The Kenyan constitution guarantees every citizen the right to healthcare access without discrimination but healthcare workers continue to violate this provision, especially as gay men stay silent for fear of harassment or stigma. [...]

With homophobia all around them, gay people like Ndiretu and Onyango in Kenya are shunning government hospitals and resorting to unconventional methods of treating sexually transmitted infections. [...]

While Onyango was lucky to get help from a gay rights lobby group which facilitated his treatment at a private facility, Ndiretu was not so lucky.

With no money for treatment in a private hospital, he turned to a friend who took him to a herbalist. There, he paid \$5 (Ksh500) for five litres of a herbal concoction. The recommended dosage was a full cup twice a day and he was promised that it would cure his infection in a week.

“It was bitter and the smell was awful but I had to take it because I was looking for a cure,” said Ndiretu. A few hours after taking the first cup, he felt weak. “I felt dizzy, developed a splitting headache and a running stomach,” he said. “I knew something was wrong.”

The quick intervention of his neighbours saved him. They rushed him to a nearby private hospital where he spent a week being treated for partial eyesight loss – and the STI.

Worried by the number of gay men resorting to herbs to treat STIs in Nairobi, Ishtar MSM, a community-based gay rights organisation now provides free medical services for men having sex with men (MSM).

Its director Peter Njane told Al Jazeera that organisations like his are a relief to gay men who value privacy and fear discrimination in public health facilities but cannot afford treatment in private facilities.

“Due to the confidentiality of our services, we have a huge number of gay people seeking our services,” said Njane. “We attend to an average of 10 people daily. Majority are gay men who are yet to come out of the closet and only come to seek help after other treatment methods like herbal medicines have failed.”

Joshua Kimani is co-founder of SWOP Kenya, a nonprofit running a community centre that offers counselling and support services to sex workers and gay men on safe sex and sexual ailments. The centre also connects gay men who require specialised treatment to gay-friendly clinics

He says SWOP has attended to more than 3,000 gay men since 2008.

“Many of them have confirmed using herbs as a remedy to treat STIs,” he said. “Herbs do not treat STIs and the moment someone fails to get proper treatment for infections it puts them and their partner in danger,” he said.

Kenya’s health ministry through its National AIDS and STIs Control Programme (NAS COP) says it has been partnering with organisations like Ishtar and SWOP to set up LGBTQ-friendly clinics where gay people can freely access health services.

Salim Hussein, head of primary healthcare at Kenya’s health ministry says that as much as the law is against homosexuality, the ministry does not support discrimination at its hospitals.

“The cases of homophobia are there and that is a fact,” he told Al Jazeera. “The ministry has been working to set up youth-friendly clinics where people who value privacy can access sexual related services. We have also trained our health workers to treat all patients with dignity and opened up customer care desks in all our health facilities to handle all complaints.”

NAS COP officials say most victims of discrimination in government hospitals fail to report to authorities or believe it to be counterproductive.<sup>206</sup>

galck+’s July 2022 report exploring conversion “therapy” practices, based on data collected from 625 LGBTIAQ+ people throughout Kenya as well as sixteen practitioners between 2021 and 2022, highlighted

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<sup>206</sup> Al Jazeera, [Kenyan queer men risk health amid homophobia in public hospitals](#), 2 June 2022

the “geographic breadth and pervasiveness of so-called conversion “therapy” in Kenya”. The report stated that:

Almost 73 per cent of the respondents or 393 people out of 541 stated that they were aware of the availability of so-called conversion “therapy” practices that existed in Kenya. [...]

Of those who were aware of access to such “therapy,” respondents identified a wide range of practitioners providing such “services.” [...]

A little over half the respondents - 297 out of 525 - reported that they knew a physical location where a conversion “therapy” practitioner offered “therapy” services in Kenya [...]. [...]

Respondents noted being aware of the availability of such “therapy” in Nairobi, Mombasa, Kilifi, Kiambu, Turkana, Kisumu, Nakuru and Machakos among other parts of the country.

The data also demonstrated, as shown below, that conversion “therapy” practitioners advertise their practices mostly through word of mouth (referrals) and sermons and other talks in faith-based organisations. However, they also advertised their services on the internet or social media, referrals from health care practitioners, community bulletins, conference presentations and published books and brochures. [...]

#### Methods of Conversion “Therapy”

##### Unethical Physical and Mental Health Services

Medical interventions of various kinds, for example, meeting with counsellors, psychologists, and doctors was frequently cited by respondents who also noted having experienced egregious and unethical practices by health care providers such as forced anal exams facilitated by medical practitioners. In some instances, this was taken as an initial step to conversion “therapy” practices, medication, and counselling/therapy. [...]

##### Hearing from Conversion “Therapy” Practitioners

The data was collected from 16 conversion “therapy” practitioners from different counties or areas such as Bungoma, Kimilili, Nairobi, and Homabay, among others. The conversion “therapy” practitioners acknowledged that there were members of the LGBTIAQ+ community that attend their churches, schools, clinics or health facilities. The majority of the practitioners described the interaction as guidance and counselling of the LGBTIAQ+ persons. Others described conversion “therapy” as mentorship, helping persons to become ‘normal’ or professional interaction through providing psychosocial support.

The conversion “therapy” practitioners run schools, churches, clinics and/or health facilities that conduct programs that “assist” or “support” members of the LGBTIAQ+ community to change their sexual orientation or gender identity. The programs vary depending on the nature of the work undertaken by the practitioner, or the context in which the conversion “therapy” occurs. [...]

According to the practitioners interviewed, the purpose of the conversion “therapy” programs includes:

- *To make LGBTIAQ+ persons ‘normal’;*
- *To provide mentorship;*
- *To ‘cure’ people;*
- *To try helping LGBTIAQ+ persons to come out of the ‘vice’ through counselling;*
- *To teach what is right and provide good guidance;*
- *To teach the ways of the Lord and win “lost souls” for those who viewed it from a religious lens;*
- *To help persons integrate to heteronormativity; and,*

- To try to save the youth and future generation from homosexuality as it can lead to people not having children and/or contracting sexually transmitted diseases.<sup>207</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, noted that “NGOs reported that it was more difficult for marginalized groups, including LGBTQI+ persons, [...] displaced persons, and persons with HIV, to access reproductive health information and services”.<sup>208</sup>

### 2023

A BBC News article stating on the decision of the supreme court to allow LGBT rights groups to register in February 2023 noted that “The ruling comes at a time when homophobic rhetoric has been rising in Kenya. [...] Some [members of the LGBTQI+ community] say they have even been denied healthcare [...] for being gay”.<sup>209</sup>

Reuters reported similar information, quoting Real Raymond, head of LGBTQ+ rights charity Mbarara Rise Foundation “Gay members of the community have even been refused their HIV/AIDS medication from government hospitals, as staff feel they will be accused of supporting them and face punishment”.<sup>210</sup>

The May 2023 joint report by the NGLHRC and Amnesty International on LGBTI refugees in Kenya stated that:

Delays in refugee status determination procedures increase the risk of LGBTI individuals needing specific health or other services “falling through the cracks”, i.e. not being properly identified nor referred to specialized services, especially when these individuals have not revealed their sexual orientation, gender identity and/or expression and sex characteristics during registration.<sup>67</sup> [...]

[...] the LGBTI refugees interviewed for this research who reported having suffered sexual and gender-based violence have not consistently been referred to, or otherwise been able to access, the services available for survivors of gender-based violence. In May 2023 UNHCR reported that specially-trained staff had been engaged to address the needs of survivors of gender-based violence within the LGBTI community.<sup>106</sup><sup>211</sup>

67 Interview with NGO6, 2022. [...]

106 UNHCR, email to Amnesty International, 17 May 2023.

queersOfKakuma and migration-control.info’s August 2023 report about ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp noted:

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<sup>207</sup> Gay and Lesbian Coalition of Kenya (galck+), [Shame Is Not a Cure: So-Called Conversion “Therapy” Practices in Kenya](#), 14 July 2022, pp. 19-22, 24, and 26-27

<sup>208</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>209</sup> BBC News, [Kenya wrong to ban LGBT rights groups from registering - Supreme Court](#), 24 February 2023

<sup>210</sup> Reuters, [FEATURE-LGBTQ+ Kenyans and Ugandans hide from wave of homophobic abuse](#), 14 March 2023

<sup>211</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 9 and 31

[...] LGBTI+ asylum seekers and refugees have difficulties accessing health care because of important stigma from carers. It is, thus, often hard for them to access necessary medical treatments and care which are vital, especially after violent attacks and for those of them who are HIV-positive, as explained by queersOfKakuma: "When we go to hospitals [...] the hospitals tell us that we are not normal, we are devils."; "Some of us, two hundred and seven, they are positive, they have HIV. [...] they can't even afford to get access to vitamins, the ingredients which can support someone who is suffering, who is traumatized with HIV. Even getting the medication sometimes is very hard."<sup>212</sup>

A 2023 report by the Initiative for Equality and Non-Discrimination (INEND) on economic justice for lesbian, bisexual, queer and gender non-conforming persons in Kenya, based on a qualitative methodology, found that:

Specifically regarding HIV/AIDS treatment and prevention, heteronormative practices in the healthcare sector result in further discrimination for LBQGN [Lesbian, Bisexual, Queer, and Gender Non-Conforming] persons. For instance, the Western Kenyan FGD [Focus Group Discussions] discussants highlighted that it is often the case that when LBQGN persons go for HIV testing as a couple, they are denied said services and advised to test as individual persons, which is an exclusionary practice. Furthermore, whereas several stations for condom dispensers can be found throughout the country, no such stations exist for finger condoms or dental dams, for example, leading to the promotion of safe heterosexual intercourse, but not for intercourse between LBQGN persons. Health disparities impact an LBQGN person's capacity to be productive at work.<sup>213</sup>

### iii. Access to state employment (e.g. civil service)

Note that not all sources distinguish between state and non-state -employment. This section only includes information that is specific to state employment and therefore should be read against V. *Treatment by Non-State Actors*, [ii. Access to work](#) which includes information on access to employment more broadly.

Freedom House stated in its 2021 Freedom in the World report for Kenya, published in March 2021 and covering events in 2020, that: "There are significant implicit barriers to the participation of non-Christian and LGBT+ people in national politics".<sup>214</sup> This was also stated in the 2020, 2022, and 2023 reports.<sup>215</sup>

### iv. Access to and treatment in public education

#### 2020

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<sup>212</sup> queersOfKakuma and migration-control.info, [Ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp, Kenya](#), 25 August 2023

<sup>213</sup> The Initiative for Equality and Non-Discrimination (INEND), [Our Voice Counts: An Economic Justice Report For Lesbian, Bisexual, Queer and Gender Non-Conforming Persons In Kenya](#), 2023, p. 26

<sup>214</sup> Freedom House, [Freedom in the World 2021: Kenya](#), 3 March 2021

<sup>215</sup> Freedom House, [Freedom in the World 2020: Kenya](#), 4 March 2020; Freedom House, [Freedom in the World 2022: Kenya](#), 24 February 2022; Freedom House, [Freedom in the World 2023: Kenya](#), 10 March 2023

The NTAN report in 2020 on the national transgender discrimination survey in Kenya commented on stigma, discrimination, and violence in the education system:

Transgender and intersex people are currently unable to access equal educational opportunities because SOGIESC [sexual orientation, gender identity, gender expression and sex characteristics] violence was rampant in various levels of the education system with 79% of students in the primary level of education, 61% of students in high schools and 65% of students in university reporting harassment by fellow students. Similarly, 9% in primary, 14% in high school and 19% in university experienced harassment from teachers/lecturers. Over a third (37%) of those who had experienced SOGIESC violence in school had to be expelled. 74% of transgender and intersex students affirmed their gender identity in pursuit of their educational goals with a significant association between low current household incomes with gender affirmation at schools.<sup>216</sup>

### 2021

For their 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that:

Multiple LGB individuals reported being expelled from schools based on their sexual orientation. School administration expelled and suspended students who were seen engaging in same-sex conduct. School staff members expressed concern about LGB students “influencing” other students into same-sex relations. According to interviewees, schools maintained policies to actively identify LGBTI students. One of the participants described how headmasters would physically abuse LGB students until they confessed their sexual orientation and were encouraged to give up other LGB students’ names.<sup>217</sup>

The same source further noted that:

LGB individuals also experience harassment at school from other students and enjoy little protection from school administrators. In one case, a perceived gay student was targeted with physical and verbal abuse from other students because of his sexual orientation. When he decided to go to the Deputy Director of the school with his mother to inform them of the situation and demand protection, he was asked to pay (2,000 Ksh), the equivalent of about twenty US dollars, to the Deputy Director in order to ensure his protection.<sup>218</sup>

The Immigration and Refugee Board of Canada’s July 2021 report on the situation of persons with diverse sexual orientation and gender identity and expression (SOGIE) in Kenya stated that:

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association] stated that individuals of diverse SOGIE do not face discrimination in employment and education but do face

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<sup>216</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, pp. 4-5

<sup>217</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 31*

<sup>218</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 32*

discrimination in accessing housing and healthcare and that "[t]his applies across Kenya," including in Nairobi (KYDESA 23 June 2021). In contrast, the PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya representative indicated that "the level of discrimination is going down, but there is still discrimination" in employment, education, housing, and health care (PEMA Kenya 12 July 2021). [...]

The human rights defender [National Gay and Lesbian Human Rights Commission (NGLHRC)] stated that individuals of diverse SOGIE "are denied access to institutions of learning" and "there are numerous instances of people being expelled because they are presumed to be LGBT" (Human rights defender 30 June 2021). [...]

The Jinsiangu representatives indicated that LGBTQ students at boarding schools face "public humiliation, conversion therapy, and expulsion" (Jinsiangu 9 July 2021). The representatives also noted that there is discrimination and violence against LGBTQ students, including physical and sexual violence by students at schools, and that schools do not help LGBTQ students who complain about mistreatment (Jinsiangu 9 July 2021).<sup>219</sup>

## 2022

A VOA News article in January 2022 reported on Kenyan students protesting the suggestion they be banned from boarding schools, explaining that:

A group of Kenyan LGBT students protested Thursday against a Cabinet minister's recent suggestion they be banned from boarding schools. The schools are common in Kenya and the students and rights groups say a ban would be discriminatory and compromise their safety. [...]

They were armed with placards that denounced a suggestion by the Cabinet secretary for education, George Magoha, that homosexual students be barred from boarding schools.

MaryLiz Biubwa, one of the protesters, said Magoha's comment is beginning to have an effect at some schools.

"Because of the directive Magoha has given, I have two students who have reached out, one I am planning to start the journey of helping them tomorrow, because she was already sent out of school. She has KCSE [exams] in March, she can't go back because she will be told she is gay," said Biubwa. [...]

Makena Njeri is the founder of Bold Africa, a gay rights network.

"Being a gay student going through high school already was a challenge all the way down to even being very close to being expelled. This already is discriminating me as a child when I was growing up. Now that the government is adding more pressure to institutions to continue discriminating [against] the kids [and] is something that we'll not stand," said Njeri. [...]

VOA has established that the cabinet secretary has yet to officially order boarding schools in Kenya to bar suspected gay students.

A state education official, speaking on condition of anonymity, said ordinarily, a formal circular would be sent to all heads of boarding schools.

"Implementing such a directive would be very difficult and can lead to a lot of fury. You can see that the statement he made is already causing chaos. What if a principal of a school was seen doing that? it would be a disaster," said the education official.

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<sup>219</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

The LGBT community leaders who presented their petition to the Ministry of Education are expected to meet with Magoha next week.<sup>220</sup>

According to openDemocracy in a February 2022 article, “Last month, members of Kenya’s LGBTIQ community took to the streets of Nairobi in protest at the cabinet secretary for education, George Magoha, saying that gay and lesbian students should be banned from boarding schools”.<sup>221</sup> The article continued:

Not surprisingly, Magoha’s remarks (made in December) incited homophobic attacks online and in schools. “Two students came to the march and they’ve been driven away from school for being lesbian [...they’re only going back for] their final O-level exams in March,” said Marylize Biubwa from the Queer Republic, the international collective behind the protest. [...]

Violent homophobic attacks, expulsions and discrimination against LGBTIQ school students in Kenya and Uganda are “commonplace”, according to victims and activists who spoke to openDemocracy. [...]

Being suspended or expelled has added complications. It is often when pupils are outed to their family – and to a violently homophobic society.<sup>222</sup>

Jinsiangu reported in February 2022 on their engagement to address the lack of information or misinformation about intersex and transgender communities in rural regions in Kenya, including Meru, stating that: “The director of the gender department in Meru county reported that she has in her office, ongoing cases of mistreatment of intersex pupils in schools”.<sup>223</sup>

In February 2022, NGLHRC released a statement on a speech made by Kenyan Education Cabinet Secretary on LGBTIQ+ learners, stating that:

On February 14th 2022, in Nairobi County, Education Cabinet Secretary is quoted as saying, "I said if you are a homosexual in a boarding school and you are hopping from a bed of another student to another, your rights end there." This quote was part of a more extensive speech where he uses homophobic and stigmatizing language to give context to his discrimination, homophobia, biphobia and transphobia of LGBTIQ+ students in his comments from December 30th, 2021. Worryingly, the CS has now added sexualization of LGBTIQ+ children to his repertoire.

Since his last utterances, the CS continues to violate Article 10 (2b), Article 27(4) and Article 28 of the Constitution of Kenya. It is immensely worrying that the CS continues on his homophobic/biphobic/transphobic campaign. He seemingly does not know the implications of his statements on the targeted learners. From his remarks, the CS insinuates that LGBTIQ+ learners spend their time in school harassing other students. In reality, LGBTIQ+ learners are often the subjects of targeted abuse and harassment from students, teachers, and school administration. These students are often targeted for suspension and expulsion based on fabricated charges. Imani Kimiri, the Head of Legal Affairs at NGLHRC, said, "Statements like these embolden school administrators and act as a justification

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<sup>220</sup> Voice of America (VOA) News, [Kenyan LGBT Students Protest Suggestion They be Banned from Boarding Schools](#), 13 January 2022

<sup>221</sup> OpenDemocracy, [LGBTIQ students kicked out of school in East Africa are fighting back](#), 11 February 2022

<sup>222</sup> OpenDemocracy, [LGBTIQ students kicked out of school in East Africa are fighting back](#), 11 February 2022

<sup>223</sup> Jinsiangu, [Enqagiq Meru County Government Officials](#), 14 February 2022

for violence against students who are perceived to be LGBTIQ+, further exacerbating an already terrible situation."

The CS' ongoing campaign against LGBTIQ+ learners constitutes state-sponsored Homophobia, and the focus on LGBTIQ+ children is worrying. The overt targeting of a vulnerable population by a government agency should be concerning to all Kenyans, as too the complete disregard for the word and spirit of the Constitution of Kenya. Worst of all is the targeted sexualized language in this statement.<sup>224</sup>

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya's third periodic report noted that "In Kenya, there is an overall environment of hostility towards LGBTIQ+ individuals, who commonly suffer harassment and discrimination because of their sexual orientation, gender identity, gender expression and sex characteristics. Such discrimination affects LGBTIQ+ persons in many areas of life, preventing them from exercising fundamental rights, such as [...] education".<sup>225</sup>

NGLHRC's 2022 annual report stated that:

Following comments made by the former Education Cabinet Secretary in December 2021 and February 2022, Prof. George Magoha, calling for expulsion from schools of minors suspected to be LGBTIQ+, there has been a surge in cases where minors have been denied their right to education. Denying the right to education for LGBTIQ+ minors has far-reaching consequences, including psychological distress, isolation, and limited future prospects. These minors also face bullying, discrimination, and harassment, often resulting in social withdrawal, while putting them at higher risk of homelessness due to family rejection or disownment by their families.

Exclusion from education also hinders their future employment opportunities, exacerbating financial challenges and increasing their vulnerability to exploitation due to low educational-attainment. [...]

Petition 4 of 2022 emerged from the discriminatory remarks made by Kenya's former Education Cabinet Secretary (CS). The CS suggested that boarding school students perceived as LGBTIQ+ should only be allowed to attend schools during the day to curb incidences of homosexuality. His remarks led to the unjust expulsions and suspensions of, primarily, high school students perceived as LGBTIQ+.<sup>226</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, noted that: "There were media reports that boarding school administrators sometimes expelled LGBTIQ+ students".<sup>227</sup>

## 2023

In February 2023, The Los Angeles Blade reported on Kenya cracking down on international books for youth with gay-specific themes, stating that:

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<sup>224</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [CS Magoha Should Stop Targeting LGBTIQ+ Learners](#), 15 February 2022

<sup>225</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 1-2

<sup>226</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2022 Annual Report](#), 2023, pp. 17 and 19

<sup>227</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

The Kenyan government is cracking down on foreign books with gay content that it feels targets teenagers.

This crackdown follows a public outcry from parents with school-age children and religious officials who are demanding the government to do a thorough audit of books in the market and ban the ones with gay content.

A group of Christian, Muslim and Hindu clerics earlier this month issued a joint statement that asked President William Ruto and his government to protect teens from so-called same-sex doctrine through books from Western countries. [...]

The clerics stated at the time the teachers' employer fired six elementary school teachers who were captured on camera forcing male students to "engage in indecent/inappropriate acts depicting homosexuality within the school compound" as punishment. The teachers were subsequently charged with breaching the school's code of conduct and ethics guidelines.

A senior official from Kenya's Education Ministry who was not authorized to speak to the press questioned how the children's books with LGBTQ+ content were stocked in bookshops against the country's norms and laws.<sup>228</sup>

While reporting in March 2023 on a resolution in Kenya to ban public discussions of LGBTQ+ issues, the Los Angeles Blade also noted that:

The Education Ministry and the church have also formed a Chaplains Committee chaired by Kenya's Anglican Bishop Jackson Ole Sapit to counter what he describes as the infiltration of homosexuality in schools. The committee's mandate include counseling students who identify as LGBTQ+.

"We recognize that publishing and distributing homosexual content through the press has serious consequences to the family values and opposite-sex relations that should be protected since the increase in same-sex relations threatens the extinction of human beings in the country," the motion reads.<sup>229</sup>

In September 2023, The Star reported that the High Court at Kiambu upheld the decision of a high school board to expel a student over claims of lesbianism, stating that:

The minor was in form 4 when on November 5, 2021, she was issued with a leave form. She claims to have been sent out of school at midnight on the allegations of lesbianism with no communication to the parent and subsequent expulsion on November 9, 2021. [...]

She argued that her constitutional right to education was violated. Sought to quash the decisions of the school to permanently remove her from the school. And an order compelling the school to readmit her.

The school in response to her case argued that the parents of the minor were informed of the reasons for sending her home and through the assistance of police officers from Ikinu police station.

It told the court that a disciplinary committee was convened on December 20, 2021, in the presence of the minor, and a decision was reached that in the best interests of other students, it was better for the minor to remain at home but would be allowed to sit for the exams. [...]

The NGO in support of the minor's case said the school failed to prove minors committed, influenced, recruited, or forced others into lesbianism.<sup>230</sup>

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<sup>228</sup> The Los Angeles Blade, [Kenya cracks down on youth books with gay-specific themes](#), 15 February 2023

<sup>229</sup> The Los Angeles Blade, [Kenyan MPs approve resolution to ban public discussions of LGBTQ+ issues](#), 24 March 2023

<sup>230</sup> The Star, [Kiambu Court affirms decision to expel student over lesbianism claims](#), 25 September 2023

The ILGA Database page for Kenya writes that “In March 2023, the Education Cabinet Secretary announced a plan to "prevent LGBTQ+ education" in schools and to install chaplaincies in all schools. According to media outlets, religious leaders will be reportedly included in a new governmental committee, which will be chaired by an Anglican archbishop”.<sup>231</sup>

The May 2023 joint report by the NGLHRC and Amnesty International documented hate crimes, discrimination, and other human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya between 2018 and February 2023 noting that:

Abuse of the rights of LGBTI people is widespread and well documented, including physical violence, death threats, harassment by state officials, stigma, expulsion from educational institutions, blackmail, extortion, poor access to health care and medical research abuse.<sup>37</sup><sup>232</sup>

37 Aljazeera, “Kenyan queer men risk health amid homophobia in public hospitals”, June 2022, <https://www.aljazeera.com/features/2022/6/2/homophobia-in-kenyan-public-hospitals-pushes-queer-men-to-danger>; Kenya Human Rights Commission, *The Outlawed Amongst Us, A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya*, 2011, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html> [...]

#### IV. Societal Attitudes Towards LGBTQI+ Individuals

For further relevant information also consult section V., a. [Harassment and violence](#) and section V., b. [Discrimination](#).

##### a. Societal norms

###### 2020

An African Human Rights Coalition (AHRC) advisory to LGBTI refugees at Kakuma refugee camp in January 2020 warned that:

Your neighbors may not understand homosexuality. You will be safer if you remain private about your sexuality. That does not mean you should be in the closet. [...] However it is unwise to flaunt LGBTI status in front of others in camp. [...]

At Kakuma: Anti-Gay people believe that gays recruit their children. Pride parades and such are misinterpreted. To engage in open displays of being LGBTQI should be accompanied by community pre

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<sup>231</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023

<sup>232</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p.19

sensitivity discussions and POC [people of concern] should be aware they would be exposing themselves to danger through such outings.<sup>233</sup>

The 2020 KNCHR submission to the UN Periodic Review stated that “The law in Kenya recognizes only two sex dichotomies-that is male and female. This has led to discrimination of intersex children and adults whose sex, gonadal and hormonal characteristics do not conform to the binary male and female. They have been locked out of acquiring and accessing certain basic needs”.<sup>234</sup>

The same source noted that the Attorney General of the Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya “found out that for a majority of the intersex persons the recorded sex conflicts with the self-recognized sex. The birth certificates make it difficult for intersex persons to acquire Identity cards (ID)30. Due to this, intersex persons continue to face discrimination in health, education, social and economic sectors”.<sup>235</sup>

NTAN’s 2020 report on transgender discrimination in Kenya stated that: “the public gender moral panic directly or indirectly positions transgender and intersex people as a sexual threat posed by the presence of sex-segregated spaces always considered unnatural or perverse and dealing with anti-transgender bias and gender stereotypes that position women as vulnerable and men as sexually threatening”.<sup>236</sup>

## 2021

For their 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that “LGBTI persons in Kenya report discrimination, violence, lack of protection by law enforcement and government officials, and limited access to services. LGBTI individuals with disabilities and other marginalized identities are particularly at risk for such human rights violations”.<sup>237</sup> The same source further described “LGBTI individuals in Kenya face discrimination daily because of their sexual orientation and/or gender identity”.<sup>238</sup> With regards to LGBTI persons with disabilities the submission noted that:

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<sup>233</sup> African Human Rights Coalition (AHRC), [African HRC Advisory to Kakuma LGBTI Refugees at Gate & General Warnings Including Activists](#), 9 January 2020

<sup>234</sup> Kenya National Commission on Human Rights (KNCHR), [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

<sup>235</sup> Kenya National Commission on Human Rights (KNCHR), [Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights](#), June 2020

Footnote 32 cited: The Intersex Taskforce Report available at <https://www.knchr.org/Portals/0/FINAL%20INTERSEX%20TASKFORCE%20REPORT.pdf>

<sup>236</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, p. 4

<sup>237</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 1*

<sup>238</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 40*

Deaf LGB individuals reported experiencing widespread human rights violations because of their intersecting marginalized identities in the Kenyan context. Participants expressed that LGBTI advocacy groups often overlook their specific needs, and therefore they still experience human rights violations. Deaf LGB individuals lack access to information compared to other members of the LGB community. Participants expressed a need for documents and training around LGBTI advocacy tailored to the Deaf community. Further, deaf individuals expressed a lack of knowledge around safe sex practices because they are excluded from key populations training due to their disability. Deaf LGB individuals expressed fear of coming out in their own community due to homophobia in the Deaf community. Because of this, most of the participants expressed that they would only discuss LGB topics with hearing people. Since the Deaf community is so small, they feared discussing LGB topics would damage their reputation throughout the entire Deaf community. One participant expressed, “there are so many in school, no one stands up. For us is so difficult, if you talk, everyone knows.”<sup>49</sup> Deaf LGB individuals fear coming out since it could leave them without the protection of their Deaf community. [...]

49 Interview with participant, Nairobi, Kenya, Jan. 15, 2019.<sup>239</sup>

A May 2021 article in *The Elephant*, an African investigative platform, on “queering Agriculture” in Kenya described the following:

Kariuki\* hustled his way through Nairobi as a personal trainer, masseur and occasionally sold sportswear. Then COVID-19 happened. His income stream went down to zero. He got tired of begging friends and former clients for 500 bob here, a thousand bob there, decided to sell off what he could and went back to his parent’s farm in the country’s central region. [...] He was one of the many LGBTIQ individuals who found themselves going back to homes that had either forced them out or that they had fled. [...] To be accepted back he had to renounce his gay ways, which he did. Kariuki was put through a traditional cleansing ceremony to chase the gay away, after which the “prodigal” was welcomed back to the fold. [...]

As I researched this article, I came across a number of LGBTIQ farmers who have accessed family land only because they have buried their sexuality.

Apollo\* is married with children and lives in Bondo, Siaya County. He is an activist and farmer. The activist side of his life is only known to those who need to know. Apollo recognises that he would have been disinherited had he gone public about his sexuality. He informs me of a young man who has kicked off the family land after the family discovered he was gay.<sup>240</sup>

In May 2021, the UN Human Rights Committee noted in its concluding observations on the fourth periodic report of Kenya regarding the International Covenant on Civil and Political Rights that it was concerned over “[t]he State party reporting that that prohibition is based upon same-sex relations being unacceptable to Kenyan culture and values but not providing information about any measures taken to address discriminatory attitudes and stigma among the general public”.<sup>241</sup>

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<sup>239</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, paragraph 46-48

<sup>240</sup> The Elephant, [It Is Time for the Agro-Queer Conversation](#), 1 May 2021

<sup>241</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights Concluding observations on the fourth periodic report of Kenya](#), 11 May 2021, paragraph 12

In June 2021, Jinsiangu released a statement on the International Day Against Homophobia Biphobia & Transphobia, observing that:

The marginalization and binary nature of gender in Kenya has serious and far reaching effects on persons who do not identify with and in the bracket of cisgender and heterosexual mostly identifying as ITGNC [intersex, transgender and gender non-conforming people]. This is compounded by discriminatory laws, lack of access to justice, pervasive homophobia and transphobia motivated by religious and political rhetoric. ITGNC persons are often constructed as criminals, cursed, deviant, immoral and devil worshipers and a shame. These persons face several layers of marginalization owing the intersecting vulnerabilities thus rendering them at high risk of violence, stigmatization and discrimination.<sup>242</sup>

The World Values Survey Wave 7 (2017-2022) collected data in Kenya in 2021 among 1266 individuals. It found that 73.1% of those surveyed mentioned ‘homosexuals’ as an answer when asked the question “Could you please mention any that you would not like to have as neighbors?”<sup>243</sup> When asked “Do you agree, disagree or neither agree nor disagree with the following statements?: Homosexual couples are as good parents as other couples”, 4.8% agreed strongly and 10.6% agreed, with 32.9% disagreeing and 37% disagreeing strongly.<sup>244</sup> On whether they thought homosexuality can be justified, 49.5% said it was never justifiable and 4.4% said it was always justifiable, with the rest classifying it something in between.<sup>245</sup>

## 2022

The Guardian article in January 2022 exploring the experiences of ‘catfishing’ by LGBTQ Kenyans noted that: “Njeri Gateru, executive director of NGLHRC, says: “The existence of laws that criminalise homosexuality create a landscape where anyone attracted to someone of the same gender is seen to belong to a lesser place in society, and as a criminal. That creates room for people to take advantage of queer individuals.”<sup>246</sup>

Another Guardian article on catwalking shows inspired by RuPaul’s Drag Race among the LGBTQ+ community in Kenya quoted a performer as follows: ““I cross-dressed in school and in public, but I wasn’t as happy,” he says. “In Kenya, when you cross-dress, people say something is wrong with you. They pray for you to get demons out of you. I wasn’t doing it with other members of the LGBTQ+ community – people who know me, appreciate me for who I am’.”<sup>247</sup>

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<sup>242</sup> Jinsiangu, [Int'l Day Against Homophobia Biphobia & Transphobia \(IDAHOBIT\) 2021](#), 14 June 2021

<sup>243</sup> World Values Survey (WVS), [World Values Survey \(WVS\) - Wave 7 \(2017-2022\), Results in % by country weighted by w weight: Study # WVS-2017, v5.0](#), 2022, p. 191

<sup>244</sup> World Values Survey (WVS), [World Values Survey \(WVS\) - Wave 7 \(2017-2022\), Results in % by country weighted by w weight: Study # WVS-2017, v5.0](#), 2022, p. 225

<sup>245</sup> World Values Survey (WVS), [World Values Survey \(WVS\) - Wave 7 \(2017-2022\), Results in % by country weighted by w weight: Study # WVS-2017, v5.0](#), 2022, p. 225

<sup>246</sup> The Guardian, [‘I’d been set up’: the LGBTQ Kenyans ‘catfished’ for money via dating apps](#), 4 January 2022

<sup>247</sup> The Guardian, [‘I saw myself in RuPaul’: how Drag Race inspired LGBTQ+ Kenyans to find freedom](#), 11 January 2022

Jinsiangu reported in February 2022 on the lack of information or misinformation about intersex and transgender communities in rural regions in Kenya, including Meru, stating that:

Information penetration about Intersex, Transgender communities is low among rural regions of Kenya. This due to a myriad of factors such as language barriers, low exposure to concepts such as gender identity mostly encountered in urban areas, to missing cultural context in relation to the aforementioned communities.

[...] During our engagement, issues of Intersex genital Mutilation arose as it's still practiced in the county as stated by the chief health officer at the meeting. The doctors in Meru were not yet educated on the dangers/ risks the practice poses on the general well-being of the intersex children and later in their adult lives. The idealized notion that choosing an intersex child's gender/sex path through surgical interventions is one of the most damaging narratives that exist within the healthcare system. Our engagement sought to uproot such notions and steer policy reforms towards an informed standard of practice in engaging intersex children within Meru county. Majority of the stakeholders reported not having encountered conversations or information regarding transgender people in the county and were perplexed that persons of such experiences existed in Meru county, let alone Kenya as a country.<sup>248</sup>

A statement by the AHRC calling for justice for Sheila Lumumba after their death noted that: "Families are also demonized for having LGBTQI family members, which often results in parents, siblings and close family members turning against their kin".<sup>249</sup>

According to Article 19, "Although the country has a thriving civil society sector, including LGBTQI+ organisations that have been at the forefront of the cause for many years, social acceptance remains low, with enduring risks and vulnerability for people of the community".<sup>250</sup> The piece continued:

Although acceptance is relatively widespread in some pockets of the country, this is mostly not the case across the country as a whole, where the community continues to face routine discrimination. The weight of religious and cultural beliefs remains extremely heavy. One of the results is that the freedom of expression of the LGBTQI+ community is severely restricted. The stares, whispers and regular open discrimination and violence, including from public authorities and law enforcement, makes it difficult for LGBTQI+ individuals to live openly and fully express who they are to Kenyan society.<sup>251</sup>

galck+'s July 2022 report exploring conversion "therapy" practices in Kenya stated the following:

When asked about why respondents ended up in so-called conversion "therapy," nearly half of the 516 respondents said they were forced into it, and 112 were "advised" to do so. [...]

Respondents shared a broad range of reasons for seeking out "therapy," including intense, but at times unspoken, social and family judgement or pressure, as well as fear of economic abandonment, among

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<sup>248</sup> Jinsiangu, [Engaging Meru County Government Officials](#), 14 February 2022

<sup>249</sup> African Human Rights Coalition (AHRC), [AHRC Calls for Justice for Sheila and Decolonization of Sexuality](#), 28 April 2022

<sup>250</sup> Article 19, [Kenya: LGBTQI+ rights must be championed by civil society](#), 17 May 2022

<sup>251</sup> Article 19, [Kenya: LGBTQI+ rights must be championed by civil society](#), 17 May 2022

other motivations. Some respondents said they chose to undergo conversion “therapy” because they believed they were not “normal” or had mental health issues, such as self-hatred and depression or because they valued social and family conformity more than affirming their sexual orientation and/or gender identity. Their stories indicate that their “choice” was often largely driven by numerous external factors and as an expression of trauma associated with fear of losing key relationships and support networks. [...]

Some respondents reported that they had been told by others that the “therapy” would be “healing” and that they had no option but to change who they are or how they express their identity. Key members of their communities such as family members and religious leaders often warned of dire consequences and made explicit threats, such as damnation, being disowned, physical violence, and being expelled if conversion “therapy” was not undertaken. [...]

In many instances, respondents described how coercion increased in intensity from the moment of discovery starting with family conversations, then escalating to counselling and prayer, and then to violence or economic duress. If such efforts did not succeed, the individual was often ostracized from family and friends. [...]

The respondents noted pressure for quick social conformity for individuals who were outed or unknowingly discovered by their family members. [...]

According to the practitioners interviewed, the purpose of the conversion “therapy” programs includes:

- *To make LGBTIAQ+ persons ‘normal’;*
- *To provide mentorship;*
- *To ‘cure’ people;*
- *To try helping LGBTIAQ+ persons to come out of the ‘vice’ through counselling;*
- *To teach what is right and provide good guidance;*
- *To teach the ways of the Lord and win “lost souls” for those who viewed it from a religious lens;*
- *To help persons integrate to heteronormativity; and,*
- *To try to save the youth and future generation from homosexuality as it can lead to people not having children and/or contracting sexually transmitted diseases. [...]*

On the spiritual/ethical/ philosophical foundation of their practices or programs seeking to change the sexual orientation or gender identity of members of the LGBTIAQ+ community, the conversion “therapy” practitioners explained that being LGBTIAQ+ is a vice, a societal problem that requires mentorship and it goes against the culture of the community. Some indicated that it is a sin that God is against and that it is unethical and amounts to societal decay. Others viewed it as western influence and goes against African culture. In addition, others interpreted it from a religious point of view, whereby God made man and woman for marriage and reproduction, and that is what should be practised in society. [...]

The majority of the conversion “therapy” practitioners strongly believe in these practices and believe that they are legitimate, helpful and ought to be encouraged.<sup>252</sup>

The Guardian published an article in September 2022 on Kenyans embracing genderless fashion, stating that:

Dressing across genders is common practice in Kenyan comedy, but those who do so outside that sphere face severe backlash.

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<sup>252</sup> Gay and Lesbian Coalition of Kenya (galck+), [Shame Is Not a Cure: So-Called Conversion “Therapy” Practices in Kenya](#), 14 July 2022, pp. 22-24 and 27-28

“I was bullied on social media for how I used to dress just because it did not conform with what society has shown people to be the norm,” says Muriithi [LGBTQ+ activist Chris “Makena Njeri” Muriithi, CEO of Bold Network Africa]. [...]

Kenya’s queer community has been increasingly visible over the past few years, after a number of prominent Kenyans came out publicly. Celebrities such as Willis Chimano of Afropop band Sauti Sol, challenge traditional gender dressing with crop tops, low V-necks, bare backs and bodysuits. Popular lifestyle YouTuber Jayson Wamae also embraces fashion fluidity, dressing in anything from sheer tops and silk jumpsuits to neck scarves.

Muriithi says: “People need to be able to be who they are without having to be afraid.”

But LGBTQ+ people face systemic discrimination and violence in Kenya, and gender non-conforming people face heightened threats. [...]

Laurence [model] faces harassment daily but does not shy away from growing out his hair, wearing eyeliner and mesh vests. [...]

“There is still very little visibility for those people that do not conform to the dominant gender,” says Letoya Johnstone, a transgender fashion icon, who has worked in the industry for nearly a decade. When she started, designers wouldn’t cast her as a model. [...]

But fashion movements can ring a bit hollow for transgender women like Johnstone, who are often targeted and face a high risk of violence regardless of what they wear.

“Genderless fashion is not always put in the context of other people who are not cisgender,” says Johnstone, who has been attacked for the way she dresses. “It is easier for a woman to dress like a man, but would be much harder for a transgender woman,” she says. “The police don’t know about gender fluidity in fashion.”<sup>253</sup>

Freedom House stated in its 2022 Freedom on the Net report for Kenya, published in October 2022, that:

Kenyan users have also engaged in other hashtag campaigns, such as the #ProtectQueerKenyans and #JusticeForSheila campaigns which started after a member of the LGBT+ community was murdered in their home in April 2022.<sup>107</sup><sup>254</sup>

[...] 107 Erin Kilbride, “Inadequate Kenyan police response to brutal killing of non binary lesbian,” Human Rights Watch, April 29, 2022, <https://www.hrw.org/news/2022/04/29/inadequate-kenyan-police-response-b...>

The 2022 USDOS Kenya report on human rights practices, noted that “Activists reported women members of specific groups, including [...] LGBTQI+ persons [...] experienced discrimination based on male-dominated social norms”.<sup>255</sup>

## 2023

In February 2023, The Los Angeles Blade reported on Kenya cracking down on international books for youth with gay-specific themes, stating that “This crackdown follows a public outcry from parents with

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<sup>253</sup> The Guardian, [‘People should be who they are’: Kenyans embrace genderless fashion](#), 20 September 2022

<sup>254</sup> Freedom House, [Freedom on the Net 2022: Kenya](#), October 2022

<sup>255</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

school-age children and religious officials who are demanding the government to do a thorough audit of books in the market and ban the ones with gay content”.<sup>256</sup>

An article in El País in May 2023 on LGBTQI+ repression in East Africa noted the following on Kenya:

Koei lives in a permanent state of tension. A baby-faced young man in his early-20s, he works in an insurance agency on the outskirts of Nairobi, the capital of Kenya. But he carries a secret, a part of his identity. Koei is actually a trans man. But, except for a couple of close friends, the people around him — friends, neighbors, coworkers, clients — have no idea. And he intends to keep it that way.

“I worry that my friends will slip up,” he admits. He worries constantly that someone will share his secret. His country’s political climate invites people like Koei to hide and not attract too much attention. His social life doesn’t include bars: he only goes to some LGBTQ collective parties, occasional “safe spaces” in Nairobi. Meanwhile, in other, smaller cities across Kenya, the idea of a rainbow-decorated party is a far-off dream.

In recent months, East Africa seems to be experiencing an intense wave of homophobia, which also rages against transgender people. This resentment is in the laws, in political speeches, in fiery church sermons, and also in the streets.

Koei — who does not wish to share his last name or his exact location for security reasons — can attest to the boom of this rhetoric. He passes for a cis man, which gives him a bit of privilege in a world that detests him. “Thanks to being able to pass [as a cis male], I listen to many conversations. And people don’t realize who they’re talking to. One day, for example, a client criticized men who pierced their ears for being ‘effeminate.’ I have pierced ears; I wore earrings before my [gender] transition,” Koei says over the phone.

In Uganda, Kenya and Tanzania, the same discourse circulates: that Africanness is incompatible with being gay, lesbian, trans, or not identifying as a man or a woman. The idea that the so-called LGBTQ agenda is a foreign imposition has, historically, been one of the most common political arguments on the continent. Several experts and activists consulted by EL PAÍS note that this is a paradoxical argument, because the laws against homosexuality come from the colonial era. [...]

“There’s a completely prefabricated panic, which is being financed by Christian fundamentalist organizations,” says Imani Kimiri, head of the legal department at Kenya’s National Gay and Lesbian Human Rights Commission (NGLHRC). “They use the argument that they want to ‘protect African culture and family values,’” Imani explains. “Thus, they create a homophobic, biphobic and transphobic propaganda machine that has a lot of resources and that successfully disseminates inaccurate and ignorant information.” [...]

Koei opines that what is said in the upper echelons of his country’s politics has an effect on everyday life. He notes how hostility has grown in Kenya since February of this year, when the Supreme Court admitted the official registration of the NGLHRC, after a 10-year-long legal battle. “It’s as if this [decision] has reminded people that we exist... It has redoubled the hatred,” he says.<sup>257</sup>

Analysis based on data by Pew Research Center, collected between February and May 2023, found that “Nigerians and Kenyans are the least supportive of same-sex marriage rights among the places in Africa

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<sup>256</sup> The Los Angeles Blade, [Kenya cracks down on youth books with gay-specific themes](#), 15 February 2023

<sup>257</sup> El País, [LGBTQI+ repression in East Africa: ‘They say that Westerners are turning us gay’](#), 17 May 2023

surveyed. [...] in Kenya, just 9% favor it”.<sup>258</sup> The data indicated that 82% of those surveyed in Kenya “strongly opposed” allowing gays and lesbians to marry legally, finding globally a correlation between more religious places and less support, as well as slightly more support among younger adults.<sup>259</sup>

In their quarterly update in October 2023, the Mixed Migration Centre gave the following information:

Against a wider crackdown on LGBTQI+ rights in the region, reports of abuse against LGBTQI+ in Kakuma refugee settlement have continued to appear this quarter. Targeted individuals report destruction of property by other residents as well as arrest and physical and sexual violence by police officers. Moreover, due to significant societal stigma, LGBTQI+ in Kakuma struggle to access services, making it challenging for them to receive medical treatment and education. As a protective measure, UNHCR and the Department of Refugee Services (DRS) have relocated some particularly vulnerable LGBTQI+ from Kakuma to Nairobi and its surroundings.<sup>260</sup>

Jinsiangu noted in November 2023 on the Intersex Day of Remembrance/Solidarity Day that “Intersex individuals suffer severe impairment from the society because of the stigmatization on the grounds of non-conforming sex characteristics”.<sup>261</sup>

## b. Representation in media

### 2020

In February 2020, Pink News reported on the banning of the Indian film “Shubh Mangal Zyada Saavdhan”, by the Kenya Film Classification Board (KFCB), commenting that:

A boundary-breaking Bollywood rom-com starring a same-sex couple has been banned from being screened in Kenya by the country’s film regulatory body.

[...] in a statement to newsrooms, the board’s CEO Ezekiel Mutua announced that the film will not be shown in Kenya, where gay sex is illegal and punishable by a one year imprisonment, local media reported. [...]

“The film is worse than the ones we have banned in the past as it has scenes involving children in homosexual practices and openly attempts to legitimise same-sex marriage,” Mutua said.

“Homosexuality is illegal in Kenya.

“Further, Kenya is a God-fearing nation which places a great premium on family, an institution derived from a union between two people of the opposite gender.”

He continued: “Those who want to consume such content can go and watch it in India where the film was done or any other country where homosexuality is permissible.

“Kenya will not be the dumping ground for all manner of filth that seeks to destroy the institution of family and our cultural identity.”

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<sup>258</sup> Pew Research Center, [How people around the world view same-sex marriage](#), 27 November 2023

<sup>259</sup> Pew Research Center, [How people around the world view same-sex marriage](#), 27 November 2023

<sup>260</sup> Mixed Migration Centre, [Quarterly Mixed Migration Update: Eastern and Southern Africa | Egypt and Yemen, QUARTER 3 2023](#), 25 October 2023, p. 7

<sup>261</sup> Jinsiangu, [Intersex Day of Remembrance/Solidarity Day: Solidarity with Kenyan Intersex Persons with Disabilities](#), 8 November 2023

Mutua stated that, as per regulations, any attempts to distribute, broadcast or exhibit the “restricted material” will be “met with the full force of the law” and distributors loosened by the Board will have accreditation revoked.<sup>262</sup>

Reuters reported in April 2020 that a Kenyan court had refused to lift a ban on “Rafiki”, a locally-made acclaimed film portraying a lesbian romance, which had been “banned by the Kenya Film Classification Board (KFCB) in April 2018 on the grounds that it promotes homosexuality in a country where gay sex is a criminal offence”.<sup>263</sup> The article further quoted the KFCB chief executive Ezekiel Mutua, who welcomed the ruling “‘We went against popular opinion and said no to homosexual content. We were labelled as homophobic and ostracized locally and internationally,’ he noted on Twitter. ‘But we stood for family values and what we believe to be in the best interest of Kenya. Family is the basic unit of society’.”<sup>264</sup>

ILGA World’s updated state-sponsored homophobia report in 2020 stated on Kenya that “Section 12 of the Film and Stage Plays Act (Act No. 34) (effective 1963) restricts the exhibition of films according to the discretion of the Kenya Film Classification Board. According to the Board’s Classification Guidelines (2012), films with themes that ‘promote or glamorise’ a homosexual lifestyle” are either age-restricted (18+) or banned”.<sup>265</sup>

## 2021

The Guardian reported in September 2021 on a new LGBTQ+ documentary, “I Am Samuel”, banned in Kenya, stating that:

Activists and film producers have criticised a decision by the Kenya Film Classification Board to ban a documentary that tells the story of a Kenyan man struggling with his sexuality. [...]

The film – which was shot over five years and took two years to edit – follows the life of a young man tormented by his sexuality while growing up in rural Kenya, who finds acceptance after moving to the capital, Nairobi. [...]

The film classification body said last week that the film “blatantly” violated the country’s laws that penalise all forms of homosexuality or same-sex marriage, and that the storyline was a “clear and deliberate attempt by the producer to promote same-sex marriage as an acceptable way of life”.

It said the film sought to influence viewers to believe that the “older generation that was once against LGBTQ+ is slowly buying into the practice and accepting same-sex marriage”.<sup>266</sup>

Human Rights Watch’s annual report on the human rights situation in 2021 noted on Kenya that:

On September 23, the Kenya Film Classification Board (KFCB) banned a gay-themed documentary, “I am Samuel,” claiming that the film attempted to “promote same sex marriage. It is the second gay-themed

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<sup>262</sup> Pink News, [Kenya bans groundbreaking Bollywood gay rom-com and says to ‘go watch it in India’](#), 22 February 2020

<sup>263</sup> Reuters, [Kenyan court refuses to lift ban on acclaimed lesbian romance film](#), 29 April 2020

<sup>264</sup> Reuters, [Kenyan court refuses to lift ban on acclaimed lesbian romance film](#), 29 April 2020

<sup>265</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [State-Sponsored Homophobia 2020: Global Legislation Overview Update](#), December 2020, p. 147

<sup>266</sup> The Guardian, [Kenya bans LGBTQ+ documentary for ‘promoting same-sex marriage’](#), 29 September 2021

film banned in Kenya, following a 2018 decision to stop cinemas from showing “Rafiki, “a lesbian love story which became the first Kenyan movie to premiere at the Cannes film festival. The ban on “Rafiki” (“friend” in Swahili) was later overturned by a court, and the film opened to sold-out audiences in Nairobi, [...] but the ban was later reinstated.”<sup>267</sup>

Freedom House confirmed in its 2022 Freedom in the World report for Kenya, published in February 2022, that: “In September 2021, the Kenya Film Classification Board banned a documentary for allegedly encouraging same-sex marriage”.<sup>268</sup>

The USDOS Kenya report on human rights practices in 2021 noted similarly that: “In September the Kenya Film Classification Board banned the film *I am Samuel* for attempting to ‘promote same-sex marriage agenda as an acceptable way of life.’ The board claimed the film violated Article 165 of the penal code, which outlaws homosexuality, as well as provisions of the Films and Stage Plays Act”.<sup>269</sup>

## 2022

In February 2022, The Standard reported that:

The Kenya Film and Classification Board (KFCB) has banned a television film deemed to be offensive. The board said the film titled *Baadhai Do*, promotes same-sex relations as it goes against Kenya’s law and cultural values. [...]

“It disregards our laws, Constitution and sensibilities as a people. The film is an affront to our culture and identity and therefore, unacceptable,” said Acting KFCB CEO, Christopher Wambua at a press conference. According to Sections 162, 163 and 165 of the Penal Code, same sex relationships and sexual practices are an offense. Further, the Constitution does not recognize same-sex marriages.

"The film tries to influence the viewer into believing that homosexuality is a normal way of life. This is evident by use of symbolic colours that are associated with LGBTQ+ as displayed towards the end," said Wambua.<sup>270</sup>

TUKO News, a Kenyan digital news platform, reported similarly in February 2022 on the banning of the Indian film *Baadhai Do* for allegedly promoting same-sex marriage, stating that KFCB deemed it unacceptable to Kenyan culture and identity and that “KFCB noted that through various conversations within the film, such as Love is Love’, ‘I am okay with my son being gay’, ‘gay people can adopt’, the film was against the constitution”.<sup>271</sup>

Freedom House noted in its 2022 Freedom on the Net report for Kenya, published in October 2022, that:

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<sup>267</sup> Human Rights Watch, [World Report 2022: Events of 2021](#), 13 January 2022, p. 396

<sup>268</sup> Freedom House, [Freedom in the World 2022: Kenya](#), 24 February 2022

<sup>269</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

<sup>270</sup> The Standard, [Board bans 'Baadhai Do' film, says it flouts law and values](#), 14 February 2022

<sup>271</sup> TUKO News, [Kenya Bans Indian Film Baadhai Do for Promoting Same-Gender Marriages: "Affront to Our Culture"](#), 14 February 2022

The Kenya Film Classification Board (KFCB) prohibited online and offline distribution, exhibition, and broadcast of the films *Baadhai Do* in February 2022<sup>60</sup> and *I Am Samuel* in September 2021.<sup>61</sup> The KFCB claimed the films were inappropriate for Kenyan audiences because they attempted to normalize same-sex relationships”.<sup>272</sup>

[...] <sup>60</sup> Renee Were, “Board bans Baadhai Do films, says it flouts law and values,” February, 2022, The Standard, <https://www.standardmedia.co.ke/standard-entertainment/article/20014376...>

<sup>61</sup> Fay Ngina, “KFCB bans gay film ‘I am Samuel’, terms it blasphemous,” September, 2021, The Standard, <https://www.standardmedia.co.ke/entertainment/the-standard/2001424264/k...>

The Star reported in September 2022 that “Acting CEO of the Kenya Film Classification Board (KFCB) Christopher Wambua has said that all films containing LGBTQ+ content are illegal in Kenya”.<sup>273</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, also confirmed that “In September, Kenya Film Classification Board (KFCB) Acting CEO Christopher Wambua stated during a radio interview that all movies containing lesbian, gay, bisexual, transgender, or queer (LGBTQ+) content are illegal in the country”.<sup>274</sup>

The report also noted that “Authorities restricted freedom of expression. In February, the KFCB [Kenya Film Classification Board] banned the Indian film *Badhaai Do*, alleging it would promote the notion that same-sex marriage was acceptable. The board claimed the film violated the penal code, which outlaws homosexuality, as well as provisions of the Films and Stage Plays Act (see also section 2.a., Censorship or Content Restrictions for Members of the Press and Other Media, Including Online Media)”.<sup>275</sup>

## 2023

In January 2023, galck+ and NGLHRC, along with five other organisations, in a statement on the investigation into the murder of Edwin ‘Chiloba’ Kiprotich Kiptoo, noted that “It is imperative that our leaders and media exercise restraint in their language and actions. Homophobic and hate based rhetoric by leaders and media sensationalization of Edwin Chiloba's murder only serves to incite violence against queer Kenyans. Online cyber-bullying using religion and culture raises the level of intolerance, hatred and violence against LGBTQ+ individuals”.<sup>276</sup>

An Al Jazeera article in March 2023 reported on increased homophobia in the public space after a February 2023 ruling by the Supreme Court that the constitution barred discrimination on the basis of sexual orientation, observing that:

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<sup>272</sup> Freedom House, *Freedom on the Net 2022: Kenya*, October 2022

<sup>273</sup> The Star, *All movies with LGBTQ+ content illegal in Kenya – KFCB*, 23 September 2022

<sup>274</sup> US Department of State (USDOS), *2022 Country Reports on Human Rights Practices: Kenya*, 20 March 2023

<sup>275</sup> US Department of State (USDOS), *2022 Country Reports on Human Rights Practices: Kenya*, 20 March 2023

<sup>276</sup> Gay and Lesbian Coalition of Kenya (galck+), The National Gay and Lesbian Human Rights Commission (NGLHRC), QInitiative, The Initiative for Equality and Non-Discrimination (INEND), Bold Network Africa, Amnesty International, change.org, Kenya, *Joint Statement on the Investigation into the Murder of Edwin ‘Chiloba’ Kiprotich Kiptoo*, 10 January 2023

Egged on by news anchors and editors keen to serve up drama and gore in an effort to retain audiences, everyone from President William Ruto to political pundits has been lining up to condemn the court for upholding verdicts by lower courts that the government could not lawfully refuse to register an organisation calling itself the National Gay and Lesbian Human Rights Commission (NGLHRC).

The jeremiads dominating the airwaves and social media proclaim this as the beginning of the end.

In an interview with one of the most-watched local TV stations, Citizen TV, Archbishop Jackson Ole Sapit of the Anglican Church of Kenya speculated – to approving noises from the anchors – that this was a sinister ploy by environmentalists to depopulate the globe in an effort to address climate change.<sup>277</sup>

Reuters reported similar:

"I've stopped going out, especially at night. It's better not to attract attention these days," Martin, a 33-year-old gay Kenyan web developer, told the Thomson Reuters Foundation by phone from his flat in the outskirts of Nairobi.

"If you go online, read the newspapers or even watch the TV shows, there are many people insulting the LGBTQ community and calling us 'demons' and 'paedophiles'. Lots of us are scared and are just keeping a low profile."

Abuse has increased since Kenya's top court ruled that the government must allow the National Gay and Lesbian Human Rights Commission to register as a non-governmental organisation, said Irungu Houghton, head of Amnesty International Kenya.<sup>278</sup>

The Los Angeles Blade reported in March 2023 on a resolution in Kenya to ban public discussions of LGBTQ+ issues, stating that:

Kenya's parliament has overwhelmingly passed a motion for the government to enforce an immediate ban on "public discussion, reporting and distribution" of LGBTQ+ content in the country.

It passed on Wednesday, despite some legislators raising concerns that it is a threat to the freedom of expression, information and the media protected under the Kenyan Constitution.

Owen Baya, an MP from the ruling United Democratic Alliance party who also serves as National Assembly's deputy majority leader, termed the motion "controversial" and questioned why it was allowed for debate in the House, even though it violates the law. [...]

The legislator stated that his motion banning LGBTQ+ publicity is motivated by an increase in homosexuality in the country because of LGBTQ+-specific content in books and in print and broadcast media.

The government is already cracking down on foreign teenage books with LGBTQ+ content.

The Education Ministry and the church have also formed a Chaplains Committee chaired by Kenya's Anglican Bishop Jackson Ole Sapit to counter what he describes as the infiltration of homosexuality in schools. The committee's mandate include counseling students who identify as LGBTQ+.

"We recognize that publishing and distributing homosexual content through the press has serious consequences to the family values and opposite-sex relations that should be protected since the increase in same-sex relations threatens the extinction of human beings in the country," the motion reads.<sup>279</sup>

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<sup>277</sup> Al Jazeera, [How an LGBTQ court ruling sent Kenya into a moral panic](#), 15 February 2023

<sup>278</sup> Reuters, [FEATURE-LGBTQ+ Kenyans and Ugandans hide from wave of homophobic abuse](#), 14 March 2023

In June 2023, The Washington Blade noted about a new agreement between Kenya and Netflix Africa ending the streaming of LGBTQ-specific movies in compliance with the country's laws explaining that:

The agreement allowing Netflix to self-classify movies streamed in Kenya by restricting the LGBTQ-specific content was officially signed in February this year after talks that began in October 2021.

An official at Kenya's film regulator, the Kenya Film Classification Board, told Washington Blade that Netflix has already paid for a films distribution license within the country and it is currently under processing.

"After signing the agreement, they (Netflix) are already developing a classification system that is aligned with the local classification standards so that every film on Netflix will be Kenyan ratings once it is in place," the official said.

The Kenya Film Classification Board considers LGBTQ-specific content under the "restricted category" that is not allowed for broadcast, exhibition and distribution to the public because it glorifies, normalizes, promotes and propagates homosexuality against the law.

"The developed system must be brought to KFCB [Kenya Film Classification Board] to confirm whether it generates results that are aligned with our local classification system before the board adopts the ratings," the official stated. [...]

The board is also targeting other video-on-demand streaming platforms in restricting LGBTQ-specific content in Kenya apart from reaching a deal with Netflix.

"We have already initiated talks with Showmax and the local Safaricom and Viusasa platforms with such video-on-demand services, among other platforms considered as distributors of this streaming content," the KFCB official said.

The board's push for the streaming platforms to self-classify movies in line with Kenyan laws makes it easy for its officials to monitor compliance. [...]

Broadcasting or showcasing LGBTQ-specific movies in Kenya by filmmakers has on several occasions put them at loggerheads with the KFCB.

The board in September 2021 banned a gay documentary, "I Am Samuel," that a local filmmaker produced. The KFCB termed it "blasphemous" because it promoted "values that are in dissonance with our constitution, culture, values, and norms."<sup>280</sup>

The AHRC issued a statement in September 2023 on the Family Protection Bill and reporting in the media, referring to a front page title of '50 years in jail for gays, lesbians':

As can be seen from the front cover of the Kenyan STAR newspaper, the media is complicit in the persecution in terms of how it reports, realizing the popularity of such a headline and how it would serve to enhance readership. In fact a poll on the website indicates that only 20% of readers believe LGBTQI+ people deserve any rights at all. This protest and type of reporting only serves to exacerbate and encourage the ongoing violence against LGBTQI+ people in Kenya which includes local Kenyans, visitors and refugees.<sup>281</sup>

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<sup>279</sup> The Los Angeles Blade, [Kenyan MPs approve resolution to ban public discussions of LGBTQ+ issues](#), 24 March 2023

<sup>280</sup> The Washington Blade, [Netflix stops streaming LGBTQ-specific movies in Kenya](#), 21 June 2023

<sup>281</sup> African Human Rights Coalition (AHRC), [Kenyan Protestors Call for Extreme Anti-LGBTQI+ Laws](#), 20 September 2023

Pink News reported in September 2023 that:

TikTok is reportedly in talks with the Kenyan government to block local access to all LGBTQ+ content. In order to comply with Kenya's strict censorship and anti-LGBTQ+ laws, the popular video-streaming app is drawing up framework to prevent specific content from reaching Kenyan users, the Washington Blade reports. [...]

The official noted that the tool has already "significantly reduced" such content on Kenyan TikTok in the last few weeks.

There is also reportedly a "national training program" being developed that will "empower" Kenyan users to create and post "positive" content. [...]

This move to censor LGBTQ+ content on TikTok is a result of petitioner Bob Ndolo, who noted to the National Assembly in August calling for the app to be banned in Kenya altogether, warning of content on the platform that was a "serious threat to the cultural and religious values of Kenya."<sup>282</sup>

Freedom House stated in its 2023 Freedom on the Net report for Kenya that:

The government moved towards greater censorship of LGBT+ content online after signing an agreement with Netflix to restrict such content on its platform, and the threat of government surveillance resurfaced after the Supreme Court allowed the Communications Authority (CA) to install a system to collect customer data from service providers. [...]

The penal code criminalizes same-sex sexual activity, and the KFCB [Kenya Film Classification Board] routinely censors LGBT+ content.<sup>74</sup> In February 2023, Netflix signed an agreement to restrict LGBT+ content in Kenya and classify content according to the KFCB's [Kenya Film Classification Board] ratings system. Talks were ongoing with other local streaming services to restrict LGBT+ content available in Kenya.<sup>75 76</sup><sup>283</sup>

74 "Governing Laws," Kenya Film Classification Board, accessed July 16, 2018, <http://kfc.co.ke/about/governing-laws/>; Penal Code Sections 162, 163 and 165 punishes gay relationships with jail terms ranging from 5 to 21 years dependent upon whether relations were consensual. Attorney General, Penal Code Chapter 63. Nairobi: National Council for Law Reporting, 2014.

75 Sam Kisika, "Netflix stops streaming LGBTQ-specific movies in Kenya," Washington Blade, June 21, 2023, <https://www.washingtonblade.com/2023/06/21/netflix-stops-streaming-lgbt...>

76 "Kenya bans movies with LGBTQ+ content by streaming platforms," Africanews, September 29, 2022, <https://www.africanews.com/2022/09/29/kenya-bans-movies-with-lgbtq-cont...>

ILGA World, in their November 2023 report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, observed that "In Kenya, public discourse criticising the Supreme Court's ruling in February 2023 to uphold the right to freedom of association for LGBT organisations was frequently presented as opposition to same-sex marriage."<sup>284</sup>

<sup>282</sup> Pink News, [TikTok reportedly in talks with Kenyan government to remove LGBTQ+ content](#), 28 September 2023

<sup>283</sup> Freedom House, [Freedom on the Net 2023: Kenya](#), 4 October 2023

<sup>284</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 32

[...] 29 “In rare unity, MPs call for stiffer laws against same s\*x relations”, Kenya Moja, 17 March 2023.

With regards to the enforcement of legal barriers in the media, the ILGA Database page for Kenya summarises the following:

In April 2018, the Board [...] banned the film “Rafiki” on the basis that it was “intended to promote lesbianism in Kenya”. However, the ban was temporarily lifted for seven days by a High Court judge after the film was nominated at the Academy Awards. In April 2020 another court case was filed to lift the ban, though the High Court ruled against the filmmakers in this second instance. In 2021, “I Am Samuel”, an LGBTQ+ Kenyan documentary, was banned for allegedly “promoting same-sex marriages”. In a statement (2021), the Board reasoned its decision on how the documentary was in their view “a clear and deliberate attempt by the producer to promote same-sex marriage as an acceptable way of life”. In 2022 an Indian film, “Badhaai Do”, was banned for featuring a same-sex marriage, with the CEO of the Board reportedly stating that any attempt to obtain the film will be met with the “full force of the law”.

In September 2022, the acting CEO of the Kenya Film Classification Board (KFCB) reiterated in a Kenya Film Classification Board Statement (2022) that screenings of all movies with LGBTQ+ content are illegal in Kenya.<sup>285</sup>

### c. Representation by influential cultural and religious figures

#### 2020

The May 2020 Washington Post article on LGBT refugees in Kenya observed that: “In Kenya, as in Uganda, outspoken local Christian ministers and foreign missionaries have used their pulpits to denounce homosexuality”.<sup>286</sup>

Pink News reported in October 2020 on the CEO of the Kenya Film Classifications Board’s (KFCB) response to the Pope speaking out in support of gay couples and civil union:

The comments made by the Pope were both celebrated and attacked around the world, but now Ezekiel Mutua, the anti-LGBT+ “moral policeman” in Kenya, has questioned whether they happened at all.

Mutua is a devout Christian whose job is to censor films, songs, and TV adverts in Kenya that he considers to be offensive. [...]

In a Facebook post Saturday (October 24), Mutua noted: “I honestly do not believe that Pope Francis meant to endorse same-sex marriage, but if he did, then he’s grossly wrong and his advice should be ignored.

“I believe his statement was in the context of ‘gay human rights’ but not the practice of homosexuality. There’s a difference between human rights and homosexuality as a concept.

“A leader of the stature of the Pope cannot endorse what’s clearly against the order of nature and God’s plan for family and procreation.”

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<sup>285</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) Database, [Jurisdiction: Kenya](#), undated, accessed 28 December 2023, accessed 28 December 2023

<sup>286</sup> The Washington Post, [‘We were so ready’: LGBT refugees in Kenya live in fear as global resettlement is put on hold](#), 26 May 2020

“If he did, he should be condemned and his statement taken with a pinch of salt. Homosexuality is outright illegal in Kenya and even from common-sense point of view, wrong.

“While we cannot deny the existence of homosexuals, we must never promote the behaviour as a way of life.”

Mutua said that being gay was not “normal behaviour”, and that the Pope supporting same-sex couples was “heresy and perversion of men”.

He added: “That’s why at KFCB we ban films or content that glamorizes, glorifies or normalizes homosexuality.

“We do not hate gay people, but the practice is wrong and against our culture and values.”<sup>287</sup>

## 2021

In their 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that:

LGB individuals face discrimination from religious leaders in Kenya. On some occasions, LGB individuals have been particularly targeted by religious leaders who perceive them as an evil that needs to be addressed. Many of the participants shared the sentiment that they were excluded from religious settings both by religious leaders and religious practitioners. One LGB individual expressed, “I stopped going to church. They stigmatize you and do not let you sit near people. You cannot pray or sing, they would preach about you.”<sup>48</sup> Many participants expressed they stopped going to church because of the treatment and hate speech they received as LGB individuals; when asked if they would like to go to church if the treatment and conditions changed, they expressed an interest in returning.

Many of the LGB individuals noted the importance of training religious leaders about LGBTI issues to decrease discrimination based on sexual orientation and gender identity. For example, the Nyanza Rift Valley and Western Kenya Network (NYARWEK) has focused on training religious leaders around LGBTI issues as part of their work. They expressed that much of the discrimination against LGBTI individuals is based on religious reasons. For instance, denying services to LGBTI individuals often occurs because service providers discriminate based on their religious beliefs.<sup>288</sup>

48 Interview with participant, Kisii, Kenya, Jan. 9, 2019.

BBC News reported in December 2021 on Chimano hailed in Kenya for coming out as gay, a singer in Sauti Sol, “one of Africa’s biggest male bands”.<sup>289</sup> The article noted that “‘Young people are saluting him and are seeing him as an icon who comes out to celebrate his life and his sexuality. It’s a good thing, it shows our diversity as a country,’ gay activist Kevin Mwachiro told the BBC” and that “attitudes are softening, especially among younger people and Chimano joins a growing list of prominent young Kenyans who have come out as gay or lesbian”, although acknowledging that “many members of the

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<sup>287</sup> Pink News, [Kenya’s anti-LGBT+ ‘moral policeman’ is bending over backwards arquing against the Pope’s support of same-sex couples](#), 26 October 2020

<sup>288</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 1*

<sup>289</sup> BBC News, [Sauti Sol singer Chimano hailed in Kenya for coming out as gay](#), 9 December 2021

LGBT community live in clandestine communities and are often shunned by their families in this deeply religious country”.<sup>290</sup>

## 2022

In galck+’s July 2022 report on conversion practices in Kenya, it spoke of faith-based approaches and the role of religious individuals:

“Pray the gay away” conversion therapy often stems from a strong religious conviction that humankind is meant to be organized around strict gender binaries and roles. [...]

Many Kenyan churches, even when not openly offering conversion “therapy” programming, tend to operate in those the blurred lines – between preaching “God’s saving grace” and the threat of condemnation to “hell-fire” for LGBTIAQ+ persons. [...]

The data also demonstrated, as shown below, that conversion “therapy” practitioners advertise their practices mostly through word of mouth (referrals) and sermons and other talks in faith-based organisations. [...]

Methods of Conversion “Therapy” [...]

Praying Away the “Gay”

One common method of conversion “therapy” includes prayers ranging from a few hours to six months because of supposed demonic or Satanic possession. [...]

Forced Detention in Homes, Churches or Camps

Respondents highlighted that one method of “therapy” is to control the freedom of movement of the individual. By detaining people on private property, practitioners believe they can force compliance with heterosexual norms. [...]

Hearing from Conversion “Therapy” Practitioners

The data was collected from 16 conversion “therapy” practitioners from different counties or areas such as Bungoma, Kimilili, Nairobi, and Homabay, among others. The conversion “therapy” practitioners acknowledged that there were members of the LGBTIAQ+ community that attend their churches, schools, clinics or health facilities. The majority of the practitioners described the interaction as guidance and counselling of the LGBTIAQ+ persons. Others described conversion “therapy” as mentorship, helping persons to become ‘normal’ or professional interaction through providing psychosocial support.

The conversion “therapy” practitioners run schools, churches, clinics and/or health facilities that conduct programs that “assist” or “support” members of the LGBTIAQ+ community to change their sexual orientation or gender identity. The programs vary depending on the nature of the work undertaken by the practitioner, or the context in which the conversion “therapy” occurs. [...]

According to the practitioners interviewed, the purpose of the conversion “therapy” programs includes:

- *To make LGBTIAQ+ persons ‘normal’;*
- *To provide mentorship;*
- *To ‘cure’ people;*
- *To try helping LGBTIAQ+ persons to come out of the ‘vice’ through counselling;*
- *To teach what is right and provide good guidance;*
- *To teach the ways of the Lord and win “lost souls” for those who viewed it from a religious lens;*
- *To help persons integrate to heteronormativity; and,*

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<sup>290</sup> BBC News, [Sauti Sol singer Chimano hailed in Kenya for coming out as gay](#), 9 December 2021

- To try to save the youth and future generation from homosexuality as it can lead to people not having children and/or contracting sexually transmitted diseases.

Some practitioners explained that the foundation for conversion “therapy” practises is the Bible which has condemned homosexuality and that LGBTIAQ+ members are welcome in the church but should undergo counselling to change. [...]

On the spiritual/ethical/ philosophical foundation of their practices or programs seeking to change the sexual orientation or gender identity of members of the LGBTIAQ+ community, the conversion “therapy” practitioners explained that being LGBTIAQ+ is a vice, a societal problem that requires mentorship and it goes against the culture of the community. Some indicated that it is a sin that God is against and that it is unethical and amounts to societal decay. Others viewed it as western influence and goes against African culture. In addition, others interpreted it from a religious point of view, whereby God made man and woman for marriage and reproduction, and that is what should be practised in society. [...]

The majority of the conversion “therapy” practitioners strongly believe in these practices and believe that they are legitimate, helpful and ought to be encouraged.<sup>291</sup>

## 2023

In February 2023, The Los Angeles Blade reported on Kenya cracking down on international books for youth with gay-specific themes, stating that:

A group of Christian, Muslim and Hindu clerics earlier this month issued a joint statement that asked President William Ruto and his government to protect teens from so-called same-sex doctrine through books from Western countries.

“We will defend the defensible moral rectitude acceptable by the majority, and frown upon any socialization that raises a mortal threat,” reads part of the statement issued on Feb. 2.

“We cannot close our eyes to the incontrovertible fact that this slice of Western liberalism is a Trojan horse which will lead to the destruction of the family unit,” it adds. “We cannot christen evil as LGBTQ rights so that it can be embraced.” [...]

The clerics asked the police to install reporting desks in stations that would allow the public to report what they describe as suspected cases of minors “being recruited” to become LGBTQ+ and to have those responsible punished.

“If we freely and openly embrace LGBTQ as the diversity of sexuality and identity, we will soon find ourselves accepting bestiality on the same grounds,” reads the statement.

The clerics stated at the time the teachers’ employer fired six elementary school teachers who were captured on camera forcing male students to “engage in indecent/inappropriate acts depicting homosexuality within the school compound” as punishment. The teachers were subsequently charged with breaching the school’s code of conduct and ethics guidelines.<sup>292</sup>

Capital News reported in February 2023 on the supreme court ruling on the right to association of the LGBTQ+ community in Kenya and on the reaction by the evangelical church:

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<sup>291</sup> Gay and Lesbian Coalition of Kenya (galck+), [Shame Is Not a Cure: So-Called Conversion “Therapy” Practices in Kenya](#), 14 July 2022, pp. 11, 20, and 25-28

<sup>292</sup> The Los Angeles Blade, [Kenya cracks down on youth books with gay-specific themes](#), 15 February 2023

The Nairobi-based CITAM Church has faulted Friday's decision by the Supreme Court allowing the LGBT community the form a lobby group.

Christ Is The Answer Ministries, through its Bishop Calisto Odede, termed the ruling as contradictory in a statement circulated on Sunday.

Odede said the ruling is against the cultural norms and called upon Christians and Kenyans to reject the ruling.

"We encourage Kenyans of moral integrity to reject, resist and oppose this supreme court ruling as it will erode our societal norms and morals," CITAM's Presiding Bishop stated.

Odede said the ruling sets a bad precedent arguing pedophiles, and those who violate other norms, could seek similar reliefs.

"The Bible speaks seven times about this kind of relationship directly; Ge.19:1-11; Lev 18:22; 20:13; Judge 19:22-25; Roman 1:25-26; 1 Cor.6:9, 1 Tim.1:9-10. In all these passages, homosexuality is not approved but rather is viewed as sinful, unnatural and perverted," he stated.

CITAM said affirmed that the Church was willing to help those struggling with homosexuality through counselling and prayers.<sup>293</sup>

The same newspaper reported the following day on responses by a Muslim group in Nairobi:

The Committee of Nairobi's Jamia Mosque called the judgement "unfortunate," stating that it would have a negative impact on religious, cultural, and family traditions that form the foundation of societal relationships.

"The decision by three of the five Supreme Court judges to allow gays and lesbians to have Legal recognition is shocking, unbecoming and totally unacceptable to Kenyans who value religion, cultural traditions and family relations," said Abdulbari Hamid, Jamia Mosque's Committee Secretary General.

Hamid also voiced his concerns about what he described as "insidious covert plans" to promote the homosexual agenda to young minds in schools and the sale of children's books advocating for homosexuality in leading bookshops.<sup>294</sup>

At the beginning of March 2023, The Guardian reported similarly on the ruling, observing that:

The ruling has been met by strong opposition, mainly from evangelical churches and conservative politicians, while the hashtag [#SayNoToLGBTQinKENYA](#) has been trending for the past week. A [media statement](#) by Calisto Odede, presiding bishop at the Christ is the Answer Ministries, said the ruling could embolden "other illegal practitioners like paedophiles and those involved in incest" to also have the right of association.

"There may be many people who are struggling with different kinds of sexual desires but they have not gone to court for the whole nation to recognise them," states the church, which has a large following in Kenya's urban areas.

The Kenyan church linked the court's ruling to the recent decision by the [Church of England](#) to welcome same-sex couples "unreservedly and joyfully".<sup>295</sup>

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<sup>293</sup> Capital News, [Wetangula Says Supreme Court Ruling On LGBTQ Will Lead To Unintended Consequences](#), 27 February 2023

<sup>294</sup> Capital News, [Nairobi Muslim Community Faults Supreme Court Ruling On Gay Rights](#), 28 February 2023

<sup>295</sup> The Guardian, [Kenya's LGBTQ community wins bittersweet victory in battle for rights](#), 3 March 2023

Africa News reported in March 2023 that “Kenya's First Lady Rachel Ruto has declared national prayers against homosexuality in the country, declaring the practice as a threat to the institution of the family”.<sup>296</sup>

The same month, Mwakilishi noted that:

The Kenya Conference of Catholic Bishops (KCCB) has appealed to the Supreme Court to rescind its ruling allowing the registration of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) lobby groups. The bishops condemned the ruling, saying it promotes homosexuality, which is against the constitution and moral values of the people of Kenya.

“We fault the determination of the Supreme Court of Kenya and declare it as an effort towards the promotion of the LGBTQ ideology which seeks to destroy life. It is an attack on humanity,” KCCB said in a statement on Friday.

"This ideology is an attempt to undermine the family and cultural values which are rooted in the very nature of humankind. It also undermines the dignity of life which is at the core of our beliefs as a nation," it added.<sup>297</sup>

Reuters reported in March 2023 the following:

Kenyan rights campaigners said some religious and political leaders are whipping up a homophobic backlash to the court ruling, which has led to calls for tougher laws against gay sex and a surge of abuse against sexual minorities.

Abuse has increased since Kenya's top court ruled that the government must allow the National Gay and Lesbian Human Rights Commission to register as a non-governmental organisation, said Irungu Houghton, head of Amnesty International Kenya. [...]

[...] Houghton said some politicians and religious leaders were fuelling a backlash.

"Amnesty is deeply concerned by the growing confidence among politicians, religious leaders and extremist individuals that calling for LGBTIQ+ individuals to be assaulted or put to death," Houghton said. [...]

Houghton said details of charities who support sexual minorities living with HIV/AIDS were shared on private anti-gay social media groups, and preachers were turning up outside these charities' offices to perform exorcisms. [...]

Conservatives fear increased rights for sexual minorities will lead to the legalisation of same-sex marriages.

"Homosexuality, lesbianism and same-sex unions are unnatural, they are wrong, they are evil and intrinsically immoral," said Reverend Martin Musonde, Chairman of the Kenya Conference of Catholic Bishops, in a statement.<sup>298</sup>

Following the February 2023 ruling, Al Jazeera also documented that “In Kenya, Archbishop Jackson Ole Sapit of the Anglican Church speculated that the alleged spread of homosexuality was a sinister ploy by environmentalists to depopulate the globe in an effort to address climate change”.<sup>299</sup>

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<sup>296</sup> Africa News, [Kenya's first lady declares prayers against homosexuality](#), 6 March 2023

<sup>297</sup> Mwakilishi, [Kenyan Catholic Bishops Want Supreme Court to Overturn Its Ruling on LGBTQ](#), 10 March 2023

<sup>298</sup> Reuters, [FEATURE-LGBTQ+ Kenyans and Ugandans hide from wave of homophobic abuse](#), 14 March 2023

The Washington Blade commented in March 2023 on a resolution in Kenya to ban public discussions of LGBTQ+ issues:

The Education Ministry and the church have also formed a Chaplains Committee chaired by Kenya's Anglican Bishop Jackson Ole Sapit to counter what he describes as the infiltration of homosexuality in schools. The committee's mandate include counseling students who identify as LGBTQ+.

"We recognize that publishing and distributing homosexual content through the press has serious consequences to the family values and opposite-sex relations that should be protected since the increase in same-sex relations threatens the extinction of human beings in the country," the motion reads.

The move to curtail homosexuality is also in response to last month's Supreme Court ruling that granted the LGBTQ+ community the right to register as non-governmental organization.

The judges' decision sparked anger and criticism from religious leaders and politicians, including President William Ruto, who has instructed the attorney general to have it overturned through an appeal.<sup>300</sup>

The Daily Monitor, a Ugandan newspaper, reported in May 2023 on Kenyan Muslim clerics backing Ugandan President Museveni's crackdown on homosexuality:

A day after Ugandan President Yoweri Museveni signed into law a Bill that imposes death and life sentences on lesbian, gay, bisexual, transgender and queer (LGBTQ+) people in Uganda, the Supreme Council of Islamic Scholars, known as Fatwa, has endorsed the move.

The council's deputy chairman, Sheikh Abubakar Bini, congratulated President Museveni and urged other leaders in Africa to emulate him. [...]

He said Islamic religious scholars have already started a push to get the Bill introduced in the Kenyan Parliament on behalf of Kenyans, should the MPs hesitate to introduce it in Parliament. [...]

"I urge President Ruto to show his commitment as a Christian who loves humanity and godliness by following the example of the Ugandan leader and signing a similar Bill into law when it is tabled in Parliament," Sheikh Bini said.<sup>301</sup>

The Washington Blade reported in September 2023 on anti-homosexuality protests:

Muslim and Christian religious authorities last Saturday staged anti-homosexuality protests in the coastal city of Mombasa, which is the country's second largest city. Protesters condemned and denounced the Supreme Court's ruling and asking President William Ruto to "unequivocally denounce LGBTQ" like his Ugandan counterpart, Yoweri Museveni.

The Kenya Muslims National Advisory Council, a leading Muslim governing body, on Thursday also condemned the Supreme Court and demanded the ouster of Chief Justice Martha Koome and other judges who ruled in favor of the LGBTQ community. The group argues the ruling offends Kenya's social,

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<sup>299</sup> Al Jazeera, [Why are Kenya and Uganda cracking down on LGBTQ rights?](#), 23 March 2023

<sup>300</sup> The Washington Blade, [Kenyan MPs approve resolution to ban public discussions of LGBTQ+ issues](#), 24 March 2023

<sup>301</sup> The Daily Monitor, [Kenyan Muslim clerics back Museveni's crackdown on Gays](#), 30 May 2023

cultural and religious beliefs while asking the president and Parliament to be “firm” like Uganda, which enacted a harsh anti-homosexuality law in May.<sup>302</sup>

Erasing 76 Crimes reported similarly on the anti-LGBTQ protest attended by hundreds in Nairobi to protest against the decision made by the court last February to allow the legal registration of a pro-LGBTQ rights organisation “The demonstrators, who were convened by Muslim and Christian associations, among others, carried banners with slogans such as “Kenya is not Sodom and Gomorrah,” “LGBTQ is not African,” and “Demons inspired LGBTQ” .<sup>303</sup>

In October 2023, The East African observed the following:

Last month, a leading Catholic prelate in Kenya, who will be among those attending a Vatican synod of bishops, objected to a ruling by the country's Supreme Court allowing a gay rights group to be officially recognised as an NGO.

In an interview with the ACI news agency, Archbishop Martin Kivuva Musonde of the Archdiocese of Mombasa said the court's decision amounted to promoting an LGBTQ+ agenda in Kenya.

"It is very unfortunate. When you legalise something, it means you are promoting it," Kivuva said.

"If you register them (LGBTQ associations), it means you are giving life to the behaviours. If you join a football club, it means you are ready to play football," he said.<sup>304</sup>

The Star also noted in October 2023 on the words of Pastor Dorcas Rigathi, wife of the deputy president, on the denial of LGBTQ rights: “Being a pastor and a mother, I have never found a situation in the history of the world where religion, culture, and the law converge and declare this to be the right thing," Pastor Dorcas said’.<sup>305</sup>

In December 2023, Erasing 76 Crimes reported on a secret church in Kenya welcoming the LGBT community, stating that:

For the past ten years, a secret church in Kenya has been worshipping God, welcoming LGBT members and proclaiming the value of queer people’s lives. [...]

A church in Kenya has survived for the last decade by operating discreetly. It does not publicise its services in this very religious country because it welcomes gay worshippers. [...]

Yet it is not always easy for the congregation, which has faced numerous attacks – for instance when a landlord or those in the surrounding community are not happy with the fact they accept LGBT worshippers.

They have been locked out of premises despite paying rent, their compound ransacked, members attacked and police have asked for bribes to offer them “protection”, or threatened to beat and arrest them.

They have changed locations nine times in their 10 years of existence, partly to keep their location a secret.

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<sup>302</sup> The Washington Blade, [Kenyan lawmaker’s bill would further crackdown on LGBTQ rights](#), 22 September 2023

<sup>303</sup> Erasing 76 Crimes, [Hundreds oppose LGBTQ people during slanderous Kenyan protest](#), 12 October 2023

<sup>304</sup> The East African, [Catholic Church open to blessing same-sex couples, Pope Francis says](#), 4 October 2023

<sup>305</sup> The Star, [Pastor Dorcas: Kenya has no space for LGBTQ, won't legalise it](#), 9 October 2023

Arguably, however, one of the hardest hoops to jump through has been helping members reconnect with their faith and a liturgy that they feel has sought to exclude them.<sup>306</sup>

#### d. Impact of societal norms on state attitudes

The sources in this section detail the impact of societal norms on political ideology and attitudes. This section should also be read against section III. *Treatment by State Actors*, [a. Public statements by government officials](#) and [b. Homophobia and transphobia in government institutions \(incl. state-owned media, within the police, in the prison service, in the judiciary\)](#).

For information on societal norms more broadly, see section IV. *Societal Attitudes Towards LGBTQI+ Individuals*, [a. Societal norms](#).

##### 2020

No information was found on the impact of societal norms on political ideology and attitudes in 2020.

##### 2021

In response to the list of issues raised by the UN Human Rights Committee for its consideration of the fourth periodic report, the Kenyan government stated in a 2021 report that “Sexual relations between same sex persons is expressly prohibited by the national law and is deemed unacceptable to the Kenyan culture and values”.<sup>307</sup>

The May 2021 UN Human Rights Committee’s concluding observations on the fourth periodic report of Kenya regarding the International Covenant on Civil and Political Rights stated that it was concerned over “The State party reporting that that prohibition is based upon same-sex relations being unacceptable to Kenyan culture and values but not providing information about any measures taken to address discriminatory attitudes and stigma among the general public”.<sup>308</sup>

In June 2021, Jinsiangu released a statement on the International Day Against Homophobia, Biphobia, and Transphobia, observing that: “ITGNC [intersex, transgender and gender non-conforming people] persons are often constructed as criminals, cursed, deviant, immoral and devil worshipers and a shame. [...] Such contexts present themselves in [...] access to protection by the Law. A practical example is usually seen through cases such as public stripping and forced stripping during arbitrary arrests by Law enforcement”.<sup>309</sup>

##### 2022

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<sup>306</sup> Erasing 76 Crimes, [Secret LGBT-friendly church welcomes and protects Kenyan worshippers](#), 26 December 2023

<sup>307</sup> Republic of Kenya, [Replies of Kenya to the list of issues in relation to its fourth periodic report Submitted to UN Human Rights Committee](#), 27 January 2021 Paragraph 30

<sup>308</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights Concluding observations on the fourth periodic report of Kenya](#), 11 May 2021, paragraph 12

<sup>309</sup> Jinsiangu, [Int'l Day Against Homophobia Biphobia & Transphobia \(IDAHOBIT\) 2021](#), 14 June 2021

*No information was found on the impact of societal norms on political ideology and attitudes in 2022.*

### 2023

ILGA World, in their November 2023 report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, noted on Kenya that “since his election, President Ruto seems to have maintained the State’s anti-LGBTQ+ stance, in an effort to maintain support from the country’s large religious community”.<sup>310</sup>

At the beginning of March 2023, The Guardian reported on the supreme court ruling on the right to association of the LGBTQ+ community in Kenya, observing that:

The ruling has been met by strong opposition, mainly from evangelical churches and conservative politicians, while the hashtag [#SayNoToLGBTQinKENYA](#) has been trending for the past week. [...] Peter Kaluma, an MP allied to the opposition, vowed to table a bill in parliament to prohibit homosexuality and impose stiffer penalties, including life in prison, for those engaged in same sex liaisons. [...] Kenya’s attorney-general said the government will challenge the supreme court’s ruling, insisting that the issue is a matter for public consultations rather than for the courts.<sup>311</sup>

The May 2023 joint report by the NGLHRC and Amnesty International stated that: “The criminalization of same-sex relations, in particular, significantly influences the attitudes of the general public, the refugee community, public officials and staff of humanitarian organizations”.<sup>312</sup>

## V. Treatment by Non-State Actors

This section focuses on societal and community perpetrated harassment and violence. On occasion sources do not indicate the perpetrators, therefore also see section III. *Treatment by State Actors*, [c. Harassment and violence](#).

### a. Harassment and violence

*For further relevant information consult also section IV. [Societal Attitudes Towards LGBTQI+ Individuals](#) and section V., b. [Discrimination](#).*

### 2020

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<sup>310</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 81

<sup>311</sup> The Guardian, [Kenya’s LGBTQ community wins bittersweet victory in battle for rights](#), 3 March 2023

<sup>312</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p. 18

In January 2020 the International Intersex Human Rights NGO, StopIGM.org/Zwischengeschlecht.org, based in Switzerland, submitted a report to the UN Human Rights Committee in relation to the fourth report of Kenya on the International Covenant on Civil and Political Rights, based on desk research some personal communications, publications by the Intersex Persons Society of Kenya (IPSK), Support Initiative for People with Atypical Sex Development (SIPD) Uganda, and the reports by the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya and the Kenya National Commission on Human Rights (KNCHR).<sup>313</sup> The submission, based on sources pre-dating the cut off period for this report, stated that "Infanticide and abandonment of intersex children, intersex genital mutilation and other harmful practices on intersex children and adults amounting to cruel, inhuman or degrading treatment are still current in Kenya".<sup>314</sup>

Pink News reported in late April 2020 on an attack against a lesbian refugee in Kenya, stating that: "At around 6.30pm on April 24, Nankinga Sophia, 22, was allegedly walking along the dust-covered roads of the camp when eight men approached her and demanded to know "why" she is a lesbian. Sophia has, according to trans camp resident who wished to remain anonymous, been left "traumatised" after the gang of "ruthless men" brutally beat her before raping her, dragging her back to her shelter".<sup>315</sup>

Reuters published in April 2020 the photographs and stories of members of the LGBT community living in fear of attacks in Kakuma, the Kenyan refugee camp, stating that "A group of around 300 gay, lesbian and transgender refugees in Kakuma refugee camp in northwestern Kenya say other refugees repeatedly attack them because of their sexual orientation. The group say police and the United Nations refugee agency, UNHCR, have failed to protect them".<sup>316</sup> The following are some of the testimonies:

"I have been threatened with death, I have been beaten, I have been harassed sexually, and I have been sexually abused, raped," Eva Nabagala [...] told Reuters by phone. [...] Nabagala left the camp but was raped again in Mombasa, where she had gone seeking shelter, so she came back. [...]

Stephen Sebuuma, another Ugandan refugee in Kakuma, said refugees armed with iron bars, sticks and machetes damaged their houses on three occasions, injuring four adults and two children. "Police insult us instead of helping us," Sebuuma, 32, told Reuters by phone. Pictures Sebuuma and another refugee sent to Reuters from the camp showed holes punched in the walls of homes made of corrugated iron. Kambungu Mubarak [...], 31, said the attackers also burnt two houses. [...]

Nabaterega, 23, told Reuters by phone that she fled Uganda in 2019 after being raped and becoming pregnant. [...]. She is constantly threatened by other refugees, she said. "We were told because we were homosexuals ... they would put poison in the water," she said.<sup>317</sup>

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<sup>313</sup> StopIGM.org/Zwischengeschlecht.org (International Intersex Human Rights NGO), [Intersex Genital Mutilations Human Rights Violations Of Children With Variations Of Reproductive Anatomy, NGO Report \(for LOI\) to the 4th Report of Kenya on the International Covenant on Civil and Political Rights \(CCPR\)](#), January 2020, p. 7

<sup>314</sup> StopIGM.org/Zwischengeschlecht.org (International Intersex Human Rights NGO), [Intersex Genital Mutilations Human Rights Violations Of Children With Variations Of Reproductive Anatomy, NGO Report \(for LOI\) to the 4th Report of Kenya on the International Covenant on Civil and Political Rights \(CCPR\)](#), January 2020, p. 4

<sup>315</sup> Pink News, [Lesbian refugee in Kenya brutally beaten and raped by 'gang of eight ruthless men'](#), 28 April 2020

<sup>316</sup> Reuters, [LGBT community living in fear of attacks in Kenyan refugee camp](#), 29 April 2020

<sup>317</sup> Reuters, [LGBT community living in fear of attacks in Kenyan refugee camp](#), 29 April 2020

The May 2020 Washington Post article on LGBT refugees in Kenya reported that:

Discrimination and assaults in the camps [Kakuma and Dadaab] have driven almost all the LGBT refugees from Uganda to relocate to Nairobi. [...]

Lubega, 27, who is transgender, said she and a roommate were taken to a police station and told they could either “buy their freedom” or be charged for sex crimes, with the lubricant as evidence. She paid around \$250, she said. [...]

Lubega and her roommates keep chickens and sell the eggs to get by. When Lubega returned home from the police station, she found one chicken hanging dead from a tree, like a warning. A few days later, she found another strangled. She thinks her neighbors are responsible for the dead chickens and for reporting her to the police. She’s looking for a new place to live.<sup>318</sup>

An August 2020 VOA News article also reported on attacks against LGBTQ refugees in Kenya’s Kakuma camp, stating that:

LGBTQ refugees in Kenya’s Kakuma refugee camp say they are subjected to violent attacks and destruction of property by other refugees and local Turkana people. Some have fled to Nairobi and accuse authorities of failing to prevent the attacks.

In a June video shared with a reporter, a crowd of people surround a group of LGBTQ refugees in Kenya’s Kakuma Refugee Camp and thrash them with stones and sticks.

Photos of bloodied LGBTQ refugees circulated on social media.

Transgender Ugandan refugee Doreen Andrews Kigongo was in the camp that day and confirmed the authenticity of the video. [...]

At a safe house in Nairobi, Sebuuma shows a reporter a long belly gash and scalp and forehead scars.

Sebuuma said the wounds are from previous attacks by other refugees and locals who don’t want them in the camp.

Sebuuma said after a while, people got to know the house where they lived and started coming both day and night, throwing stones and threatening to kill them. [...]

Craig Paris is the executive director for the Refugee Coalition of East Africa. He said that few LGBTQ refugees stayed in camps until just a few years ago.

Police raids on safe houses increased, he said, and LGBTQ refugees demanded protection.

“But the problem came with visibility and security—general security around queer refugees—and, you know, the host community being homophobic itself,” he said.

Activists helped some of the LGBTQ refugees attacked in June get to safe houses in Nairobi.

But an estimated 300 LGBTQ refugees remain in Kakuma, where few of them feel welcome or safe.<sup>319</sup>

An August 2020 issue of the Covid-19 Human Rights Monitor by the IBAHRI also brought attention to “the gang-rape at a refugee camp of a lesbian due to her sexual orientation”.<sup>320</sup>

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<sup>318</sup> The Washington Post, [‘We were so ready’: LGBT refugees in Kenya live in fear as global resettlement is put on hold](#), 26 May 2020

<sup>319</sup> Voice of America (VOA) News, [Kenya’s LGBTQ Refugees Face Threats, Attacks at Kakuma Camp](#), 13 August 2020

<sup>320</sup> International Bar Association’s Human Rights Institute (IBAHRI), [IBAHRI Covid-19 Human Rights Monitor, Issue 17](#), 14 August 2020

The same month, Mwakilishi reported that police in Kakamega were holding two men accused of being in a gay relationship after “residents suspected one of the two men had been defiling underage boys in the area”.<sup>321</sup> The article continued: “Neighbors laid a trap and stormed his house on Friday, where they found him in the company of another man. They also demanded to go through his phone, from wherein they found messages and conversations confirming that he was in an intimate relationship with his male visitor. Police officers arrived on time to save the two from the wrath of an irate mob that was baying for their blood”.<sup>322</sup>

The Standard reported in an October 2020 article on a gang in Kenya luring and robbing gay men. It stated that:

An international gay sex racket set up in Nairobi's Eastlands is the latest pain in the back of expatriates trooping to Kenya and seeking cheap pleasures of life. The sex pests have been luring their victims into their den at Pipeline estate through social media where they promise heaven but deliver hell. Police investigations have revealed that the four men, who are still at large, are part of a wider cartel preying on foreigners and well-to-do locals in search of forbidden love.

The gang members and their victims are said to connect through a popular dating site popular with the gay community. In one instance, one of their victims, a county government employee from Rift Valley, who had visited the house expecting pleasure, lost all his property and his decomposing body was discovered on September 23. With the death of the man, detectives from the Directorate of Criminal Investigations Crime Research Bureau sniffed what has now emerged to be a well-organised transnational sex scheme. [...]

Although the police are yet to find evidence to corroborate their findings, the investigators believe that the man was lured to the house through a dating site popular among the gay community.<sup>323</sup>

A VOA News article in November 2020 reported on increased abuse of Kenya’s LGBTQ community during the Covid-19 pandemic, noting that:

Twenty-eight year-old Rebecca Adhiambo’s family shunned her after discovering two years ago that she is a lesbian.

When her neighbors found out, she was insulted, evicted, and - in September - attacked.

She says she was on her way home from the market to prepare a meal after a long day of doing casual work in Eastleigh. Someone approached her from behind, a crowd gathered, and some were shouting that she should leave the neighborhood. They started beating her and threw away all that she bought at the market.

Said Athmani documents cases of attacks on the LGBTQ community. Since the COVID-19 outbreak began in March, he says there’s been a jump in cases of abuse.

“Curfew is in place, some people don’t go to work, so they stay in their locality. Our locality here is Pumwani, when people notice and recognize that in our neighborhood, we have LGBTQ+ persons, they start to abuse them, they start to victimize them, in a way they feel that they do not want them here,” Athmani said.

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<sup>321</sup> Mwakilishi, [Kenya Police Arrest Two Suspected Kenyan Gay Lovers](#), 21 August 2020

<sup>322</sup> Mwakilishi, [Kenya Police Arrest Two Suspected Kenyan Gay Lovers](#), 21 August 2020

<sup>323</sup> The Standard, [How Pipeline gang uses gay dating site to lure and rob men](#), 16 October 2020

The Gay and Lesbian Coalition of Kenya (GALCK) says during the pandemic it has been logging up to 10 attacks per month on the LGBTQ community.

Kenya's government raised an alarm on increased cases of gender-based-violence but has offered no targeted help for LGBTQ people.<sup>324</sup>

NGLHRC's 2019/2020 Annual Legal Aid Report, covering the period from July 2019 to July 2020, documented that:

The Legal team has received reports of Between July 2019 and July 2020, NGLHRC received 329 reports of violations through its legal aid clinic. [...]

The highest number of cases reported at the Legal Aid Centre were of different forms of violence including sexual, physical, emotional and verbal. Blackmail and Extortion cases have rapidly risen as well over the past few years especially in dating sites, however a lot of sensitization on personalized safety mechanisms and utilization of security alerts on some of the dating/social digital applications have been conducted to ensure reduction of these cases. Additionally, Cases of cyberbullying have been quite rampant. [...]

Notably, Cases of conversion therapy have worryingly [sic] increased compared to the previous years with the affected clients, based abroad, reporting being coerced to return home in Kenya only to end up tortured and abused due to their SOGIESC status in a bid to 'convert' their orientation. [...]

Cases of blackmail and extortion continue to be reported. We note that cases of Blackmail and extortion are reported by clients who experience intimate partner violence from their partners. [...]

Cases of intimate partner violence have risen especially with the government directives on quarantine and cessation of movement that had been put in place since April and lapsed on 6th July 2020. However most of these cases are unreported to the police due to the fear of having to disclose the nature of their relationship.

Cyberbullying cases have equally been on a steady rise since 2019 with some perpetrators being known while some unknown to the clients.

Murder and suicide cases have rampantly risen especially among gay/bisexual males since 2019.

Instances of threats to life, physical and verbal assault have been numerous with perpetrators being known and unknown to the clients. [...]

Corrective rape cases have steadily risen among LGBQ+ persons with most perpetrators being people close to the survivors. [...]

Increase in attacks on LGBTQ+ refugees in Kakuma by locals and other refugees. [...]

There has been a steady increase in the number of cases of threats and threats to assault from one of the partner's family members in intimate partner relationships among LGBQ+ persons.<sup>325</sup>

NTAN's report in 2020 on the national transgender discrimination survey in Kenya noted that "There was [...] widespread verbal abuse in the public sector with the transport sector presenting the highest rate of verbal harassment or disrespect (63%). Rates of reported assaults included 26% GBV rape cases,

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<sup>324</sup> Voice of America (VOA) News, [Kenya's LGBTQ Community Faces Increased Abuse During Pandemic](#), 24 November 2020

<sup>325</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, pp. 2, 6-10

20% GBV cases in domestic partnerships, 11% GBV cases in mental health clinics, 6% GBV cases in the criminal justice system, and 5% GBV cases by government agencies” .<sup>326</sup>

The 2020 USDOS Kenya report on human rights practices, published in March 2021, noted that “Violence and discrimination against LGBTI individuals were widespread. In October an LGBTI rights organization reported an increase in conversion therapy and practices. It attributed this increase to the fact many LGBTI persons had returned to hostile community environments after losing their jobs during the pandemic. Some LGBTI groups also reported an increase in abuses cases against LGBTI persons during the pandemic”.<sup>327</sup> The same source further observed that “Sexual and gender-based violence against refugees and asylum seekers remained a problem, particularly for vulnerable populations, including women, children, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees and asylum seekers”.<sup>328</sup>

Freedom House stated in its 2021 Freedom in the World report for Kenya, covering events in 2020 that: “LGBT+ people face discrimination, abuse, and violent attacks” .<sup>329</sup>

The 2021 USDOS trafficking in persons report for Kenya (covering the period April 1, 2020 ending March 31, 2021) indicated that “refugees are generally required to live within the camps with restricted movement and limited access to education and livelihood opportunities, increasing their vulnerability to labor and sex trafficking [...] LGBTQI+ persons in refugee camps are especially vulnerable” .<sup>330</sup>

Al Jazeera reported in June 2022 on the experiences of abuse and healthcare of queer men in Kenya. It reported on an incident in 2020:

In February 2020, Hosea Ndiretu was gang-raped by a group of men while leaving a bar in Nairobi. Within weeks, he realised he had a sexually transmitted infection (STI) and visited a government hospital to seek treatment. [...]

At the government hospital where he had sought treatment for gonorrhoea, 35-year-old Francis Onyango says the doctor attending to him called his colleagues into the room to mock him. So he sought solace in church instead.

“My pastor termed my problem as demonic and asked me to plant a ‘seed’ of \$200 (Ksh 2,000) before he could pray for me. For his prayers to work, he ordered me not to take any form of medication,” said the Nairobi-based gym trainer. [...]

Human rights researchers and activists have documented a steady rise of hostility against gay people [...], which is still a conservative society.<sup>331</sup>

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<sup>326</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, p. 4

<sup>327</sup> US Department of State (USDOS), [2020 Country Reports on Human Rights Practices: Kenya](#), 30 March 2021

<sup>328</sup> US Department of State (USDOS), [2020 Country Reports on Human Rights Practices: Kenya](#), 30 March 2021

<sup>329</sup> Freedom House, [Freedom in the World 2021: Kenya](#), 3 March 2021

<sup>330</sup> US Department of State (USDOS), [2022 Trafficking in Persons Report: Kenya](#), 1 July 2021

<sup>331</sup> Al Jazeera, [Kenyan queer men risk health amid homophobia in public hospitals](#), 2 June 2022

## 2021

A February 2021 statement from a collective of human rights organisations in Kenya calling on UNHCR to offer protection to LGBTQ+ refugees in Kakuma refugee camp noted that: “2021 has already registered fresh brutal attacks on LGBTQ+ refugees at Block 13, including: assault of an infant refugee, rape, stoning and beatings. On the night of February 15, 2021, four gay men were set ablaze in their bedding as they slept in the open yard where they have no shelter. Three were rushed to hospital, seriously burned. This came at the end of a weekend of back-to-back attacks, where LGBT+ refugees were surrounded and stoned for several hours two days before the fire attack”.<sup>332</sup>

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic’s report on the rights of LGBTI citizens and non-citizens in Kenya stated that:

LGBTI persons in Kenya face high rates of sexual and gender-based violence and face obstacles accessing justice and rehabilitative mental health services. This is especially true for LGBTI refugees. [...] In its recent study the Women’s Refugee Commission reported that every refugee research participant of diverse sexual orientation and gender identity reported having suffered sexual or other gender-based violence upon their arrival in Kenya and many on more than one occasion.<sup>69</sup> Violence against LBQ women has been particularly high. Where 14% of women in Kenya faced sexual violence, 51% of lesbian women and 52% of bisexual women experienced sexual violence in their lifetime.<sup>70</sup> In another study, 42% of LBQ women refugees interviewed indicated that they had experienced sexual violence, and an additional 16% indicated they had been the victim of intimate partner or domestic violence.<sup>71</sup>

The WRC report confirmed that trans women, trans men, LGBTI adolescents, unaccompanied boys and young men, refugees selling sex, and detainees appear particularly vulnerable to sexual violence, exploitation, and abuse.<sup>72</sup> The study documents how dire living conditions, discrimination, and deprivations in social and economic rights, including housing and health, increase the vulnerability among refugee youth and refugees with diverse sexual orientation and gender identity to sexual exploitation.<sup>73</sup>

69 WRC, “We Have a Broken Heart”, p. 2.

70 Müller, Daskilewicz and SEARCH, Are We Doing Alright?, p. 40.

71 Moore, p. 328.

72 Ibid.

73 Ibid.<sup>333</sup>

In May 2021, the UN Human Rights Committee’s concluding observations on the fourth periodic report of Kenya stated that it was concerned over “Reports of lesbian, gay, bisexual, transgender and intersex

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<sup>332</sup> Pan Africa ILGA [International Lesbian, Gay, Bisexual, Trans and Intersex Association], Just Associates, Global Interfaith Network, Triangle Project, Center for Minority Rights and Strategic Litigation, and PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya, [A Further Call on UNHCR to Urgently Offer Protection to LGBTQ+ Refugees in Kakuma Refugee Camp](#), 26 February 2021

<sup>333</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, pp. 12-13

individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access justice and remedies” as well as “[c]ases of non-urgent, irreversible surgical procedures, infanticide and abandonment among intersex children”.<sup>334</sup>

For their 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that (N.B. citing sources outside of the reporting period for this report):

The Kenyan government fails to protect LGBTI individuals from human rights violations by members of their communities or to educate the public about LGBTI rights. LGB individuals also reported suffering attacks from members of their local community based on their sexual orientation. LGBTI individuals who present themselves more openly in Kenyan society are more at risk of aggression from people in their communities.<sup>21</sup> In addition, a 2016 survey found that in Kenya 40% of respondents strongly agreed that being LGBTI should be a crime.<sup>22</sup>

LGB individuals reported instances of physical assaults due to their sexual orientation. In one case, a lesbian woman was physically attacked by another woman when trying to explain her lifestyle. While these types of physical assaults were common, verbal assaults constituted the majority of attacks on LGB individuals in Kenya from other community members. Some of the participants stated that “they threaten that they will beat you when you are alone; that is why you never walk alone.”<sup>23</sup> Other comments included: “you should be banned and killed”<sup>24</sup> and “we should be treated like dogs.”<sup>25</sup> Therefore, LGB individuals are forced to protect themselves, without support from members of the community, law enforcement officials, or family members. [...]

Vigilante groups are another primary source of fear for LGBTI individuals because of their violent attacks on LGBTI individuals that are supported by members of the community and even LGBTI individuals’ family members. Vigilante groups specifically target LGBT individuals in Kenya by creating fear and promoting violence. Most of the participants interviewed expressed great fear of vigilante groups, especially those living in rural areas. Statements like: “if they know you are gay they will kill you. They just kill,”<sup>30</sup> “they think you are promoting satanism, them murdering you would be very easy.”<sup>31</sup> The LGB individuals interviewed for this report universally observed that law enforcement officials are unwilling to prevent attacks or protect LGBTI individuals from vigilante groups.<sup>32</sup> [...]

LGB individuals experience discrimination when accessing public spaces. For example, most interviewees reported that they were denied access to some bars, clubs or restaurants. In some instances, LGB individuals were attacked in public spaces because of their sexual orientation. One individual expressed that “in a restaurant, someone drunk started calling me names. I was told to walk out of the room because more people kept joining; there were ten.”<sup>46</sup> Another LGB individual stated, “When I go to restaurants you hear them talking about me. Some may come and mock me. I have lost a lot of friends because of who I am.”<sup>47</sup> LGB individuals were aware of the public spaces where they faced more danger and spread the word to each other to prevent further confrontations.<sup>335</sup>

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<sup>334</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights Concluding observations on the fourth periodic report of Kenya](#), 11 May 2021, paragraph 12

<sup>335</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, paragraph 13, 20, 24 and 52

21 Neela Ghoshal, Lesbian, Bisexual, and Queer Women Speak Out in Kenya, Huffington Post, Feb. 20, 2016, [https://www.huffingtonpost.com/neela-ghoshal/lesbian-bisexual-and-queer-women-speak-out-in-kenya\\_b\\_9280166.html](https://www.huffingtonpost.com/neela-ghoshal/lesbian-bisexual-and-queer-women-speak-out-in-kenya_b_9280166.html).

22 International Lesbian, Gay, Bisexual, Trans and Intersex Association, The ILGA-RIWI 2016 Global Attitudes Survey on LGBTI People in Partnership with LOGO (2016).

23 Interview with participant, Homabay, Kenya, Jan. 12, 2019.

24 Interview with participant, Homabay, Kenya, Jan. 12, 2019.

25 Interview with participant, Migori, Kenya, Jan. 8, 2019. [...]

30 Interview with participant, Nyamira, Kenya, Jan. 9, 2019.

31 Interview with participant, Kisii, Kenya, Jan. 12, 2019.

32 Katy Migiro, Homophobic Mobs Attack LGBT People in Kenya with Impunity, All Africa, Sept. 28, 2015, <https://allafrica.com/stories/201509280135.html> [...]

46 Interview with participant, Migori, Kenya, Jan. 8, 2019.

47 Interview with participant, Migori, Kenya, Jan. 8, 2019.

Freedom House stated in its Freedom in the World report for Kenya, covering events in 2021 that “LGBT+ people face discrimination, abuse, and violent attacks”.<sup>336</sup>

The German Federal Office for Migration and Refugees (BAMF) reported in April 2021 that “On 13.04.21, UNHCR recommended that security for LGBTQ people in Kakuma refugee camp in northwestern Kenya should be increased after the death of an Ugandan refugee in hospital. He was being treated there for burns he suffered from an attack on 15.03.21. The perpetrators had reportedly set fire to a group of LGBTQ people sleeping outside, injuring several others as well. In recent years, LGBTQ people in the camp have repeatedly complained about the insecurity in the camp”.<sup>337</sup>

The openDemocracy investigation into conversion therapy in Kenya, Tanzania, and Uganda in July 2021 noted the following: “A lesbian woman in Kenya said that her family – who she described as “radical Muslims” – “threatened to take me to a conversion camp to teach me how to be a good Muslim woman”. She said that, in the end, they locked her in a room where she was “forced to fast and pray day and night”. They even said “that queer people should be killed’”.<sup>338</sup>

In July 2021, the Immigration and Refugee Board of Canada’s report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya stated that:

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association] indicated that individuals of diverse SOGIE are “subject to discrimination, harassment, abuse and/or violence” and that this treatment “applies across Kenya” (KYDESA 23 June 2021). The PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya representative noted that “things are changing in Kenya, but there are cases of discrimination of LGBT individuals in Kenyan society” (PEMA Kenya 12 July 2021). The same source indicated that there is discrimination throughout Kenya, but the level of violence varies across the country; while “there is not as much violence and discrimination in rural areas,” “violence is worse in cities” although it “varies from city to city” (PEMA Kenya 12 July 2021). The Jinsiangu

<sup>336</sup> Freedom House, *Freedom in the World 2022: Kenya*, 24 February 2022

<sup>337</sup> German Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge - BAMF), *Briefing Notes Group 62 – Information Centre for Asylum and Migration*, 19 April 2021, pp. 6-7

<sup>338</sup> OpenDemocracy, *‘I was afraid I was going to die’: Kenyan survivor of ‘conversion therapy’*, 12 July 2021

representatives stated that "violence and discrimination occur everywhere" but it varies depending on socio-economic status, religion, and rural or urban area (Jinsiangu 9 July 2021). [...]

The Jinsiangu representatives indicated that in society, LGBTQ individuals are subject to verbal and sexual abuse (Jinsiangu 9 July 2021). The human rights defender [National Gay and Lesbian Human Rights Commission (NGLHRC)] noted that in June 2021, a human rights representative was murdered "because of their identity" (Human rights defender 30 June 2021). [...]

The Jinsiangu representatives noted that in families, LGBTQ individuals are subject to conversion therapy, violence, forced marriage, and "corrective rape" (Jinsiangu 9 July 2021). The representatives also indicated that female genital mutilation/cutting (FGM/C) is practiced on lesbian, bisexual, and queer women and that "intersex children are forced to undergo FGM[/C] at an early age" (Jinsiangu 9 July 2021). [...]

The Executive Director of KYDESA stated that "Nairobi is not fully a city free of discrimination for [persons of diverse SOGIE]"; however, compared to other places in Kenya "LGBTIQ+ activities are taken with fair modesty" (KYDESA 23 June 2021). The Jinsiangu representatives noted that "Nairobi is a metropolitan city that is homophobic and transphobic. It is not a safe city. It does not matter if you are out or not, the way someone looks or acts will affect how they are treated" (Jinsiangu 9 July 2021). The human rights defender stated that cases of discrimination, harassment, and violence against LGBT individuals "occur in every county in Kenya, from city centers to more rural areas" (Human rights defender 30 June 2021). The same source indicated that the treatment of an LGBT individual depends on their personal circumstances (Human rights defender 30 June 2021). Sources stated that it is "easier" for individuals of diverse SOGIE to live openly (Jinsiangu 9 July 2021; PEMA Kenya 12 July 2021), if they "can financially support themselves" (PEMA Kenya 12 July 2021) or have "more economic security," for example someone who does not need to take public transit and has private health insurance (Jinsiangu 9 July 2021). The human rights defender stated that it is "easier" for individuals who are younger to live openly as LGBT "than for older people who are coming out" (Human rights defender 30 June 2021).<sup>339</sup>

In August 2021, galck+ released a statement on the rise of reports of blackmail among the LGBTQ+ community in Kenya, stating that:

This is to bring to your attention that we have been getting a rising number of blackmailing reports from members of the Lenana Cluster. We would like to notify members of LEHA, GKT [Gay Kenya Trust], HOYMAS [Health Options for Young Men on HIV/AIDS/STI], ISHTAR MSM, QUEER HIVE, MPEG [Mambo Leo Peer Empowerment Group], and MWA [Minority Women in Action] to stay vigilant whenever they agree to get in contact with people they are meeting.

The areas that have been marked as hotspots in Kiambu and Nairobi counties include Dandora, Greenspan Mall – Donholm, Kangemi, Kasarani, Kibera, Kileleshwa, Kilimani, Lenana, Mlolongo, Nairobi CBD, Ngara, Ruaka, Taj Mall, Thika town, along Thika Road, and areas around Naivasha. We have also noted that some perpetrators are using social media to lure LGBTQ+ people. Kindly be careful when using online dating apps like Grindr, Tinder and Facebook.<sup>340</sup>

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<sup>339</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

<sup>340</sup> Gay and Lesbian Coalition of Kenya (galck+), [Statement Regarding the Rise in Blackmail Reports](#), 10 August 2021

Jinsiangu published a statement in September 2021 in which they recorded that “Between 2020 and July 2021, as of documented reports, 83 transgender women, 35 transgender men and 27 Intersex and gender non-conforming persons have been subjected to physical and sexual violence”.<sup>341</sup>

In September 2021, galck+ released a statement, stating that “On Friday night 17th September 2021 at around 7 pm an incident took place at club LA located in the CBD area. The next day, a video of the incident was shared online and circulated widely. On it, it showed commotion outside the club where a man was caught on camera throwing an enormous stone at Club LA’s signboard. This caused panic among people, especially the Queer community who have many times frequented the club and have considered it their safe space”.<sup>342</sup>

The following month, Rainbow Railroad and ORAM’s report into the conditions facing LGBTQI+ asylum seekers and refugees in Kakuma refugee camp found the following challenges of stigma, harassment, and violence:

The study established that there are an estimated 350 LGBTQI+ asylum seekers in both Kakuma Refugee Camp and Kalobeyei Integrated Settlement (estimates vary between 280-419 persons). Just over 71 percent of the LGBTQI+ asylum seekers fled their home countries due to SOGIESC persecution. [...]

Experiences of stigma and violence in the camp

The data illustrates societal stigma and discrimination, as well as self-stigma and physical violence among LGBTQI+ persons in the camp. Over 90 per cent of the respondents reported having been verbally insulted, 83 percent reported being denied services in shops or markets, 55 per cent reported being denied an opportunity to participate in religious activities and, out of the 58 respondents, 88 per cent reported being denied police assistance due to their sexual identity. More than 45 per cent of the respondents reported having relocated from their allocated shelters to alternative accommodation due to the constant abuses directed at them by neighbors.

Community and religious leaders interviewed mentioned that most refugees in the camp were from cultural and religious backgrounds that are non-accepting of LGBTQI+ persons. They also pointed out that a majority were afraid that LGBTQI+ persons could influence the life choices of young ones in the community. The community leaders, especially block leaders who are tasked with some security responsibilities, including conflict resolution and filing complaints with the police, reported trying to provide protection services but were overwhelmed by the negative attitudes among most of the refugees towards LGBTQI+ persons. [...]

Physical violence was reported by 83 per cent of the respondents, with 26 per cent reporting sexual assault. The physical assaults were attributed mainly to fellow refugees in the camp (87 per cent). Members of the host community and family members of LGBTQI+ persons were responsible for seven per cent and six per cent of the violence reported respectively. The same trend was noted in the sexual assaults, with other refugees in the camp reported to be responsible for 73 per cent, host community responsible for 20 per cent and relatives responsible for seven per cent. The sexual violence reported included mainly rape perpetrated by fellow refugees with a stated goal of attempting to change the victim’s sexual orientation. One person who self-identified as transgender narrated their experience with neighbors in their allocated area of residence.

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<sup>341</sup> Jinsiangu, [Jinsiangu Statement Regarding the Unfortunate Death of Erica](#), 1 September 2021

<sup>342</sup> Gay and Lesbian Coalition of Kenya (galck+), [Club L.A. Incident Update & Way Forward](#), 23 September 2023

*“Four men who were living in my block stormed into my shelter one evening accompanied by a young lady who looked terrified. They were armed with sticks. They beat me up and ordered me to undress as they undressed the lady. They forced me to have sex with the lady. They then lectured me on the need to get married and have children of my own. They left me traumatized. Two days later they asked the lady to come and stay with me as my wife. That is when I escaped from the block and moved to live with a friend in an area far from my allocated shelter. I did not report the incident since I was afraid the police would equally stigmatize me for who I am.”*

– A 26-year-old transgender individual living in Kakuma Refugee Camp

All the transgender respondents reported having experienced physical assault, with 67 per cent reporting sexual assault (n=6). Among lesbian-identified informants, 77 per cent reported physical assault, while 27 per cent reported having been sexually assaulted (n=22). Bisexual and gay respondents reported 81 per cent and 86 per cent that they have experienced physical violence, and 25 per cent and seven per cent reported that they have experienced sexual assault respectively. [...]

LGBTQI+ asylum seekers’ integration with other asylum seekers

LGBTQI+ asylum seekers were allocated space and shelters in the camp like other asylum seekers finding refuge in Kakuma Refugee Camp. Most of the respondents who reported having fled violent conflicts in their countries of origin were well-integrated and living among individuals of the same nationality in the camp. Most were rarely identified as LGBTQI+ in the community and could participate in any activity within the camp.

However, 29 per cent of the respondents reported living among a community of LGBTQI+ in Kakuma Block 13. All of them reported having experienced physical violence perpetrated by other refugees in the camp. It was reported that Block 13 is an area where LGBTQI+ residents openly display their sexual orientation and gender identity, fly rainbow flags and host many LGBTQI+ meetings and parties. This area was also reported to have experienced various security incidents, including an arson attack on some of the shelters. [...]

Explaining the frequent attacks on LGBTQI+ residents of Block 13, one respondent noted that the fact that most residents of the camp associate Block 13 with the LGBTQI+ community made them an easy target for homophobic attacks. He also alleged that some attacks were perpetrated by relatives of some of the LGBTQI+ asylum seekers who live in the camp and who resented one of their own associating with the LGBTQI+ community.

A small percentage of the respondents residing in other parts of the camp outside of Block 13 (eight per cent of those living outside Block 13) said that the activism in Block 13 was affecting the overall relationship between LGBTQI+ asylum seekers and service providers in the camp. They expressed concern with some activities conducted as part of their activism. For example, they alleged that some activists were conducting staged attacks on individuals and false claims of violence to attract media attention as part of their advocacy. Three key informants also reported having received reports of staged attacks on residents of Block 13. They attributed the activism in Block 13 to a belief by the asylum seekers that being LGBTQI+ is their ticket to a better life in a safer country for LGBTQI+ people. It is important to consider that many more may be affected by the actions of Block 13 but are hesitant to openly share their experiences due to potential consequences to their safety. It is also important to note that allegations of activity from activists in Block 13 have not been confirmed.

Some of the key informants interviewed observed that LGBTQI+ activists from different countries have been supporting the advocacy in Block 13 without considering the local context and potential negative or unintended consequences. They allege that the advocacy has been antagonizing LGBTQI+ members with other refugees in the camp and service providers. For example, some of the LGBTQI+ asylum seekers were

reported to have deserted their allocated shelters, moved to Block 13 and were persistently demanding new shelters.

Forty-one per cent of the respondents residing in Block 13 identified relocation to a safer place as a priority. They proposed moving their shelters to an exclusive area either within or outside the camp. They felt this would ease the provision of services to LGBTQI+ asylum seekers and allow them to engage in various economic or personal development activities without the fear of attacks that they currently experience. [...]

A lesbian who was raped while hawking clothes emotionally narrated her ordeal:

*“The emotions that I experience every time I step out and see the men who raped me walking freely in the camp is just too much to handle. I can no longer run my small business or run errands in the camp for fear of a repeat encounter with them. Why couldn’t the police arrest them, yet I reported to them and even identified the rapists? Why do they treat me like a lesser human being? What will stop those men from raping another woman when they know nothing will happen to them?”* [...]

Lesbians living with their children, biological or adopted, also raised the concern of child protection services. They felt that lesbian and bisexual women with children faced challenges that increased their vulnerability. They reported that the stigma and discrimination projected to them was also extended to their children, who may end up becoming traumatized. One mother showed the healing scars on her 2-year-old daughter who was scalded with hot water by a neighbor to stop her from playing with the neighbor’s children.<sup>343</sup>

Jinsiangu released a statement in November 2021 for Intersex Remembrance Day 2021, stating that “Among the major calls to action, Intersex genital mutilation is a top the list of items being called to abolition as well as premature killing of intersex children”.<sup>344</sup>

NGLHRC’s 2020/2021 Annual Legal Aid Report stated that:

Since July 2020 to June 2021 the Commission has received and handled 619 cases reported by LGBTIQ+ persons across the country. There has been significant increase in the number of cases, this could have been due to the ongoing pandemic. Covid-19 rendered quite a number of our constituents jobless and with no means of survival hence they had to go back home and were stuck with either abusive partners or abusive family members. This therefore resulted in cases of intimate partner violence, evictions, family rejections, economic indignity, discrimination and stigma among other cases discussed in detail herein. [...]

Restrictions of movement created exacerbated risk of abuse during street controls, with reports of selective arrests; hate crimes such as harmful exposure on social media; arbitrary detentions and a general increase in mistreatment in the public sphere. [...]

There have been cases of blackmail and extortion among GSM [gay and other men who have sex with men] community where some GSM collude with the police to extort other queer persons. [...]

Homophobic, transphobic and biphobic attacks against LGBTIQ+ persons in Kakuma Camp has steadily risen. [...] There has been an increased number of cases in homophobic attacks against queer Human Rights Defenders (HRDs) some unfortunately [sic] resulting in murder. [...]

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<sup>343</sup> Rainbow Railroad and ORAM (Organization for Refuge, Asylum and Migration), [The Challenges Facing LGBTQI+ Refugees in Kakuma Refugee Camp, Kenya](#), October 2021, pp. 6, 22-25, 27-28

<sup>344</sup> Jinsiangu, [Intersex Remembrance Day 2021](#), 14 November 2021

Incidents of threats to life/physical assault and verbal assault have been rampant from perpetrators well known and unknown to the clients.<sup>345</sup>

The Guardian article in January 2022 exploring the experiences of ‘catfishing’ by LGBTQ Kenyans noted that:

Otieno’s experience on social media sites or dating apps of being “catfished” – as using a fake identity to lure someone online is known – by people intending to extort money is common among members of the LGBTQ+ community in Kenya. [...]

Njeri Gateru, executive director of NGLHRC, says: “The existence of laws that criminalise homosexuality create a landscape where anyone attracted to someone of the same gender is seen to belong to a lesser place in society, and as a criminal. That creates room for people to take advantage of queer individuals.” According to Gateru, cases of blackmail and extortion are increasing, methods are becoming more sophisticated, and while this type of crime used to be limited to Nairobi, it has now spread to other areas of the country.

Exact figures on its prevalence are hard to come by and Gateru estimates that only about 10% of cases are reported. The NGLHRC legal aid centre has dealt with 679 such cases since its inception in 2013. Other LGBTQ+ organisations in the country say they have anecdotal evidence of thousands of such cases. [...]

Many other members of the LGBTQ+ community have ended up in dire situations after being catfished on social media and dating sites. Lawyers and caseworkers have reported cases where people have been beaten so severely that they required hospital treatment and some almost died. Others have been raped and robbed at gunpoint. Many have been forced to empty their bank accounts and pay bribes amounting to tens of thousands of pounds to their blackmailers. Perpetrators include police officers, but also other officials and members of the public. [...]

Kelly Kigera, of the emergency security response team at the Gay and Lesbian Coalition of Kenya, says blackmailers approach members of the LGBTQ+ community online, sometimes using “cute” fake pictures, to chat and gain their trust before arranging to meet. Sometimes they will take compromising pictures or videos, which they use to threaten to expose their victim’s sexual orientation. [...]

The pandemic has made everything worse, says Gateru: “There has been such a loss of income and livelihoods from within the community and some people have resorted to these means to try to make a living for themselves.”<sup>346</sup>

In Amnesty International’s annual report on the state of the world’s human rights in 2021, published in March 2022, on Kenya it stated: “There were around 1,000 LGBTI refugees in the Kakuma and Dadaab camps who were inadequately protected from homophobic attacks. In late March, unidentified people attacked the LGBTI refugee shelter in Kakuma camp, throwing a petrol bomb at the LGBTI refugees’ houses. Two LGBTI refugees suffered second degree burns on about 50% of their bodies and were evacuated for specialized medical attention in Nairobi. One of them, 22-year-old Chriton Atuhwera died on 12 April”<sup>347</sup>.

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<sup>345</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2020/2021 Annual Legal Aid Report](#), 2021, pp. 2-3, 25-26

<sup>346</sup> The Guardian, [‘I’d been set up’: the LGBTQ Kenyans ‘catfished’ for money via dating apps](#), 4 January 2022

<sup>347</sup> Amnesty International, [Amnesty International Report 2021/22: The state of the world’s human rights](#), 29 March 2022, p. 222

The USDOS Kenya report on human rights practices in 2021, published in April 2022, noted that: “Some LGBTQI+ groups also reported an increase in abuses cases against LGBTQI+ persons during the pandemic. They attributed this rise to increased scrutiny of LGBTQI+ persons’ lifestyles because of COVID-19-related lockdown and curfew orders. In May human rights defender and HAPA Kenya paralegal Joash Mosoti was allegedly tortured and killed at his home in Mombasa”.<sup>348</sup>

The report further documented that “some LGBTQI+ refugees continued to face stigma and discrimination” and “An arson attack by unknown perpetrators in March led to the death of one LGBTQI+ refugee in April”.<sup>349</sup>

Freedom House stated in its Freedom in the World report for Kenya, covering events in 2022 that “LGBT+ people face discrimination, abuse, and violent attacks”.<sup>350</sup>

The 2021 USDOS trafficking in persons report for Kenya (covering the period April 1, 2020 ending March 31, 2021) indicated that “refugees are generally required to live within the camps with restricted movement and limited access to education and livelihood opportunities, increasing their vulnerability to labor and sex trafficking [...] LGBTQI+ persons in refugee camps are especially vulnerable”.<sup>351</sup> This was also noted in the reports for the following year.<sup>352</sup>

## 2022

The March 2022 submission of Redress and the NGLHRC to the UN Committee Against Torture ahead of Kenya’s third periodic report stated that:

Acts of violence perpetrated by State and non-State actors against LGBTIQ+ persons in Kenya include [...] sexual assault, physical assault, [...] conversion therapy practices, extortion, and other forms of ill-treatment. [...]

5. In Kenya, there is an overall environment of hostility towards LGBTIQ+ individuals, who commonly suffer harassment and discrimination because of their sexual orientation, gender identity, gender expression and sex characteristics. Such discrimination affects LGBTIQ+ persons in many areas of life, preventing them from exercising fundamental rights, such as healthcare, employment, and education. It also fuels violence against them, including torture and other ill-treatment, and impacts their access to justice and to reparation. [...]

10. [...] NGLHRC since the inception of its legal clinic in 2014 has received and responded to approximately 2,707+ cases of violence against LGBTIQ+ Kenyans, and refugees and asylum seekers in Kenya, based on their real or perceived sexual orientation or gender identity. These cases include sexual assault, physical assault, verbal abuse and threats to violence, murder, conversion therapy practices, among others.<sup>9</sup> [...]

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<sup>348</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

<sup>349</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

<sup>350</sup> Freedom House, [Freedom in the World 2023: Kenya](#), 10 March 2023

<sup>351</sup> US Department of State (USDOS), [2022 Trafficking in Persons Report: Kenya](#), 1 July 2021

<sup>352</sup> US Department of State (USDOS), [2022 Trafficking in Persons Report: Kenya](#), 19 July 2022

11. *Conversion therapy practices*. In 2020, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity noted the practice of conversion therapy in Kenya, and the existence of camps or “*rehabilitation facilities*” where individuals are subjected to “*beatings, shackling and food deprivation*” (amongst other things).<sup>11</sup> Also noted was the practice of so-called “*corrective*” rapes and other forms of sexual abuse against gay men and trans men in the country.<sup>12</sup> [...]

13. In other cases, where lawyers were not involved, victims of this type of extortion have suffered severe beatings by both police officers and members of the public, sometimes requiring hospital treatment.<sup>14</sup> [...]

15. *Violence in detention facilities*. NGLHRC has also received reports of violence against gay and bisexual men and men who have sex with men perpetrated by other prisoners.<sup>21</sup> [...]

[...] reports from 2020 and 2021 note that high rates of verbal abuse and physical assaults against LGBTIQ+ refugees remain a significant concern.<sup>25</sup><sup>353</sup>

9 See generally National Gay & Lesbian Human Rights Commission (NGLHRC), ‘2020/2021 Annual Legal Aid Report’, 2021; ‘July 2019/July 2020 Legal Aid Report’, 2020, and ‘2018/2019 Legal Aid Brief’, 2019. [...]

11 UN Human Rights Council (UNHRC), ‘Practices of so-called “conversion therapy”, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity’ (Practices of conversion therapy report), 1 May 2020, UN Doc A/HRC/44/53, paras. 30 and 52. See also: openDemocracy, ‘I was afraid I was going to die’: Kenyan survivor of conversion therapy’ (12 July 2021); ‘Aid donors to investigate anti-gay ‘therapy’ revealed by openDemocracy’ (30 June 2021); LVCT, ‘LVCT health response to the open democracy article’ (1 July 2021); NGLHRC, ‘2020/2021 Annual Legal Aid Report’, pp. 3, 11 (para. 3.3), and 16 (para. 4.2.7) and ‘July 2019/July 2020 Legal Aid Report’, p. 19 (para. 10).

12 Ibid UNHRC, ‘Practices of conversion therapy’, para. 39; See also NGLHRC, ‘2020/2021 Annual Legal Aid Report’, pp. 1, 17 (para. 4.4.6) and ‘July 2019/July 2020 Legal Aid Report’, p. 15 (para. 4.0). [...]

14 Ibid [13 Sarah Johnson, ‘I’d been set up’: the LGBTQ Kenyans ‘catfished’ for money via dating apps, The Guardian, 4 January 2022.] [...]

21 See Case No. SO E 093/2021, pending at Mombasa Law Courts. [...]

25 Rainbow Road and ORAM, ‘The Challenges facing LGBTIQ+ Refugees In Kakuma Refugee Camp, Kenya’; Human Rights Centre, University of Minnesota, ‘Submission for the List of Issues: Kenya, 128th Session of the UN Human Rights Committee’, January 2020.

An April 2022 statement by the AHRC noted that “At African Human Rights Coalition we receive extensive reporting from various African countries, including Kenya, of so called ‘corrective’ rape. This occurs where the rapist believes he can ‘cure’ a lesbian of her sexual orientation or to make them ‘act more like their gender’”.<sup>354</sup>

At the end of April 2022, openDemocracy reported on the murder of Sheila Adhiambo Lumumba, a non-binary Kenyan lesbian, earlier that month, noting that:

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<sup>353</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya’s Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 1-4

<sup>354</sup> African Human Rights Coalition (AHRC), [AHRC Calls for Justice for Sheila and Decolonization of Sexuality](#), 28 April 2022

Sheila, a lesbian non-binary person, lived in Nyeri county, central Kenya. In the days since their killing earlier this month, the hashtag [#JusticeForSheila](#) has been gaining momentum on Kenyan Twitter.

They worked as a supervisor at a hotel in Nyeri and have been described as “jovial, very friendly” and “hardworking” by family and friends.

When they did not show up for work on the morning of 15 April, workmates called their phone, but it was off. It remains unclear when exactly Sheila was murdered, and police are yet to disclose if there are any suspects.

A close family member told openDemocracy that a post-mortem report released last week showed they had been raped, stabbed several times in the chest, face, neck and eyes, and hit on the head with a blunt object. One of their legs had been broken. [...]

The National Gay and Lesbian Human Rights Commission, an LGBTIQ organisation in Kenya that is providing legal assistance to Lumumba’s family, said the case was “not an isolated incident”, but rather part of a “pattern of attacks and violence” against queer people in the country.

Afrika [a coordinator at Kisumu Feminists’ Society in Sheila’s home town] added: “A lot of hate crimes against lesbians in Kenya, especially masculine lesbians, come from a place of: ‘Oh, you want to act like a man? Let me show you how.’”

The [#JusticeForSheila](#) campaign is reminiscent of 2021 social media campaigns like [#JusticeForErica](#), for Erica Chandra, a trans woman who was found murdered in Nairobi, and [#JusticeForJoash](#), for Joash Mosoti, a gay man and LGBTIQ activist who was tortured and strangled to death in his home in Mombasa.

Activists have called out Lumumba’s murder as a hate crime, with attacks like so-called ‘corrective rape’ directed at lesbian women and gender non-conforming people.

Afrika says that when she heard about the brutal way in which Sheila Lumumba had been killed, she “immediately thought: ‘This is a hate crime, a homophobic attack.’” A lesbian, Afrika was reminded of her partner who, like Lumumba, is masculine presenting and has been repeatedly targeted in homophobic attacks. “There are places my partner and I can’t go to,” she said, “places we can’t live in. It’s really hectic having to watch your back every single time.”<sup>355</sup>

A joint April 2022 statement from NGLHRC, Initiative for Equality and Non-Discrimination (INEND), Voices of Women in Western Kenya (VOWWEK), Amnesty International Kenya, and Change.org, Kenya on the murder of Sheila Lumumba noted that:

On 17th April 2022, Sheila Lumumba, a 25-year-old queer, non-binary person, was found dead in their apartment in Karatina, Nyeri County. The autopsy conducted by the Government Pathologist report released on 20th April 2022 shows, among other things, signs of rape, broken limbs and multiple stab wounds in the neck and chest area. [...] In the same breath, we decry a visible pattern as indicated in various research studies and anecdotal information by the LGBTIQ community of targeted violence against sexual and gender minorities and the lack of prosecution and impunity for perpetrators of homophobic/transphobic violence. We urge the Directorate of Criminal Investigations to move with speed to arrest and the identified suspects prosecuted. [...]

Reports in recent years have shown that there has been an alarming increase in incidences of violence against female-bodied people, and Sheila’s murder is a grim reminder of that statistic. Imani Kimiri, the Head of Legal Affairs at NGLHRC, said, “Sheila’s murder has illuminated the consequences of normalising

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<sup>355</sup> OpenDemocracy, [Police leave family of murdered non-binary lesbian to find murder weapon](#), 25 April 2022

violence against LGBTIQ+ people and highlights that this kind of narrative has been acquiesced by the political class as evidenced through statements that Magoha made."<sup>356</sup>

According to Article 19, "In late April, Sheila Adhiambo Lumumba (known as Lumumba Sheila) was gang raped by six men and later brutally killed in Karatina Town in the Nairobi area. One of the reasons they were killed was because they identified as a non-binary lesbian".<sup>357</sup>

At the beginning of May 2022, The Daily Nation Africa reported that "Police in Cherang'any constituency, Trans Nzoia County, are investigating the rape and killing of a 50-year-old intersex [woman] whose body was found dumped on the side of a road in Kachibora township".<sup>358</sup>

A joint May 2022 statement from NGLHRC, INEND, Bold Network Africa, Amnesty International Kenya, and Change.org, Kenya on the International Day Against Homophobia, Biphobia, Transphobia And Intersexphobia noted on the following murders of persons of the LGBTIQ+ community:

Some of the recent reported cases include: Joash Mosoti, a young gay male peer educator, who was attacked and killed in his house in Mombasa County; In addition, Erica Chandra, a transwoman, was killed, and her body dumped on the streets of Westlands. Chriton "Trinidad" Atuhwera a gay refugee and human rights activist died from burn injuries sustained in an arson attack at the Kakuma refugee camp in 2021. Rose Mbesa, a 50-year-old intersex person, was raped and killed, her lifeless body was dumped on the roadside in Kachibora, Trans Nzoia County earlier this month.<sup>359</sup>

The May 2022 UN Committee Against Torture's Concluding observations on the third periodic report of Kenya expressed its concern over "Reports of lesbian, gay, bisexual, transgender and intersex individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access to justice and remedies".<sup>360</sup> The Committee also was concerned about "Cases of non-urgent, irreversible surgical procedures, undertaken without full, free and informed consent, infanticide and abandonment among intersex children (arts. 2 and 16)".<sup>361</sup>

galck+'s July 2022 report exploring conversion "therapy" practices found the following:

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<sup>356</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), Initiative for Equality and Non-Discrimination (INEND), Voices of Women in Western Kenya (VOWWEK), Amnesty International Kenya, and Change.org, Kenya, [Joint Statement on the Brutal Murder of Sheila Lumumba](#), 26 April 2022

<sup>357</sup> Article 19, [Kenya: LGBTIQ+ rights must be championed by civil society](#), 17 May 2022

<sup>358</sup> The Nation, [50-year-old intersex woman raped and killed in Trans Nzoia](#), 5 May 2022

<sup>359</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), Initiative for Equality and Non-Discrimination (INEND), Bold Network Africa, Amnesty International Kenya, and Change.org, Kenya, [Protect the Lives and Rights of LGBTIQ+ Persons in Kenya Nairobi](#), 17 May 2022, p. 2

<sup>360</sup> UN Committee Against Torture, [Concluding observations on the third periodic report of Kenya](#), 30 May 2022, paragraph 43

<sup>361</sup> UN Committee Against Torture, [Concluding observations on the third periodic report of Kenya](#), 30 May 2022, paragraph 43

Almost 73 per cent of the respondents or 393 people out of 541 stated that they were aware of the availability of so-called conversion “therapy” practices that existed in Kenya. [...]

A little over half the respondents - 297 out of 525 - reported that they knew a physical location where a conversion “therapy” practitioner offered “therapy” services in Kenya [...]. [...]

Respondents noted being aware of the availability of such “therapy” in Nairobi, Mombasa, Kilifi, Kiambu, Turkana, Kisumu, Nakuru and Machakos among other parts of the country.

The data also demonstrated, as shown below, that conversion “therapy” practitioners advertise their practices mostly through word of mouth (referrals) and sermons and other talks in faith-based organisations. However, they also advertised their services on the internet or social media, referrals from health care practitioners, community bulletins, conference presentations and published books and brochures. [...]

While no one under the age of 18 was interviewed for this report, 504 respondents indicated that children as young as 12 and 13 years of age have experienced insidious and/or abusive “conversion” efforts and those young people between 15 and 30 years are especially vulnerable, as they are still in school or university, and thus remain financially dependent on family. [...]

When asked about why respondents ended up in so-called conversion “therapy,” nearly half of the 516 respondents said they were forced into it, and 112 were “advised” to do so. [...]

Some respondents reported that they had been told by others that the “therapy” would be “healing” and that they had no option but to change who they are or how they express their identity. Key members of their communities such as family members and religious leaders often warned of dire consequences and made explicit threats, such as damnation, being disowned, physical violence, and being expelled if conversion “therapy” was not undertaken. [...]

In many instances, respondents described how coercion increased in intensity from the moment of discovery starting with family conversations, then escalating to counselling and prayer, and then to violence or economic duress. If such efforts did not succeed, the individual was often ostracized from family and friends. [...]

The respondents noted pressure for quick social conformity for individuals who were outed or unknowingly discovered by their family members. [...]

#### Methods of Conversion “Therapy”

##### Unethical Physical and Mental Health Services

Medical interventions of various kinds, for example, meeting with counsellors, psychologists, and doctors was frequently cited by respondents who also noted having experienced egregious and unethical practices by health care providers such as forced anal exams facilitated by medical practitioners. In some instances, this was taken as an initial step to conversion “therapy” practices, medication, and counselling/therapy. [...]

##### Praying Away the “Gay”

One common method of conversion “therapy” includes prayers ranging from a few hours to six months because of supposed demonic or Satanic possession. [...]

##### Forced Sex/Marriage and Physical Violence

In some instances, respondents reported that family members sought to coerce heterosexual sexual conduct or marriage as a “cure.” Some respondents noted that “therapy” often involved beatings to enforce conformity and torture which may amount to cruel, inhuman and/or degrading treatment. [...]

##### Forced Detention in Homes, Churches or Camps

Respondents highlighted that one method of “therapy” is to control the freedom of movement of the individual. By detaining people on private property, practitioners believe they can force compliance with heterosexual norms.<sup>362</sup>

Reuters posted an article in August 2022 exploring discrimination and harassment faced by lesbian Kenyan football players. It noted that:

All Imani wanted to do was to play football. But Kenyan fans, gossiping about her sexuality, had other ideas.

"That one is always with girls," Imani overheard one man saying as she was in the middle of a match in the coastal city of Mombasa.

"Jersey number four, she is a renowned lesbian."

There and then, Imani knew her game was over. She faked an injury and went straight home, worried for her safety in a country where discrimination against LGBTQ+ people is rife and can lead to abuse including taunts, attacks and rape. [...]

"The spectator went on to announce ... that he knew my friends and even where I lived." [...]

While women's football is gaining popularity in Kenya, stigma against LGBTQ+ people forces players to stay in the closet.

Secrecy is the safest choice for Kenyan female footballers who harbour ambitions of playing professionally, internationally, or in the national Harambee Starlets team.

"Lesbian players are discriminated against. So, it would be best to hide who you really are," said Farida, 33, a retired professional footballer who kept her sexuality hidden for all of her career. [...]

Coaches do not speak up for lesbian and bi players who are being bullied over speculation that they are gay - and some even sexually harass them, said Imani.

"No coach has ever stood up in defence of any lesbian players. Some even refuse to include us in their teams unless we give into their demands," said Imani, who is semi-professional.

"They want to protect their reputation, their jobs, and are afraid of taunts from the fans." [...]

Despite LGBTQ+ women's secrecy, rumours and discrimination against players who don't match up to stereotypical feminine norms mean they have struggled to get support..<sup>363</sup>

Freedom House reported in its 2022 Freedom on the Net report, published in October 2022, that:

"Kenyan users have also engaged in other hashtag campaigns, such as the #ProtectQueerKenyans and #JusticeForSheila campaigns which started after a member of the LGBT+ community was murdered in their home in April 2022.<sup>107</sup><sup>364</sup>

[...] 107 Erin Kilbride, "Inadequate Kenyan police response to brutal killing of non binary lesbian," Human Rights Watch, April 29, 2022, <https://www.hrw.org/news/2022/04/29/inadequate-kenyan-police-response-b...>

NGLHRC's 2022 annual report also documented that:

<sup>362</sup> Gay and Lesbian Coalition of Kenya (galck+), [Shame Is Not a Cure: So-Called Conversion "Therapy" Practices in Kenya](#), 14 July 2022, pp. 19-20 and 22-26

<sup>363</sup> Reuters, [FEATURE-Kenya's lesbian footballers fight for the right to play](#), 15 August 2022

<sup>364</sup> Freedom House, [Freedom on the Net 2022: Kenya](#), October 2022

Sheila Adhiambo Lumumba (they/them), a bright soul at 24 years old, was brutally murdered in April 2022 in Karatina, Nyeri County. The postmortem results paint a harrowing picture of their ordeal – they were subjected to horrifying acts of violence, suffering from stab wounds to the face and stomach, and sexual assault both vaginally and anally. Their bodies bore the scars of this cruelty, including a broken leg. Rose Mbesa, a resilient 50-year-old intersex individual, also met a tragic fate. She was ruthlessly raped and murdered, her lifeless body discarded by the roadside in Kachibora, Trans-Nzoia County.<sup>365</sup>

The 2022 USDOS Kenya report on human rights practices, observed that:

Nonstate actor violence and discrimination against LGBTQI+ individuals were widespread. In April, Sheila Adhiambo Lumumba, a nonbinary member of the LGBTQI+ community, was found dead at home after being raped, stabbed, and beaten. LGBTQI+ activists alleged the attack was due in part because Lumumba identified as a nonbinary lesbian and rejected the perpetrator’s sexual advances. Following an investigation, police arrested and charged a suspect in Lumumba’s killing but there was no date for the trial at year’s end. In May, media reported on the rape and killing of an intersex person in Trans-Nzoia County. Police had not charged anyone with these crimes at year’s end.<sup>366</sup>

The report further discussed the situation for LGBTQI+ refugees in Kenya:

Although the country granted refugee status to persons who are persecuted due to sexual orientation or gender expression, some LGBTQI+ refugees continued to face stigma and discrimination, as well as delays in processing their asylum applications. They were often compelled to hide their sexual orientation or gender identity to protect themselves, especially among Somali refugee communities in Dadaab. [...] There were approximately 1,000 LGBTQI+ refugees in the country, including approximately 300 in Kakuma, where there were some reports of community violence and intimidation against LGBTQI+ refugees during the year.<sup>367</sup>

The same report also explored documented involuntary or coercive medical or psychological practices specifically targeting LGBTQI+ individuals in Kenya:

LGBTQI+ rights organizations reported an increase in so-called conversion therapy and “corrective rape” practices, including forced marriages, exorcisms, physical violence, psychological violence, or detainment. It attributed this increase to the fact many LGBTQI+ persons had returned to hostile home and community environments after losing their jobs because of the economic downturn caused by the COVID-19 pandemic. According to the KNCHR, infants and children born with physical sex characteristics that did not align with either a typical male or female body were subjected to harmful medical practices for years in attempt to “normalize” them. After years of advocacy by the intersex community, during the year the country amended the Children’s Rights Act protecting children from unnecessary harmful genital surgeries.<sup>368</sup>

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<sup>365</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2022 Annual Report](#), 2023, p. 17

<sup>366</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>367</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>368</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

The 2023 USDOS trafficking in persons report for Kenya (covering April 1, 2022–March 31, 2023) indicated that “refugees are generally required to live within the camps with restricted movement and limited access to education and livelihood opportunities, increasing their vulnerability to labor and sex trafficking [...] LGBTQI+ persons in refugee camps are especially vulnerable”.<sup>369</sup> This was also noted in the reports for the previous year.<sup>370</sup>

ILGA World documented the following incident:

In November 2022, law enforcement officials in Migori County arrested an individual who appears to be a trans woman, although they were reported in the media as a “crossdresser” and a “female impersonator”. The incident occurred when the individual in question was passing by the Awendo police station and was stopped by a female officer. According to a police statement, the officer found their appearance to be “suspiciously masculine”. After some questioning from the officer, the victim was asked to undress and present their National Identification Card. After it was found that their ID had a male gender-marker and name, the victim was arrested. Local residents congregated at the police station, suspecting without evidence that the arrested individual might have been linked to recent serial killings in the area. The crowd demanded that the authorities hand the suspect over to them to be lynched, with their calls soon escalating to the point where riot officers were forced to disperse them.<sup>371</sup>

### 2023

BBC News reported in January 2023 on the murder of Edwin Chiloba, a Kenyan LGBTQ activist, stating that “Police in Kenya are investigating the death of young fashion designer and LGBTQ activist Edwin Chiloba after his body was found dumped in a metal box by the roadside near the town of Eldoret. A suspect believed to be a friend of the victim has been arrested but police have not spoken about a motive. Rights organisations in Kenya, where gay sex is outlawed, have linked the killing to his sexuality”.<sup>372</sup>

The following day, The Guardian published an article on the same content, quoting the Kenya Human Rights Commission: “It is truly worrisome that we continue to witness escalation in violence targeting LGBTQ+ Kenyans,’ it said in a statement. ‘Every day, the human rights of LGBTQ+ persons are being violated with little consequence for perpetrators.’ Members of the LGBTQ community often face harassment and physical attacks in the predominantly conservative Christian nation”.<sup>373</sup>

AHRC also reported on the murder of the activist, discussing wider violence and instances of blackmail and kidnapping of LGBTQI+ people in Kenya:

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<sup>369</sup> US Department of State (USDOS), [2023 Trafficking in Persons Report: Kenya](#), 15 June 2023

<sup>370</sup> US Department of State (USDOS), [2022 Trafficking in Persons Report: Kenya](#), 19 July 2022

<sup>371</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 83

<sup>372</sup> BBC News, [Edwin Chiloba: LGBTQ activist found dead in Kenya](#), 6 January 2023

<sup>373</sup> The Guardian, [Kenyan police arrest suspect over killing of LGBTQ+ activist](#), 7 January 2023

Conditions for LGBTQI+ people and human rights defenders are particularly dangerous in Kenya. At African Human Rights Coalition we receive consistent reports of attacks and kidnappings where people who are gay meet other gay people online and through hook up or dating apps. They build trust and relationships which lead to assault, torture and kidnappings. [...]

People are kidnapped, tortured, beaten, and held hostage in exchange for blackmailed money and are often released, only to have the blackmail persist, until such time as they are able to flee. The kidnapped party draws money out of bank accounts or transfers money to mobile accounts in exchange for their release. This is done under threat of beatings, killings and also under threat of outing or exposure to press and families.

The kidnapers know that gay people, who are victims are often seen by police to be perpetrators, merely by virtue of their sexuality. This perception is due to the criminalizing laws of the country. [...] These gangs get away with these kidnappings and other crimes, as cases are not generally reported to police, for fear of reprisal.<sup>374</sup>

Reuters noted on the violence faced by the LGBTQI+ community and exacerbated following the murder of Edwin Chiloba:

For the first time in years, Arya Rams falls asleep and wakes up each day without a dense knot of fear in her chest.

She lives in a room in a safe house deep in Kenya's Rift Valley, supported by the Dutch non-governmental organisation Trans Rescue.

Being transgender in Kenya can be dangerous. In 2021, her friend was stoned to death by a mob on a beach near the city of Malindi, she said. A few months later, Arya said she was chased by people wielding machetes.

Arya, 27, said the protections of the safe house have been all the more important over the past week as a backlash against lesbian, gay and transgender Kenyans has flared following the death of LGBTQ rights activist Edwin Chiloba.<sup>375</sup>

The Financial Times also reported on the murder of Edwin Chiloba, stating that:

“It is truly worrisome that we continue to witness escalation in violence targeting LGBT+ Kenyans,” the Kenya Human Rights Commission said in a statement. Kenyan police said that five suspects had been arrested in connection with the death, including one with whom Chiloba is believed to have had a personal relationship, officers said. [...]

In the past two years, the National Gay and Lesbian Human Rights Commission has recorded seven murders of LGBT+ people, three of them activists, in addition to Chiloba.<sup>376</sup>

In March 2023, AHRC warned LGBTQI refugees in Nairobi to avoid meeting in public places like hotels in groups due to the dangers of “Raids, arrests and detentions; Attempts by Opportunists to collect data for misuse or inappropriate fundraising; Breaches of private information; Traps by criminals”, reportedly

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<sup>374</sup> African Human Rights Coalition (AHRC), [Kenyan LGBTQI Activist brutally murdered and body dumped in metal box](#), 6 January 2023

<sup>375</sup> Reuters, [Transgender Kenyans seek refuge amid backlash over activist's death](#), 13 January 2023

<sup>376</sup> The Financial Times, [Kenyan killing exposes prejudices faced by LGBT+ Africans](#), 19 January 2023

exacerbated by recent events such as the court case granting two LGBTQI organisations the right to register and support for the new Ugandan anti-homosexuality act.<sup>377</sup>

Reuters also reported in March 2023 on the homophobic backlash to the court ruling on LGBTQI+ NGOs:

Kenyan rights campaigners said some religious and political leaders are whipping up a homophobic backlash to the court ruling, which has led to calls for tougher laws against gay sex and a surge of abuse against sexual minorities.

"I've stopped going out, especially at night. It's better not to attract attention these days," Martin, a 33-year-old gay Kenyan web developer, told the Thomson Reuters Foundation by phone from his flat in the outskirts of Nairobi. [...]

Abuse has increased since Kenya's top court ruled that the government must allow the National Gay and Lesbian Human Rights Commission to register as a non-governmental organisation, said Irungu Houghton, head of Amnesty International Kenya. [...]

[...] "Public abuse against the community and doxing of individuals has increased dramatically."

Houghton said details of charities who support sexual minorities living with HIV/AIDS were shared on private anti-gay social media groups, and preachers were turning up outside these charities' offices to perform exorcisms.

As a result, some charities along Kenya's coastline areas of Kilifi, Mombasa and Malindi have been forced to close, he added. [...]

"We feel hunted," said Real Raymond, head of LGBTQ+ rights charity Mbarara Rise Foundation.

"The bill is whipping up so much hate and violence against LGBTQ people. It's basically telling everyone that it's open season on gays." [...]

Raymond said the Mbarara Rise Foundation had received 65 anti-LGBTQ+ hate crime reports so far in 2023, compared to an average of 10 cases monthly the previous year, as the bill stokes homophobic rhetoric and debate. [...]

"People have been attacked by mobs as they are walking home from work or at the market, they are being evicted from their homes, added Raymond."<sup>378</sup>

Reuters reported again in April 2023 on the backlash accompanying the Kenyan supreme court ruling in favour of the NGLHRC:

For Kenya's lesbians and gays, a supreme court ruling allowing the rights body that represents their interests to register as a non-governmental organisation has turned out to be a mixed blessing. [...]

Meanwhile, NGLHRC activists have reported a surge in threats against the community. Calls it has received reporting abuse, including assaults, threats and discrimination, rose from 78 in January to 117 in February and 367 in March, the commission said.

Victims include a 31-year-old lesbian who was on the back of a motorbike taxi on the capital Nairobi's outskirts last week when she was stopped by about 10 motorcycle riders.

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<sup>377</sup> African Human Rights Coalition (AHRC), [AHRC Warns LGBTQI Refugees in Nairobi to Avoid Meeting in Public Places Like Hotels in Groups](#), March 2023

<sup>378</sup> Reuters, [FEATURE-LGBTQ+ Kenyans and Ugandans hide from wave of homophobic abuse](#), 14 March 2023

They surrounded her, pushed her, and shouted they knew she was "one of them" - meaning gay - before a couple walking past intervened and the crowd dispersed, the woman, who asked not to be named, told Reuters.

"Things have gotten worse after the ruling and Uganda's recent introduction of the [Anti-Homosexuality Bill](#)," she said, referring to a draft law passed by neighbouring Uganda's parliament last month that would introduce the death penalty for some same-sex acts. [...]

For Kevin Mwachiro, an LGBTQ activist for 15 years, this is the most challenging time that the community inside Kenya has experienced.

"People... feel like they have the right to attack you. And they feel that they have that right because of what has been said in the press, what the government has said," he said.<sup>379</sup>

Al Jazeera similarly commented on the effects of the February 2023 ruling, stating that:

Rather than make life easier for the LGBTQ+ community, the ruling instead galvanised many Kenyans against them and exposed them to danger, they said. [...]

Since the Supreme Court ruling, incidents of malicious online and offline behaviour and public demonstrations against sexual minorities have increased, according to Houghton Irungu, Amnesty International's executive director in Kenya.

"It is worrying when we see personal details of persons perceived to be identifying as LGBTQ+ are being shared publicly without their consent," he said.

Consequently, many who openly identify as gay are afraid to leave their houses, NGLHRC co-founder and former executive director Eric Gitari, told Al Jazeera. [...]

"Right now, many are too scared to even go to the shop across the road because they do not know what will befall them," he said.

Days after Gachagua's remarks, 26-year-old Jeen Kyaviluga (not their real name) and a small group of Kenyan friends were attacked at about 10pm as they left a club in Rongai, on the outskirts of Nairobi.

"They attacked me claiming that I was dressed like a lady yet I'm a man," Kyaviluga, a second-year computer engineering student in Nairobi, said. "They smashed my phone and told me to relocate from the town." [...]

"There are increasing requests for evacuation, relocation and psychotherapy with organisations responding to no less than 117 recent homophobic attacks in the last month are seeing their case-load multiplying," Irungu said.<sup>380</sup>

The May 2023 joint report by the NGLHRC and Amnesty International documented hate crimes, discrimination, and other human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya between 2018 and February 2023. With regards to harassment and violence at the hands of non-state actors, the report found the following:

In particular, the evidence gathered in this report reveals an extremely dangerous situation for LGBTI asylum seekers and refugees in the Kakuma refugee camp complex, with hate crimes occurring at alarming rates, generalised impunity for perpetrators and inaction on the part of the authorities, against a background of widespread marginalisation and discrimination. [...]

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<sup>379</sup> Reuters, [For LGBTQ Kenyans, court win prompts backlash as threats escalate](#), 20 April 2023

<sup>380</sup> Al Jazeera, [Displaced twice: Gay Ugandans on the run face upheaval in Kenya](#), 29 March 2023

## THE SITUATION OF THE LGBTI COMMUNITY IN KENYA

Abuse of the rights of LGBTI people is widespread and well documented, including physical violence, death threats, harassment by state officials, stigma, expulsion from educational institutions, blackmail, extortion, poor access to health care and medical research abuse.<sup>37</sup>

In 2021 Erica Chandra, a transgender woman, was found murdered in the Westlands district of Nairobi and Joash Mosoti, a gay man was found tortured and strangled to death in Mombasa. In April 2022, the murder of Sheila Adhiambo Lumumba, a non-binary lesbian, triggered the trauma of these cases. [...] A month later Rose Mbesa, an intersex person, was raped and killed.<sup>38</sup> No one has yet been arrested so far and the authorities have not released information on the progress of investigations. In January 2023, the killing of LGBTI activist Edwin Chiloba made international news.<sup>39</sup> [...]

### 3. VIOLENCE AGAINST LGBTI REFUGEES [...]

Of the 38 LGBTI people interviewed who were living in Kakuma camp at the time of the interview or had been living there at the time of the incidents they reported, 31 reported having suffered violent attacks, threats or intimidation, reporting at least 56 episodes targeting LGBTI people, individually or as a group. [...]

Violence against the LGBTI community in Kakuma camp is due in part to hostility and prejudice in the wider refugee population, as most refugees in the camp are from cultural and religious backgrounds that are non-accepting of LGBTI persons [...]. At the same time, the discrimination and abuses against LGBTI individuals are exacerbated by the state's lack of effort to apprehend perpetrators or tackle deeply entrenched homophobia and transphobia. [...]

More than 40 LGBTI refugees reported being targeted in two homophobic attacks in Kakuma camp in December 2019 and January 2020.<sup>76</sup> In April 2020 media reported that a lesbian refugee had been beaten and raped by a gang of eight men who demanded to know "why" she was a lesbian.<sup>77</sup> A June 2020 video showed a crowd of people attacking LGBTI refugees with stones and sticks.<sup>78</sup>

In September 2020, UNHCR reported that violent confrontations broke out in Kakuma refugee camp between some LGBTI refugees and members of the local community, leaving a female refugee and a young local man with injuries. UNHCR indicated that police responded and reinforced the security in the relevant area.<sup>79</sup> NGOs expressed concerns about several attacks targeting LGBTI individuals in Kakuma camp between 25 January and 17 February 2021.<sup>80</sup>

On 15 March 2021, unknown people attacked a block where LGBTI refugees are known to live, throwing a petrol bomb at their shelters.<sup>81</sup> Two refugees suffered serious burns and were evacuated to Nairobi for specialist medical care. One of them, Chrifton Atuhwera, died on 12 April 2021.<sup>82</sup> Amnesty International called on law enforcement agencies to accelerate their investigations into the incident, and for an independent review of the current and proposed UNHCR and RAS protection and safety measures accorded to all refugees, especially minority groups at higher risk of human rights violations and abuses.<sup>83</sup> In September 2021, the European Parliament adopted a resolution on the situation in Kakuma refugee camp, where it condemned the arson attack, expressed its concern "about the standing threats in Kakuma refugee camp against individuals with an LGBTIQ+ profile" and urged the Kenyan authorities "to continue investigating and to bring full clarity regarding this crime and to hold those responsible to account in accordance with Kenyan law and with respect to international human rights law."<sup>84</sup>

#### 3.1 VIOLENT ATTACKS, THREATS AND INTIMIDATION

Thirty-one of the refugees and asylum seekers interviewed reported having suffered assaults, threats and intimidation in Kakuma camp, most of them more than once, because of their sexual orientation, gender identity and/or expression and sex characteristics.<sup>85</sup> In all cases, the attackers referred to their targets' gender identity or sexual orientation either directly, often using derogatory terms for "gay" or "lesbian", or indirectly, for example asking them to kiss a person of the same sex or accusing them of being a

“curse,” that is bringing harm to the camp. Some attacks have targeted specific blocks in the camp, where members of the LGBTI community are known to live together.<sup>86</sup> [...]

Sharon, a transgender woman, expressed her lack of confidence in the police when describing some of the several episodes of violence and intimidation she suffered at various points during 2019-2020:

*“One morning I was going from Kakuma camp to town with another transgender refugee who I met in the camp. Four people approached us and told us to kiss each other in front of them, threatening to beat us.*

*Another day three people found me walking around the camp and started throwing jabs on my face and kicking me, saying that I am a curse to the rain in Kakuma. They beat me on the eye, and it got swollen. My nose was also swollen.*

*Another day my boyfriend came to visit me but my neighbours in the block were not happy to see him there. They threatened to kill me. They said we teach their children bad manners. I had to leave my house.*

*I have been reporting all these incidents to the police station all the times, and there is no need to go to the police station again. Nothing will happen to [the perpetrators].”<sup>89</sup>*

Diana, a lesbian woman, arrived in Kakuma camp in December 2019. [...]

Diana told researchers about seven different episodes between December 2019 and April 2020 during which she suffered violence, threats, or intimidation at the hands of other camp residents. She reported all these incidents to the police and obtained OB reference numbers. In two occasions the police told her to go back to the station, should she see her attackers anywhere again. In May 2020 Diana met two of the men who had attacked her previously, who pushed her on the ground. [...] She said that the feeling of unsafety is her greatest concern.<sup>91</sup>

In January 2020 a group of men living in the camp accosted Ian, a gay man, and asked to know why he was there while “all the gays had been taken away” (referring to the transfer of a large group of LGBTI refugees to Nairobi in 2019). They grabbed him, hit him, threw him to the ground and stepped on his left arm. He did not report this because he was afraid that the police would lock him up because he is gay.<sup>92</sup>

In February 2020, five men attacked Judy, a transgender woman, who was going to one of the markets in the camp. One of the men stabbed her left shoulder, leaving her with visible scars. [...]

Emmanuel, a gay man, described an attack he suffered in April 2020, when his leg was dislocated by a fellow camp resident who pushed him into a ditch after asking him why he was a homosexual. [...]

In April 2020, a few days after newly arrived LGBTI refugees were allocated shelters in Kakuma camp, an attempted arson attack targeted their block.<sup>95</sup> Nelson, a gay man, was woken up by his neighbour, who had seen two people trying to set fire to the tarpaulin of his shelter. [...]

In June 2020, Nelson was woken up by the sound of knocking on iron sheets and saw a group of men attacking his block with stones, iron bars and sticks. He was chased by some of them and was hit on his legs and head. He regained consciousness in hospital with multiple injuries.<sup>97</sup> The assailants attacked also Pauline, a lesbian woman, hitting her with sticks and stones while calling her “shoga” and telling her that she did not deserve to be in the camp.<sup>98</sup> [...]

Emmanuel suffered another attack in November 2020, when two other refugees asked him about his sexual orientation, then grabbed him and cut him on the neck with a small knife. [...]

Anne, a lesbian woman, said she had been attacked and ridiculed several times. During one incident in September 2020, she said that men approached her on a motorbike as she was on her way to the market. They called her “shoga” and hit her with sticks and stones. She had injuries on her face and her left hand and bruises on the leg and she needed hospital treatment. [...]

Mercy, a lesbian woman, told the researchers that she was harassed and threatened with rape since the moment she arrived in Kakuma in 2019. Despite repeatedly raising concerns about her safety with the

camp management, UNHCR and the police, she was transferred to a part of the camp that she did not consider safe. Two men attacked her and raped her in March 2021, on her way to the market. She obtained medical records and reported the rape to the police, but she was not informed of any follow-up and still does not have a safe place to stay.<sup>101</sup> [...]

Widespread homophobia and transphobia result in LGBTI refugees being also at risk of suffering sexual and gender-based violence. [...]

Several interviewees told Amnesty International and NGLHRC about the 15 March 2021 arson attack that caused the death of Chriton Atuhwera.<sup>107</sup> Diana told researchers that she was sleeping outside and woke up screaming: she had been wounded on her left leg.<sup>108</sup> Isabel, a transgender woman, told researchers that she was woken up that night by screams from other members of the LGBTI community living in the block. When she went outside, she saw her friend Chriton running away in a ball of flames while screaming for help.<sup>109</sup> The only survivor of the arson attack has burn scars on over 50% of his body, which remain a permanent reminder of the incident. He has to wear long trousers and long sleeve shirts to hide the scars. His pictures spread on the internet and he has received threatening calls from people, including from his country of origin.<sup>110</sup> At the time of stating, the police had provided no information on the outcome of its investigations.

In May 2021, a group of men attacked Fredrick, a gay man, while he was on a friend's boda-boda and wearing a rainbow mask. They asked him why he was wearing rainbow and why he was gay. They injured one of his eyes, his left hand and a foot. He was still bleeding when he went to the police station to report the attack and was issued with an OB number. He then went to hospital. [...]

In July 2021 Kevin, a gay man, found a notice in his shelter, written in English and Swahili, telling LGBTI people to leave the place or they will be attacked. He commented: "I found the letter in the house. Homophobic people know each and every LGBTI person here".<sup>112</sup>

### 3.2 IMPUNITY FOR PERPETRATORS OF HATE CRIMES [...]

In only one out of the cases of alleged hate crimes targeting LGBTI people documented for this research did the authorities inform the victim of any follow-up. Harper, who self-identifies as LGBTIQ (pronouns they/them), said that in February 2020 one subcontracted security officer attacked them with a metal rod while they were queueing at the reception centre, calling them "shoga" and injuring their chest and back. [...]

Ken, a gay man, said that a group of six subcontracted security officers, including Harper's alleged assailant, attacked him at the reception centre in January 2020, about a month before the incident suffered by Harper [...]. They locked him in a room and hit and caned him, saying that gay people were a problem at the reception because they do not follow orders. [...]

Diana, a lesbian woman, told the researchers that in January 2020, a group of men living in the camp threw stones at her and other LGBTI refugees while they were sleeping outside the reception gate in Kakuma camp. Her left leg was injured. They shouted for help, but the private security officers guarding the reception centre refused to open the gates. The police arrived about 30 minutes later and dispersed the attackers but did not identify them and made no arrests. Diana and others were taken to one of the camp's hospitals by ambulance. She stayed in hospital overnight. [...]

Fredrick, a gay man, told researchers that in May 2020 he entered a shop in Kakuma 2. The owner pushed him out saying that "shogas" were not allowed in his shop. Other vendors joined in and started to beat him. He escaped and went straight to the police station and reported the matter. [...]

Isabel, a transgender woman, shared with police a video of a man intimidating and pointing fingers at a transgender woman. She maintains that the man is well known within the camp. [...]

Lewis, a bisexual man, shared that in August 2020 refugees from his country of origin saw him with other LGBTI people in the camp. That evening he was summoned by the elders (community leaders) of his

country of origin and interrogated about his association with LGBTI people. The elders punished him with caning and a fine. He reported this to the police station. On hearing that his issue involved the elders, the police officers sent him back and told him to sort his issue informally with them.<sup>119</sup>

Fredrick reported that, after the beating he suffered in May 2020, unknown gangs attacked him again, in June and August 2020, and that people threw stones at his house. [...]

Robert, a gay man, said that the police accused him of pretending to be gay when he went to report an attack with stones he suffered in May 2021.<sup>122</sup> [...]

### 3.4 PERVASIVE DISCRIMINATION AND ABUSES IN THE CAMP

Violence against the LGBTI community in Kakuma camp is due in part to hostility and prejudice in the wider camp population. LGBTI refugees are often harassed, marginalised and ostracised by their own communities of origin, or even by their own family, who consider their sexual orientation and/or gender identity to conflict with religious or cultural values. At the same time, religious and other leaders in the local communities hosting refugees have fuelled the hostility by expressing concerns about having LGBTI refugees in the camps.<sup>138</sup> [...]

Several other refugees reported persistent harassment by the general population of the camp. Judy, for example, a transgender woman, said that her neighbors harass her saying that she is a bad example to their children.<sup>142</sup> Harassment does not target only LGBTI refugees, but also their children.<sup>143</sup>

Linda, a bisexual woman, told researchers that in 2020 some young men attacked one of her children, who is about ten years old. They called him “mtoto wa shoga” (child of a “shoga”) and chased him while beating him. The boy returned home upset and shaken. He did not want to go to school, fearing that he would be attacked again, and his mom had to escort him to school every day. Both Linda’s children get bullied at school on account of their mother’s sexual orientation:

*“I teach my children to be quiet when they are taunted because their mum is a ‘shoga’, but it hurts their hearts and mine”.<sup>144</sup>*

Discrimination, marginalisation and bullying in school are serious problems for children of LGBTI refugees and children who identify as LGBTI themselves, effectively stopping them from attending.<sup>145</sup> Olive, a 16-year-old lesbian girl, told the researchers:

*“I am in class eight, but I can’t go to school. I was studying last year but I had to stop. I only went to school three times. On the first day the other students get to know you and like you, but when they discover who you are or who you stay with, they start avoiding and abusing you. They called me ‘shoga’ in school. You can’t play together. If you are reading, you can’t share a book. Even if you tell the teacher, they say they can offer no help. I left school as I can’t continue facing that.”<sup>146</sup>*

Christine, a 16-year-old queer girl, told the researchers about the marginalisation she faces in the camp because of the way she dresses and because her mother is a lesbian woman. As a result, she cannot continue her studies:

*“I should have started from one [secondary school] in the camp but I cannot join school here. The other girls won’t allow me because I look like a boy. I tried going to one of the primary schools in the camp. I was dressed in the girls’ uniform but I could not even last a day. The other girls laughed at me and called me ‘kijana msichan’ (male female). The teachers could not help. I did not go the next day. My form one classmates are now three weeks in school and I have not gone. I know I miss a lot but I can’t go. I will face the same problem I faced before.”<sup>147</sup>*

The harassment and intimidation of LGBTI refugees create barriers that prevent them from accessing camp services and communal areas, such as rations distribution, health clinics, water points, places of worship and shops - a problem they often suffer in silence. Several LGBTI refugees reported having

problems accessing the food distribution service, the hospital and the water points, as other camp residents did not want to wait in the line with them.<sup>148</sup>

Faith, a lesbian woman, described how other refugees call her a man when she approaches the water point, giggle and point at her, making her feel unwelcome, and tell her to allow others to take water before she does.<sup>149</sup> Brian, a gay man, told the researchers that it was common practice for fellow refugees to stop LGBTI individuals collecting water from the communal taps. He explained:

*“You can't disguise and can't hide who you are. The neighbour will know you. The water point is the meeting point... Just by the style you live in, the community can know you. Reaching a water point, your jerry cans are placed aside and they claim you are not entitled to water.”<sup>150</sup>*

Robert, a gay man, said that he was told he could not enter the mosque (masjid):

*“I went to the mosque. A man there told me that this masjid is not for 'kaumlut', which means LGBTI people. I left and decided I will never come back to the mosque again. They don't welcome me and I don't know who will”.<sup>151</sup>*

Several LGBTI refugees told researchers they had struggled to buy food from shops in Kakuma camp because of their sexual orientation, gender identity and/or expression and sex characteristics.<sup>152</sup> Local NGOs confirmed that LGBTI refugees found it difficult to access water and participate in the activities in the camp.

All in all, several LGBTI refugees spoke about an acute feeling of marginalization, loneliness and isolation. For example, Faith, a lesbian woman, told the researchers:

*“You can't shake a hand to anyone here in the camp. You can't greet anyone. They know you are lesbian, and they are afraid that others may think that they are associated with you.”<sup>153</sup>*

Sometimes, the prejudice and the feeling of not being accepted by their neighbours drives people from the shelters they have been assigned, or even from Kakuma camp itself – a dangerous breach of the government's encampment policy.<sup>154</sup><sup>381</sup>

37 Aljazeera, “Kenyan queer men risk health amid homophobia in public hospitals”, June 2022, <https://www.aljazeera.com/features/2022/6/2/homophobia-in-kenyan-public-hospitals-pushes-queer-men-to-dangero>; Kenya Human Rights Commission, The Outlawed Amongst Us, A Study of the LGBTI Community's Search for Equality and Non-Discrimination in Kenya, 2011, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html>

38 Nation, “50-year-old intersex woman raped and killed in Trans Nzoia,” 5 May 2022, <https://nation.africa/kenya/counties/trans-nzoia/50-year-old-intersex-woman-raped-and-killed-in-trans-nzoia-3805548>

39 The Guardian, “Killing of LGBTQ+ activist prompts outcry over anti-gay attacks in Kenya”, 6 January 2023, <https://www.theguardian.com/world/2023/jan/06/killing-lgbtq-activist-edwin-chiloba-outcry-anti-gay-attacks-kenya>. [...]

76 Reuters, “African LGBT+ refugees plead U.N. for safe shelter after Kenya camp attacks”, 10 January 2020, <https://news.trust.org/item/20200109162844-dfkeb/>.

77 Pinknews, “Lesbian refugee in Kenya brutally beaten and raped by ‘gang of eight ruthless men’”, 28 April 2020, <https://www.pinknews.co.uk/2020/04/28/lesbian-refugee-kenya-kakuma-refugee-camp-nankinga-sophia-beaten-raped/>

78 VOA, “Kenya's LGBTQ Refugees Face Threats, Attacks at Kakuma Camp”, 13 August 2020, <https://www.voanews.com/africa/kenyas-lgbtq-refugees-face-threats-attacks-kakuma-camp>.

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<sup>381</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 7-8, 18-19, 25, and 27-38

79 UNHCR, “UNHCR calling for calm after a confrontation between refugees and the local community”, 12 September 2020, <https://www.unhcr.org/ke/18787-kakuma-refugee-camp-unhcr-calling-for-calm-after-confrontation-between-refugees-and-the-local-community.html>.

80 Pan Africa ILGA and GIN, Joint Statement on the Kakuma Incident(s), 18 February 2021 <https://panafricailga.org/pan-africa-ilga-and-gin-joint-statement-on-the-kakuma-incidents/>.

81 Reuters, “U.N. to boost security for LGBT+ refugees after deadly arson attack at Kenya camp”, 13 April 2021, <https://news.trust.org/item/20210413133346-n7byk>

82 Ebar, “Death of gay Kakuma refugee spurs LGBTQ Africans' calls for evacuation”, 14 April 2021, <https://www.ebar.com/news/news/303961>

83 Amnesty International Kenya, Statement on killing of Chriton Atuhwera, 13 April 2021.

84 European Parliament, Resolution of 16 September 2021 on the situation in Kakuma refugee camp in Kenya (2021/2874(RSP)), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0391\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0391_EN.html).

85 In addition to the testimonies highlighted in this section and the following ones, the researchers collected the testimonies of four more individuals. The researcher saw OB numbers and photos related to two episodes of physical assaults and one episode of breaking and theft against Patrick, a bisexual man, interviewed in Kakuma town on 8 September 2021. Martin, a gay man, said that in 2020 a group of camp residents broke into his house and started beating him, calling him “shoga”, because they did not want “dirty people” to live in their area. Interview in Kakuma town, 9 September 2021. In July 2021, five camp residents attacked George, a gay man, outside his shelter, calling him “shoga” and hitting him with sticks. He reported the crime to the police and obtained a medical examination report from the hospital. Interviewed in Kakuma town, 10 September 2021. Isabel said that she was part of a group that was stoned and verbally insulted by other people living in the camp. She said the assailants accused the group of being a reason why there was no rain in Kakuma refugee camp. Interview with Isabel, Kakuma town, 11 September 2021.

86 Some interviewees told the researchers that they prefer living together with other members of the LGBTI community, for support and because they believe it is safer. Other interviewees told the researchers that they prefer to live in other areas of the camp, including because they do not want their sexual orientation and/or gender identity to be known [...]

89 Interview with Sharon, Kakuma town, 10 September 2021 [...]

91 Ibid [Interview with Diana, Kakuma town, 11 September 2021. The OB reference number, including the date of the incident, is on file with Amnesty International.]

92 Interview with Ian, Kakuma town, 8 September 2021. [...]

95 Interview with Charles, Nairobi, 29 January 2022. [...]

97 Ibid. The researchers have reviewed medical documents and pictures showing injuries consistent with the description of the attack.

98 Interview with Pauline, Kakuma town, 8 September 2021. [...]

101 Interview with Mercy, Kakuma town, 7 September 2021. [...]

107 Interviews with Pauline, Kakuma town, 8 September 2021; Ian, Kakuma town, 8 September 2021; Isabel, Kakuma town, 11 September 2021; Diana, Kakuma town, 11 September 2021.

108 Interview with Diana, Kakuma town, 11 September 2021.

109 Interview with Isabel, Kakuma town, 11 September 2021.

110 Phone interview with the survivor of the March 2021 arson attack, September 2022.

112 Interview with Kevin, Kakuma town, 9 September 2021. [...]

119 Interview with Lewis, Kakuma town, 10 September 2021. [...]

122 Interview with Robert, Kakuma town, 8 September 2021. [...]

137 Phone interview with Isabel, 24 August 2021.

138 Kakuma and Dadaab Joint Committee on Administration and National Security, meeting minutes available on file with Amnesty International. [...]

142 Interview with Judy, Kakuma town, 9 September 2021.

143 Interview with Faith, Kakuma town, 8 September 2021.

144 Interview with Linda, Kakuma town, 9 September 2021.

145 Interview with Winnie, Kakuma town, 10 September 2021.

- 146 Interview with Olive, Kakuma town, 9 September 2021.
- 147 Interview with Christine, Kakuma town, 8 September 2021.
- 148 Interviews with Faith, Kakuma town, 8 September 2021; Joseph, Kakuma town, 9 September 2021; Sharon, Kakuma town, 10 September 2021; Simon, Kakuma town, 10 September 2021.
- 149 Interview with Faith, Kakuma town, 8 September 2021.
- 150 Interview with Brian, Kakuma town, 8 September 2021.
- 151 Interview with Robert, Kakuma town, 8 September 2021.
- 152 Interview with Judy, Kakuma town, 9 September 2021. Robert said that most times he tried to buy food, the shop owner would not accept his money as they saw him as an outcast, and so he left empty-handed. Interview with Robert, Kakuma town, 8 September 2021. Faith described how other refugees who operate shops in the camp refuse to take money from her because she is a lesbian. She said the shop owners called her “chairlady of lesbians” in the camp and do not allow her to buy anything. Interview with Faith, Kakuma town, 8 September 2021.
- 153 Interview with Faith, Kakuma town, 8 September 2021.
- 154 Interviews with Sharon, Kakuma town, 10 September 2021; Faith, Kakuma town, 8 September 2021.

Pink News reported in June 2023 on the experiences of trans women in Kakuma refugee camp, stating that:

When Cyara Kaira fled her home in Uganda, she hoped to find safety elsewhere – but in Kenya’s notorious Kakuma Refugee Camp, life has only gotten worse. [...]

She arrived in the camp in May 2021. When she was finally assigned a block to live in, she found herself living in an area with people from different cultures – many of whom were outwardly hostile to LGBTQ+ people.

Cyara was forced to live with people who believed “that when they kill an LGBTI [person] they are supposed to go to heaven”, she tells PinkNews.

People have physically assaulted her, while others have forcibly undressed her so they could see what genitals she had. She and other trans people in the camp have had people turn up to their lodgings with machetes, stones and sticks to beat them with.

“We have wounds. We have been stitched several times. We’ve been beaten. Our houses have been burnt. We are homeless. Imagine being homeless in a refugee camp – looking where to sleep, looking for food, looking for safety,” she says. [...]

Pretty Peter is another trans woman in the Kakuma Refugee Camp, who is also from Uganda. [...]

Pretty Peter says she too has been attacked in the camp – and workers have done little to protect her.

“Everyone wants to beat you if you put on a dress. Everyone looks at you as something who is the devil,” she says.<sup>382</sup>

The 2023 USDOS trafficking in persons report for Kenya (covering April 1, 2022–March 31, 2023) indicated that “refugees are generally required to live within the camps with restricted movement and limited access to education and livelihood opportunities, increasing their vulnerability to labor and sex trafficking [...] LGBTQI+ persons in refugee camps are especially vulnerable”.<sup>383</sup>

The Guardian reported in July 2023 on the anti-LGBTQ+ agenda in Ghana, Kenya, and Uganda, stating that Kenya “witnessed a spike in anti-LGBTQ+ sentiment this year, after a decision by the country’s

<sup>382</sup> Pink News, [Trans women beaten, cut and ‘forcibly undressed’ in Kenyan refugee camp: ‘They see us as the devil’](#), 7 June 2023

<sup>383</sup> US Department of State (USDOS), [2023 Trafficking in Persons Report: Kenya](#), 15 June 2023

supreme court judges in February to uphold the right of association for LGBTQ+ organisations. Data shared with the Guardian by the Kenya National Human Rights Commission shows that at least 356 cases of physical, verbal, cyberbullying and death threats to members of the community have taken place in the months since the judgment, and nearly a dozen anti-LGBTQ+ rallies in major cities".<sup>384</sup>

Frontline Defenders reported in August 2023 on the attack against a LGBTQ+ rights defender and the director of the organisation Grassroots Transitional House, Kenya "On 13 August 2023, human rights defender Kenneth Thethe was verbally and physically attacked near his home, while he was alone, by three unidentified men in Kiganjo in the town of Thika, Kiambu County. The individuals seemed to be familiar with the human rights defender identity. The aggressors called Kenneth Thethe by his first name, which also made him believe that the men were aware of his advocacy work for LGBTQ+ rights. As a result of the attack, the human rights defender suffered from numerous bruises and lacerations".<sup>385</sup>

queersOfKakuma and migration-control.info's August 2023 report about ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp noted:

An activist of queersOfKakuma explains the pain of being in the camp: *"I'm living in Kakuma refugee camp in Kenya. I'm here to speak on behalf of my fellow Queers in Kakuma refugee camp. We were persecuted in our home country because of our sexuality. We managed to flee and seek for protection and safety but unfortunately, it's like we jumped from a frying pan to a fire. The situation here is very terrible. We are facing discrimination, segregation. The place is very homophobic and when it comes to the trans, it's worse."* [...]

[...] The Kenyan police effectively rarely investigates discriminatory violence against LGBTI+ asylum seekers and refugees, who are regularly assaulted, beaten, raped. queersOfKakuma explain: *"Here we live in open spaces which makes it easy for homophobic people to come and attack us and it has happened so many times. We lost lives of our colleagues and no reaction has been taken by the police and the UNHCR. So you see it's really unfair. We are unsafe."* [...]

[...] children of LGBTI+ parents and children who identify themselves as LGBTI+ face violence in Kakuma refugee camp. The discrimination they experience in school stops them from attending. QueersOfKakuma explain: *"We can't take our children to go to school in the camp. They will be discriminated against. They do miserable things to those kids but they are really innocent. They did not do anything. And if we can get an organization to support those kids to go to school and to get an uniform, bags and school fees, this would be very very wonderful."* [...]

QueersOfKakuma report about the death of LGBTI+ relocated to Nairobi: *"We lost our fellow queer. He was staying in Nairobi. He jumped from a flat. He lost hope, he lost everything and he was tired of his life because of homophobia. He requested justice, he was requesting support, he was begging support. He had nothing to eat. No one was caring for him, no one was there."*<sup>386</sup>

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<sup>384</sup> The Guardian, [US Intel executive 'actively responsible' for driving anti-LGBTQ+ agenda in Africa, say campaigners](#), 7 July 2023

<sup>385</sup> Frontline Defenders, [Kenya: Violent attack against LGBTQ+ rights defender Kenneth Thethe](#), 18 August 2023, p.

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<sup>386</sup> queersOfKakuma and migration-control.info, [Ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp, Kenya](#), 25 August 2023

The Kenya Human Rights Commission (KHRC) sent a letter to the chairman of the National Cohesion and Integration Commission to urge them to stop the “hate campaign” against the LGBTIQ+ community in Kenya stating that:

The Kenya Human Rights Commission (KHRC) brings to your attention an ongoing hate campaign culminating in anti-LGBTQ protests on September 15, 2023, in Mombasa. The demonstrations are poised to trigger a disturbing surge of hatred, prejudice, and instigation within Kenya, endangering the lives and safety of people with diverse gender and sexual orientations.

An amorphous group based in Mombasa dubbed the "Anti-LGBTQ Movement" leads the onslaught with horrifying messaging that incites violence against LGBTQI persons.

Evidence shows the movement is calling for the "kicking out" of LGBTQI persons and raising funds to accomplish their mission. We believe "kicking out" is a code phrase implying harm, or worst-case scenario, even the murder of their targets.<sup>387</sup>

Discussing the opinions of a Kenyan activist at a recent event on the challenges facing LGBTIQ individuals in various African countries, Outright International noted in October 2023 that “The success of challenging discriminatory laws in the penal code and securing legal recognition for intersex and trans communities has contributed to a backlash from anti-gay groups”.<sup>388</sup>

An October 2023 Deutsche Welle (DW) article on anti-gay protests in Kenya and the LGBTIQ+ community response stated “The LGBTIQ+ community in Kenya has faced homophobic attacks, with some being occasionally subjected to physical abuse. [...] Kariuki Ngunjiri, the youth leader of the ruling UDA party in Kenya, told DW [...] there is a lot of pushback to the heightened activism for same-sex relationships in Kenya”.<sup>389</sup>

At the end of October 2023, Leha Kenya, a grassroots organisation which supports LBQ women and non-binary people in rural central Kenya, reported on trends in sexual reproductive health and violence from January to October 2023. It documented 95 cases of violence, including conversion therapy, economic violence, emotional/psychological violence (including disownment), online harassment/cyber bullying, other discrimination due to LBQ identity, physical harassment, rape or attempted rape, self-harm, sexual assault or attempted sexual assault, being outed (or threatened/attempted), and verbal abuse – with the largest figures for emotional/psychological violence, physical harassment, and verbal abuse.<sup>390</sup>

ILGA World, in their November 2023 report on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions, noted on Kenya that:

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<sup>387</sup> Kenya Human Rights Commission (KHRC), [Letter: Urgent Action Required to Stop Dangerous Hate Campaign and Prevent Impending Violence](#), 30 August 2023

<sup>388</sup> Outright International, [UNGA Side-Event Calls for Renewed Support to Fight Global Pushback Against Human Rights for LGBTI People](#), 3 October 2023

<sup>389</sup> Deutsche Welle (DW), [LGBTQ+ community in Kenya defies anti-gay protests](#), 17 October 2023

<sup>390</sup> Leha Kenya, [Unveiling LBQ Violence and SRH Insights from Jan to Oct 2023](#), 31 October 2023

Since the introduction of this [“family protection”] bill, several local LGBTQ+ Kenyans have claimed that the threats and harassment they face has increased, with some fearing for their lives. One young university student claimed that his classmates were openly “praying for the bill to be passed, saying they can’t wait to pounce on us and beat the spirit of homosexuality out of us”. These trends are a clear indicator of how the vilification and marginalisation of sexual and gender diversity from the halls of government can have dire consequences for communities on the ground, even if a law has not come into effect or been directly enforced.<sup>391</sup>

The Standard reported in December 2023 on the vandalism of “offices belonging to a community-based organisation linked to the LGBTQ community” in Kisumu.<sup>392</sup>

## b. Discrimination

### i. Access to housing

*For information on access to state owned housing, see section III. Treatment by State Actors, i. [Access to state-owned housing](#).*

#### 2020

NGLHRC’s 2019/2020 Annual Legal Aid Report, covering the period from July 2019 to July 2020, noted “increased claims of forced internal relocation and evictions”.<sup>393</sup> The report recorded 12 incidents in this time frame of forced evictions due to clients’ SOGIE-SC status.<sup>394</sup>

NTAN published a report in 2020 on the national transgender discrimination survey in Kenya, commenting on stigma, discrimination, and violence within housing:

Housing insecurity was a major crisis for transgender and intersex people. 44% of transgender and intersex people had experienced direct housing discrimination either by being denied a house or being evicted (42%) on grounds of gender identity status. 61% of transgender and intersex people were homeless with an overwhelming 51% of homeless transgender and intersex people more likely to be incarcerated and twice more likely (60%) to have engaged in sex work for income, and (63%) attempted suicide. Only a third (33%) of transgender and intersex homeless people had access to shelters with an overwhelming majority always presenting in the wrong gender, experienced eviction or being thrown out from shelters, harassed by shelter administrators, denied access to a shelter, and had been physically and sexually assaulted in shelter homes.

In public settings and accommodation, transgender and intersex people experienced discrimination despite the existence of civil rights laws that prohibit discrimination.<sup>395</sup>

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<sup>391</sup> ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association) World, [Our Identities Under Arrest: A global review on the enforcement of laws criminalising consensual same-sex acts and diverse gender expressions](#), Second edition, 30 November 2023, p. 81

<sup>392</sup> The Standard, [Vandals break into LGBTQ-linked group offices, destroy property](#), 22 December 2023

<sup>393</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, p. 9

<sup>394</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, pp. 18-19

## 2021

The Immigration and Refugee Board of Canada's report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya documented the following information based on interviews conducted in 2021:

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association] stated that individuals of diverse SOGIE do not face discrimination in employment and education but do face discrimination in accessing housing and healthcare and that "[t]his applies across Kenya," including in Nairobi (KYDESA 23 June 2021). In contrast, the PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya representative indicated that "the level of discrimination is going down, but there is still discrimination" in employment, education, housing, and health care (PEMA Kenya 12 July 2021). [...] The human rights defender [National Gay and Lesbian Human Rights Commission (NGLHRC)] indicated that individuals of diverse SOGIE have been "denied services" and also stated that violations against LGBTQ individuals, include evictions, when landlords discover their sexual orientation or gender identity or by neighbors who "instigate" evictions; "illegal termination of employment"; and "discrimination in the job market" (Human rights defender 30 June 2021). The PEMA Kenya representative noted that "housing is the biggest area of discrimination" (PEMA Kenya 12 July 2021). The Jinsiangu representatives indicated that LGBTQ individuals face evictions and that "landlords do not want to rent to persons who are LGBTQ" (Jinsiangu 9 July 2021).<sup>396</sup>

## 2022

*No information was found on access to housing in 2022.*

## 2023

A BBC News article stating on the decision of the supreme court to allow LGBT rights groups to register in February 2023 noted that "The ruling comes at a time when homophobic rhetoric has been rising in Kenya. [...] Some [members of the LGBTQI+ community] say they have even been [...] thrown out of rental houses for being gay".<sup>397</sup>

Similarly, Reuters reported in March 2023 on the homophobic backlash to the court ruling, quoting Real Raymond, head of LGBTQ+ rights charity Mbarara Rise Foundation: "People have been attacked by mobs as they are walking home from work or at the market, they are being evicted from their homes', added Raymond. 'Some have left their jobs and moved to other places for fear of being discovered and targeted'."<sup>398</sup>

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<sup>395</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, p. 5

<sup>396</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

<sup>397</sup> BBC News, [Kenya wrong to ban LGBT rights groups from registering - Supreme Court](#), 24 February 2023

<sup>398</sup> Reuters, [FEATURE-LGBTQ+ Kenyans and Ugandans hide from wave of homophobic abuse](#), 14 March 2023

Al Jazeera similarly commented on the effects of the ruling, stating that “In parts of Nairobi and elsewhere in Kenya, activists have said landlords are now evicting queer tenants – some forcefully”.<sup>399</sup>

## ii. Access to work

*For information on access to state employment, see section III. Treatment by State Actors, [iii. Access to state employment \(e.g. civil service\)](#).*

### 2020

NGLHRC’s 2019/2020 Annual Legal Aid Report, covering the period from July 2019 to July 2020, reported the following trend “Lack of jobs and economic dignity for LGBTQ+ refugees due to lack of work permits as well as being stereotyped in the community”.<sup>400</sup>

The NTAN report in 2020 on the national transgender discrimination survey in Kenya commented on stigma, discrimination, and violence within the workplace:

Systematic discrimination of transgender and intersex people in the workplace was high with nearly a half (49%) experiencing job denial with Nairobi County being a major casualty, 37% were denied promotion and 42% lost their jobs with Nairobi and Kisumu counties experiencing the highest proportion (54%). There was a significant association between sex work and being denied a job or losing a job. There was widespread mistreatment at the work place with 46% reporting harassment on grounds of gender identity status, 31% reported physical violence and 26% reported sexual assaults.

A half (50%) presented in the wrong gender, 65% experienced misgendering and 55% experienced information privacy breach and 41% experienced sex work discrimination in the workplace. Nearly half (47%) had experienced underemployment. [...]

Gender incongruent identification exposes transgender and intersex people to a range of hostile outcomes, from denial of benefits and employment to violence. Over a half (63%) of transgender and intersex people had none of their identification documents and records reflecting their current gender identity and that 26% of those who presented their Identity Documentation (ID) (when it was required in the ordinary course of life) which did not match their gender identity reported being harassed, 9% reported being attacked or assaulted, and 10% reported being asked to leave. 10% and 13% of transgender and intersex people who were denied ID/passport and work ID respectively were unemployed. Similarly, there was a statistically significant association between those who were denied a chance to change their ID/passport and the unemployed and work ID and the unemployed.<sup>401</sup>

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<sup>399</sup> Al Jazeera, [Displaced twice: Gay Ugandans on the run face upheaval in Kenya](#), 29 March 2023

<sup>400</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, p. 8

<sup>401</sup> National Transgender Advocacy Network of Kenya (NTAN) (Trans\*Alliance Kenya and Jinsiangu Kenya), [A Report of the National Transgender Discrimination Survey: Policy Brief](#), 2020, pp. 4 and 6

The 2020 USDOS Kenya report on human rights practices, published in March 2021, noted that “There are no legal employment protections for LGBTI persons, who remained vulnerable to discrimination in the workplace”.<sup>402</sup>

### 2021

For their 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, the Eagles for Life, Sign Ishara, and Oasis Research noted that:

LGB individuals face discrimination in the workplace, both when applying for jobs and while employed. One gay individual expressed that he had to leave a position with a tourism company after his boss found out he was dating a man. The boss expressed that by having him as an employee he was “destroying the business.” In addition, he mentioned when he was trying to apply for a job at a catering company, the job application said they were only looking for straight people. Many other cases showcased the struggle of LGB individuals when trying to enter the job market. In some instances, documented discrimination in the workplace pushed LGB individuals to go into sex work as their only option for employment.<sup>403</sup>

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic’s report on the rights of LGBTI citizens and non-citizens in Kenya stated that:

Interviews have also revealed that LGBTI persons face discrimination in employment by both current and prospective employers. One recent academic study of LBQ women refugees reported job losses when their employers learned of their nationality and the refugees reported that because of this type of discrimination “retaining employment is nearly impossible.”<sup>43</sup> Throughout Kenya, LGBTI refugees have extreme difficulty locating legal housing outside refugee camps. Given the pervasive homophobia in Kenya, LGBTI Kenyans also report arbitrary evictions if their landlord would discover their status.<sup>44</sup> One recent study of reported on the forced eviction of LBQ women refugees by Kenyan landlords. The study found that these evictions frequently came about after the landlord or neighbors learned of LBQ refugees’ nationality and private lives.<sup>45</sup> A Reuters’ report provides examples of the hardships LGBTI Kenyans face when trying to find and keep housing, stating, “[s]cores of LGBT+ refugees are in desperate need of emergency shelter after facing homophobic threats, violence and eviction warnings from community members in a Nairobi slum ...”<sup>46</sup> In the same article, the interviewees recounted harrowing personal interactions: “[t]he people here threaten and insult us. They say we are spreading disease and teaching their children to be homosexuals” and “[t]hey said either we go, or they will kill us. We are so scared to leave our rooms. At night, we take turns to stand guard.”<sup>47</sup>

43 Moore, p. 328.

44 CAL & GALCK, Lived Experiences, p. 25. 9

45 Ibid.

46 Nita Bhalla, “Scores of LGBT+ Refugees in Kenya Slum Face Homophobic Attacks, Eviction”, Reuters, 11 June 2019, available at <https://www.reuters.com/article/kenya-lgbt-refugees-idINKCN1TC2RC>.

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<sup>402</sup> US Department of State (USDOS), [2020 Country Reports on Human Rights Practices: Kenya](#), 30 March 2021

<sup>403</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, *paragraph 41*

The article in The Elephant in May 2021 on “queering Agriculture” in Kenya noted the following:

Unfortunately, there are those within the LGBTIQ community who dropped out of school or completed high school with poor grades. They have few employable skills, and when they do have them, the sectors in which they can work safely and freely are limited. The hustle is real, very real for them. The hospitality sector, entertainment, retail, personal care and grooming — the sectors in which many queer individuals have found work — have been severely impacted by the pandemic. If you don’t work, you can’t afford to eat, and many have been struggling to eat.<sup>405</sup>

In July 2021, the Immigration and Refugee Board of Canada noted in their report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya that:

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association] stated that individuals of diverse SOGIE do not face discrimination in employment and education but do face discrimination in accessing housing and healthcare and that “[t]his applies across Kenya,” including in Nairobi (KYDESA 23 June 2021). In contrast, the PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya representative indicated that “the level of discrimination is going down, but there is still discrimination” in employment, education, housing, and health care (PEMA Kenya 12 July 2021). [...]

The human rights defender [National Gay and Lesbian Human Rights Commission (NGLHRC)] indicated that individuals of diverse SOGIE have been “denied services” and also stated that violations against LGBTQ individuals, include evictions, when landlords discover their sexual orientation or gender identity or by neighbors who “instigate” evictions; “illegal termination of employment”; and “discrimination in the job market” (Human rights defender 30 June 2021). [...]

The Jinsiangu representatives noted that transgender, intersex, and non-gender conforming individuals face difficulties accessing employment “because their identity documents do not match their gender expression” (Jinsiangu 9 July 2021).<sup>406</sup>

For Intersex Awareness Day in October 2021, Jinsiangu noted that the “Majority [of intersex people] do not have identification cards and therefore can not be employed”.<sup>407</sup>

The 2021 USDOS Kenya report on human rights practices, observed that “There are no legal employment protections for LGBTQI+ persons, who remained vulnerable to discrimination in the workplace”.<sup>408</sup>

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<sup>404</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, p. 9

<sup>405</sup> The Elephant, [It Is Time for the Agro-Queer Conversation](#), 1 May 2021

<sup>406</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

<sup>407</sup> Jinsiangu, [Intersex Awareness Day 2021](#), 28 October 2021

<sup>408</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

## 2022

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya's third periodic report noted that: "In Kenya, there is an overall environment of hostility towards LGBTIQ+ individuals, who commonly suffer harassment and discrimination because of their sexual orientation, gender identity, gender expression and sex characteristics. Such discrimination affects LGBTIQ+ persons in many areas of life, preventing them from exercising fundamental rights, such as [...] employment".<sup>409</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, observed that "There are no legal employment protections for LGBTIQ+ persons, who remained vulnerable to discrimination in the workplace".<sup>410</sup>

## 2023

Al Jazeera commented on the effects of the February 2023 court ruling in favour of LGBTIQ+ organisations' right to register, stating that "In parts of Nairobi and elsewhere in Kenya, activists have said [...] confrontations with employers are rising".<sup>411</sup>

An article published by Reuters in October 2023 explored the discrimination experienced by Kenyan LGBTIQ+ entrepreneurs when it comes to seeking bank loans:

Mary Akinyi, an intersex woman from the city of Mombasa, ended up borrowing money from a loan shark after being turned down for bank credit - a situation faced by many Kenyan LGBTIQ+ entrepreneurs, advocates say.

Akinyi said that despite having a solid business plan and credit score, she was told by a loan manager at the Kenya Women Finance Trust Bank in Nairobi she had been rejected because her gender identity did not match her ID card.

"It was disheartening, I felt rejected, dejected and out of place because the reason for the rejection was flimsy," said the 23-year-old, who identifies as female but whose identity card is marked male. [...]

Many trans and intersex Kenyans end up turning to informal lenders charging high interest rates after being denied credit by formal financial institutions, said Gerald Hayo, communications officer at Nairobi-based rights group Rainbow Women of Kenya. [...]

"These loans obtained from informal lenders end up trapping many LGBTQ women in a cycle of debt, hindering their economic progress," Hayo said.

The Thomson Reuters Foundation spoke with 10 women entrepreneurs who are trans, intersex or lesbian. All said they had been denied loans from mainstream banks to grow their businesses.

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<sup>409</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 1-2

<sup>410</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>411</sup> Al Jazeera, [Displaced twice: Gay Ugandans on the run face upheaval in Kenya](#), 29 March 2023

Some, like Akinyi, said they were rejected because their gender identity does not match that of their identify cards, or because their loan guarantors were trans. Others said banks turned them down when they found out they were LGBTQ+.

Irene Wagemu, a trans woman, wanted to expand her chain of grocery stores in Nairobi so she filled out a loan application form at the Kitengela branch of Faulu Bank, where she had been a customer for nine years.

It was her first loan request and she asked to borrow 50,000 Kenyan shillings (\$336), providing the name of her partner - who is also trans - as a guarantor.

"That is when trouble started," Wagemu told the Thomson Reuters Foundation. Eventually, the loan was rejected.

Faulu Bank's communications manager Fridah Mutua said the loan was refused because the names provided by Wagemu and the guarantor did not match their identity cards. [...]

Difficulty accessing bank credit is a particular problem for trans Kenyans and others from gender minorities, many of whom set up their own small businesses due to discrimination in the jobs market, said Sara Akinyi, executive director of Elite LBQ, a rights group based in Busia County in western Kenya.

Entrepreneur Sandra Njoki, 38, said she was fired from her teaching job when she came out as a lesbian, prompting her to make plans to open a beauty salon.

So in May, Njoki applied for a 100,000-shilling business loan from Sidian Bank, giving her partner's name as her guarantor.

"The bank manager asked me how and why I had listed a woman as my spouse," said Njoki.<sup>412</sup>

The 2023 report by the Initiative for Equality and Non-Discrimination (INEND) on economic justice for lesbian, bisexual, queer and gender non-conforming persons in Kenya, based on a qualitative methodology, found that:

Even where LBQGN persons are able to secure employment, interviewees revealed that in some instances, sexual orientation has been used as grounds for termination of said employment. Sara Akinyi, who is from Busia County and is the Executive Director of Elite LBQ, highlighted the following:

"...a member of the LBQ community [once] quarrelled with the[ir] partner at home. Once their employer was notified, they were demoted from their previous position as a supervisor, to being a waitress. Worse still, while the other waitpersons were being paid around Kshs. 8,000, she was being paid Kshs. 5,000. Upon inquiring about this, she was informed that rather than firing her, they decided to pay her less, and that they were doing her a favour."

This sort of treatment of persons from the LBQGN community reflects not only the denial of employment

services to LBQGN persons, but also the rampant job insecurity faced even in employment itself.

Given the dire situation regarding employment, many LBQGN persons have opted instead for entrepreneurship as a means to support themselves financially. Unfortunately still, many factors hinder their prosperity in this sector. Interviewees cited lack of funding and networking opportunities as some of the many reasons LBQGN persons cannot run successful businesses. One of the interviewees was quoted saying:

"I lost my job as my employers were not happy with how I was presenting myself, so I had to quit and start my own business from the little money I had saved. My business subsided as I was not able to run it

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<sup>412</sup> Reuters, [FEATURE-Rejected by banks, Kenyan LGBTQ+ entrepreneurs turn to loan sharks](#), 16 October 2023

by myself, and on hiring someone to help me run it, they were not managing the funds well as I was getting more losses than profits, so I decided to close my business. Business is not easy.” [...]

On a positive note, it was also highlighted in the interviews that certain entrepreneurial opportunities had been created for LBQGNC persons in Kenya; one interviewee noted that in celebration of Pride Month<sup>23</sup> this year, there were several activities organised throughout June which saw members of the community engaged in providing services during the array of events. In addition, some interviewees talked about a few funding opportunities for LBQGNC persons in Kenya. The UWEZO Fund, for example, is a youth fund open to Kenyan youth, regardless of their sexual and gender orientation. Similarly, Akili Dada, an organisation whose goal is empowering women in Kenya, has offered a seed grant to Elite LBQ – an organisation run by LBQ persons - to set up their organisation.

However, the above reflects very isolated instances in which LBQGNC entrepreneurs can be profitable, and as such, does not speak to the grander scheme of things regarding economic prosperity and inclusion.<sup>413</sup>

<sup>23</sup> [www.givengain.com/cc/1st-kenyan-pride](http://www.givengain.com/cc/1st-kenyan-pride)

[festival/#:~:text=We%20are%20bringing%20Nairobi%20its%20first%20Pride%20Festival%20in%20June%202022](https://www.facebook.com/1stkenyanpride/)

## VI. Treatment of LGBTQI+ Organizations and Human Rights Defenders

*This section should be read in conjunction with section II., Legal framework, [iii. Other relevant legislation affecting LGBTQI+ persons](#).*

### a. Government recognition of LGBTQI+ NGOs

This section should be read against section VI., [b. State treatment of LGBTQI+ activists or those supporting their case or those perceived as such](#).

#### 2020

The 2020 USDOS Kenya report on human rights practices observed that: “Authorities permitted LGBTQI+ advocacy organizations to register and conduct activities”.<sup>414</sup>

#### 2021

The Immigration and Refugee Board of Canada’s July 2021 report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya stated that: “The Jinsiangu representatives noted that the penal code has been used by the [Kenyan] NGO board to refuse to register LGBTQ organizations (Jinsiangu 9 July 2021)”.<sup>415</sup>

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<sup>413</sup> The Initiative for Equality and Non-Discrimination (INEND), [Our Voice Counts: An Economic Justice Report For Lesbian, Bisexual, Queer and Gender Non-Conforming Persons In Kenya](#), 2023, pp. 13-14

<sup>414</sup> US Department of State (USDOS), [2020 Country Reports on Human Rights Practices: Kenya](#), 30 March 2021

<sup>415</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

In November 2021 The Star reported that:

The Supreme Court on Tuesday was asked to reject registration of an organisation for gay rights on grounds it would erode family values and harm society.

The Non-Governmental Organisations Coordination Board told the Supreme Court that organisations can be registered to protect the rights of persons but not to promote activities that violate any laws or policies.

The board was represented by lawyer Charles Kanjama.

“Its registration will harm family values and these values are protected in the Constitution. Approaches by western countries seeking to impose their own values on us will not be accepted but resisted by African countries,” Kanjama said.

The board is challenging a decision by Court of Appeal that upheld a 2015 High Court decision compelling it to register the National Gay and Lesbian Human Rights Commission as an NGO.

The board urged the Supreme Court judges to overturn the decision of the lower courts.

The submission was supported by the Office of the Attorney General, which said the names being sought for registration have homosexual connotations, and its registration is a violation of Section 13 of the NGO act.

The section indicates the Board may refuse registration, if it is satisfied the proposed activities or procedures are not in the national interest. The AG asked the court to allow the appeal by the board in the public interest.

In response, Eric Gitari urged the Supreme Court to uphold the decision of Court of Appeal and allow registration of the NGO. [...]

Gitari had approached the NGO Coordination Board seeking registration of the organisation. He is a co-founder of the National Gay and Lesbian Human Rights Commission.

The board rejected the application on grounds the people whose rights the proposed NGO will seek to protect are gay and lesbian persons.

Gitari then petitioned the High Court that allowed him to register the proposed NGO. [...]

In the decision, justices Isaac Lenaola, Mumbi Ngugi and George Odunga declared Gitari was entitled to exercise his constitutionally guaranteed freedom to associate by being able to form an association.

The bench found the Board violated Gitari's right to non-discrimination by refusing to accept the names proposed on the basis that the proposed NGO sought to advocate for the rights of persons who are not socially accepted.<sup>416</sup>

The 2021 USDOS Kenya report on human rights practices observed that: “Authorities permitted LGBTQI+ advocacy organizations to register and conduct activities”<sup>417</sup>

## 2022

According to Article 19, “Kenya has thriving civil society organisations fighting for the rights of LGBTQI+ people, which have been working on key issues for years, including on overturning the law banning same-sex conduct in the country and working with religious communities to promote acceptance. Yet

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<sup>416</sup> The Star, [Gay rights will destroy family values, Supreme Court told](#), 24 November 2021

<sup>417</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

there remains a real fragmentation within the human rights space, at the local and international levels, with a lack of bridges between LGBTQI+ organizations and others”.<sup>418</sup>

NGLHRC’s 2022 annual report stated that:

As of December 31st, 2022, NGLHRC was awaiting the Supreme Court of Kenya’s decision on Petition 440 of 2013. This petition, first filed in 2013, challenged the NGO Coordination Board’s refusal to register the National Gay and Lesbian Human Rights Commission as an NGO due to the presence of the terms ‘gay’ and ‘lesbian’ in its title. After securing victories in two lower courts, the Supreme Court upheld the High Court’s ruling, dismissing the NGO Coordination Board’s appeal. This marked a significant triumph for Freedom of Association in Kenya, with the decision issued on February 24th, 2023.<sup>419</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, observed that: “Authorities permitted LGBTQI+ advocacy organizations to register and conduct activities”.<sup>420</sup>

### 2023

The Washington Blade reported in February 2023 on the Kenyan Supreme Court ruling that an LGBTQ, intersex group could register as NGO stated that:

The Kenyan Supreme Court on Friday in a 3-2 ruling said an LGBTQ and intersex rights group must be allowed to register as a non-governmental organization.

Eric Gitari, the former executive director of the National Gay and Lesbian Human Rights Commission, in 2013 challenged the Kenya NGO Coordination Board’s decision not to allow him to register the NGLHRC as an NGO because it contained the words “gay” or “lesbian.”

The Kenyan High Court and the country’s Court of Appeal ruled in Gitari’s favor in 2015 and 2019 respectively.

“The court was of the view that the appellant’s decision was discriminatory and that it would be unconstitutional to limit the right to associate, through denial of registration of an association, purely on the basis of the sexual orientation of the applicants,” reads the ruling. “The court noted that by refusing to register the NGO, the persons were convicted before they contravened the law. The court however pointed out that all persons, whether heterosexual, lesbian, gay, intersex or otherwise, will be subject to sanctions if they contravene existing laws, including Sections 162, 163 and 165 of the Penal Code.”

NGLCC [National LGBT Chamber of Commerce] in a tweet described the ruling as a “victory for Kenya’s LGBTQI+ community.”<sup>421</sup>

A press release from the Human Dignity Trust quoted NGLHRC Executive Director Njeri Gateru “The Supreme Court’s decision to uphold the lower courts’ rulings is a triumph for justice and human rights. At a time where the Kenyan LGBTQI+ community is decrying the increased targeting and violence; this

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<sup>418</sup> Article 19, [Kenya: LGBTQI+ rights must be championed by civil society](#), 17 May 2022

<sup>419</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2022 Annual Report](#), 2023, p. 19

<sup>420</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>421</sup> The Washington Blade, [Kenyan Supreme Court rules LGBTQ, intersex group can register as NGO](#), 24 February 2023

decision affirms the spirit and intention of the Constitution to protect all Kenyans and guarantee their rights”.<sup>422</sup>

NGLHRC also released a statement on the decision of the Supreme Court to allow for their registration as an NGO with the words ‘gay’ and ‘lesbian’ in its title stating that:

This decision marks the end of a ten-year-long legal battle that began when the NGO Co-ordination Board rejected our application to register due to our name's reference to gays and lesbians. This obviously stood in contrast with the spirit and tenor of the Constitution that provides for the national values of Equality, non-discrimination and protection of the marginalized. [...]

In their landmark decision the judges stated ‘Given that the right to freedom of association is a human right, vital to the functioning of any democratic society as well as an essential prerequisite enjoyment of other fundamental rights and freedoms, we hold that this right is inherent in everyone irrespective of whether the views they are seeking to promote are popular or not ... As such, we agree with the reasoning of the High Court that just like everyone else, LGBTQ have a right to freedom of association which includes the right to form an association of any kind’.<sup>423</sup>

A detailed case digest of the aforementioned court case can be found prepared by Human Dignity Trust [here](#).<sup>424</sup>

While reporting in March 2023 on a resolution in Kenya to ban public discussions of LGBTQ+ issues, The Los Angeles Blade noted that “The move to curtail homosexuality is also in response to last month’s Supreme Court ruling that granted the LGBTQ+ community the right to register as non-governmental organization. The judges’ decision sparked anger and criticism from religious leaders and politicians, including President William Ruto, who has instructed the attorney general to have it overturned through an appeal”.<sup>425</sup>

An article in El País in May 2023 on LGBTQI+ repression in East Africa noted the following on Kenya:

Koei [a trans Kenyan man] opines that what is said in the upper echelons of his country’s politics has an effect on everyday life. He notes how hostility has grown in Kenya since February of this year, when the Supreme Court admitted the official registration of the NGLHRC, after a 10-year-long legal battle. “It’s as if this [decision] has reminded people that we exist... It has redoubled the hatred,” he says. The Supreme Court declared the veto against the NGO as being unconstitutional, but made sure to include the following words in the judgement: “Any person, whether heterosexual, lesbian, gay, intersex or other, is subject to sanctions if they contravene existing laws, including those Sections 162, 163 and 165 of the

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<sup>422</sup> Human Dignity Trust, [Victory as Kenya’s highest court allows registration of LGBT organisation](#), 24 February 2021

<sup>423</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [Supreme Court Affirms NGLHRC'S Right to Register as an NGO in Kenya](#), 24 February 2023

<sup>424</sup> Human Dignity Trust, [Eric Gitari v NGO Co-ordination Board & 3 others Case Digest](#), 10 March 2023

<sup>425</sup> The Los Angeles Blade, [Kenyan MPs approve resolution to ban public discussions of LGBTQ+ issues](#), 24 March 2023

Penal Code (the articles that punish same-sex relationships).” President William Ruto was quick to comment: “Our culture and religion do not allow same-sex marriages.”<sup>426</sup>

In September 2023, The Daily Nation Africa provided an update on the court case around the NGLHRC’s right to register, stating that the Supreme Court on Tuesday upheld this decision “Opponents of the decision applied for a review of the court’s ruling. The judges delivered their verdict on Tuesday, confirming the right of association and freedom from discrimination cannot be restricted”.<sup>427</sup>

In a September 2023 report on LGBTIQ “organising”, Outright International summarised and gave background to the court ruling:

Two Kenyan organizations, Transgender Education and Advocacy and the National Gay and Lesbian Human Rights Commission (NGLHRC), won cases regarding their right to register in 2014 and 2015 respectively, with the NGLHRC ruling upheld by the Supreme Court in February 2023.

The Kenya cases, and NGLHRC’s legal battle in particular, illustrate the possible benefits of strategic litigation on the right to register in countries like Kenya where non-discrimination provisions are open-ended, and the judiciary is relatively independent. The 2023 Supreme Court of Kenya ruling on NGLHRC and its aftermath also illustrate the risks of backlash.

The case dates to 2013, when NGLHRC initially sought to reserve a name with the regulatory body Non-Governmental Organizations Coordination Board (NGO Board) for purposes of registration as an NGO. It proposed five names: Gay and Lesbian Human Rights Council, Gay and Lesbian Human Rights Observatory, Gay and Lesbian Human Rights Organisation, Gay and Lesbian Human Rights Commission, and Gay and Lesbian Human Rights Collective. The NGO Board declined to approve all suggested names, relying on the authority that it could do so in situations where the names, in the opinion of the Executive Director were “repugnant to or inconsistent with any law” or “otherwise undesirable.”<sup>28</sup> In response, Eric Gitari on behalf of the Commission instituted Petition No. 440 of 2013 at the Constitutional and Human Rights Division of the High Court, seeking declaratory relief on the argument that the Board violated the constitutionally guaranteed right to associate and assemble.<sup>29</sup>

The High Court found in favor of Gitari. It also noted that although the right to the freedom of association could be restricted under very limited circumstances according to article 24 the Constitution, it could not be restricted on the basis of sections 162, 163, or 165 of the Penal Code, which criminalize “gross indecency” and “carnal knowledge against the order of nature.”<sup>30</sup> Furthermore, the Court ruled that the said provisions did not “criminalize homosexuality or the state of being homosexual.”<sup>31</sup>

The decision prompted an appeal by the Board to the Court of Appeal through Civil Appeal No. 145 of 2015.<sup>32</sup> The Court of Appeal affirmed the decision of the High Court, which prompted Petition No. 16 of 2019 before the Supreme Court of Kenya.<sup>33</sup> On 24 February 2023, the apex court affirmed the decisions of the two lower superior courts, thus concluding a decade-old fight for the right to register as an LGBTIQ organization.

However, the ruling has caused nationwide debate and negative backlash against LGBTIQ persons, communities, and organizations.<sup>34</sup> In February 2023, a Kenyan member of Parliament proposed a new

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<sup>426</sup> El País, [LGBTQI+ repression in East Africa: ‘They say that Westerners are turning us gay’](#), 17 May 2023

<sup>427</sup> The Nation, [Supreme Court reaffirms LGBTQ right to associate](#), 13 September 2023

law that would criminalize the so-called “promotion of homosexuality,” including operating an organization “which promotes or encourages homosexuality” or normalizes prohibited conduct.<sup>428</sup>

28 National Gay and Lesbian Human Rights Commission, “Case Brief: Republic of Kenya, in the Court of Appeal at Nairobi,” Civil Appeal No. 145 of 2015, <https://nglhrc.com/wp-content/uploads/2022/08/FOAJudgementCaseBrief.pdf> (accessed 23 May 2023).

29 Republic of Kenya, Constitution & Judicial Review Division, Petition No. 440 of 2013, <http://kenyalaw.org/caselaw/cases/view/108412/> (accessed 23 May 2023).

30 Republic of Kenya, Penal Code, <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2063>.

31 Republic of Kenya, Civil Appeal No. 145 of 2015, <http://kenyalaw.org/caselaw/cases/view/170057/> (accessed 23 May 2023).

32 Republic of Kenya, Civil Appeal No. 145 of 2015, <http://kenyalaw.org/caselaw/cases/view/170057/> (accessed 23 May 2023).

33 Republic of Kenya, Petition No. 16 of 2019, <https://nglhrc.com/wp-content/uploads/2023/02/PETITION-NO.-16-OF-2019-NGOs-CO-ORDINATION-BOARD-vs-ERIC-GITARI-5-OTHERS-1.pdf> (accessed 23 May 2023).

34 Amnesty International Kenya, “Press Statement on the Supreme Court Judgement on the Freedom of Association of LGBTQ+,” 2 March 2023, <https://www.amnestykenya.org/statement-on-supreme-court-judgement-on-the-freedom-ofassociation/> (accessed 23 May 2023).

The same report also classified Kenya as a country where “LGBTIQ CSOs Exist, but Registration As Openly LGBTIQ Is Prohibited or Generally Impossible”.<sup>429</sup>

The Star reported on a drive by members of the County Assembly (MCAs) of Mombasa “to make it difficult for organisations supporting the gay to operate in the county”, stating that: “Led by Kadzandani’s Fatma Kushe, the MCAs want to come up with a law that will bar any organisation that supports homosexuality, is sponsored by gay activists or organisations whose members are homosexuals, from conducting any activity in the county.”<sup>430</sup>

b. State treatment of LGBTQI+ activists or those supporting their case or those perceived as such

*For further relevant information consult also section II., b., i. [Arrests](#) and section II., b., iv. [Prosecutions and convictions under laws that are deployed against the LGBTQI+ community](#).*

2020

The May 2023 joint report by the NGLHRC and Amnesty International documented hate crimes, discrimination, and other human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya between 2018 and February 2023. The report found the following incident in 2020:

<sup>428</sup> Outright International, [The Global State of LGBTQI Organizing: The Right to Register and the Freedom to Operate 2023](#), 14 September 2023, pp. 23-24

<sup>429</sup> Outright International, [The Global State of LGBTQI Organizing: The Right to Register and the Freedom to Operate 2023](#), 14 September 2023, p. 75

<sup>430</sup> The Star, [Mombasa MCAs mull law to bar gays from doing business with county](#), 18 September 2023

The researchers saw a letter, dated May 2020, that the then Refugee Affairs Secretariat noted to Bernard, a LGBTI refugee activist, informing him of a decision to withdraw his refugee status under Section 19 of the Refugee Act 2006.<sup>129</sup> The letter accused the activist of “organizing and taking part” in an unlawful demonstration at UNHCR offices in Nairobi. The letter also claimed that he was the administrator of a Facebook page used to “make statements and utter words that are manifestly against” the prohibition of subversive activities in Kenya’s Penal Code; and as a platform for misinformation.<sup>130</sup> The Refugee Appeal Board reinstated the activist’s refugee status after he challenged the decision to revoke it.<sup>131</sup><sup>431</sup>

129 Section 19 of the Refugee Act 2006 (cit.) provided: “The Commissioner may withdraw the refugee status of any person where there are reasonable grounds for regarding that person as a danger to national security or to any community of that country.”

130 Letter from Kenya’s Refugee Affairs Secretariat, dated May 2020, on file with Amnesty International.

131 The Refugee Appeal Board agreed with the appellant that the Commissioner of Refugee Affairs’ revocation of his status was unprocedural and unlawful because the appellant’s actions did not meet the threshold for withdrawal of refugee status on grounds of national security; and because the decision did not meet the Kenyan Constitutional threshold for fair process. Refugee Appeal Board Decision, and the Petitioners application to the Refugee Board on file with Amnesty International.

## 2021

In a November 2021 oral statement on the challenges faced by LGBTI refugees in Kakuma refugee camp in Kenya, Amnesty International stated that “LGBTI activists who have been vocal in expressing concerns from the LGBTI community have faced threats and intimidation and their life are threatened. Security officials often term them as ‘attention seekers’ and threaten them with deportation back to their countries of origin. Some LGBTI activists have also been arbitrarily arrested and detained by the security officials in the camp”.<sup>432</sup>

## 2022

In November 2022, CIVICUS noted on increased attacks of the LGBTIQ community ahead of the elections: “On 20th July 2022, police officers arrested four HRDs [human rights defenders] working on sexual orientation, gender identity and expression (SOGIE) in Malindi for ‘illegally assembling’. Police officers allegedly raided a meeting organised to discuss issues affecting the LGBTIQ+ community and arrested four HRDs out of the 30 that took part in the meeting. Even though the venue hosted other meetings, the authorities declared this particular meeting illegal and demanded they provide a permit”.<sup>433</sup>

The 2022 USDOS Kenya report on human rights practices, published in March 2023, similarly observed that “Authorities permitted LGBTIQ+ advocacy organizations to register and conduct activities. In July, however, police arrested four activists in Malindi while they held a lawful assembly regarding problems

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<sup>431</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 34-35

<sup>432</sup> Amnesty International, [Oral statement on the situation of refugees in Africa at the 69th Ordinary Session of the African Commission on Human and Peoples’ Rights](#), 25 November 2021, p. 2

<sup>433</sup> CIVICUS, [High Inflation and Attacks on LGBTIQ on the Spotlight Ahead of Elections](#), 1 November 2022

affecting the LGBTQI+ community in the coastal region of the country. Defenders Coalition alleged police were systematically harassing and intimidating the sexual- and gender-identity activists. Police reportedly detained the activists and released them on condition they disperse”.<sup>434</sup>

### 2023

The May 2023 joint report by the NGLHRC and Amnesty International documenting the human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya found the following:

Kenyan police and other authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism, while LGBTI refugees detained in relation to protests about the treatment of LGBTI people in Kakuma camp have described being subjected to serious abuses in detention, including being intentionally exposed to rape and sexual violence by other detainees. [...]

#### 3.3 INTIMIDATION OF HUMAN RIGHTS DEFENDERS

Several LGBTI refugees have been active both within the camp and through social media, leading protests and sit-ins at UNHCR offices, supporting survivors of violence and voicing the LGBTI community's concerns. LGBTI refugee rights defenders in Kakuma camp are doubly at risk because of both their identities and their activism. They reported to the researchers several episodes of harassment and intimidation by Kenyan authorities because of their activism.

Pauline, a lesbian woman who used to be a nurse in her country of origin, was providing first aid care to the other members of the LGBTI community who had suffered violent attacks. She told the researchers:

*“I was volunteering in the blocks, helping my friends when they were hurt. One day the police called me in and accused me of giving LGBTI people injections [of anesthetic drugs] so that they could cut themselves and say they had been hurt by someone else. But I don't have that sort of injection.”<sup>124</sup>*

Isabel, a transgender woman, told the researchers that a group of four vocal LGBTI activists in Kakuma refugee camp were summoned to a meeting in May 2021 with DRS [Department of Refugee Services]/RAS [Refugee Affairs Secretariat] / and police authorities. She told the researchers that during that meeting DRS/RAS and Kenya police officers ordered them to stop sharing evidence of violence against LGBTI refugees on social media, accusing them of tarnishing the name of Kakuma refugee camp and threatening to deport them back to their country of origin.<sup>125</sup>

In mid-August 2021 LGBTI refugees reported a fire incident caused by petrol thrown at their shelters.<sup>126</sup> The following day, the police detained Isabel and three other LGBTI refugees, accusing them of having planned the fire incident. The group was released the following day. At the time of stating, no further investigation has been conducted involving them and no charge has been pressed against them. Isabel believes that they have been singled out by the police because of their activities for the LGBTI community in Kakuma.<sup>127</sup>

After the August 2021 fire incident, the Kakuma police also summoned Geoffrey, a LGBTI refugee activist who had once stayed in Kakuma and self-relocated to Nairobi. He believes that he was summoned after he posted about the fire incident on social media, tagging international media and human rights organizations.<sup>128</sup><sup>435</sup>

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<sup>434</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>435</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 9 and 34-35

124 Interview with Pauline, Kakuma town, 8 September 2021.

125 Isabel also shared how in the meeting DRS/RAS and Kenya police officers ridiculed them, saying that they were pretending to cross dress to get sympathy and international funding from social media. Phone interview, 24 August 2021.

126 Phone interview with Daniel, 18 August 2021.

127 Phone interview with Isabel, Kakuma camp, 24 August 2021.

128 Interview with Geoffrey, Nairobi, 2 September 2021.

## VII. Availability of State Protection

*For further relevant information consult also section II., a. [Legislation](#).*

### a. Investigation and prosecution of crimes against LGBTQI+ individuals

#### 2020

The August 2020 VOA News article on attacks against LGBTQ refugees in Kenya's Kakuma camp stated that "LGBTQ refugees in Kenya's Kakuma refugee camp say they are subjected to violent attacks and destruction of property by other refugees and local Turkana people. Some have fled to Nairobi and accuse authorities of failing to prevent the attacks. [...] Another transgender Ugandan refugee, Anita Sebuuma, was among those attacked in the video and says that police were called but took hours to arrive".<sup>436</sup>

In its shadow report in response to the fourth periodic report on the International Covenant on Civil and Political Rights, the Independent Medico-Legal Unit submitted (in collaboration with several Kenyan NGOs) noted that "The State has not taken any steps to protect LGBTI individuals against harassment" and "There is no evidence that the State has put in place any measures to protect from non-discrimination or to aid LGBTI persons in accessing justice if they are subjected to violence or discrimination".<sup>437</sup>

#### 2021

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic's report on the rights of LGBTI citizens and non-citizens in Kenya stated that "both public and state-administered violence against LGBTI Kenyans and refugees continues without redress. Our interviews confirm that this violence continues to occur in the Kakuma camp and in other parts of Kenya, and LGBTI persons report a failure of the government to investigate".<sup>438</sup>

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<sup>436</sup> Voice of America (VOA) News, [Kenya's LGBTQ Refugees Face Threats, Attacks at Kakuma Camp](#), 13 August 2020

<sup>437</sup> Independent Medico-Legal Unit (IMLU), [Shadow Report in Response to the Fourth Periodic Report on the International Covenant on Civil and Political Rights \(2013-2020\)](#), 2020, paragraph 81

<sup>438</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be](#)

In May 2021, the UN Human Rights Committee, in its concluding observations on the fourth periodic report of Kenya regarding the International Covenant on Civil and Political Rights, stated that it was concerned over “Reports of lesbian, gay, bisexual, transgender and intersex individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access justice and remedies”.<sup>439</sup>

In the Immigration and Refugee Board of Canada’s July 2021 report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya, it noted:

The human rights defender [National Gay and Lesbian Human Rights Commission (NGLHRC)] stated that the *Penal Code* "gives a free pass for the mistreatment of LGBT individuals" and that "there is no way the state can in turn protect LGBT individuals" (Human rights defender 30 June 2021). [...]

The human rights defender stated that "it is difficult for LGBTQ individuals to go to the police," who think "the very existence of LGBTQ individuals is illegitimate" (Human rights defender 30 June 2021). The same source indicated that police complaints by individuals of diverse SOGIE "are not taken seriously" and that individuals of diverse SOGIE "shy away from going to the police to report violations" (Human rights defender 30 June 2021). The PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya representative indicated that "LGBT cases are treated differently than how others are treated" and that according to a survey PEMA conducted on how LGBT individuals are treated, LGBT cases reported to the police are not "taken seriously" and being LGBT can be "used against them" (PEMA Kenya 12 July 2021). [...]

The KYDESA Executive Director stated that KYDESA [Kenya Youth Development and Education Support Association] is working with the police to address issues affecting persons of diverse SOGIE and as of June 2021, the police have documented no cases of harassment against persons of diverse SOGIE who reported complaints (KYDESA 23 June 2021).<sup>440</sup>

In Rainbow Railroad and ORAM’s October 2021 report into the conditions facing LGBTQI+ asylum seekers and refugees in Kakuma refugee camp, it was noted that:

The respondents painted a picture of unresponsive security services, with over 88 per cent reporting having been denied services by the police. One respondent narrated:

*“When I arrived at the camp, I was allocated space in Block 1 and provided materials to construct my shelter. On the same day, some other refugees came to my site. I thought they were welcoming me and assisting me to put up my shelter. They spoke to me in Kiswahili but I responded in English. One of them started shouting at me, calling me shoga. They took away my materials and chased me from the location. I went back to the reception to report my experience. I was referred to the police to record a statement. On getting to the report desk and explaining my situation, the officer manning the desk gave me a reference*

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[considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights](#), 2021, p. 10

<sup>439</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights Concluding observations on the fourth periodic report of Kenya](#), 11 May 2021, paragraph 12

<sup>440</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

*number and told me to go sort out my problems. He told me he is tired of dealing with homosexuals and I should consider going back to my country.”*

– A 29-year-old Ugandan asylum seeker

Reports of police declining to assist or demanding bribes from the asylum seekers were quite rampant. Most reported not being able to pay the bribes. [...]

Safety and protection [...]

Respondents confirmed that there was a 24-hour hotline managed by UNHCR, through which they would report security incidents. They also confirmed the availability of post-violence care, including psychosocial support and ambulance services to transport victims to health facilities. However, they felt the police services were the weakest link in responding to violence. The respondents felt that there was a need to ensure the police respond to all complaints filed with them, ensure aggressors face the law to discourage further aggression and institute prevention measures, such as enhanced police patrols. A lesbian who was raped while hawking clothes emotionally narrated her ordeal:

*“The emotions that I experience every time I step out and see the men who raped me walking freely in the camp is just too much to handle. I can no longer run my small business or run errands in the camp for fear of a repeat encounter with them. Why couldn’t the police arrest them, yet I reported to them and even identified the rapists? Why do they treat me like a lesser human being? What will stop those men from raping another woman when they know nothing will happen to them?”<sup>441</sup>*

In a November 2021 oral statement on the challenges faced by LGBTI refugees in Kakuma refugee camp in Kenya, Amnesty International stated that “While LGBTI refugees have been active in reporting homophobic attacks to the Kenya security officials in the camp, there has been little or no state action. No perpetrator has been arrested and charged in a court of law even in instances where the LGBTI refugees are able to point out specific perpetrators”.<sup>442</sup>

In Amnesty International’s annual report on the state of the world’s human rights in 2021, published in March 2022, on Kenya it noted “There were around 1,000 LGBTI refugees in the Kakuma and Dadaab camps who were inadequately protected from homophobic attacks”.<sup>443</sup>

In reference to violence faced by LGBTIQ+ refugees in Kenya, the 2021 USDOS Kenya report on human rights practices observed that “UNHCR and NGO partners provided medical and other assistance for LGBTIQ+ refugees when necessary, but legal accountability for perpetrators was lacking overall. In March UNHCR released a statement outlining efforts in collaboration with police and the Refugee Affairs Secretariat to enhance security for LGBTIQ+ refugees, including the relocation of some particularly vulnerable individuals”.<sup>444</sup>

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<sup>441</sup> Rainbow Railroad and ORAM (Organization for Refuge, Asylum and Migration), [The Challenges Facing LGBTIQ+ Refugees in Kakuma Refugee Camp, Kenya](#), October 2021, pp. 24 and 27

<sup>442</sup> Amnesty International, [Oral statement on the situation of refugees in Africa at the 69th Ordinary Session of the African Commission on Human and Peoples’ Rights](#), 25 November 2021, p. 1

<sup>443</sup> Amnesty International, [Amnesty International Report 2021/22: The state of the world’s human rights](#), 29 March 2022, p. 222

<sup>444</sup> US Department of State (USDOS), [2021 Country Reports on Human Rights Practices: Kenya](#), 12 April 2022

2022

The Guardian article in January 2022 exploring the experiences of ‘catfishing’ by LGBTQ Kenyans stated that:

Otieno’s experience on social media sites or dating apps of being “catfished” – as using a fake identity to lure someone online is known – by people intending to extort money is common among members of the LGBTQ+ community in Kenya. [...]

Activists say it is important to educate police officers about the rights of the LGBTQ+ community to try to avoid this happening. Gateru says she has made five allegations of misconduct to the Independent Policing Oversight Authority (IPOA) over the past two years. “Very little is done,” she says. “It’s very frustrating.”

A spokesperson for the IPOA denies this: “The authority is not in receipt of any complaint falling within the ambit of police targeting individuals as a result of their sexual affiliation.”<sup>445</sup>

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya’s third periodic report noted that:

4. [...] even though violence against LGBTIQ+ persons will often satisfy the definition of torture, such acts are rarely prosecuted as such. In practice, violence against the LGBTIQ+ community is often ignored or considered a minor offence or otherwise as an offence not characterised as torture and CIDTP [cruel, inhuman or degrading treatment or punishment]. Further, urgent action is needed to improve prevention strategies, including repealing discriminatory laws that fuel violence against LGBTIQ+ persons, and to strengthen investigative and accountability mechanisms to ensure such violence is appropriately addressed, including by providing adequate training on LGBTIQ+ issues and the PTA [Prevention of Torture Act 2017] for relevant State authorities.

5. In Kenya, there is an overall environment of hostility towards LGBTIQ+ individuals, who commonly suffer harassment and discrimination because of their sexual orientation, gender identity, gender expression and sex characteristics. Such discrimination [...] fuels violence against them, including torture and other ill-treatment, and impacts their access to justice and to reparation. [...]

17. In Kenya, whilst in some cases the police have protected LGBTIQ+ persons from violence, there remain many cases in which the police have either refused to assist LGBTIQ+ individuals or became perpetrators of violence themselves. LGBTIQ+ persons who have attempted to report incidents of violence or crime to the police have been subjected to further verbal or physical abuse, or even arrest, as a result of officers’ perception of the victims’ sexual orientation or gender identity.<sup>26</sup>

18. In light of these experiences, it is unsurprising there is a general fear of reporting violence against LGBTIQ+ persons, especially where the violence was motivated by discrimination on grounds of sexual orientation or gender identity.<sup>27</sup> Also, in cases where an individual has suffered sexual violence at the hands of the police, attempts to report such incidents have on occasion been unsuccessful due to the reluctance of the police to investigate and prosecute their own.<sup>28</sup>

Initiatives to prevent and investigate gender-based violence

19. It must be noted that Kenya has taken some steps in recent years to prevent and address sexual and gender-based violence (SGBV), including:

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<sup>445</sup> The Guardian, [‘I’d been set up’: the LGBTQ Kenyans ‘catfished’ for money via dating apps](#), 4 January 2022

- a) the development of a monitoring and evaluation framework facilitated by the National Gender and Equality Commission and a County Government Policy on SGBV (in 2017) designed to progressively eliminate such violence;
- b) the adoption of National Guidelines on the Management of Sexual Violence (in 2014), aimed at medical practitioners, with a view to better preserve evidence for court use and provide appropriate psycho-social and medical support to survivors;
- c) the development of a Training Manual on SGBV for Prosecutors, which provides guidance to investigators, medical practitioners, and civil society on the elements of prosecution under the Sexual Offences Act. The Manual specifically includes guidelines on how to record statements, handle crime scenes and evidence, identify offenders and expert witnesses, and related challenges;<sup>29</sup>
- d) the enactment of the Protection against Domestic Violence Act in 2015.<sup>30</sup> [...]

21. Nonetheless, the above framework has not been used to address violence against the LGBTIQ+ community. The National Gender and Equality Commission does not tend to receive nor investigate instances of violence based on discrimination against sexual orientation or gender identity specifically. Also, the use of the above frameworks to address LGBTIQ+ violence is hindered by the fact that LGBTIQ+ persons rarely report instances of gender-based violence or intimate partner violence due to their fear of having to disclose the nature of their status or relationship and, consequently being further discriminated or being arrested themselves as a result (for example, under sections 162 and 165 of the Penal Code) [...].<sup>32</sup> [...]

Another relevant step reported by the State (this time to the Human Rights Committee in 2019), refers to an apparent training initiative by different stakeholders for State officers on LGBTIQ+ issues. According to Kenya's government, the National Police Service, National Gender and Equality Commission, the Kenya Human Rights Commission and NGOs, are "sensitising public officers on how to handle matters relating to Lesbian, Gay, Bisexual and Transgender matters."<sup>39</sup> However, there is no information available on when and how many times such initiatives were implemented, how many State officials received training, which issues were covered, and what was the impact of such trainings.

27. In any case, the issues presented in this submission suggest that there is a problem of structural discrimination against LGBTIQ+ persons, including institution-wide concerns in relation to the police, where there is an urgent need to better understand the rights of LGBTIQ+ persons. [...]

29. The general absence of accountability for torture, CIDTP and other forms of violence against LGBTIQ+ persons in Kenya can be attributed, among other things, to the lack of gender sensitive protocols on the effective investigation of LGBTIQ+ violence specifically, and the lack of appropriate training of State officials dealing with such investigations.<sup>40</sup>

30. Even when investigations are conducted, the discriminatory purpose behind violent acts is not always explored.<sup>446</sup>

26 Human Rights Watch (HRW), 'The Issue is Violence – Attacks on LGBT People on Kenya's Coast' (The Issue is Violence), September 2015; See also NGLHRC, '2020/2021 Annual Legal Aid Report', pp. 12 (para. 42.), 18 (paras 5.1, 5.2, 5.4 and 5.5); 'July 2019/July 2020 Legal Aid Report', pp. 21 (para.14.2), 22 (para. 14.3), 23 (para. 14.5) and '2018/2019 Legal Aid Brief', pp. 3, 10-11 (para. 6.2).

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<sup>446</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 1-3 and 5-7

27 NGLHRC, '2020/2021 Annual Legal Aid Report', pp. 9 (para. 1.1), 18 (paras 5.4, and 5.6); 'July 2019/July 2020 Legal Aid Report', pp. 7, 8, 11-12 (para. 1.0), 21 (para. 14.2), and '2018/2019 Legal Aid Brief', pp. 3, 6 (para. 2.1.2), 7 (para. 2.3.2).

28 HRW, 'The Issue is Violence'.

29 HRC, 'Fourth periodic report submitted by Kenya under article 40 of the Covenant, due in 2015', 26 April 2019, UN Doc. CCPR/C/KEN/4, paras. 80-81. [...]

32 NGLHRC, '2020/2021 Annual Legal Aid Report', p. 9 (para. 1.1) and 'July 2019/July 2020 Legal Aid Report', 2020, pp. 7, 8, and 14 (para. 3.1). [...]

39 HRC, 'Fourth periodic report submitted by Kenya', UN Doc. CCPR/C/KEN/4, para. 20.

40 Victims sometimes opt not to report violations due to lack of trust in the investigative process. See NGLHRC, 'July 2019/July 2020 Legal Aid Report', p. 15 (para. 4.0).

The joint April 2022 statement from NGLHRC, INEND, VOWWEK, Amnesty International Kenya, and Change.org, Kenya on the murder of Sheila Lumumba noted that:

On 17th April 2022, Sheila Lumumba, a 25-year-old queer, non-binary person, was found dead in their apartment in Karatina, Nyeri County. The autopsy conducted by the Government Pathologist report released on 20th April 2022 shows, among other things, signs of rape, broken limbs and multiple stab wounds in the neck and chest area. [...] In the same breath, we decry a visible pattern as indicated in various research studies and anecdotal information by the LGBTIQ community of targeted violence against sexual and gender minorities and the lack of prosecution and impunity for perpetrators of homophobic/transphobic violence. We urge the Directorate of Criminal Investigations to move with speed to arrest and the identified suspects prosecuted.

Article 27 The Constitution of Kenya (2010) guarantees equal protection and equal benefit of the law to all persons. Regardless, we have continuously seen a lack of commitment and will from duty bearers to prosecute and investigate issues that involve Sexual and Gender Minorities. This resistance to act has been particularly evident in the past year, where we have witnessed the murders of three members of the LGBTIQ+ community. Yet, very little has been done by way of documentation, prosecution and investigation. This reluctance highlights an unjust society where the protection of certain classes of marginalised groups lapses, and violence against them is not treated as an urgent and important issue. [...] As the LGBTIQ+ community rallies to condemn Sheila's assault and murder, we note with sadness the silence from duty bearers and the political class. Their silence is particularly disturbing, considering April is Sexual Assault Awareness Month.<sup>447</sup>

At the end of April 2022, openDemocracy also reported on what they found to be an inadequate police response to the murder of Sheila Adhiambo Lumumba, a non-binary Kenyan lesbian, earlier that month:

Rights groups and LGBTIQ people in Kenya say police are dragging their feet over the brutal murder of 25-year-old Sheila Adhiambo Lumumba, whose grieving family and friends have been forced to carry out basic investigative work themselves.

Sheila's cousin told openDemocracy she had even discovered the potential murder weapon, a knife, among Sheila's possessions when collecting their things – a weapon police claimed they had been unable to find – and that friends and family had been left to chase down vital CCTV of their final hours.

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<sup>447</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), Initiative for Equality and Non-Discrimination (INEND), Voices of Women in Western Kenya (VOWWEK), Amnesty International Kenya, and Change.org, Kenya, [Joint Statement on the Brutal Murder of Sheila Lumumba](#), 26 April 2022

Sheila, a lesbian non-binary person, lived in Nyeri county, central Kenya. [...]

When they did not show up for work on the morning of 15 April, workmates called their phone, but it was off. It remains unclear when exactly Sheila was murdered, and police are yet to disclose if there are any suspects.

A close family member told openDemocracy that a post-mortem report released last week showed they had been raped, stabbed several times in the chest, face, neck and eyes, and hit on the head with a blunt object. One of their legs had been broken.

Afrika, a coordinator at Kisumu Feminists' Society in Sheila's home town, started the #JusticeForSheila social media campaign last week to "break the silence and ensure that we show people that you cannot kill someone like this and go unpunished".

But the police investigation on the case remains painfully slow, and Sheila's family say the police are not doing enough to catch the perpetrators.

"They're not doing much, at least not what is expected of them," John Lumumba, Sheila's father, told openDemocracy. "There is nothing much going on. There is not much progress."

The Directorate of Criminal Investigations (DCI) Kenya – the criminal investigations arm of the police – and the investigating officer on the case have not responded to openDemocracy's questions about progress.

Sheila's cousin, Laura Ocieng, told openDemocracy she was among the people who went to Sheila's room on Wednesday to pack up their belongings.

She said she had discovered a bloodied knife "hidden" among Sheila's clothes, even though "the police claimed not to have found the murder weapon" when they conducted their own search days before. She said that she later handed the knife over to the police.

"We told the DCI to come and pick it up, and they told us they can't come. They told us to take it to the police station. Luckily, we had gloves and took it [to the police] without putting our fingerprints [on it]," she said.

Ocieng also said that police had been given CCTV footage of Sheila Lumumba leaving a bar in the company of three males some time on 14 April. The CCTV footage is one of the only pieces of evidence showing the people with whom Sheila Lumumba was last seen alive.

But even this had to be located by friends and family of the deceased, and brought to the attention of the police.

"I really think the police failed us from the start," Ocieng said.<sup>448</sup>

Human Rights Watch reported similarly:

Sheila Adhiambo Lumumba, a 25-year-old Kenyan non-binary lesbian, was found murdered and naked in their bedroom in Karatina, north of Nairobi on April 17. A postmortem report conducted the next day at Karatina Sub-County Hospital and seen by Human Rights Watch revealed that Lumumba was sexually assaulted, hit on the head with a blunt object, and stabbed in the chest, face, neck, and eyes. Police have yet to properly investigate.

Lumumba's cousin, Brenda Akinyi, told Human Rights Watch that the family is desperate to receive the results of a toxicology report that they requested; they are also hoping that Lumumba was unconscious during the attack. According to Akinyi, Lumumba's cousins are investigating the murder themselves because police failed to update the family on case developments. After police claimed they had thoroughly searched the crime scene, Lumumba's family members said they found a knife and razor blade

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<sup>448</sup> OpenDemocracy, [Police leave family of murdered non-binary lesbian to find murder weapon](#), 25 April 2022

in their bedroom. A family friend found CCTV footage of Lumumba leaving a bar with three men on her last night alive.

In the face of inadequate police response, lesbian, bisexual, and queer (LBQ) activists started a campaign for justice and circulated a photo on social media of Lumumba in their jean jacket: vibrant, stylish, and alive. By the start of Lesbian Visibility Week (April 25 to May 1), #JusticeForSheila was trending in Kenya. [...]

Kenya's laws and policies against sexual and gender-based violence do not explicitly mention LBQ people, nor does Kenya's National Policy on Prevention and Response to Gender-Based Violence mention murder as a form of gender-based violence. This renders both the extent of the brutality and the unique targeting that Lumumba experienced as a lesbian invisible under Kenya's current policies.

Police should immediately conduct a thorough and transparent investigation into Lumumba's murder, and Kenya's Directorate of Criminal Investigations and the National Police Service Commission should release statements condemning the attack.<sup>449</sup>

The May 2022 UN Committee Against Torture's Concluding observations on the third periodic report of Kenya expressed its concern over "[r]eports of lesbian, gay, bisexual, transgender and intersex individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access to justice and remedies".<sup>450</sup>

In galck+'s July 2022 report, it noted the following with regards to conversion 'therapy' practices and Kenyan law "Generally, homophobic contexts are fertile ground for practices that may be termed conversion 'therapy' because there are no regulations to protect LGBTIAQ+ people and criminalization silences open discussions of discrimination and violence against LGBTIAQ+ people. The criminalization of same-sex conduct may further embolden perpetrators and practitioners of so-called conversion 'therapy' as survivors have clear reasons to fear reprisals, including criminal charges by state authorities if abuses are reported".<sup>451</sup>

In July 2022, openDemocracy gave an update into investigations around the murder of Sheila Adhiambo Lumumba, stating that:

The family of Sheila Lumumba, who was raped and murdered in Nyeri County, Kenya, in April, have told openDemocracy of their relief at hearing a suspect has been charged in connection with their death.

A man was arraigned in court in Karatina town, Nyeri County on Tuesday this week, charged with the aggravated assault and murder of the 25-year-old.

A woman has also been arrested but has not been charged. Sheila's family claim she was allegedly found selling items that belonged to Sheila. [...]

The family has previously accused police officers of dragging their feet on the case. They say this has forced them to start their own investigations, during which they claim to have found CCTV footage that subsequently became part of the police probe. [...]

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<sup>449</sup> Human Rights Watch, [Inadequate Kenyan Police Response to Brutal Killing of Non-Binary Lesbian](#), 29 April 2022

<sup>450</sup> UN Committee Against Torture, [Concluding observations on the third periodic report of Kenya](#), 30 May 2022, paragraph 43

<sup>451</sup> Gay and Lesbian Coalition of Kenya (galck+), [Shame Is Not a Cure: So-Called Conversion "Therapy" Practices in Kenya](#), 14 July 2022, p. 17

LGBTIQ organisations in Kenya have called on the Directorate of Criminal Investigations (DCI) Kenya to ensure progress in other murder cases of queer Kenyans, including Joash Mosoti, a gay man who was murdered in Mombasa last year.

Arrests were also made last week in the case of an intersex woman, Rose Mbesa, who was found murdered this year in Trans Nzoia County, 380 kilometres northwest of Nairobi.

The hashtags #JusticeForSheilaLumumba, #JusticeForRoseMbesa, #JusticeForJoashMosoti are trending again as many demand answers over queer murders and violence in the country.<sup>452</sup>

Human Rights Watch's 2023 annual report on the human rights situation in 2022 noted on Kenya that "Intersex children are recognized and protected against discrimination in the Children's Act, 2022".<sup>453</sup>

The same report also noted that: "At least one person was arrested in July over the killing of Sheila Adhiambo Lumumba, a 25-year-old Kenyan non-binary lesbian. Lumumba was sexually assaulted and brutally murdered in their home in Karatina, north of Nairobi".<sup>454</sup>

In reference to violence faced by LGBTQI+ refugees in Kenya, the 2022 USDOS Kenya report on human rights practices, published in March 2023, observed that "UNHCR and NGO partners provided medical and other assistance for LGBTQI+ refugees when necessary, but legal accountability for perpetrators was lacking overall".<sup>455</sup>

### 2023

Following the murder of LGBTQ+ rights activist Edwin Chiloba, The Guardian quoted the KHRC as stating that: "'It is truly worrisome that we continue to witness escalation in violence targeting LGBTQ+ Kenyans [...] Every day, the human rights of LGBTQ+ persons are being violated with little consequence for perpetrators,' it added, urging the police 'to conduct swift investigations and ensure the killers are apprehended and prosecuted'".<sup>456</sup>

In January 2023, galck+ and NGLHRC, along with five other organisations, released a statement on the investigation into the murder of Edwin 'Chiloba' Kiprotich Kiptoo, stating that they:

[...] commend the Directorate of Criminal Investigations (DCI) for the swift investigations into the brutal murder of Edwin Kiprotich Chiloba. The investigations have resulted in a confession, the arrest of five suspects and their arraignment at the Eldoret Law Courts. [...]

We call on the DCI and the Judiciary to replicate this determination and enthusiasm and act to close other pending cases, such as Sheila Lumumba, who was raped and killed in Karatina, Nyeri County. Joash Mosoti, a young gay male peer educator, was attacked and killed in his house in Mombasa County. Chriton "Trinidad" Atuhwera, a gay refugee and human rights activist succumbed to burns injuries sustained in an arson attack at the Kakuma refugee camp. Rose Mbesa, a 50-year-old intersex person who

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<sup>452</sup> OpenDemocracy, [Sheila Lumumba: Hopes for justice as man charged with lesbian's murder](#), 20 July 2022

<sup>453</sup> Human Rights Watch, [World Report 2023: Events of 2022](#), 12 January 2023, p. 360

<sup>454</sup> Human Rights Watch, [World Report 2023: Events of 2022](#), 12 January 2023, p. 360

<sup>455</sup> US Department of State (USDOS), [2022 Country Reports on Human Rights Practices: Kenya](#), 20 March 2023

<sup>456</sup> The Guardian, [Killing of LGBTQ+ activist prompts outcry over anti-gay attacks in Kenya](#), 6 January 2023

was raped and killed and her lifeless body dumped on the roadside in Kachibora, Trans Nzoia County, among many others.

Articles 26, 27, and 28 of the Constitution of Kenya (2010) guarantee the right to life, equal protection and equal benefit of the law to all persons, and the right to dignity for all, including sexual and gender minorities. However, in reality, this has not been the case, as seen in the laxity in prosecution in the murder cases of persons of the LGBTQ+ community.

The killing of Edwin Chiloba exposes the rise in Sexual and Gender-based Violence (SGBV), and Intimate Partner Violence (IPV) experienced in Kenya. These incidents can be attributed to the absence of strong preventions, weak protection mechanisms for survivors, evasive prosecution of SGBV cases, and an uncoordinated and often reluctant response to SGBV from State and non-state actors.<sup>457</sup>

Edge Media Network reported in January 2023 that “A suspect on Tuesday faced a murder charge in the killing of a prominent LGBTQ activist in Kenya, with authorities dismissing activists' suggestions that it was a hate crime. Authorities say Jacktone Odhiambo is the only person who will be charged with the murder of Edwin Chiloba after a court released four other suspects. [...] Activists have said the murder was a hate crime, adding that fashion designer Chiloba had been targeted for his activism in support of gay rights”.<sup>458</sup>

According to Article 19, the “lack of recognition in law, coupled with homophobic rhetoric from leaders, perpetuate the climate of prejudice and violence towards the community. It also renders the targeting of LGBTQ+ people invisible under Kenya’s laws and inadvertently leads to a lack of or inadequate response from authorities when called on to investigate cases of violence on the basis of real or perceived sexual orientation and/or gender expression”.<sup>459</sup>

The May 2023 joint report by the NGLHRC and Amnesty International documenting the human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya found the following:

#### THE SITUATION OF THE LGBTI COMMUNITY IN KENYA [...]

In 2021 Erica Chandra, a transgender woman, was found murdered in the Westlands district of Nairobi and Joash Mosoti, a gay man was found tortured and strangled to death in Mombasa. In April 2022, the murder of Sheila Adhiambo Lumumba, a non-binary lesbian, triggered the trauma of these cases. After public outrage on the murder, a suspect was arrested and is facing trial. A month later Rose Mbesa, an intersex person, was raped and killed.<sup>38</sup> No one has yet been arrested so far and the authorities have not released information on the progress of investigations. [...]

#### 3. VIOLENCE AGAINST LGBTI REFUGEES [...]

Violence against the LGBTI community in Kakuma camp is due in part to hostility and prejudice in the wider refugee population, as most refugees in the camp are from cultural and religious backgrounds that

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<sup>457</sup> Gay and Lesbian Coalition of Kenya (galck+), The National Gay and Lesbian Human Rights Commission (NGLHRC), QInitiative, The Initiative for Equality and Non-Discrimination (INEND), Bold Network Africa, Amnesty International, change.org, Kenya, [Joint Statement on the Investigation into the Murder of Edwin ‘Chiloba’ Kiprotich Kiptoo](#), 10 January 2023, p. 1

<sup>458</sup> Edge Media Network, [Kenyan Police: Murder of LGBTQ+ Activist Not Hate Crime](#), 31 January 2023

<sup>459</sup> Article 19, [Kenya: Murder of LGBTQ+ activist must prompt urgent reform](#), 6 February 2023

are non-accepting of LGBTI persons [...]. At the same time, the discrimination and abuses against LGBTI individuals are exacerbated by the state's lack of effort to apprehend perpetrators or tackle deeply entrenched homophobia and transphobia. Perpetrators of violence and intimidation targeting LGBTI individuals can commit their crimes with almost total impunity, emboldened by the lack of adequate responses from the police and other relevant duty bearers.

This chapter highlights some of the patterns of violence described to the researchers by LGBTI refugees, as well as the failure of the relevant duty bearers, including the police, to promptly, effectively, transparently and independently investigate incidents reported to them, fulfil the rights of survivors and bring the perpetrators to justice. Researchers also documented other human rights violations at the hands of the police and other state actors, such as intimidation of human rights defenders and violations of their right to be free from torture and ill-treatment.

The Kenyan government is under the obligation to protect life and ensure security for all refugees in Kakuma, including LGBTI refugees, through human rights-compliant law enforcement and community interventions that prevent human rights violations. Its failure to fulfil this obligation has led to impunity for perpetrators and human rights violations for LGBTI refugees, including their rights to physical integrity, freedom from torture and ill-treatment, as well as their right to live without discrimination on grounds of their sexual orientation, gender identity and/or expression or sexual characteristics.

The systematic and pervasive failure to conduct a prompt, thorough, independent and impartial investigation into allegations of hate crimes and gender-based violence against LGBTI people raise concerns on institutional homophobia and transphobia within the police and other state institutions. [...]

### 3.1 VIOLENT ATTACKS, THREATS AND INTIMIDATION

Thirty-one of the refugees and asylum seekers interviewed reported having suffered assaults, threats and intimidation in Kakuma camp, most of them more than once, because of their sexual orientation, gender identity and/or expression and sex characteristics.<sup>85</sup> [...]

The interviewees reported most of these episodes to the police. Police officers recorded the incident in the Occurrence Book and provided a reference number, known as OB number. However, in only one case known to the researchers the police followed up on the report [...]. In all other cases, the police did not provide any information about the investigations or other types of follow-up to the individuals affected. In some cases, the interviewee reported incidents to the police while they were occurring, or provided information that could identify the alleged perpetrator, but the police did not intervene to stop the incident and did not identify any suspect. [...]

Sharon, a transgender woman, expressed her lack of confidence in the police when describing some of the several episodes of violence and intimidation she suffered at various points during 2019-2020:

*"One morning I was going from Kakuma camp to town with another transgender refugee who I met in the camp. Four people approached us and told us to kiss each other in front of them, threatening to beat us.*

*Another day three people found me walking around the camp and started throwing jabs on my face and kicking me, saying that I am a curse to the rain in Kakuma. They beat me on the eye, and it got swollen. My nose was also swollen.*

*Another day my boyfriend came to visit me but my neighbours in the block were not happy to see him there. They threatened to kill me. They said we teach their children bad manners. I had to leave my house.*

*I have been reporting all these incidents to the police station all the times, and there is no need to go to the police station again. Nothing will happen to [the perpetrators]."<sup>89</sup>*

Diana, a lesbian woman, arrived in Kakuma camp in December 2019. [...]

Diana told researchers about seven different episodes between December 2019 and April 2020 during which she suffered violence, threats, or intimidation at the hands of other camp residents. She reported all these incidents to the police and obtained OB reference numbers. In two occasions the police told her to go back to the station, should she see her attackers anywhere again. In May 2020 Diana met two of the men who had attacked her previously, who pushed her on the ground. When she ran to the police station, the police gave her another OB reference number, her eighth one in five months. However, she told researchers that police failed to follow-up on her reports as she had not been provided any further information regarding the outcome of any police investigation. She said that the feeling of unsafety is her greatest concern.<sup>91</sup>

In January 2020 a group of men living in the camp accosted Ian, a gay man, and asked to know why he was there while “all the gays had been taken away” (referring to the transfer of a large group of LGBTI refugees to Nairobi in 2019). They grabbed him, hit him, threw him to the ground and stepped on his left arm. He did not report this because he was afraid that the police would lock him up because he is gay.<sup>92</sup>

In February 2020, five men attacked Judy, a transgender woman, who was going to one of the markets in the camp. One of the men stabbed her left shoulder, leaving her with visible scars. She reported the attack to the police and was given an OB reference number, but police failed to provide her with information about any further action.<sup>93</sup>

Emmanuel, a gay man, described an attack he suffered in April 2020, when his leg was dislocated by a fellow camp resident who pushed him into a ditch after asking him why he was a homosexual. He said he reported the assault to the police and added:

*“... once you report, the police do not go beyond the police station to investigate. Once you report nothing will happen to the case. Nobody has been arrested and there is no information from the police.”<sup>94</sup>*

In April 2020, a few days after newly arrived LGBTI refugees were allocated shelters in Kakuma camp, an attempted arson attack targeted their block.<sup>95</sup> Nelson, a gay man, was woken up by his neighbour, who had seen two people trying to set fire to the tarpaulin of his shelter. They reported the matter to the police and were given an OB number. The police promised to investigate but did not provide any follow-up.<sup>96</sup>

In June 2020, Nelson was woken up by the sound of knocking on iron sheets and saw a group of men attacking his block with stones, iron bars and sticks. He was chased by some of them and was hit on his legs and head. He regained consciousness in hospital with multiple injuries.<sup>97</sup> The assailants attacked also Pauline, a lesbian woman, hitting her with sticks and stones while calling her “shoga” and telling her that she did not deserve to be in the camp.<sup>98</sup> The group of LGBTI refugees affected called the police but is not aware of any follow up.

Emmanuel suffered another attack in November 2020, when two other refugees asked him about his sexual orientation, then grabbed him and cut him on the neck with a small knife. Again, he reported the incident to the police, who did not follow up.<sup>99</sup>

Anne, a lesbian woman, said she had been attacked and ridiculed several times. During one incident in September 2020, she said that men approached her on a motorbike as she was on her way to the market. They called her “shoga” and hit her with sticks and stones. She had injuries on her face and her left hand and bruises on the leg and she needed hospital treatment. She reported the attack to the police, but she said nothing was done.<sup>100</sup>

Mercy, a lesbian woman, told the researchers that she was harassed and threatened with rape since the moment she arrived in Kakuma in 2019. Despite repeatedly raising concerns about her safety with the camp management, UNHCR and the police, she was transferred to a part of the camp that she did not consider safe. Two men attacked her and raped her in March 2021, on her way to the market. She

obtained medical records and reported the rape to the police, but she was not informed of any follow-up and still does not have a safe place to stay.<sup>101</sup> [...]

Several interviewees told Amnesty International and NGLHRC about the 15 March 2021 arson attack that caused the death of Chriton Atuhwera.<sup>107</sup> Diana told researchers that she was sleeping outside and woke up screaming: she had been wounded on her left leg.<sup>108</sup> Isabel, a transgender woman, told researchers that she was woken up that night by screams from other members of the LGBTI community living in the block. When she went outside, she saw her friend Chriton running away in a ball of flames while screaming for help.<sup>109</sup> The only survivor of the arson attack has burn scars on over 50% of his body, which remain a permanent reminder of the incident. He has to wear long trousers and long sleeve shirts to hide the scars. His pictures spread on the internet and he has received threatening calls from people, including from his country of origin.<sup>110</sup> At the time of stating, the police had provided no information on the outcome of its investigations.

In May 2021, a group of men attacked Fredrick, a gay man, while he was on a friend's boda-boda and wearing a rainbow mask. They asked him why he was wearing rainbow and why he was gay. They injured one of his eyes, his left hand and a foot. He was still bleeding when he went to the police station to report the attack and was issued with an OB number. He then went to hospital. No police action was taken against his attackers.<sup>111</sup> [...]

### 3.2 IMPUNITY FOR PERPETRATORS OF HATE CRIMES

The testimonies collected in this report point to systematic and pervasive inaction by police in Kakuma refugee camp to effectively, promptly, independently and thoroughly investigate allegations of hate crimes reported by LGBTI refugees and asylum seekers. This has led to impunity for perpetrators and violations of human rights for LGBTI individuals in Kakuma camp, including their rights to physical integrity, freedom from torture and ill-treatment, as well as their right to live without discrimination on grounds of their sexual orientation, gender identity and/or expression or sexual characteristics.

In only one out of the cases of alleged hate crimes targeting LGBTI people documented for this research did the authorities inform the victim of any follow-up. Harper, who self-identifies as LGBTIQ (pronouns they/them), said that in February 2020 one subcontracted security officer attacked them with a metal rod while they were queueing at the reception centre, calling them "shoga" and injuring their chest and back. In August 2020 the alleged assailant was arrested and detained in Kakuma police station. However, justice was not served in Harper's case. The alleged assailant offered to settle the matter out of court and cover their medical expenses if they withdrew the complaint. Harper was given 10,000 KES (\$80 USD) for their treatment and was promised a further 10,000 KES, which they never received. They told the researchers:

*"There is nothing I can do as a refugee. Homosexuality is criminalized [in Kenya]. But I want to seek justice as a human being. A friend of mine told me that I am refugee, and I am putting someone into jail who is a Kenyan. I am the one who will suffer more. [But] I would still wish to get justice like any other person..."*<sup>113</sup>

In all other cases documented for this report, the police did not provide any information about the investigations or other types of follow-up. [...]

In several of the cases collected by Amnesty International and NGLHRC, LGBTI refugees reported incidents to the police while they were occurring: the police could have stopped, identified and arrested the perpetrators, but didn't. In other cases, the police could have easily identified the alleged perpetrator based on the information provided by those reporting the crime but didn't. In some cases, LGBTI refugees have been violently attacked in areas controlled by international humanitarian organizations and staffed by subcontracted security officers. Again, when survivors have reported the incidents, little or no action has been taken by police to hold the perpetrators to account.

Ken, a gay man, said that a group of six subcontracted security officers, including Harper's alleged assailant, attacked him at the reception centre in January 2020, about a month before the incident suffered by Harper (see above). They locked him in a room and hit and caned him, saying that gay people were a problem at the reception because they do not follow orders. Ken reported the matter to the police, identifying at least one of the security officers. He said the police told him: "You can't report a Kenyan to the police station". Ken was given an OB number, but nothing happened subsequently.<sup>115</sup>

Diana, a lesbian woman, told the researchers that in January 2020, a group of men living in the camp threw stones at her and other LGBTI refugees while they were sleeping outside the reception gate in Kakuma camp. Her left leg was injured. They shouted for help, but the private security officers guarding the reception centre refused to open the gates. The police arrived about 30 minutes later and dispersed the attackers but did not identify them and made no arrests. Diana and others were taken to one of the camp's hospitals by ambulance. She stayed in hospital overnight. Again, the attack was reported at the police station and an OB number issued, but no action had subsequently been taken.<sup>116</sup>

Fredrick, a gay man, told researchers that in May 2020 he entered a shop in Kakuma 2. The owner pushed him out saying that "shogas" were not allowed in his shop. Other vendors joined in and started to beat him. He escaped and went straight to the police station and reported the matter. He was given an OB number, but no further action was taken by the police, who could have easily identified the alleged perpetrators.<sup>117</sup>

Isabel, a transgender woman, shared with police a video of a man intimidating and pointing fingers at a transgender woman. She maintains that the man is well known within the camp. She is however not aware of any follow up by the police.<sup>118</sup>

Lewis, a bisexual man, shared that in August 2020 refugees from his country of origin saw him with other LGBTI people in the camp. That evening he was summoned by the elders (community leaders) of his country of origin and interrogated about his association with LGBTI people. The elders punished him with caning and a fine. He reported this to the police station. On hearing that his issue involved the elders, the police officers sent him back and told him to sort his issue informally with them.<sup>119</sup>

The failure by Kenya Police to investigate allegations of violations is itself a breach of international norms and principles Kenya has accessed to and a failure to uphold the principle of non-discrimination (see 5: National and international legal framework).

In several statements following violent incidents in Kakuma camp, UNHCR reported that the police had increased police patrols as a measure to increase the security of the LGBTI community.<sup>120</sup> However, in a context where LGBTI people are highly criminalized, increasing police patrols or resources is not sufficient if there are no other measures in place to tackle systemic homophobia and transphobia, including within the police itself. The testimonies of LGBTI refugees who have faced overt discrimination while reporting to the police the incidents that happen to them in the camp prove this point.

Fredrick reported that, after the beating he suffered in May 2020, unknown gangs attacked him again, in June and August 2020, and that people threw stones at his house. When he reported these crimes to the police, the police taunted him, calling him "shoga" and laughing at him when he was crying out in pain.<sup>121</sup>

Robert, a gay man, said that the police accused him of pretending to be gay when he went to report an attack with stones he suffered in May 2021.<sup>122</sup>

Joseph, a gay man, told the researchers that in 2020 a police officer took a very valuable item from him. When he went to the police station to have it back, the police officer claimed that LGBTI refugees give the

police problems by “telling the world” about their situation in Kakuma; and then asked for 5,000 KES (about \$40 USD), saying that “gay people have rich friends”.<sup>460</sup>

[...] 38 Nation, “50-year-old intersex woman raped and killed in Trans Nzoia,” 5 May 2022, <https://nation.africa/kenya/counties/trans-nzoia/50-year-old-intersex-woman-raped-and-killed-in-trans-nzoia-3805548> [...]

85 In addition to the testimonies highlighted in this section and the following ones, the researchers collected the testimonies of four more individuals. The researcher saw OB numbers and photos related to two episodes of physical assaults and one episode of breaking and theft against Patrick, a bisexual man, interviewed in Kakuma town on 8 September 2021. Martin, a gay man, said that in 2020 a group of camp residents broke into his house and started beating him, calling him “shoga”, because they did not want “dirty people” to live in their area. Interview in Kakuma town, 9 September 2021. In July 2021, five camp residents attacked George, a gay man, outside his shelter, calling him “shoga” and hitting him with sticks. He reported the crime to the police and obtained a medical examination report from the hospital. Interviewed in Kakuma town, 10 September 2021. Isabel said that she was part of a group that was stoned and verbally insulted by other people living in the camp. She said the assailants accused the group of being a reason why there was no rain in Kakuma refugee camp. Interview with Isabel, Kakuma town, 11 September 2021. [...]

89 Interview with Sharon, Kakuma town, 10 September 2021 [...]

91 Ibid [Interview with Diana, Kakuma town, 11 September 2021. The OB reference number, including the date of the incident, is on file with Amnesty International.]

92 Interview with Ian, Kakuma town, 8 September 2021.

93 Interview with Judy, Kakuma town, 9 September 2021.

94 Interview with Emmanuel, Kakuma town, 10 September 2021. Medical records on file with Amnesty International.

95 Interview with Charles, Nairobi, 29 January 2022.

96 Interview with Nelson, Kakuma town, 8 September 2021. OB number on file with Amnesty International.

97 Ibid. The researchers have reviewed medical documents and pictures showing injuries consistent with the description of the attack.

98 Interview with Pauline, Kakuma town, 8 September 2021.

99 Interview with Emmanuel, Kakuma town, 10 September 2021.

100 Interview with Anne, Kakuma town, 7 September 2021; follow-up phone call, 8 February 2023.

101 Interview with Mercy, Kakuma town, 7 September 2021. [...]

108 Interview with Diana, Kakuma town, 11 September 2021.

109 Interview with Isabel, Kakuma town, 11 September 2021.

110 Phone interview with the survivor of the March 2021 arson attack, September 2022.

111 Interview with Fredrick, Kakuma town, 9 September 2021. The OB reference number, including the date of the incident, is in Amnesty International’s record. [...]

113 Interview with Harper, Kakuma town, 11 September 2021. OB number and photos of the injuries on file with Amnesty International. [...]

115 Phone interview with Ken, 20 September 2021. The OB reference number, including the date of the incident, is in Amnesty International’s record. Ken shared pictures with the researchers that showed redness and bruising on his back, hand and thighs, which were consistent with his description of the assault.

116 Interview with Diana, Kakuma town, 11 September 2021. The OB reference number, including the date of the incident, is in Amnesty International’s record.

117 Interview with Fredrick, Kakuma town, 9 September 2021. The OB reference number, including the date of the incident, is in Amnesty International’s record.

118 Phone interview with Isabel, 24 August 2021. The video is on file with Amnesty International.

119 Interview with Lewis, Kakuma town, 10 September 2021.

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<sup>460</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, pp. 19, 25-26, and 28-34

120 For example: UNHCR, UNHCR deplors tensed situation in Kakuma, renews call for dialogue and peaceful solutions, 31 August 2020, <https://www.unhcr.org/ke/18723-unhcr-deplores-tensed-situation-in-kakuma-renews-call-for-dialogue-and-peaceful-solutions.html>; UNHCR Statement on the situation of LGBTIQ+ refugees in Kakuma camp, 25 March 2021, <https://www.unhcr.org/ke/19859-unhcr-statement-on-the-situation-of-lgbtqi-refugees-in-kakuma-camp.html>.

121 Interview with Fredrick, Kakuma town, 9 September 2021.

122 Interview with Robert, Kakuma town, 8 September 2021.

123 Interview with Joseph, Kakuma town, 9 September 2021.

queersOfKakuma and migration-control.info's August 2023 report about ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp noted:

The Kenyan police effectively rarely investigates discriminatory violence against LGBTI+ asylum seekers and refugees, who are regularly assaulted, beaten, raped. queersOfKakuma explain: *"Here we live in open spaces which makes it easy for homophobic people to come and attack us and it has happened so many times. We lost lives of our colleagues and no reaction has been taken by the police and the UNHCR. So you see it's really unfair. We are unsafe."* [...]

As a protection measure, UNHCR and DRS [Department of Refugee Services] have relocated some LGBTI+ refugees from Kakuma refugee camp, mostly to Nairobi and its environs. But the relocation to Nairobi is only allowed in exceptional cases and follows an opaque selection process, as the Kenyan government implements an encampment policy which restricts the freedom of movement (asylum seekers and refugees must seek permission to move from designated refugee areas to other locations in Kenya). Those who benefited from relocation also suffer from difficulties to access services and renewing their documents. Thus, internal relocation is not considered a solution.<sup>461</sup>

An October 2023 DW article on anti-gay protests in Kenya and the LGBTQ+ community response quoted the following individual:

"Homophobia has always been prevalent, but abuse is based on silence. What queer people cry for all the time that we are now confident enough to say is that we have been here since time immemorial," Marylize Biubwa, co-founder of the queer republic in Kenya, told DW.

She said those who carry out homophobic attacks have been encouraged by a system that fails to punish perpetrators.

"We have been abused and the system in place allows perpetrators of homophobia to find the power to abuse us by making us keep quiet and not say anything," Biubwa added.<sup>462</sup>

In December 2023, Erasing 76 Crimes noted on the sentencing of the murderer of the Kenyan lesbian Sheila Lumumba, noting that "Some local LGBTQ+ organizations calling for justice for Lumumba said that, although they welcomed the verdict, the 30-year sentence was not enough".<sup>463</sup>

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<sup>461</sup> queersOfKakuma and migration-control.info, [Ongoing violent attacks on LGBTI+ asylum seekers and refugees at Kakuma refugee camp, Kenya](#), 25 August 2023

<sup>462</sup> Deutsche Welle (DW), [LGBTQ+ community in Kenya defies anti-gay protests](#), 17 October 2023

<sup>463</sup> Erasing 76 Crimes, [Killer of Kenyan lesbian sentenced to 30 years](#), 23 December 2023

## b. Fear of reporting to authorities

### 2020

The VOA News article in November 2020 on increased abuse of Kenya's LGBTQ community during the Covid-19 pandemic noted that: "Homosexuality is illegal in Kenya and activists say many are afraid to report abuse or get medical help because of stigma".<sup>464</sup>

NGLHRC's 2019/2020 Annual Legal Aid Report, covering the period from July 2019 to July 2020, stated that: "Despite the sensitization and advocacy campaigns consistently conducted there is still high reluctance towards reporting cases of human rights violations by queer persons to the police due to the fear of getting arrested and having to explain the nature of their relationships and identities. Oftentimes, clients have stated that they lack trust in the judiciary and the authorities, especially due to the harassment often accorded to LGBTQ+ persons by the police".<sup>465</sup> The report also noted that: "Cases of intimate partner violence have risen especially with the government directives on quarantine and cessation of movement that had been put in place since April and lapsed on 6th July 2020. However most of these cases are unreported to the police due to the fear of having to disclose the nature of their relationship".<sup>466</sup>

The Standard reported in an October 2020 article on a gang in Kenya luring and robbing gay men, stating that "Police spokesman Charles Owino told *The Standard* the police had intensified crackdown on the gang. Police say the stigma associated with gays has made many victims shy away from reporting such cases to the police".<sup>467</sup>

The 2020 All Survivors Project submission to the UN Human Rights Committee in response to its concluding observations on the fourth periodic report of Kenya regarding the International Covenant on Civil and Political Rights stated that "Criminalisation of same sex relationship, in addition to being discriminatory, can tacitly encourage violence and can deter survivors of sexual violence from seeking justice or medical and other support for fear of being arrested and prosecuted. This is particularly so for SGM [sexual and gender minority] victims/survivors but also applies to male victims/survivors who may fear being labelled as homosexuals and being prosecuted as such".<sup>468</sup>

The May 2023 joint report by the NGLHRC and Amnesty International reported the following case:

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<sup>464</sup> Voice of America (VOA) News, [Kenya's LGBTQ Community Faces Increased Abuse During Pandemic](#), 24 November 2020

<sup>465</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, p. 7

<sup>466</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC), [2019/2020 Annual Legal Aid Report](#), 2020, p. 8

<sup>467</sup> The Standard, [How Pipeline gang uses gay dating site to lure and rob men](#), 16 October 2020

<sup>468</sup> All Survivors Project, [Submission to the UN Human Rights Committee 128<sup>th</sup> Session 2-27 March 2020](#), 2020

In January 2020 a group of men living in the camp accosted Ian, a gay man, and asked to know why he was there while “all the gays had been taken away” (referring to the transfer of a large group of LGBTI refugees to Nairobi in 2019). They grabbed him, hit him, threw him to the ground and stepped on his left arm. He did not report this because he was afraid that the police would lock him up because he is gay.<sup>469</sup>

92 Interview with Ian, Kakuma town, 8 September 2021.

## 2021

For its 2021 submission to the UN Human Rights Committee, the Advocates for Human Rights, with the Eagles for Life, Sign Ishara, and Oasis Research, observed that:

Because of their experience of arrests and persecution by law enforcement, LGB individuals in Kenya reported that they distrust law enforcement officials. LGB individuals interviewed expressed their inability to report criminal cases to the police and government agencies because it would affect them negatively. In some instances, respondents suffered crimes and human rights violations, but they did not seek services because the complaint was about a situation that happened because of their sexual orientation. For example, when one gay man was blackmailed by someone from his local community, he decided to pay 10,000 KSh, the equivalent of about 100 US dollars, rather than report the incident to the authorities out of fear that it would damage his reputation.<sup>470</sup>

Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic’s report on the rights of LGBTI citizens and non-citizens in Kenya noted that:

A lack of action once violence is reported is only one aspect of the problem, as a lack of reporting is often prevalent as well. As one researcher has described, “LBQ [women who are] refugees experience violence on interrelated physical, psychological, and structural platforms. Because violence is also entrenched in legal structures, LBQ refugees do not consistently report instances of violence.”<sup>54</sup> Interviews with community leaders indicate that refugees fear going to the police to report crimes because of abuse by police and security officials when they seek help. LGBTI refugees have reported harassment, including extortion, where authorities seek bribes in exchange for not reporting those who do not have proper documentation of their legal status. An example from a recent GALCK report shows the issues LGBTI people face when trying to report crimes to the police. There are “incidents where individuals go to the police seeking help only to have the police attack them. In one such case where [an individual] tried to report a robbery, he was pushed into a cell by police officers, forcibly undressed, beaten, choked and had his hair shaved and burnt off because he ‘was dressed very gay.’”<sup>55</sup> In another example, one woman summarized, “[o]f course I cannot go to the police, first I am a woman, and then I am a lesbian and a refugee! They will not listen to me. They will rape me again and throw me in jail. I am nobody here ... I know that and they know that too.”<sup>56</sup> [...]

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<sup>469</sup> The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, [“Justice like any other person” – Hate crimes and discrimination against LGBTI refugees](#), 19 May 2023, p. 29

<sup>470</sup> The Advocates for Human Rights, The Eagles for Life, Sign Ishara, and Oasis Research, [Kenya Alternative Report Relating to the Rights of LGBTI Persons](#), 22 February 2021, paragraph 29

Several significant barriers remain for LGBTI refugees that make them vulnerable to sexual and gender-based violence and keep them from accessing care. The Women's Refugee Commission concisely summarized these barriers: "limited access to urban refugee documentation (particularly for refugees with camp-based documents); economic hardship and scarce livelihood opportunities (especially for refugees with diverse SOGIE and unaccompanied adolescents); legislative barriers, particularly the criminalization of same-sex sexual activities; negative provider attitudes and practices; poor awareness of service availability among the studied refugee communities; and socio-cultural barriers."<sup>80</sup> [...]

LGBTI refugees and Kenyans report fear or experience of rape, physical abuse, and arbitrary imprisonment by law enforcement if they report being victims of crimes.<sup>93</sup>

54 Moore, p. 16.

55 Gay and Lesbian Coalition of Kenya, Decriminalisation of Consensual Same Sex Sexual Conduct in Kenya (2018), available at <https://www.galck.org/repeal162/>.

56 CAL & GALCK, Lived Experiences, p. 25. [...]

80 WRC, "We Have a Broken Heart" [...]

93 CAL & GALCK, Lived Experiences, p. 24.<sup>471</sup>

The Immigration and Refugee Board of Canada's July 2021 report on the situation of persons with diverse sexual orientation and gender identity and expression in Kenya found that:

The Executive Director of KYDESA [Kenya Youth Development and Education Support Association] indicated that "various authorities have been sensitized on human rights for LGBTIQ+ persons" and "harassment coming from authorities has therefore greatly reduced" (KYDESA 23 June 2021). The PEMA [Persons Marginalized and Aggrieved in Kenya] Kenya representative stated that "there has been some progress with training of the police on gender and sexual diversity by PEMA and other organizations" (PEMA Kenya 12 July 2021). However, the same source noted that "police stations might have changed their perspective on LGBT, but LGBT people are still afraid to go to the police" (PEMA Kenya 12 July 2021). [...]

The human rights defender [National Gay and Lesbian Human Rights Commission (NGLHRC)] stated that "it is difficult for LGBTQ individuals to go to the police," who think "the very existence of LGBTQ individuals is illegitimate" (Human rights defender 30 June 2021). The same source indicated that police complaints by individuals of diverse SOGIE "are not taken seriously" and that individuals of diverse SOGIE "shy away from going to the police to report violations" (Human rights defender 30 June 2021). The PEMA Kenya representative indicated that "LGBT cases are treated differently than how others are treated" and that according to a survey PEMA conducted on how LGBT individuals are treated, LGBT cases reported to the police are not "taken seriously" and being LGBT can be "used against them" (PEMA Kenya 12 July 2021). [...]

The KYDESA Executive Director stated that KYDESA is working with the police to address issues affecting persons of diverse SOGIE and as of June 2021, the police have documented no cases of harassment against persons of diverse SOGIE who reported complaints (KYDESA 23 June 2021).<sup>472</sup>

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<sup>471</sup> Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, [\*Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya \(CCPR/C/KEN/4\) on its compliance with the International Covenant on Civil and Political Rights\*](#), 2021, pp. 10, 14, and 16

In Rainbow Railroad and ORAM's October 2021 report exploring the abuse and violence faced by LGBTQI+ asylum seekers and refugees in Kakuma refugee camp, it was written that: "Fear of reprisals from aggressors was seen as one of the reasons victims fail to report and pursue justice".<sup>473</sup>

## 2022

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya's third periodic report noted that LGBTQI+ people faced:

[...] indirect violence due to fear of reporting crimes or seeking support" and that "there is a general fear of reporting violence against LGBTQI+ persons, especially where the violence was motivated by discrimination on grounds of sexual orientation or gender identity."<sup>474</sup>

[...] 27 NGLHRC, '2020/2021 Annual Legal Aid Report', pp. 9 (para. 1.1), 18 (paras 5.4, and 5.6); 'July 2019/July 2020 Legal Aid Report', pp. 7, 8, 11-12 (para. 1.0), 21 (para. 14.2), and '2018/2019 Legal Aid Brief', pp. 3, 6 (para. 2.1.2), 7 (para. 2.3.2).

The Al Jazeera article from June 2022 on the gang rape of healthcare experiences of queer men in Kenya stated that:

In February 2020, Hosea Ndiretu was gang-raped by a group of men while leaving a bar in Nairobi. [...] he is still reluctant to report his predicament to the authorities because he is afraid the police might harass him for being gay. "Reporting is not an option because the police are worse than those healthcare workers in government hospitals," he said.<sup>475</sup>

## 2023

AHRC noted, while discussing instances of blackmail and kidnapping of LGBTQI+ people in Kenya, that "[t]hese gangs get away with these kidnappings and other crimes, as cases are not generally reported to police, for fear of reprisal".<sup>476</sup>

In January 2023, galck+ and NGLHRC, along with five other organisations, noted in a statement on the investigation into the murder of Edwin 'Chiloba' Kiprotich Kiptoo that: "The existing legal landscape

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<sup>472</sup> Immigration and Refugee Board of Canada, [Kenya: Situation of persons with diverse sexual orientation and gender identity and expression \(SOGIE\), including their treatment by society and state authorities; state protection and support services \(2019–July 2021\)](#), 13 July 2021

<sup>473</sup> Rainbow Railroad and ORAM (Organization for Refuge, Asylum and Migration), [The Challenges Facing LGBTQI+ Refugees in Kakuma Refugee Camp, Kenya](#), October 2021, p. 27

<sup>474</sup> Redress and the National Gay and Lesbian Human Rights Committee (NGLHRC), [Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report: 73rd Session of the Committee against Torture](#), 18 March 2022, pp. 3 and 5

<sup>475</sup> Al Jazeera, [Kenyan queer men risk health amid homophobia in public hospitals](#), 2 June 2022

<sup>476</sup> African Human Rights Coalition (AHRC), [Kenyan LGBTQI Activist brutally murdered and body dumped in metal box](#), 6 January 2023

makes it near impossible for sexual and gender minorities to report cases of IPV [intimate partner violence], fearing arrest, self-incrimination and further harm”.<sup>477</sup>

The May 2023 joint report by the NGLHRC and Amnesty International documented hate crimes, discrimination, and other human rights violations suffered by LGBTI asylum seekers and refugees in Kakuma refugee camp in Kenya between 2018 and February 2023. The report found the following:

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<sup>477</sup> Gay and Lesbian Coalition of Kenya (galck+), The National Gay and Lesbian Human Rights Commission (NGLHRC), QInitiative, The Initiative for Equality and Non-Discrimination (INEND), Bold Network Africa, Amnesty International, change.org, Kenya, [Joint Statement on the Investigation into the Murder of Edwin ‘Chiloba’ Kiprotich Kiptoo](#), 10 January 2023, p. 1