



Home Office

# **Country Policy and Information Note**

## **Kenya: Sexual orientation and gender identity and expression**

**Version 3.0**

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# Preface

## Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

## Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

## Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

## Feedback

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

## Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

### **Independent Advisory Group on Country Information**

Independent Chief Inspector of Borders and Immigration

5th Floor

Globe House

89 Eccleston Square

London, SW1V 1PN

Email: [chiefinspector@icibi.gov.uk](mailto:chiefinspector@icibi.gov.uk)

Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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# Assessment

Updated: 2 April 2020

## 1. Introduction

### 1.1 Basis of claim

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

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### 1.2 Points to note

- 1.2.1 This note provides an assessment of the general situation for gay men, lesbians, bisexuals, trans and intersex persons, as well as those perceived as such. They are referred hereafter collectively as 'LGBTI persons'.
- 1.2.2 The experiences of each group within the LGBTI umbrella term may differ. Where source information is available this note describes and considers each group discretely. However, many sources treat LGBTI persons as a single group or community, which often, in practice reflects the experiences of the most dominant or visible in a particular society, usually gay men or trans persons.
- 1.2.3 For general guidance on considering claims LGBTI persons, decision makers should refer to the Asylum Instructions on [Sexual orientation in asylum claims](#) and [Gender identity issues in the asylum claim](#).
- 1.2.4 Where a claim by a male applicant is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as Kenya is listed as a designated state in respect of men only.

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## 2. Consideration of issues

### 2.1 Credibility

- 2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#))
- 2.1.4 Decision makers should also refer to the Asylum Instructions on [Sexual orientation in asylum claims](#) and [Gender identity issues in the asylum claim for guidance on interviewing LGBTI persons](#).

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## 2.2 Exclusion

- 2.2.1 If there are serious reasons for considering that the person has been involved with a group and/or activity that falls within scope, then decision makers must consider applying one (or more) of the exclusion clauses.
- 2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.
- 2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention, Humanitarian Protection](#) and [Restricted Leave](#).

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## 2.3 Convention reason(s)

- 2.3.1 Actual or imputed membership of a particular social group.
- 2.3.2 LGBTI persons form a particular social group (PSG) in Kenya within the meaning of the Refugee Convention because they share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it **and** have a distinct identity because it is perceived as being different by the surrounding society.
- 2.3.3 Although LGBTI persons form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question is whether the particular person has a well-founded fear of persecution on account of their membership of such a group.
- 2.3.4 For further guidance on the 5 convention grounds, including particular social groups, see the instruction on [Assessing Credibility and Refugee Status](#).

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## 2.4 Risk

### a) General points

- 2.4.1 Paragraphs 82 and 35 of the determination of the Supreme Court's ruling in [HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31](#), heard 10,11,12 May and promulgated 7 July 2010, has set out the approach to take and established the test that should be applied when assessing a claim based on a person's sexual orientation, which can also be applied to claims based on a person's gender identity / expression.
- 2.4.2 For further information, see the Asylum Instructions on [Sexual orientation in asylum claims](#) and [Gender identity and expression, including intersex issues in asylum claims](#).

### b) State treatment

- 2.4.3 Same-sex sexual relations between men are criminalised under the penal code with a maximum penalty of 21 years in prison. Being gay itself is not illegal, and same-sex relationships between women are not referred to in legislation. The constitution provides for freedom from discrimination but does not explicitly do so on the basis of sexual orientation and gender identity or expression. There is no specific equality legislation in relation to

sexual orientation and gender identity discrimination in employment, health, housing and other social economic areas. There is no provision in law for same-sex marriage or civil partnership, and same-sex couples are not able to adopt. There is no legal gender recognition for trans persons. The law protects intersex persons' rights to humane and dignified treatment in custody and the government has identified the legislative reforms necessary to comply with the 2014 High Court judgement which found that intersex persons in Kenya have the right to be recognised as persons before the law (see [Legal context](#)).

- 2.4.4 There have been a number of successful legal challenges in Kenyan courts against government practices. On 22 March 2018 the Court of Appeal ruled that forced anal examinations of those accused of same-sex relations is illegal, overturning a 2016 High Court case which had upheld the authorities' practise. On 22 March 2019 the Court of Appeal ruled that the government could not use the criminalisation of same-sex sexual relations to prevent the registration of a LGBTI rights NGO (see [Challenges to laws affecting LGBTI persons](#)).
- 2.4.5 On 24 May 2019, the High Court found that the penal code criminalising same-sex sexual activity did not breach the constitution, finding that the existing laws did not violate the rights of LGBTI persons to non-discrimination, health, a fair trial, security of the person, freedom of conscience, religion or belief, human dignity or privacy. Same-sex relations continue therefore to be criminalised. The petitioners have, however, sought to appeal the case to the Supreme Court (see [Challenges to laws affecting LGBTI persons](#)).
- 2.4.6 The police have arrested some LGBTI persons, particularly those involved in sex work and LGBTI refugees seeking asylum in Kenya, although exact figures are not available. Arrests usually occurred under public order laws rather than same-sex legislation, with release shortly after. There have been reports of assaults by the police (including sexual), harassment, intimidation and physical abuse in custody, along with reports of blackmail and extortion from organised gangs, believed to be working with the police, and police themselves. However, the police do not generally target and prosecute LGBTI persons and there have been few, if any convictions for same-sex sexual activity. There have also been some occasions where the police have protected LGBTI persons against mob attacks (see [State treatment](#)).
- 2.4.7 The government, including the Prime Minister and deputy, have stated that the discussion of LGBTI rights goes against Kenyan cultural and societal beliefs, and Kenya's Attorney General argued against decriminalisation of same-sex sexual relations. However, there has been government recognition of transgender and intersex persons as vulnerable groups and a commitment to safeguard their rights and interests. For the first time, intersex as a gender marker was included on the 2019 Kenya Population and Housing Census to determine the number of intersex people in Kenya (see [Legal context](#) and [State treatment](#)).
- 2.4.8 Since the promulgation of the High Court case in May 2019, which did not decriminalise same-sex sexual relations, there has been no public comment on the decision by the government. The United States State Department



noted in their 2019 report increased ‘ostracism and harassment’ in the lead up to and in the wake of the decision, although they did not specify whether this was from the state, society or a combination of actors. There is no evidence, in sources consulted, to suggest the court decision has led to mistreatment from the state or an increase in mistreatment against LGBTI persons, which by its nature and frequency, amounts to persecution or serious harm (see [State treatment](#) and [Societal reaction to the High Court ruling, 24 May 2019](#)).

- 2.4.9 LGBTI groups exist and are generally able to function and conduct activities without state interference. The Court of Appeal ruling in March 2019 ruled that the government could not use the criminalisation of same-sex sexual relations to prevent the registration of a LGBTI rights NGO. This upheld the 2015 High Court’s decision that sexual minorities were entitled to the same rights as all other Kenyans, including the right to associate. Kenya’s first ‘Pride’ event was held in Kakuma refugee camp in June 2018 without government restriction see [LGBTI organisations allowed to register as NGOs - Court of Appeal ruling, 22 March 2019](#), and [LGBTI groups, civil society and human rights NGOs](#))
- 2.4.10 In general, the evidence available does not establish that LGBT persons, or persons perceived to be LGBT are likely to face mistreatment from state actors which, by its nature and frequency, amounts to persecution or serious harm by the state. The experiences of intersex persons as a discrete group are not widely documented in sources consulted. However, there is evidence that the government is committed to improving their rights and the information available does not establish that intersex persons are likely to face mistreatment from state actors which, by its nature and frequency, amounts to persecution or serious harm by the state. Each case, however, needs to be considered on its facts, with the onus on the person to demonstrate that they face such a risk (see [State treatment](#)).
- 2.4.11 For further information on assessing risk, see [Asylum Instruction on Assessing Credibility and Refugee Status](#) and the Asylum Instructions on [Sexual orientation in asylum claims](#) and [Gender identity and expression, including intersex issues in asylum claims](#).

c) Societal treatment

- 2.4.12 Societal norms based on culture, religion or the concept that homosexuality is a ‘western’ import mean that attitudes are generally conservative and intolerant of LGBTI persons. However, a 2016 survey reported that 53% of Kenyans do not agree that homosexuality should be considered a crime and 46% of people had no concerns about their neighbour being gay or lesbian. There are also signs that attitudes may be changing and, in an ethnically and culturally diverse society, attitude varies between groups and locations, with tolerance greater in the capital, Nairobi. The High Court ruling in May 2019, which did not decriminalise same-sex sexual relations, was welcomed by many Kenyans. However, the case was able to be brought to court by an active LGBTI community and differing views were expressed (both for and against decriminalisation) in the media, demonstrating the mix of societal views Kenyans hold on LGBTI issues (see [Societal attitudes and treatment](#)).

- 2.4.13 Some LGBTI persons have experienced harassment, verbal and physical assault, blackmail, intimidation, and discrimination in employment, education, housing and accessing healthcare. LGBTI people have also been victims of violence including killings, rape and mob violence. Sources noted that violence and discrimination against LGBTI individuals was ‘widespread’. Sources considering the experiences of LBQ women (lesbian, bisexual and queer; which includes trans identifying- and other gender non-confirming people) noted that they had encountered discrimination and violence, and one source noted the risk of direct acts of violence was increased for masculine presenting women (See [Societal attitudes and treatment](#)).
- 2.4.14 According to one source, attacks on LGBTI persons occurred more often in low income or highly conservative areas. Kenya’s first ‘Pride’ event was held in Kakuma refugee camp in June 2018, although organisers reported receiving death threats following the event. Kenya is the only country in the region that accepts LGBTI asylum seekers from neighbouring countries, however, violence against asylum seekers and refugees, mainly in Kenyan refugee camps (which contain mixed nationalities) has also occurred (see [Access to services](#) and [Societal attitudes and treatment](#)).
- 2.4.15 While religious leaders generally express homophobic views, some have welcomed LGBTI persons into their congregations, speaking about their organisations and LGBTI rights in the media and on community radio stations. The media is taking an increasing interest in LGBTI issues; challenging government rhetoric and publishing material reflecting diverse opinions on LGBTI rights. The film ‘Rafiki’ – initially banned for promoting lesbianism – was subsequently shown for one week in Kenyan cinemas to sold out crowds (see [Media](#) and [Societal attitudes and treatment](#)).
- 2.4.16 LGBTI organisations and civil society are generally able to function relatively freely. Some civil society organisations report that societal attitudes to LGBTI persons are gradually beginning to change as they work extensively throughout the country to promote awareness and respect for LGBTI people. There are examples of education institutions promoting a more inclusive curriculum and engaging with civil society on LGBTI rights. A LGBTI NGO leader has stated that Kenya is more tolerant to members of the gay community compared to some of its neighbours (see [LGBT groups, civil society and human rights NGOs](#)).
- 2.4.17 The size, location and openness of an LGBTI ‘community’ in Kenya is unclear. There are vibrant social, cultural and artistic movements in some parts of Kenya and sources indicate that there is a LGBTI community in parts of Nairobi where people are able to express their sexual/gender identities (see [Societal treatment](#)).
- 2.4.18 The majority of sources discuss LGBTI persons’ societal experiences as a single group or community. Masculine presenting women, or trans persons may attract more attention from those in surrounding society.
- 2.4.19 In general, however, the evidence available does not establish that LGBTI persons, or persons perceived as such, are likely to face mistreatment from societal actors which, by its nature and frequency, amounts to persecution or

serious harm. Each case, however, needs to be considered on its facts, with the onus on the person to demonstrate that they face such a risk.

- 2.4.20 For further information on assessing risk, see [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.5 Protection

- 2.5.1 Where the person has a well-founded fear of persecution from the state, they are unlikely to be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors, including 'rogue' state actors, decision makers must assess whether the state are willing and able to provide effective protection.
- 2.5.3 Same-sex sexual acts are prohibited in law which has prevented LGBTI persons from reporting crimes perpetrated against them as they fear arrest themselves, abuse or extortion by the police. The police have reportedly responded to some cases of violence against LGBT persons on the Kenyan coast by refusing to take statements, or provide assistance, and there have been occasions where the police have failed to protect LGBTI refugees. However, there have also been incidences where the police have provided protection and there are active NGOs and civil society groups who assist in navigating the justice system for LGBTI persons (see [State treatment and LGBTI groups, civil society and human rights NGOs](#))
- 2.5.4 The police force is frequently seen as being ineffective in providing assistance generally, although there is some evidence to indicate LGBTI persons have received more assistance than other vulnerable groups. Although there are avenues for redress, the Independent Policing Oversight Authority, in practice is generally considered to be lacking accountability and effectiveness in investigating and pursuing complaints. There is no specific information on the whether LGBTI persons have been able to access the service or not (see [State treatment](#) and the [Kenya: Country Background Note](#))
- 2.5.5 In general, the state appears able but unwilling to offer effective protection and the person will not be able to avail themselves of the protection of the authorities. However, decision makers must consider each case on its facts.
- 2.5.6 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#). Decision makers must also refer to the Asylum instructions, [Sexual orientation issues in asylum claims](#) and [Gender identity issues in the asylum claim](#).

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## 2.6 Internal relocation

- 2.6.1 Where the person has a well-founded fear of persecution from the state, it is unlikely to be possible to expect them to relocate to escape that risk.
- 2.6.2 While societal intolerance is prevalent throughout the country, relocation may be relevant and reasonable where the threat from a non-state actor is localised. Decision makers must give careful consideration to the relevance

and reasonableness of internal relocation taking full account of the individual circumstances of the particular person.

- 2.6.3 The Court of Appeal in [SC \(Jamaica\) v Home Secretary \[2017\] EWCA Civ 2112](#) held that: ‘the evaluative exercise is intended to be holistic and ... no burden or standard of proof arises in relation to the overall issue of whether it is reasonable to internally relocate’ (para 36).
- 2.6.4 The law provides for freedom of internal movement and the government generally respects these rights (see [Country Policy and Information Note Kenya: Internal relocation](#))
- 2.6.5 Although homophobic attitudes are prevalent throughout Kenya, larger cities such as Nairobi may be more tolerant of LGBTI persons, with the presence of civil society organisations including LGBTI NGOs and churches, and an active LGBTI community. In contrast, the coastal areas of Kenya, with the prevalence of Islamic beliefs and conservative attitudes tend to be less tolerant towards gender and sexual minorities. Where LGBTI persons do encounter local hostility, they may be able to avoid this by moving elsewhere, either in the same city or to another part of the country.
- 2.6.6 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and/or gender identity in the proposed new location for fear of persecution.
- 2.6.7 For further guidance on internal relocation see the instruction on [Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Sexual orientation issues in the asylum claim](#).

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## 2.7 Certification

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

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# Country information

Section 3 updated: 23 March 2020

## 3. Legal context

### 3.1 Constitution

- 3.1.1 Stonewall, an LGBT rights organisation, in the 'Global Workplace Briefings 2018, Kenya' published July 2018 noted:

'Article 27(1) of the Constitution provides the rights to equality, freedom from discrimination and that every person is equal before the law and has the right to equal protection and benefit of the law...

'Articles 33, 36 and 37 of the Constitution of Kenya protect the rights of freedom of expression, association and assembly, demonstration, picketing and petition. Each of these rights may be restricted under certain specified circumstances, but there are no specific restrictions regarding the rights of LGBT people. In 2015, the High Court of Kenya ruled that these rights are held by every person, including LGBT people.'<sup>1</sup>

- 3.1.2 The same report noted, in relation to marriage: 'Article 45 of the Constitution only recognises marriages between persons of the opposite sex. There is no legal recognition of same-sex couples.'<sup>2</sup>

- 3.1.3 The United States State Department, 'Country Reports on Human Rights Practices for 2019' (USSD report 2019) noted: 'The constitution does not explicitly protect LGBTI persons from discrimination based on sexual orientation or gender identity.'<sup>3</sup>, repeating its assessment from the 2017 report<sup>4</sup> and 2018 report<sup>5</sup>.

See the [Constitution of Kenya \(2010\)](#)

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### 3.2 Penal code and legislation

- 3.2.1 Stonewall noted: 'Different sexual acts and attempted sexual acts between people of the same sex are illegal and may be punished with imprisonment of up to five or up to 14 years under Sections 162, 163 and 165 of the Penal Code Cap 63 Laws of Kenya.'<sup>6</sup>

- 3.2.2 The USSD report 2019, repeating information from its 2016<sup>7</sup>, 2017<sup>8</sup> and 2018<sup>9</sup> reports noted: 'The penal code criminalizes "carnal knowledge against the order of nature," which was interpreted to prohibit consensual same-sex sexual activity, and specifies a maximum penalty of 14 years' imprisonment

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<sup>1</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p.1), July 2018, [url](#)

<sup>2</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p.1), July 2018, [url](#)

<sup>3</sup> USSD, 'USSD report 2019' (section 6), 11 March 2020, [url](#)

<sup>4</sup> USSD, 'USSD report 2017', (section 6), 20 April 2018, [url](#)

<sup>5</sup> USSD, 'USSD report 2018' (section 6), 13 March 2019, [url](#)

<sup>6</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p.1), July 2018, [url](#)

<sup>7</sup> USSD, 'USSD report 2016' (section 6), 3 March 2017, [url](#)

<sup>8</sup> USSD, 'USSD report 2017', (section 6), 20 April 2018, [url](#)

<sup>9</sup> USSD, 'USSD report 2018' (section 6), 13 March 2019, [url](#)

if convicted. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years' imprisonment if convicted.<sup>10</sup>

- 3.2.3 The article by Eric Mawira Gitari, NGLHRC, titled 'The Gay Debate: Decriminalising Homosexuality in Kenya', 28 February 2019 noted 'There is no comprehensive or specific equality legislation to guarantee protection from sexual orientation and gender identity discrimination, particularly in employment, health, housing and other social economic spheres.'<sup>11</sup>
- 3.2.4 The 'Compilation on Kenya' submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019 stated 'Noting the lack of explicit legal protection against discrimination based on sexual orientation and gender identity, and citing sections 162 and 165 of the Penal Code, the United Nations country team stated that lesbian, gay, bisexual and transgender persons continued to face challenges.'<sup>12</sup> The full text of articles 162 to 165 can be found in the Kenya [Penal Code](#)<sup>13</sup>.

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### 3.3 Lesbians and bisexual women

- 3.3.1 A 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated '...while same-sex conduct between women is not interpreted as prohibited under the Penal Code, lesbians – like gay men – face considerable prejudice and discrimination, in part because of stigma associated with the criminalisation of same-sex relationships.'<sup>14</sup>
- 3.3.2 The Gay and Lesbian Coalition of Kenya report 'Research on The Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya' (GALCK report 2016) noted: 'While no legislation in Kenya specifically mentions sexual acts between women, LBQ women who engage in sexual practices with other women might qualify to be charged under the Sexual Offences Act (2006), i.e. section 11 that criminalizes "indecent acts" between adults. Again, this clause does not further explicate what this may constitute.'<sup>15</sup>
- 3.3.3 The UN Office of the United Nations High Commissioner for Human Rights 'Compilation on Kenya' submitted to the UN Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019 stated: 'Referring, inter alia, to a relevant supported recommendation from the previous universal periodic review, the Committee on the Elimination of Discrimination against Women [CEDAW] recommended that Kenya exercise due diligence to protect all women, including lesbian, bisexual and transgender women and intersex persons, against discrimination by adopting comprehensive anti-discrimination legislation affording such protection.'<sup>16</sup>

See also [Penal code and legislation](#)

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<sup>10</sup> USSD, 'USSD report 2019' (section 6), 11 March 2020, [url](#)

<sup>11</sup> The Elephant, Eric Mawira Gitari, 'The Gay Debate...', 28 February 2019, [url](#)

<sup>12</sup> UN OHCHR, 'Compilation on Kenya' (para 21) 18 November 2019, [url](#)

<sup>13</sup> Kenya government, Laws of Kenya, Penal code, Chapter 63, revised 2012, [url](#)

<sup>14</sup> Equal Rights Trust, 'Submission to the United Nations Human Rights Council..' 2015 (para 15), [url](#)

<sup>15</sup> GALCK, 'Research on The Lived Experiences of Lesbian...' (p.28-29), 12 February 2016, [url](#)

<sup>16</sup> UN OHCHR, 'Compilation on Kenya' (para 20, 21) 18 November 2019, [url](#)

### 3.4 Trans persons

#### 3.4.1 Stonewall in the 'Global Workplace Briefings 2018, Kenya' noted:

'There is no legal gender recognition for trans people. Under the Registration of Persons Act, Cap 107, the details of a person in the principal register of persons must include sex. "Sex" has subsequently been defined as either male or female by the High Court in 2007.

'Name change is allowed for all persons, including trans people, as held by the High Court in 2014. The name can be changed via a deed poll under the Registration of Documents Act.'<sup>17</sup>

#### 3.4.2 The GALCK noted on their website: 'Violence towards transgender persons is fueled [sic] by hate and exacerbated by the sections 162 a) & c) and 165 of the Penal Code of Kenya, whose existence creates a misguided perception that gender minorities are criminalized.'<sup>18</sup>

#### 3.4.3 GALCK also noted:

'Some members of the LGBQ community are better protected from violence and discrimination by the constitution. This is because laws that outlaw discrimination on grounds of sex and gender protect transgender and intersex individuals. However, the law does not adequately address the needs of Kenya's transgender and intersex community. Members of this community experience challenges accessing health care and changing their names and gender in legal documents.'<sup>19</sup>

See also [Intersex, Lesbians and bisexual women](#) and [Access to services](#)

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### 3.5 Intersex persons

#### 3.5.1 The USSD report covering 2019 noted:

'In 2017 the government formed a taskforce to implement a High Court's judgment in the 2014 Baby 'A' case that recognized the existence of intersex persons. The taskforce submitted its final report to the attorney general in March [2019]. The report estimated the number of intersex persons in the country at 779,414. ...The report concluded with a number of recommendations to realize the rights of members of the intersex community.'<sup>20</sup>

#### 3.5.2 The Kenya government's National Report to the United Nations Human Rights Council Working Group on the Universal Periodic Review, Kenya, submitted 11 November 2019 noted:

'Intersex persons in Kenya have for a long time faced stigma and discrimination due to their biological make-up. The High Court in a judgment delivered on 5th December 2015 in Petition No. 266 of 2013, Baby A v. Attorney General and others – declared that it is the duty of the Government to protect the rights of intersex babies and persons by providing a legal

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<sup>17</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p1), July 2018, [url](#)

<sup>18</sup> GALCK, 'Transgender day of remembrance', 20 November 2019, [url](#)

<sup>19</sup> GALCK, 'As a Member of the LGBQ Community in Kenya, Do I have Rights?', undated, [url](#)

<sup>20</sup> USSD, 'USSD report 2019', (section 6), 11 March 2020, [url](#)

framework to address issues relating to them, including registration under the Registration of Births and Deaths Act, medical examination and tests, and corrective surgeries. To this end, the executive has identified the immediate, medium and long term reforms required to respect and protect the rights of intersex people as Kenyans. Of importance is the review of the gender marker to incorporate the “intersex” as a category. The marker was used in the 2019 Kenya Population and Housing Census to determine the number of intersex people, for policy and programmatic interventions.

‘Additionally, the Persons Deprived of Liberty Act of 2014 recognizes intersex persons and provides for their humane and dignified treatment while in custody. All intersex people in custody can now choose the sex of the person by whom they should be searched. The Act also directs that intersex persons must be held separate from other persons.’<sup>21</sup>

3.5.3 Reuters and Human Rights Watch (HRW) noted that in August 2019, Kenya became the first country in Africa to recognise intersex people in its census<sup>22,23</sup>.

3.5.4 The Reuters report, ‘Kenyan census results a “big win” for intersex people’, 4 November 2019, noted:

‘The results showed that 1,524 people - 0.003 percent of the population - said they were intersex, a figure campaigners said was low and attributed to widespread stigma and low awareness...

“Certainly the numbers are not what we expected in terms of big volumes, but the KNBS [Kenya National Bureau for Statistics] data confirms that every county has people who identify as intersex,” said Isaac Mwaura, Kenya’s Senator for Persons with Disabilities. “It doesn’t matter if it’s one intersex person or one million. I see it as a big, big win as it means intersex people are recognized and their rights must be safeguarded - just like all other minorities in this country.”

‘Mwaura has introduced a bill in parliament that would allow intersex people to change their sex on their national ID cards and to include “intersex” on birth and death certificates.’<sup>24</sup>

See also [Lesbians and bisexual women](#), [Trans persons](#) and Societal attitudes and treatment - [Intersex persons](#)

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## 3.6 Adoption

3.6.1 Stonewall in the ‘Global Workplace Briefings 2018, Kenya’ noted: ‘Section 158(3)(c) of the Children Act specifically prohibits the adoption of a child by a ‘homosexual’ person.’<sup>25</sup>

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<sup>21</sup> UN OHCHR, ‘National report Kenya’ (p.18), 11 November 2019, [url](#)

<sup>22</sup> Reuters, ‘Kenyan census results a ‘big win’ for intersex people’, 4 November 2019, [url](#)

<sup>23</sup> HRW, ‘World report 2020, Kenya’, (Sexual Orientation and Gender Identity), 14 January 2020, [url](#)

<sup>24</sup> Reuters, ‘Kenyan census results a ‘big win’ for intersex people’, 4 November 2019, [url](#)

<sup>25</sup> Stonewall, ‘Global Workplace Briefings 2018, Kenya’ (p.1), July 2018, [url](#)



- 3.6.2 The 'Compilation on Kenya' submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019 noted that same-sex couples were prohibited from adopting children<sup>26</sup>.

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Section 4 updated: 20 January 2020

## 4. Challenges to laws affecting LGBTI persons

### 4.1 Recognition of trans persons

- 4.1.1 Stonewall in the 'Global Workplace Briefings 2018, Kenya' noted 'Trans people submitted a memorandum on the 2016 Health Bill seeking to be legally recognised and to curb the stigma associated with trans identity. The law has remained unchanged. In 2014, the High Court allowed for the removal of the gender mark on a trans person's exam certificate.'<sup>27</sup>
- 4.1.2 Human Rights Watch (HRW) in its 'World Report 2020' covering events of 2019 noted that the Court of Appeal upheld a ruling which allowed a transgender woman to change her name and remove the gender marker from her school-leaving certificate<sup>28</sup>.

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### 4.2 Anal examinations - Court of Appeal ruling, 22 March 2018

- 4.2.1 See the [Court of Appeal judgement](#)

- 4.2.2 HRW in their publication dated 22 March 2018 stated:

'A Court of Appeal in Mombasa, Kenya, ruled on March 22, 2018, that conducting forced anal examinations on people who are accused of same-sex relations is unconstitutional... It was a resounding victory for lesbian, gay, bisexual, and transgender (LGBT) rights activists in Kenya and beyond.

'The ruling reversed a 2016 High Court decision that had upheld the Kenyan authorities' use of forced anal exams to attempt to provide evidence of homosexual conduct. The National Gay and Lesbian Human Rights Commission (NGLHRC), a nongovernmental organization based in Nairobi, filed a constitutional challenge after police arrested two men in Kwale County in February 2015 on charges of homosexuality, and subjected them to forced anal exams, HIV tests, and Hepatitis B tests at Mombasa's Madaraka Hospital.

"The ruling that forced anal exams violate Kenya's constitution is of tremendous significance," said Neela Ghoshal, senior LGBT rights researcher at Human Rights Watch. "The ruling affirms the dignity of the two Kenyan men who were subjected to these horrific exams, and it reinforces the understanding that the constitution applies to all Kenyans, regardless of their sexual orientation or gender identity..."

"With this ruling, the judges are saying that we all deserve to be treated with dignity and afforded our basic rights, as enshrined in the Kenyan

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<sup>26</sup> UN OHCHR, 'Compilation on Kenya' (para 21) 18 November 2019, [url](#)

<sup>27</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p.1), July 2018, [url](#)

<sup>28</sup> HRW, 'World report 2020, Kenya', (Sexual Orientation and Gender Identity), 14 January 2020, [url](#)

Constitution,” Njeri Gateru, head of Legal Affairs at NGLHRC, said in a statement..

“This landmark ruling places Kenya’s courts at the vanguard in affirming that the government cannot deny LGBT people their basic rights,” Ghoshal said.’<sup>29</sup>

4.2.3 In relation to the same case, international news agency, Reuters noted:

‘In a rare win for gay rights campaigners in Kenya, its Court of Appeal on Thursday [March 2018] ruled that it is illegal to force people suspected of being homosexual to undergo anal examinations. The landmark case was brought by the National Gay and Lesbian Human Rights Commission (NGLHRC) after two men were arrested in 2015 on suspicion of having gay sex, which is illegal in Kenya and punishable by 14 years in jail...

‘The judgment ends a three-year legal battle by the NGLHRC to prove that the examinations violated the rights of Kenyan citizens. It originally lost the case in 2016 when Mombasa’s High Court ruled the anal tests as constitutional. The charity then challenged the ruling in the Court of Appeal in Mombasa, which has now ruled in its favour...’<sup>30</sup>

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4.3 [LGBTI organisations allowed to register as NGOs - Court of Appeal ruling, 22 March 2019](#)

4.3.1 The original case was [Gitari v. Non-Governmental Organisations Co-ordination Board](#) heard at the High Court and promulgated 24 April 2015<sup>31</sup>. The appeal was heard at the [Court of Appeal and promulgated 22 March 2019](#).

4.3.2 Reuters noted on 22 March 2019:

‘A prominent LGBT+ organization in Kenya won the right to be recognized as a charity on Friday in a Court of Appeal ruling that could give greater freedom to persecuted sexual minorities across the country.

‘The court ruled that the government could not use colonial-era laws criminalizing gay sex to block the National Gay Lesbian Human Rights Commission (NGLHRC) from being registered as a non-profit organization.

‘Three of the five judges upheld an earlier verdict by the high court, saying sexual minorities were entitled to the same rights as all other Kenyans, including the right to associate...The government could still appeal the decision in the Supreme Court...

‘[NGLHRC]... has struggled with official recognition, with the government’s Non-Governmental Organisations Coordination Board rejecting its application for registration as a charity on the basis that it was for gay and lesbian people.

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<sup>29</sup> HRW, ‘Kenya: Court Finds Forced Anal Exams Unconstitutional...’, 2 March 2018, [url](#)

<sup>30</sup> Reuters, ‘Rare win for gay rights as Kenya court rules forced anal tests illegal’, 22 March 2018, [url](#)

<sup>31</sup> Kenya Law, ‘EG v Non- Governmental Organisations Co-ordination Board...’, 24 April 2015, [url](#)

'The organization challenged the decision in Kenya's High Court, arguing that it violated the constitution which guarantees the right to freedom of association for all persons.

'The High Court ruled in favor of the NGLHRC in 2015, saying that it should be allowed to register as every person has the right to freedom of association, irrespective of sexual orientation. The government however took the matter to the court of appeal the following year.'<sup>32</sup>

- 4.3.3 The Star, a Kenyan daily newspaper, reported some of the findings of the judges in the case:

"In a society that is diverse as Kenya, there is need for tolerance and in any democratic society there will always be a marginalised group. This appeal therefore lacks merit and is dismissed," he [Justice Asike Makhandia] said.

'In addition, presiding Judge Waki said the LGBT community has a right to freedom of association and that the criminal procedure code does not criminalise those that want to form such a group. He said there is nothing unlawful and criminal about the objectives of the proposed NGO.

"The issue of LGBT is rarely discussed in public. But it cannot be doubted that it is an emotive issue. The reality is that this group does exist and we can no longer deny that. Let it go down that I will not be the first to throw a stone and harm them," said the Judge.

"...As we observed above, our understanding of the objectives of the proposed NGO is the protection of persons whose sexual orientation is gay or lesbian, as well as persons who are transgender or intersex, from discrimination and other violation of their rights," the bench said.

"It is not for the promotion of the sexual acts 'against the order of nature' prohibited by the Penal Code, nor is it to advance paedophilia as submitted by the Board, which are criminal offences with respect to which clear penal consequences are provided."<sup>33</sup>

- 4.3.4 CPIT was unable to find information in the sources consulted indicating that the government had sought to appeal the High Court ruling to the Supreme Court (see [Bibliography](#)).
- 4.3.5 More information about the case is available on the Global Freedom of Expression Columbia University [website](#).

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- 4.4 [Continued criminalisation of consensual same-sex relationships - High Court ruling, 24 May 2019](#)
- 4.4.1 See the [High Court judgement](#) in the case of EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae), In The High Court Of Kenya At Nairobi Milimani Law Courts Constitutional And Human Rights Division, 24 May 2019, for full details of the case.

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<sup>32</sup> Reuters, 'Victory for Kenya's LGBT+ community ...', 22 March 2019, [url](#)

<sup>33</sup> The Star, 'Win for gays as court upholds their right to form organisation', 22 March 2019, [url](#)

- 4.4.2 The Human Dignity Trust, in the article ‘Judgment “huge setback” – High Court upholds discriminatory laws criminalising LGBT Kenyans’, published 24 May 2019 noted:

‘Today’s [March 2019] decision by Kenya’s High Court to uphold discriminatory laws that target lesbian, gay, bisexual and transgender (LGBT) people is a huge setback, says the Human Dignity Trust.

‘Sections 162, 163 and 165 of the Penal Code, which were introduced into Kenyan lawbooks by British colonisers over 100 years ago, make it a crime to “have carnal knowledge against the order of nature,” and for consenting adult men to engage in “gross indecency” with each other...

‘The court found that Sections 162, 163 and 165 do not violate the rights of LGBT Kenyans to non-discrimination, health, a fair trial, security of the person, freedom of conscience, religion or belief, human dignity or privacy.’<sup>34</sup>

- 4.4.3 The Independent in an article dated 24 May 2019 noted:

‘Kenya’s High Court has blocked an attempt to overturn a law banning gay sex, in a significant set back for LGBT+ rights across Africa. Judges claimed repealing British colonial-era laws would open the door to same sex marriage in a country and continent that continues to discriminate against LGBT+ citizens...

‘Activists had argued the laws criminalising consensual same-sex relations between adults were in breach of the constitution because they deny basic rights. The state should not regulate intimacy between gay couples, they said.

‘The laws create an environment of fear and harassment even if they are not always enforced, activists said. “The issue is violence, discrimination and oppression,”...

‘But the judges, in a unanimous ruling, said those behind the appeal had failed to prove how the laws violated their right to health, dignity and privacy and said the laws do not single out gay people. “Acknowledging cohabitation among people of the same sex, where they would ostensibly be able to have same-sex intercourse, would indirectly open the door for (marriage) of people of the same sex,” said the judgment read in part by Justice Roselyn Aburili...’<sup>35</sup>

- 4.4.4 The Nation, a US magazine, in the report, ‘In a Painful Setback, Kenya’s High Court Upholds Antigay Laws’, dated 28 May 2019, stated:

‘On Friday [24 May 2019] this legal challenge suffered a painful setback... The unequivocal nature of the defeat—a three-judge panel ruled unanimously that the challenge had “no merit”—came as a surprise, given Kenyan activists’ recent successes in using the courts to expand their rights...

‘Reading out the high court’s decision on Friday, Justice Roselyn Aburili claimed, somewhat bizarrely, that the country’s antigay laws don’t amount to discrimination because they don’t specifically mention LGBT people. She

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<sup>34</sup> The Human Dignity Trust, ‘Judgment ‘huge setback...’ 24 May 2019, [url](#)

<sup>35</sup> The Independent, ‘Kenya refuses to overturn ban on gay sex’, 24 May 2019, [url](#)

also raised the specter of gay marriage, saying a ruling in the Kenyan activists' favor would "open the door for same-sex unions," something the activists made no mention of in their petition.'<sup>36</sup>

- 4.4.5 HRW in its annual report covering events in 2019 noted: 'Three Kenya lesbian, gay, bisexual, and transgender (LGBT) activist groups have appealed the [the High Court] decision.'<sup>37</sup> However, no further information about the appeal was available in the sources consulted at the time of writing (see [Bibliography](#)).

See [State treatment](#) and [Reaction to the High Court ruling 24 May 2019](#)

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Section 5 updated: 23 March 2020

## 5. State treatment

### 5.1 Government position

- 5.1.1 The Star, a Kenyan daily newspaper, in its article dated 20 April 2018 'Gay rights is non-issue in Kenya, Uhuru says during CNN interview', stated:

'President Uhuru Kenyatta ... said Kenya does not consider gay rights relevant as it goes against the cultural beliefs of Kenyans. In a manner reminiscent of his response to former US President Barack Obama in 2015, Uhuru said Kenya's cultural beliefs do not consider homosexuality a human right.

"I want to be very clear, I will not engage in any subject that is not of any major importance to the people and the Republic of Kenya. This is not an issue of human rights, this is an issue of society, of our own base as a culture as a people regardless of which society you come from. This is not acceptable, this is not agreeable," he said.

'Uhuru said his stand on gay rights was not a personal opinion but rather the voice of Kenyans as outlined in the Kenyan Constitution. "After several years, I have clearly stated that this is not a subject that we are willing to engage in,"...

'In an interview with CNN... Uhuru reiterated the stand saying he operates under the Supreme Law of Kenya which is the Constitution... Uhuru said under the prevailing laws, he cannot allow same-sex activities to be tolerated unless, in future days, the law is repealed to allow it.

"Maybe our society will have reached a stage where those are issues that people are willing freely and open to discuss. I have to be honest with [sic] and that is a position we have always maintained," Uhuru said.

"Those are the laws that we have and those are the laws that are 100 per cent supported by 99 per cent of Kenyans regardless of where they come from," he added.

'The head of state, however, said he does not advocate for the violation or discrimination of the LGBT community in any way as they are also part of the

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<sup>36</sup> The Nation, In a Painful Setback, Kenya's High Court Upholds Antigay Laws, 28 May 2019, [url](#).

<sup>37</sup> HRW, 'World report 2020, Kenya', (Sexual Orientation and Gender Identity), 14 January 2020, [url](#)

society whose rights as Kenyans is provided for by the Constitution. “But, they also must recognize that their freedom must also be taken into the entire context of the society that they live in because this is not a question of the government accepting or not accepting. This is a question of society,” he said.’<sup>38</sup>

5.1.2 In relation to intersex and trans rights, the Kenya National Commission on Human Rights (KNCHR) in ‘KNCHR: International Day Against Homophobia, Biphobia & Transphobia’, 18 May 2018 noted: ‘...the recognition of transgender and intersex persons as vulnerable groups and the commitment by the government to safeguard their rights and interests is a key milestone in the protection of SOGIE [sexual orientation, gender identity and expression] rights.’<sup>39</sup>

5.1.3 The BBC, in an article dated 24 May 2019, in a section which discussed the initial reaction to the [High Court ruling](#) noted that the Kenyan attorney-general had argued against decriminalisation <sup>40</sup>.

5.1.4 Africa News noted on 9 November 2019:

‘Kenya’s president Uhuru Kenyatta rejected any gay agenda to be tabled in a global population conference to be held in Nairobi [...] Kenya will host the population conference “but will not accept practices that are at conflict with our cultures,” President Uhuru Kenyatta has said.

‘Kenyatta reiterated Kenya’s stand to protect cultural norms by not allowing any practices that will be seen devaluing traditions of various local communities. It is understood that the President was referring to the push by reproductive health activists for legal abortion and homosexual rights during the conference.’<sup>41</sup>

5.1.5 The Daily Nation, a Kenyan privately-owned newspaper, noted that the Deputy Prime minister reiterated the president’s response at a church address on 10<sup>th</sup> November 2019<sup>42</sup>.

See [Challenges to laws affecting LGBTI persons](#) and [Government recognition of LGBT NGOs](#)

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## 5.2 Harassment, arrest and detention

5.2.1 The USSD report 2019 noted: ‘NGOs reported police frequently harassed, intimidated, or physically abused LGBTI individuals in custody.’<sup>43</sup>

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

‘LGBT people, too—particularly those who are engaged in sex work—face abuses at the hands of the police...Like female sex workers, male and trans sex workers are subjected to sexual abuse and extortion at the hands of

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<sup>38</sup> The Star, ‘Gay rights is non-issue in Kenya, Uhuru says during CNN interview’, 20 April 2018, [url](#)

<sup>39</sup> KNCHR, ‘KNCHR: International Day Against Homophobia...’, 18 May 2018, [url](#)

<sup>40</sup> BBC News, ‘Kenya upholds law criminalising gay sex’, 24 May 2019, [url](#).

<sup>41</sup> Arica News, ‘Kenya’s president Uhuru Kenyatta ...’, 9 November 2019, [url](#)

<sup>42</sup> The Daily Nation, ‘DP Ruto wades into ‘gay agenda’...’, 11 November 2019, [url](#)

<sup>43</sup> USSD report 2019 (section 6), 11 March 2020, [url](#)

police officers and county government law enforcement officials, known in Kiswahili slang as makanjoo (singular—kanjoo). Among the 39 interviewees who sometimes engaged in sex work, 15 reported cases in which police officers or makanjoo threatened to arrest them if they refused sex...County government law enforcement officials—a separate entity from the police—also rape and abuse male sex workers.’<sup>44</sup>

- 5.2.3 The GALCK report 2016 noted: ‘Legal structures hardly mention LBQ women specifically, but this research highlighted that this does not withstand their harassment by state representatives in practice... Most participants ... have developed different strategies to circumvent legal persecution and harassment by police.’<sup>45</sup> The same report further stated ‘the State continues to discriminate against LBQ women through frequent arrests, denial of access to basic rights and amenities, and through all kinds of other exclusion mechanisms that hamper the participation of LBQ women as rightful citizens in Kenyan society.’<sup>46</sup>
- 5.2.4 The GALCK report also noted: ‘Participants all narrated different stories about random arrests of LBQ women who were kept in police lock-up overnight only to be released without charges the following morning. Most times, however, they had to pay hefty bribes in order to be released or to avoid being taken to court on trumped up charges. Some, participants claimed, they were raped by police as a form of bribe to ensure their release. They did not give further details.’<sup>47</sup>
- 5.2.5 An ITV News report dated 24 May 2019, which spoke to an asylum seeker in South Africa who left Kenya in 2017, stated:
- ‘George Barasa is a gospel singer who is well know [sic] back home in Kenya - but after he came out in 2013, he was soon counting the cost of that fame.
- “I’ve been arrested four or five times, just for walking down the street, the police know me,” he tells me. ‘As well as the arrests, he’s been beaten by a mob, and when he helped make a music video that told the story of his life’s struggles, the authorities tried to ban it. “They issued a warrant for my arrest and all the band. They called it promoting homosexuality...”’<sup>48</sup>
- 5.2.6 The article by Eric Mawira Gitari, NGLHRC, titled ‘The Gay Debate: Decriminalising Homosexuality in Kenya’, 28 February 2019 noted:
- ‘The National Gay and Lesbian Human Rights Commission (NGLHRC) has since 2012 been responding to and documenting violations against LGBTIQ persons. Annual legal aid reports from NGLHRC indicate that recurrent violations include “corrective” rape, physical assaults, arbitrary arrests, detentions, extrajudicial killings and executions, forced disappearances, extortion and blackmail, entrapment, among others. NGLHRC has been litigating on some of these violations, including challenging the use of forced

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<sup>44</sup> HRW, ‘The Issue is Violence - Attacks on LGBT...’,(p.32-33), September 2015, [url](#)

<sup>45</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p.38), 12 February 2016, [url](#)

<sup>46</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p.20) 12 February 2016,[url](#)

<sup>47</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p.25), 12 February 2016, [url](#)

<sup>48</sup> ITV News, LGBT activist remains in exile as Kenya upholds anti-gay laws, 24 May 2019, [url](#).

anal examination to prove sexual orientation, forced evictions by landlords, dismissals from work, denial of government services and documents, etc.’<sup>49</sup>

5.2.7 The Washington Post, in an article published 19 March 2019 stated:

‘...20 LGBT refugees who had come to Kenya hoping to escape repression in countries such as Uganda, Rwanda and Congo were spending their first full day in jail [22 February 2019]. Their ordeal has now lasted nearly a month and demonstrates the difficulties that LGBT people in Kenya face regardless of what happens in the courts.

‘The refugees were arrested en masse near the headquarters of the United Nations High Commissioner for Refugees (UNHCR) in an upscale neighborhood of the Kenyan capital. Police say they were creating a public nuisance, trespassing and even defecating in public.

‘In interviews during visiting hours at Nairobi West Prison, five of the refugees said the charges are trumped up and that they have suffered horrible physical abuse at the hands of prison guards and other prisoners. The interviewees complained that they had lice and that those who were HIV positive among them could not access their antiretroviral treatment.’<sup>50</sup>

5.2.8 Associated Press (AP) News, a US news agency, in an article published 19 June 2019 noted:

‘LGBT refugees allege they have been harassed by police in recent weeks in Kenya, which is a rare regional haven for the gay community and yet maintains that gay sex is illegal. It is the only East African nation where someone can seek asylum and be registered as a refugee based on their LGBT status...

‘Muregwa and 16 other refugees allege that five police officers arrested them at gunpoint at home and locked them up without charge earlier this month. After they were released two days later on June 10 [2019], they allege another group of police officers tried to arrest them but the U.N. refugee agency intervened.

‘Nairobi police chief Philip Ndolo told The Associated Press that the refugees were arrested for their own protection. He did not give details.’<sup>51</sup>

5.2.9 The BBC in the article ‘Gay refugees sent back to “homophobic Kenya camp”’, 20 June 2019 noted: ‘Kenya's government has ordered a group of 76 refugees to return to a camp they had fled after some of them faced homophobic attacks, a UN agency says. Police with guns escorted the group on to buses on Wednesday night, photos sent to the BBC by the refugees show. The group had been living in temporary accommodation in the capital, Nairobi, after fleeing the refugee camp.’<sup>52</sup>

See also [LGBTI groups, civil society and human rights NGOs](#)

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<sup>49</sup> The Elephant, Eric Mawira Gitari, ‘The Gay Debate...’, 28 February 2019, [url](#)

<sup>50</sup> The Washington Post, ‘These LGBT refugees came to Kenya ...’, 19 March 2019, [url](#)

<sup>51</sup> AP News, ‘LGBT refugees allege harassment in Kenya, a rare safe haven’, 19 June 2019, [url](#)

<sup>52</sup> BBC, ‘Gay refugees sent back to ‘homophobic Kenya camp’’, 20 June 2019, [url](#)



### 5.3 Prosecution of same-sex acts

- 5.3.1 In relation to the application of the penal code and the criminalisation of same sex sexual relations the USSD report 2019 repeated its assessments for 2016<sup>53</sup> and 2017<sup>54</sup> and 2018<sup>55</sup>: ‘Police detained persons under these laws, particularly persons suspected of prostitution, but released them shortly afterward... LGBTI organizations reported police more frequently used public-order laws (for example, disturbing the peace) than same-sex legislation to arrest LGBTI individuals.’<sup>56</sup>
- 5.3.2 CNN noted: ‘A 2014 parliamentary report found that between 2010-2014, the Kenyan government prosecuted 595 cases of homosexuality.’<sup>57</sup> The Guardian, noted ‘Kenya arrested 534 people for having same-sex relations between 2013 and 2017.’<sup>58</sup>
- 5.3.3 The 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated: ‘Though there have been few prosecutions under any of these Penal Code provisions in recent years, 18 gay men interviewed by ERT reported being harassed by police seeking to blackmail or extort money from them.’<sup>59</sup>
- 5.3.4 The Human Rights Watch report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, published in September 2015, stated:  
‘It is unclear whether anyone has ever been convicted for consensual adult same-sex relations in Kenya. According to a list produced by former Inspector General of Police David Kimaiyo in 2014, over 500 people were convicted of “unnatural offenses” between 2010 and 2014. The National Gay and Lesbian Human Rights Commission (NGLHRC) conducted an initial analysis of the list and found that it conflated cases of bestiality and rape with cases allegedly involving consensual sex, all of which are categorized under the “unnatural offenses” provisions in the Penal Code. At the time of writing, NGLHRC had not yet determined whether there were in fact any convictions on the record based on consensual same-sex conduct.  
‘Human rights organizations report occasional cases in which LGBT people are arrested, often due to complaints from neighbors, or on the initiative of law enforcement officials seeking bribes. In most cases, they are released within a matter of days... Charges against gay men and transgender women on the grounds of sex work are more common.’<sup>60</sup>
- 5.3.5 Anna Dubuis, a freelance journalist living in Nairobi, in an article of 9 May 2016 on Vice news, spoke to NGLHRC leader Eric Gitari ‘According to the Kenyan government, 595 cases were prosecuted under Section 162 between 2010 and 2014, though Gitari and his team found that most of them were cases of bestiality and rape — crimes currently seen as comparable to

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<sup>53</sup> USSD report 2016 (section 6), 3 March 2017, [url](#)

<sup>54</sup> USSD report 2017 (section 6), 20 April 2018, [url](#)

<sup>55</sup> USSD report 2018 (p.41), 13 March 2019, [url](#)

<sup>56</sup> USSD report 2019 (section 6), 11 March 2020, [url](#)

<sup>57</sup> CNN, ‘Kenya’s top court considers case to legalize homosexuality’, 23 February 2018, [url](#)

<sup>58</sup> The Guardian, ‘Kenya court upholds ban on gay sex in major setback...’, 24 May 2019, [url](#)

<sup>59</sup> Equal Rights Trust, ‘Submission to the United Nations...’ (paragraph 15), 2015, [url](#)

<sup>60</sup> Human Rights Watch, ‘The Issue is Violence...’ (p.17-18), September 2015, [url](#)

consensual gay sex in the eyes of the law. In reality, Gitari says, the law is rarely enforced against homosexual activity, with only one person convicted since 2011.<sup>61</sup>

5.3.6 HRW in a July 2016 report, *Dignity Debased Forced Anal Examinations in Homosexuality Prosecutions*, noted: ‘The law on “unnatural offenses” is rarely applied in cases involving consensual sex between adults. Only two cases are known to Human Rights Watch. One, filed in 2012 in Kifili, was dismissed in May 2015 for lack of evidence. The other case, filed in Kwale County in February 2015, is ongoing, and marks the only case known to Human Rights Watch in which forced anal examinations have been used in Kenya.’<sup>62</sup>

5.3.7 France 24, ‘God and justice: Gay church prays for historic Kenya ruling’, 20 February 2019 noted, in relation to the penal code:

“The law specifies ‘in public or private’ which essentially allows police to enter our bedrooms to investigate these crimes,” said Eric Gitari, the co-founder of the National Gay and Lesbian Human Rights Council (NGLHRC), one of the petitioners.

‘Imani Kimiri of the NGLHRC’s legal team, told AFP her office dealt with 15 prosecutions under the laws in 2018, but cannot recall the last conviction -- slamming the process as “just a frustrating endeavour”’<sup>63</sup>

5.3.8 Amongst sources consulted (see [Bibliography](#)) CPIT could not find further updated information or statistics on the prosecution or conviction of LGBTI persons for same-sex acts.

See [Anal examinations - Court of Appeal ruling, 22 March 2018](#)

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## 5.4 Police responses to reports of anti-LGBT violence

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

‘Police play an ambiguous role. In some cases, they have protected LGBT people from mob violence—a role that is recognized and appreciated by LGBT activists on the coast—but they have not brought the perpetrators of violence to book. In other cases, they have outright failed in their responsibility to protect: refusing assistance to victims because of their presumed gender identity or sexual orientation, conducting arbitrary arrests, or even perpetrating violence themselves... Many LGBT victims of violence believe they have no recourse, and that the police are just as likely to persecute them as to protect them.’<sup>64</sup>

5.4.2 The same report also stated:

‘Police and other law enforcement officials have an obligation to provide assistance to LGBT people who are victims of crime, but do not always act accordingly. LGBT people are not unique in being denied adequate

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<sup>61</sup> Vice news, ‘Kenya Could Become the Next Country...’, 9 May 2016, [url](#)

<sup>62</sup> HRW, ‘Dignity Debased...’, July 2016, [url](#)

<sup>63</sup> France 24, ‘God and justice: Gay church prays for historic Kenya ruling’, 20 February 2019, [url](#)

<sup>64</sup> HRW, ‘The Issue is Violence - Attacks on LGBT...’,(p.32-33), September 2015, [url](#)

protection by the Kenyan police. Human Rights Watch has documented inadequate police protection in the case of terrorist attacks, interethnic violence, and other cases of serious violence. In some ways, LGBT people fare better with the police than other vulnerable groups...Too often, however, police on the coast have responded to cases of violence against LGBT individuals by treating the victims with stigma and discrimination, refusing to take statements or to provide assistance...Most LGBT people we interviewed reported being afraid of the police, and were unwilling to even attempt to file complaints.’<sup>65</sup>

- 5.4.3 The GALCK report 2016 noted: ‘Despite encountering frequent violence, LBQ women hardly report cases to the police. According to the NGLHRC 2014 report, 22 cases of attacks on LBQ women were reported between January 2014 and November 2014. Out of these cases only six were reported to the police. Participants explained that most LBQ women have no faith in the police and were often afraid to ‘out’ themselves and/or increase tensions in relationship to family members. Only two of the reported incidents were presented in court, and one of these was withdrawn upon the first hearing date following family intervention. The other case is still being investigated by the prosecution to gather more evidence to support it.’<sup>66</sup>
- 5.4.4 GALCK, in ‘Decriminalisation of Consensual Same Sex Sexual Conduct in Kenya’, 22 February 2018 noted: ‘... incidents where individuals go to the police seeking help only to have the police attack them. In one such case where our client 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.” These are not the national values Kenyans aspire to.’<sup>67</sup>
- 5.4.5 Harvard Law Today, in an article published 14 May 2018 on Eric Gitari, NGLHRC, Gitari noted: ‘There are a lot of cases that we’re not able to bring because the people who are affected don’t want to be outed by the justice system... It becomes more complicated when our clients are entrapped or faced with blackmail or extortion. They go to seek justice, but they end up being the ones who are investigated, because the overtures that led to the blackmail are a crime.’<sup>68</sup>
- 5.4.6 Mamba Online, a South African news and lifestyle website, in the article ‘LGBTIQ refugees left bloodied after police attack in Kenya’ published 12 December 2018 noted:
- ‘A group of LGBTIQ refugees who fled homophobic persecution to the notorious Kakuma Refugee Camp in Kenya have been viciously attacked, allegedly by the police.
- ‘According to reports from the victims, they were assaulted after holding a peaceful march against the ongoing homophobic violence and appalling living conditions they face in the camp. The around 30 individuals attempted to hand over a petition to the UN Refugee Agency, UNHCR, which runs the

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<sup>65</sup> HRW, ‘The Issue is Violence - Attacks on LGBT...’,(p.30-31), September 2015, [url](#)

<sup>66</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p.24), 12 February 2016, [url](#)

<sup>67</sup> GALCK, ‘Decriminalisation of Consensual Same Sex Sexual Conduct ...’, 22 February 2018, [url](#)

<sup>68</sup> Harvard Law Today, ‘Eric Gitari LL.M...’, 14 May 2018, [url](#)

facility, about their grievances. They claim that UNHCR officials called the police, who then allegedly beat the LGBTIQ refugees in the UNHCR compound.

‘...Moses Mbazira, the executive director of the LGBTIQ group in the camp, Refugee Flag Kakuma, was among those assaulted and injured. The refugees posted shocking images on Facebook of their bloody injuries...[he] said the police had confiscated his phone and threatened him with further violence and even death if he posted photos and videos of the group’s injuries.’<sup>69</sup>

5.4.7 HRW, in the ‘World report 2020’, covering events of 2019 noted: ‘LGBT refugees and asylum seekers from neighboring countries faced attacks both in Kakuma refugee camp and in Nairobi neighborhoods. In June [2019], police forcibly returned a group of LGBT asylum seekers from Nairobi to Kakuma, despite admissions from UNHCR that it could not ensure their safety in the camp.’<sup>70</sup>

5.4.8 The USSD report 2019 noted ‘In June [2019] the government ordered a group of 76 LGBTI refugees to leave their temporary quarters in Nairobi and return to the Kakuma camp, where they had been subject to homophobic attacks and death threats. LGBTI refugees continued to face stigma and discrimination. They were often compelled to hide their sexual orientation or gender identity to protect themselves.’<sup>71</sup>

See [Harassment, arrest and detention](#) and [Pro-LGBT marches / protests](#)

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## 5.5 Police oversight - complaints mechanism(s)

5.5.1 The Independent Policing Oversight Authority (IPOA) describes its remit on its website:

‘The Authority considers complaints alleging misconduct or neglect of duty by the Police, or about Police practices, policies, and procedures affecting the complainant.

‘The Authority also considers incidents of death and serious injury caused by Police action. The Police have to inform IPOA about these incidents. The Authority can also investigate on its own motion....

“Misconduct” includes using of unreasonable force, corruption, dishonesty, perjury, threats or harassment, unlawful arrest, and a wide range of other acts.

“Neglect of duty” includes failure to investigate, failure to prosecute or respond to a crime, failure to provide proper care for people in custody, and failure to notify a person of a matter affecting them (such as a Court appearance).<sup>72</sup>

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<sup>69</sup> Mambaonline, ‘LGBTIQ refugees left bloodied after police attack in Kenya’, 12 December 2018, [url](#)

<sup>70</sup> HRW, ‘World report 2020, Kenya’, (Sexual Orientation and Gender Identity), 14 January 2020, [url](#)

<sup>71</sup> USSD report 2019 (section 6), 11 March 2020, [url](#)

<sup>72</sup> IPOA, ‘website’ (How to complain and What is misconduct...), undated, [url](#)

For more information on the IPOA including effectiveness see [Kenya: Actors of protection](#).

- 5.5.2 Amongst sources consulted (see bibliography) CPIT could not find specific information in relation to LGBTI persons' complaints made, or their ability to access the IPOA.

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Section 6 updated: 23 March 2020

## 6. Societal attitudes and treatment

### 6.1 Societal norms

- 6.1.1 The 'KNCHR: International Day Against Homophobia, Biphobia & Transphobia' report dated 18 May 2018 noted: 'In Kenya like many other countries, there is deeply entrenched stigma against sexual and gender minorities. This situation is driven by myths, misconceptions and stereotypes based on religion, culture, science and that sexual orientation, gender identity and expression (SOGIE) issues are a western/foreign importation.'<sup>73</sup>
- 6.1.2 The article by Eric Mawira Gitari, NGLHRC, titled 'The Gay Debate: Decriminalising Homosexuality in Kenya', 28 February 2019 noted 'The most common rhetoric against same sex relations in Kenya has been coming from the religious and political elite who often characterise homosexuality as being against African tradition and biblical teachings.'<sup>74</sup>

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### 6.2 Public opinion

- 6.2.1 The 2013 Pew Research Centre report 'The Global Divide on Homosexuality' noted that 90% of Kenyans surveyed believed homosexuality should not be accepted by society<sup>75</sup>.
- 6.2.2 The IGLA-RIWI [International LGBTI Association and a global survey technology company] 2016 Global Attitudes Survey on LGBTI people in partnership with LOGO [entertainment brand inspired by the LGBT community] noted that, in Kenya:
- 53% of people didn't agree that being LGBTI should be a crime
  - 46% of people had no concerns about their neighbour being gay or lesbian<sup>76</sup>.
- 6.2.3 Amongst sources consulted (see [Bibliography](#)) no more recent survey data on public opinion in relation to LGBTI rights was available.
- 6.2.4 DW Akademie, a German state-owned public international broadcaster, noted on 6 April 2018 : '... the rising number of LGBT organizations and major court cases show that some progress has been made. Brian [who works for the Gay and Lesbian Coalition of Kenya (GALCK)] thinks the

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<sup>73</sup> KNCHR, 'KNCHR: International Day Against Homophobia...', 18 May 2018, [url](#)

<sup>74</sup> The Elephant, Eric Mawira Gitari, 'The Gay Debate...', 28 February 2019, [url](#)

<sup>75</sup> Pew Research Centre, 'The Global Divide on Homosexuality' (p.3), 4 June 2013, [url](#)

<sup>76</sup> ILGA, 'The ILGA-RIWI 2016 Global Attitudes Survey...', (p.5, p.10), May 2016, [url](#)

country has become a bit more liberal since the time when he came out around ten years ago.’<sup>77</sup>

- 6.2.5 Pink News in the article ‘Lesbian film Rafiki playing to sold-out crowds in Kenya after court lifts ban’, 24 September 2018 noted:

‘Screenings of lesbian film Rafiki are selling out in Kenya, after a court allowed it to be released for one week only. The film had its first screenings on Sunday (September 23 [2018]) in the wake of the Friday ruling, with a cinema in the capital Nairobi packed out for the occasion... The Nairobi cinema manager... [said] big crowds are expected for the rest of the film’s brief release given the attention it has garnered, adding: “I expect it to be full every day.”

‘Demand for the movie was so high that the cinema quickly upped the number of planned screenings, opening a second screen to cater to the influx of movie-goers.’<sup>78</sup>

- 6.2.6 The Stonewall Global Workplace Briefing 2018, in an interview with a representative from the Gay and Lesbian Coalition of Kenya (GALCK) noted: ‘Kenya is a very diverse country, with different religious groups and various ethnic communities. There are also sharp ideological divides between political movements. Within this diverse society, gender and sexual minorities have increasingly claimed space to talk about issues affecting them. Making use of social media and other online spaces, we can see a growing boldness to speak about gender and sexual diversity. This is despite strong resistance: often the louder the sexual orientation and gender identity and expression movements get, the louder their opposition responds.’<sup>79</sup>

- 6.2.7 The article by Eric Mawira Gitari the former Executive Director of NGLHRC, titled ‘The Gay Debate: Decriminalising Homosexuality in Kenya’, 28 February 2019 noted:

‘In the social-cultural sphere, Kenya’s creative/arts scene has increasingly become a mirror of the diversity in Kenya’s gender and sexuality fluidity. Notable among them are the films *Stories of Our Lives* and *Rafiki*, whose same sex themes have been banned locally but have spiked local and international demand.

‘Art galleries and cultural centres in Kenya have in recent years been hosting Lesbian Gay Bisexual Trans Intersex and Queer (LGBTIQ) art and cultural events without state sanction. Reputed artists, such as Michael Soi, with his provocative paintings on sexuality and Kawira Mwirichia, with her *Kanga* love art, also continue to highlight the changing social landscape on matters sexuality and gender in Kenya.

‘Although the education curriculum in primary and secondary schools still teaches that homosexuality is a social deviance, many public universities and colleges have been pushing back with a much more inclusive curriculum, especially in law schools. In addition, student-led bodies in universities and colleges have been engaging in research, internships, moot

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<sup>77</sup> DW Akademie, ‘Kenya’s LGBT community fights for a place in society’, 6 April 2018, [url](#)

<sup>78</sup> PinkNews, ‘Lesbian film Rafiki playing to sold-out crowds..’, 24 September 2018, [url](#)

<sup>79</sup> Stonewall, ‘Global Workplace Briefings 2018, Kenya’ (p.2), July 2018, [url](#)

courts and other public service partnerships with civil society organisations dealing with LGBTIQ equality in Kenya.<sup>80</sup>

- 6.2.8 The paper ‘LGBTIQ Rights in Kenya: On Activism and Social Change’ published in the Georgetown Journal of International Affairs discussed how the High Court ruling might impact social change released prior to the 24 May 2019 Court determination:

‘The struggle for LGBTIQ rights in Kenya provides a unique and fascinating case study of the powerful social change taking place right now. On May 24, 2019, the High Court of Kenya will rule on whether to decriminalize same-sex relationships... The court was originally scheduled to decide this case in February but delayed the ruling...and some worried that the delay was a sign of government interference with the judicial process...

‘The big question for May 24 is, will the Kenyan courts decriminalize homosexuality? If that happens, we will be able to credit a tenacious collection of activists and activists for their courageous work over the past twenty years fighting for social change and human rights for all Kenyans. If the Kenyan courts decide that criminalizing homosexuality does not violate the human rights clauses of the 2010 constitution, a luta continua: the struggle continues. Social change is often slow in coming, but indicators show that it will eventually arrive for LGBTIQ people in Kenya.’<sup>81</sup>

- 6.2.9 PEMA (formally Persons Marginalized and Aggrieved) Kenya, an NGO in ‘County Dialogue Forum on Gender and Sexual Diversity and Human Rights’, published 18 October 2019 noted: ‘The coastal region of [K]enya is an area where most inhabitants are cultured with [I]slamic religious beliefs and traditional conservatism. Consequently, this elicits very low tolerance to the gender and sexual minorities from the wider society.’<sup>82</sup>

See also [Media](#)

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### 6.3 Intersex persons

- 6.3.1 Reuters, in an article about the August 2019 census which recognised intersex people for the first time in Kenya noted: ‘Despite the low figure, Karanja [the director of the Intersex Society of Kenya] said his group was “really happy” with the result. “We have to remember this is the first time in Kenya that we are even speaking about intersex issues, so it’s going to take time and a lot work, but at least the conversation has started.”’<sup>83</sup>
- 6.3.2 The same report noted LGBT+ rights groups said a lack of awareness had led to skewing of data. The low figure was due to stigma, a lack of public awareness about what intersex is, and poor training of census staff<sup>84</sup>.
- 6.3.3 The USSD report 2019, noted in relation to the findings of the taskforce formed in 2017 to implement a High Court’s judgment in the 2014 Baby ‘A’ case that ‘...The taskforce submitted its final report to the attorney general in

<sup>80</sup> The Elephant, Eric Mawira Gitari, ‘The Gay Debate...’, 28 February 2019, [url](#)

<sup>81</sup> Georgetown Journal of International Affairs, ‘LGBTIQ Rights in Kenya:...’ 14 May 2019, [url](#)

<sup>82</sup> PEMA, ‘County Dialogue Forum ...’, published 18 October 2019, [url](#)

<sup>83</sup> Reuters, ‘Kenyan census results a ‘big win’ for intersex people’, 4 November 2019, [url](#)

<sup>84</sup> Reuters, ‘Kenyan census results a ‘big win’ for intersex people’, 4 November 2019, [url](#)

March. The report estimated the number of intersex persons in the country at 779,414. The taskforce found only 10 percent of the intersex population completed tertiary education, only 5 percent recognized themselves as intersex due to lack of awareness, and the majority lacked birth certificates, which caused numerous problems, including inability to obtain a national identity card. The census included intersex as a gender and reported 1,524 intersex persons. The disparity between these numbers is likely due to the report's finding that many Kenyans did not recognize themselves as intersex due to lack of awareness and thus did not mark themselves as intersex during the census.'<sup>85</sup>

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#### 6.4 Societal reaction to the High Court ruling, 24 May 2019

6.4.1 The BBC, in an article dated 24 May 2019, in a section which discussed the initial reaction to the High Court ruling 24 May 2019, noted 'One of the petitioners, Eric Gitari, has vowed to appeal against the decision which he called "very biased". Human rights groups also criticised the ruling, with the Kenyan Human Rights Commission going as far as to say that it "legitimises homophobia by upholding a colonial culture of exclusion, discrimination and violence against minorities".'<sup>86</sup>

6.4.2 The BBC in the article 'Gay rights in Kenya: 'Why our fight isn't over'', 25 May 2019, writer Kevin Mwachiro stated:

'Thirteen years ago, I would never have thought that Kenya could get to this point - that our LGBTQ community would go to court and fight for our rights. We have come a long way.

'This generation is a much braver group of individuals trying to ensure other Kenyans learn to love, live and accept themselves for who they are. Our community is also trying to help other Kenyans understand our lives.'<sup>87</sup>

6.4.3 The Nation, a US magazine, in the report, 'In a Painful Setback, Kenya's High Court Upholds Antigay Laws', dated 28 May 2019, stated:

'...[Justice Roselyn] Aburili indicated that the high court's decision [24 May 2019] was informed by notions of tradition and values, saying at one point, "Any interpretation by the petitioners should not exclude our cultural values and principles."...

'Yet on closer examination...it's unclear whether polling and politicians' statements accurately reflect how people interact with sexual minorities in their families and communities or whether surface-level hostility translates into an outright refusal to engage in any way with gay culture. Evidence that public opinion might be more nuanced was on display last year with the local reaction to *Rafiki*, a film by Wanuri Kahiu that became the first Kenyan film to premiere at Cannes—a feat made all the more remarkable because it had been banned at home...

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<sup>85</sup> USSD, 'USSD report 2019', (section 6), 11 March 2020, [url](#)

<sup>86</sup> BBC News, 'Kenya upholds law criminalising gay sex', 24 May 2019, [url](#)

<sup>87</sup> BBC, 'Gay rights in Kenya: 'Why our fight isn't over'', 25 May 2019, [url](#)



'Nairobi residents turned out en masse for the screenings, which took on a celebratory air, with attendees taking selfies and applauding as soon as Rafiki began. In a review for Kenya's Daily Nation newspaper, Thomas Rajula raved about the film, taking issue with just one element: its depiction of the homophobia the main characters encountered...

'The point here, presumably, is not to contend that homophobia in Kenya doesn't exist or to downplay the role that Sections 162 and 165 play in inflaming it. Rather, Rajula points out that public opinion shouldn't be treated as a uniform thing and that, in any case, it can change.'<sup>88</sup>

- 6.4.4 BBC Monitoring, a subscription source which reports and analyses news from media around the world, noted the varying views on Twitter in relation to the High Court ruling:

'Kenyans on Twitter are using #Repeal162 (15,000 tweets) and High Court (13,000 tweets) to comment on the ruling...

'The ruling has been welcomed by many Kenyans, who said it was in step with the country's cultural values. "African traditions and values do not permit [same sex relationships]. And I am sure both the Koran and Bible are all against such despicable acts," said user @Bontae\_254...

'Some users directed derogatory slurs towards members of the Lesbian, Gay, Bisexual and Transgender (LGBT) community, with some even calling for a police crackdown on suspected homosexuals. "Following the rejection of #Repeal162 police should now do a crackdown on gay relationships and lock culprits up. We cannot breathe same air with such a people!" said Charles Mwabili...

'However, some users criticised the anti-gay vitriol in the aftermath of the ruling. "The amount of hate under the #Repeal162 hashtag is disgusting. It's one thing to have dissenting opinions, it's another to be a hateful disgusting human being," Florence Shako said.

"A sad day for human rights. What a shame! That 56 Years after independence, we are still stuck with an anachronistic, anti-human rights colonial piece of legislation which Britain repealed in 1967," lamented George Morara, a commissioner of the Kenyan National Commission on Human Rights.'<sup>89</sup>

- 6.4.5 The Independent, in an article dated 24 May 2019 noted:

'Some in Kenya... praised the decision as a strike against what they called "sexual perversion." Gerald Walterfang with the Kenya Christian Professionals Forum said they were delighted with the ruling against what they termed a "destructive sexual lifestyle".

'Kenyan Bishop Alfred Rotich added: "LGBT is an orientation. You cannot legalise something as an orientation. If somebody has an orientation to steal money, we cannot legalise it."<sup>90</sup>

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<sup>88</sup> The Nation, 'In a Painful Setback, Kenya's High Court Upholds Antigay Laws', 28 May 2019, [url](#)

<sup>89</sup> BBC Monitoring (subscription source), 'Kenyans mostly laud high court ruling...', 24 May 2019, [url](#)

<sup>90</sup> The Independent, 'Kenya refuses to overturn ban on gay sex', 24 May 2019, [url](#)

6.4.6 The BBC, in an article dated 24 May 2019, in a section which discussed the initial reaction to the same ruling noted:

‘... it is a divisive issue in Kenya and many welcomed the judges' verdict. Catholic bishop Alfred Rotish told Reuters news agency outside the court: "We cannot be another Sodom and Gomorrah". Most Christian and Muslim groups support the current law.’<sup>91</sup>

6.4.7 An opinion piece for the Thomas Reuters Foundation by Bahiru Shewaye and Arit Okpo (LGBT+ advocates) noted:

‘It might feel like cold comfort at the moment, but even getting as far as the High Court in Kenya is a big deal. The attorneys' evidence may not have been accepted, but they were recognised as legitimate petitioners and their case was heard. That's a win in itself and a setback in court is by no means the end of the road.

‘With hindsight, this judgement may still prove a seismic moment in the struggle to ensure that everyone, everywhere has the right to love freely.’<sup>92</sup>

6.4.8 Amnesty International in a statement released on 27 May 2019, after the High Court judgement, noted:

‘Kenyan society and courts have increasingly become more progressive, especially since the promulgation of the Constitution of Kenya 2010. We note that over the last 5 years, the courts have affirmed LGBTQ persons' right to human dignity and privacy; freedom of association; freedom of artistic expression and freedom of expression through the landmark decisions that determined that invasive anal testing for suspected gay men was unconstitutional; that the refusal to register NGLHRC was discriminatory; and, by lifting the ban on a lesbian themed movie “Rafiki” and allowing it to be aired in Kenyan cinemas.

‘This decision is a major setback to the human rights discourse especially with regards to equality and non-discrimination.’<sup>93</sup>

6.4.9 AP News in an article published 19 June 2019 noted:

‘[LGBT]... refugees have now locked themselves in their two-bedroom house in the capital, Nairobi, saying they are too frightened to venture out even for food because of threats from local residents.

‘Kenyan human rights activists say they saw this coming. They had warned that a closely watched High Court ruling last month [May 2019] upholding the criminalization of gay sex would bring a backlash against the LGBT community. Some Kenyans would now feel emboldened to act out, even with violence, said leading gay rights activist Eric Gitari.’<sup>94</sup>

6.4.10 The USSD report 2019 stated that leading up to the May 2019 Supreme Court hearing ‘and in its wake, the LGBTI community experienced increased

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<sup>91</sup> BBC News, ‘Kenya upholds law criminalising gay sex’, 24 May 2019, [url](#).

<sup>92</sup> Thomas Reuters Foundation ‘OPINION: What Kenya's continued gay sex ban ...’, 30 May 2019, [url](#)

<sup>93</sup> Amnesty, ‘Amnesty International Kenya statement ...’, 24 May 2019, [url](#)

<sup>94</sup> AP News, ‘LGBT refugees allege harassment in Kenya, a rare safe haven’, 19 June 2019, [url](#)

ostracism and harassment' although the source did not specify whether this was from the state, society in general or a combination of actors<sup>95</sup>

6.4.11 For detail of tweets see [Twitter](#) #Repeal162.

See also [Challenges to laws affecting LGBTI persons](#), [Government position](#), [Religious attitudes](#) and [Media](#)

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## 6.5 Violence and discrimination

6.5.1 The USSD report 2019, repeating its assessment from the 2016<sup>96</sup> and 2017<sup>97</sup> and 2018<sup>98</sup> reports noted:

'Violence and discrimination against LGBTI individuals was widespread.' The same report added 'For example, in April [2019] secondary school authorities in Mathira Constituency reportedly abused 32 girls for allegedly being lesbians and prohibited them from taking their end-term exams... LGBTI refugees continued to face stigma and discrimination. They were often compelled to hide their sexual orientation or gender identity to protect themselves.'<sup>99</sup>

6.5.2 The GALCK report 2016 noted '...the wider public ...draws on the criminalization of same-sex practices among men to condemn and even legitimize violence against LBQ women.'<sup>100</sup>

6.5.3 The same report noted:

'With regards to gender performances, this study highlighted that self-identifying studs [term used to describe masculine presenting women] in particular, face high risks in public spaces. However all participants have encountered some kind of violence because of their gender performances and/or sexual orientation and practices at least once in in their lives, and most feel as if they risk violence on a daily basis.

'LBQ women continue to face direct acts of violence, social stigmatization and isolation, undetected mental health problems and poverty.'<sup>101</sup>

6.5.4 Eric Gitari, NGLHRC, talking to Anna Dubuis on Vice News in May 2016, said that:

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

"Nairobi allows us to be anonymous. Everyone minds their own business," he says. "There have been cases of rape and violence and physical assault,

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<sup>95</sup> USSD report 2019 (section 6), 11 March 2020, [url](#)

<sup>96</sup> USSD, 'USSD report 2016' (section 6), 3 March 2017, [url](#)

<sup>97</sup> USSD, 'USSD report 2017', (section 6), 20 April 2018, [url](#)

<sup>98</sup> USSD report 2018 (p.41), 13 March 2019, [url](#)

<sup>99</sup> USSD report 2019 (section 6), 11 March 2020, [url](#)

<sup>100</sup> GALCK, 'Research on The Lived Experiences of Lesbian...' (p.38) 12 February 2016, [url](#)

<sup>101</sup> GALCK, 'Research on The Lived Experiences of Lesbian...' (p.12 and 38) 12 February 2016, [url](#)

but the fact that it is not systematic [and] widespread shows it is not comparable to our neighbors, like Uganda."<sup>102</sup>

- 6.5.5 In an interview in the Guardian in February 2017, Dennis Nzioka, founding member of the Gay and Lesbian Coalition of Kenya, said 'Kenya is less intolerant to members of the gay community compared to some of her neighbours.'<sup>103</sup>
- 6.5.6 GALCK in 'Decriminalisation of Consensual Same Sex Sexual Conduct in Kenya', 22 February 2018 noted: 'Over 1,000 incidents of violations against LGBTQ people since 2014 have been documented — ranging from murder to mob violence, verbal assault, rape, blackmail and extortion. We receive cases of women who have been brutally beaten and raped because their family or neighbors found out they were lesbian.'<sup>104</sup>
- 6.5.7 The article by Eric Mawira Gitari, NGLHRC, titled 'The Gay Debate: Decriminalising Homosexuality in Kenya', 28 February 2019 noted: 'The National Gay and Lesbian Human Rights Commission (NGLHRC) has since 2012 been responding to and documenting violations against LGBTIQ persons. ... recurrent violations include "corrective" rape, physical assaults... extortion and blackmail, entrapment, among others. NGLHRC has been litigating on some of these violations, including ... forced evictions by landlords, dismissals from work, denial of government services and documents, etc.'<sup>105</sup>
- 6.5.8 DW Akademie noted on 6 April 2018 :  
'Brian works for the Gay and Lesbian Coalition of Kenya (GALCK), ... Brian knows what it means to be harassed and attacked because of his sexual orientation. "I received a lot of verbal [abuse] in the last year," says the activist, recalling a situation where he was asked whether if he was a man or a woman.  
  
'Many members of the LGBT community are regularly subjected to discrimination and even physical attacks just because they are perceived as being different. "It is largely because I express my gender differently and that obviously strikes people by surprise," says Brian. The former student of journalism notes that these attacks often occur in low income areas or parts of the country that are highly conservative...'<sup>106</sup>
- 6.5.9 KNCHR in 'KNCHR: International Day Against Homophobia, Biphobia & Transphobia', 18 May 2018 noted:  
'While celebrating the gains made in Kenya towards the realization of human rights for all, KNCHR notes with concern the continued stigmatization and violations of the rights of sexual and gender minorities... the challenges include; killings, physical violence, arbitrary arrests, ridicule, constant harassment, stigma and exclusion by family and society, expulsion from workplace, learning institutions, blackmail, extortion, denial of work, denial of

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<sup>102</sup> Vice news, 'Kenya Could Become the Next Country...', 9 May 2016, [url](#)

<sup>103</sup> The Guardian, 'On the run from persecution...', 23 February 2017, [url](#)

<sup>104</sup> GALCK, 'Decriminalisation of Consensual Same Sex Sexual Conduct ...', 22 February 2018, [url](#)

<sup>105</sup> The Elephant, Eric Mawira Gitari, 'The Gay Debate...', 28 February 2019, [url](#)

<sup>106</sup> DW Akademie, 'Kenya's LGBT community fights for a place in society', 6 April 2018, [url](#)

housing and poor access to health care. Consequently most of these persons are forced to conceal their true identities often resulting in considerable stress, depression and loss of productivity'.<sup>107</sup>

- 6.5.10 The Stonewall Global Workplace Briefing 2018, in an interview with a representative from GALCK, noted:

'People who don't confirm to society's expectations about gender and sexuality, particularly LGBTIQ persons, are immediately in danger. LGBTIQ persons are not only marginalised but often face violence and discrimination when they're open about their sexual orientation and gender identity, and when they're perceived to be anything other than heterosexual and/or cisgender. This can come from an individual's family, community or even from state officials.'<sup>108</sup>

- 6.5.11 The Daily Nation, 'The challenges of being gay, queer and misunderstood', 8 October 2018, noted the experiences of several people in Kenya:

'[Mark] would not hold hands with his partner on the streets, nor would he want to be identified as a gay man outside of his circle of friends and family where he feels safe. "Inasmuch as I am out on my twitter account, I have protected it to give access only to the people that I know. I have been harassed on twitter, by for example, being called "faggot" so I have learnt to be careful," he said....

'Maria...[i]dentifying as a non-binary person [said] "I have been referred to as "shoga" for walking with a girl, especially at bus stops. I am lucky that this has never escalated to physical violence," they [chosen pronoun] said.

'Like Mark, Maria identifies as queer on twitter, but very few people outside of their twitter friends know about their queer identity. They are not yet out to their family or offline friends. And to protect themselves even further, they have "non-queer" twitter account which has their real name and details about their jobs...

'...Lily, a 24-year-old lesbian living in Nairobi [said] "I have been denied admission into establishments, heckled publicly and insulted because of my sexuality but I consider myself lucky as compared to others," said Lily.

'Her friends know that she is a lesbian and she is out on twitter but she has not come out to her family..."I am deliberately out on Twitter mostly because it is my own form of activism, disrupting and resistance. I rarely get harassed overtly because of my sexuality online but the micro-aggressions and erasure sting just as much. I do have a substantial following so I am sometimes worried about my online persona spilling over into my real life but I refuse to be silenced," she said.'<sup>109</sup>

- 6.5.12 France 24, 'God and justice: Gay church prays for historic Kenya ruling', 20 February 2019 noted:

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<sup>107</sup> KNCHR, 'KNCHR: International Day Against Homophobia...', 18 May 2018, [url](#)

<sup>108</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p.2), July 2018, [url](#)

<sup>109</sup> Daily Nation, 'The challenges of being gay, queer and misunderstood', 8 October 2018, [url](#)

"Because of the law you fear blackmail, you fear extortion, you fear violence ... because there is no law protecting you, and the law is against you," said Arthur Owiti... [church member]

'The NGLHRC in 2017 recorded an increase in cases where people using online dating applications such as Grindr end up being blackmailed or extorted, often by organised gangs who work with the police.

"When you get a date online you have to ask them security questions so you don't fall into a trap," said Owiti. And those who are blackmailed, evicted, fired, expelled from school, or assaulted over their sexual orientation, are unable to access justice because it means "confessing to a crime", said Gitari [NGLHRC].'<sup>110</sup>

- 6.5.13 The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 'State sponsored Homophobia 2019' (The ILGA report 2019) noted: 'In Kenya, NGLHRC's Because Womxn [forum] has reported increased vulnerabilities and discrimination against LBQ women on account of multiple biases of gender and sexual orientation. This has resulted in marginalization, violence and exclusion of LBQ women not only by the general society but also within the LGBTIQ community.'<sup>111</sup>
- 6.5.14 The ILGA report 2019 noted: 'Cases of mob violence based on sexual orientation and subsequent arrest of the victims have been reported.'<sup>112</sup> The case cited by ILGA was reported in Hivisasa, a Kenyan digital media project publishing news and photos from citizen reporters. The article stated:  
'Two University gay students were on Monday night found on the act by villagers of Nyamage village, Kisii County... The angry residents started beating the two up but a good Samaritan who is an official at Kisii university rescued them... a security officer in the university arrested the two before handing them over to the guidance and counselling department in the school. An official in the school said that the two will not be arraigned in court.'<sup>113</sup>
- 6.5.15 The ILGA report 2019 also noted that: 'Local media reported that George Barasa, an LGBTI activist who turned his home into a safe housing space for LGBTI people, was assaulted by an individual pretending to be homeless gay man.'<sup>114</sup>
- 6.5.16 The UN High Commissioner for Human Rights stated on 24 May 2019:  
'... "Criminalizing acts targeting certain individuals based on who they are and whom they love is inherently discriminatory. It also sends a dangerous signal to broader society and encourages hostility and even violence against LGBT individuals," [Michelle] Bachelet said. "Denial of rights to education, healthcare, housing and employment can all be traced to the criminalization of same sex relationships."

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<sup>110</sup> France 24, 'God and justice: Gay church prays for historic Kenya ruling', 20 February 2019, [url](#)

<sup>111</sup> ILGA, 'State sponsored Homophobia 2019' (p.89), March 2019, [url](#)

<sup>112</sup> ILGA, 'State sponsored Homophobia 2019' (p.334), March 2019, [url](#)

<sup>113</sup> Hivisasa, 'Gay couple arrested in Kisii', undated, [url](#)

<sup>114</sup> ILGA, 'State sponsored Homophobia 2019' (p.335), March 2019, [url](#)

'The High Commissioner noted that LGBT activists and their allies in Kenya have fought hard to secure greater recognition of the rights of members of the LGBT community.'<sup>115</sup>

- 6.5.17 The BBC in the article 'Gay rights in Kenya: "Why our fight isn't over"', 25 May 2019, writer Kevin Mwachiro stated:

'Thirteen years ago, I told myself that I would not live a life that panders to societal approval. I was not going to put myself in a sham, straight relationship or marriage so as to keep my relatives happy.

'What has it been like to be gay in Kenya? Some of my friends say that I'm brave to be publicly out. It took me a long time to understand what they meant, because I was just being myself, there was no bravery. I am lucky that I live in a part of town where people really don't bother you about your life.

'I've worked with organisations that respect sexual orientation. I have not experienced any form of violence or overt discrimination. I have not been denied access to a home, work or services because of my orientation. Maybe a few stares and whispers here and there, but that's as far it has gone. I am lucky. But there many individuals from the community who have experienced physical and verbal violence and various forms of discrimination.

'I recognise that there is the potential for violence. That threat is real to me too. But as members of the community, we've learnt to create or manoeuvre into and around spaces that let us be ourselves. Here our love is proud yet guarded. Almost free, but cautious.'<sup>116</sup>

- 6.5.1 The 'Summary of Stakeholders' submissions on Kenya' to the Office of the United Nations High Commissioner for Human Rights (OHCHR) Universal Periodic Review, 5 November 2019 noted: 'KNCHR [Kenya National Commission on Human Rights] stated that the criminalization of same sex conduct underpinned violence, discrimination and stigmatization of lesbian, gay, bisexual and transgender persons.'<sup>117</sup>

- 6.5.2 The same report also noted that 'JS4 [The Advocates for Human Rights, Minneapolis, United States of America, The Eagles for Life, Kenya, and Sign Ishara, (Kenya)] stated that LGBTI persons suffered widespread violations of their rights to life, liberty and security, and were specifically targeted by vigilante groups.'<sup>118</sup>

- 6.5.3 Pink News, an LGBT publication, in the article 'Just hours after a trans asylum seeker was attacked by a mob, homophobes pelted LGBT refugees with stones', 20 November 2019 stated:

'In the space of a single afternoon, a trans refugee was reportedly battered with rocks and another trans man attacked leaving him with cuts to the head yesterday [19 November 2019]. Queer refugees in the Kakuma camp in

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<sup>115</sup> OHCHR, 'Bachelet dismayed by Kenyan High Court Decision ...' 24 May 2019, [url](#)

<sup>116</sup> BBC, 'Gay rights in Kenya: "Why our fight isn't over"', 25 May 2019, [url](#)

<sup>117</sup> OHCHR, 'Summary of Stakeholders' submissions on Kenya', 5 November 2019, [url](#)

<sup>118</sup> OHCHR, 'Summary of Stakeholders' submissions on Kenya', 5 November 2019, [url](#)

Kenya – many fleeing from neighbouring country’s vicious anti-LGBT laws – have reported being under siege from assaults in recent weeks.

‘Not only was a trans man allegedly jumped on by outsiders, but just hours later, locals reportedly returned armed with stones and pelted them at the patch of the camp where queer refugees are staying...

‘Testimonies from refugees to PinkNews have detailed a camp playbook of near-weekly attacks from not only fellow refugees, but reportedly from camp organisers themselves.’<sup>119</sup>

- 6.5.4 The ‘Compilation on Kenya’ submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019 stated ‘...the United Nations country team stated...lesbian, gay, bisexual, transgender and intersex refugees faced discrimination and considerable obstacles in accessing mainstream services and livelihood opportunities.’<sup>120</sup>

See also [State treatment](#) and [Pro-LGBT marches / protests](#)

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## 6.6 Pro-LGBT marches / protests

- 6.6.1 The USSD report 2018 noted ‘In June [2018] LGBTI activists reported receiving death threats following the first pride event held at Kakuma refugee camp.’<sup>121</sup>

- 6.6.2 NBC News, a US news organisation, in the article ‘Following pride event, Kenya’s gay refugees fear for their lives’, published 20 June 2018 noted:

‘The Kakuma Refugee Camp in north western Kenya held its first LGBTQ pride event on Saturday, but now the event’s organizers are in fear for their lives. After the event, which organizers said drew approximately 600 people, threatening messages were “pinned all over the camp on notice boards,” according to Mbazira Moesa, a Ugandan refugee and one of the event’s organizers.

‘Moesa said he does not know who wrote and posted the threats — which warned LGBTQ refugees to “leave the camp” or “we are going to kill you one by one” — but he said they made him “anticipate danger that may happen to me and all the LGBTIQ refugee members in Kakuma Refugee Camp.”...

‘While he considered Saturday’s turnout “huge,” Moesa said homophobic violence at the event led to a lesbian and a transgender person sustaining “serious injuries.” Despite that, Moesa said he hopes Kakuma has a pride event next year and “every year” after that...

‘Yvonne Ndege, a spokesperson for UNHCR Kenya, told NBC News the UNHCR and its partners supported and participated in the pride event at Kakuma and “invited all stakeholders to promote an environment free from discrimination and homophobia.” Ndege said UNHCR is aware that two people sustained injuries at the event and said the organization mobilized an

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<sup>119</sup> Pink News, ‘Just hours after a trans asylum seeker...’, 20 November 2019, [url](#)

<sup>120</sup> UN OHCHR, ‘Compilation on Kenya’ (para 21) 18 November 2019, [url](#)

<sup>121</sup> USSD report 2018 (p.41), 13 March 2019, [url](#)



ambulance to transport them to the hospital and encouraged the police to conduct an investigation into the incident.<sup>122</sup>

6.6.3 AP News in an article published 19 June 2019 noted:

‘Gay refugees are especially vulnerable. Last month some of them protested outside the U.N. refugee agency office in Nairobi demanding more support from the agency and more respect from Kenyan authorities. In April another group of at least 55 LGBT refugees held a sit-in protest outside the office demanding resettlement as Kenyan authorities sought to close the emergency shelter where they stayed.’<sup>123</sup>

See [Violence and discrimination](#) and [Non-gender / non-conformist community](#)

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6.7 [Non-gender / gender non-conformist community](#)

6.7.1 The GALCK report 2016 noted: ‘Art projects, social groups that organize picnics and LGBTIQ churches are considered by the interview participants as positive ways to help LBQ women to counter self-stigma and relieve social anxieties. These initiatives, however, are still very fragmented and small in reach.’<sup>124</sup>

6.7.2 The BBC, in an article dated 24 May 2019 noted:

‘There are unofficial gay clubs and advertised events in Kenya's cities. "The LGBT community in Kenya have created an amazing tribe and culture for themselves," says Brian Macharia, an activist for the Gay and Lesbian Coalition of Kenya. There is a ballroom scene, a drag scene - vibrant bisexual community, a lesbian scene. Young people are driving the community forward through social media.”

‘Gay men also use dating apps - although visitors with international roaming do get a warning about the legal status when logging in while in Kenya.’<sup>125</sup>

6.7.3 Sky News, ‘Off Limits – Is it ‘Un-African’ to be Gay?’, 25 May 2019 noted: ‘

‘Homosexuality has been a widely debated issue in the country which is considered less-hostile to LGBT+ people than many of its neighbours.

‘Kaz Lucas is a popular podcast host based in Nairobi, whose show on sexuality faced down an attempted ban by authorities... Kaz says there are a lot of Eastern African LGBT+ refugees in Nairobi. "Whenever there is a queer party in Kenya, there are always lots of Eastern Africans in attendance. People come here because they feel safer. Even though the laws here don't favour LGBT+ people, it's a safer environment for many people.”’<sup>126</sup>

See [Pro-LGBT marches / protests](#)

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<sup>122</sup> NBC News, ‘Following pride event, Kenya's gay refugees fear for their lives’, 20 June 2018, [url](#)

<sup>123</sup> AP News, ‘LGBT refugees allege harassment in Kenya, a rare safe haven’, 19 June 2019, [url](#)

<sup>124</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p.39) 12 February 2016, [url](#)

<sup>125</sup> BBC News, ‘Kenya upholds law criminalising gay sex’, 24 May 2019, [url](#).

<sup>126</sup> Sky News, ‘Off Limits – Is it ‘Un-African’ to be Gay?’(Kenya), 25 May 2019 [url](#)

## 6.8 Family treatment

### 6.8.1 The GALCK report 2016 noted:

Another security risk many LBQ women face, including self-identifying studs, is linked to different kinds of abuse from immediate or extended family members. The participants all talked of having experienced at least one incident of physical violence by relatives. Some participants even reported that they have had to deal with numerous attacks by family members either directed to them or their parents, who were at times blamed by others for raising queer children...

'In Kenya, families are viewed as an important social unit where procreation is the primary purpose of the family unit. Within the patriarchal structures of Kenyan society single women families are disadvantaged and viewed as incomplete.

'With this background in mind, LBQ women are expected to continue with the family lineage which means getting married and bearing children to honor and reproduce the family. Those who do not conform to this expectation, are ostracized by both their families and the society at large forcing them to engage in harmful coping mechanisms...'<sup>127</sup>

### 6.8.2 In relation to low figures for people identifying as intersex in the August 2019 census, the Reuters article 'Kenyan census results a 'big win' for intersex people', dated 4 November 2019 noted:

'In Kenya, parents often rush to have surgery performed on their children at a young age to avoid ridicule. Many intersex adults say their lives have been psychologically damaged by such operations. Intersex children have also been shunned by their families and bullied at school and adults have struggled to get jobs and faced physical abuse, add intersex rights campaigners.'<sup>128</sup>

See also Societal attitudes and treatment [Intersex persons](#) and Legal context [Intersex persons](#)

## 6.9 Religious attitudes

### 6.9.1 France 24, 'God and justice: Gay church prays for historic Kenya ruling', 20 February 2019 noted:

'A lesbian church leader lights pink, yellow, and purple candles and passes them around to worshippers as they pray for a court decision that will mean they no longer have to live a lie...

'The Cosmopolitan Affirming Church (CAC) [Nairobi] is a rare space where Kenya's LGBT community can escape hostility from society, which is often reflected in hatred and vitriol from religious pulpits...

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<sup>127</sup> GALCK, 'Research on The Lived Experiences of Lesbian...' (p. 26, 33-34) 12 February 2016, [url](#)

<sup>128</sup> Reuters, 'Kenyan census results a 'big win' for intersex people', 4 November 2019, [url](#)

‘Ochara [who helped found the church in 2013] believes Kenyans are ready to begin a discussion about homosexuality. He has allied with other pastors and even does radio talks on grassroots radio stations -- often fighting off intense homophobia to talk about the acceptance of minorities -- which he believes are starting to scratch the surface of intolerance.

‘In the meantime, the reality for those like Arthur [a member of the church] is that "basically you live a lie", with brief moments of respite in safe spaces like the CAC. He said that before CAC he attended a church "where the messages every Sunday were that homosexuals, lesbians, they are not loved by God ... it was like being stabbed every time."<sup>129</sup>

- 6.9.2 Ureport, The Standard, published an article on 24 April 2019 ‘Meet Kenyan lesbian pastor Jacinta Nzilani’ which detailed an interview she gave to a local radio station. The article noted: ‘Evangelist Jacinta Nzilani Kilonzo is no ordinary pastor. Unlike some of her colleagues who are married, divorced or single, Nzilani is a lesbian and a proud one for that matter.’<sup>130</sup>
- 6.9.3 The Archbishop Jackson Ole Sapit published an Easter message in April 2019 which noted the recent campaigns for de-criminalisation of same sex marriage.<sup>131</sup> He stated: ‘...African culture forbids homosexual conduct. It is essential for us as a nation to ensure that our national Ethos is consistent and in harmony with our Constitution, our African culture and supreme law of God. However, if contradiction occurs between our cultural practices and law of God, the God decrees must take precedence. We urge Kenyans to avoid any conduct that undermines moral decency.’<sup>132</sup>
- 6.9.4 The Daily Nation noted on 11 November 2019 that two Bishops were ‘deeply sceptical’ about the purpose of the International Conference on Population and Development in Nairobi.<sup>133</sup> The article stated: “What we are being told in the open is not true; it’s a mere facade for entrenching unacceptable practices into national and international laws,” Bishop Omae said. The clerics believe that several commitments to be adopted at the controversial conference will advance abortion, homosexuality and other “immoral” practices.<sup>134</sup>
- 6.9.5 In relation to the same conference the Japan Times noted on 12 November 2019:
- ‘The United Nations and Kenyan government on Monday came under fire on the eve a global conference on sexual and reproductive health with Christian groups claiming hosting the event was promoting abortion and homosexuality in the East African nation... CitizenGo [a Christian campaign group], as well as some Kenyan parliamentarians and Catholic bishops said the meeting — which will include discussions on access to sexual health services for the LGBT+ community — will also encourage homosexuality.’<sup>135</sup>

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<sup>129</sup> France 24, ‘God and justice: Gay church prays for historic Kenya ruling’, 20 February 2019, [url](#)

<sup>130</sup> Ureport, ‘Meet Kenyan lesbian pastor Jacinta Nzilani’, 24 April 2019, [url](#)

<sup>131</sup> Archbishop Jackson Ole Sapit, ‘Easter Message’, April 2019, [url](#)

<sup>132</sup> Archbishop Jackson Ole Sapit, ‘Easter Message’, April 2019, [url](#)

<sup>133</sup> The Daily Nation, ‘DP Ruto wades into ‘gay agenda’...’, 11 November 2019, [url](#)

<sup>134</sup> The Daily Nation, ‘DP Ruto wades into ‘gay agenda’...’, 11 November 2019, [url](#)

<sup>135</sup> Japan Times, ‘Kenya hosts global sexual health summit...’, 12 November 2019, [url](#)

See also [Societal norms](#), [Public opinion](#) and [Societal reaction to the High Court ruling 24 May 2019](#)

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## 7. Media

### 7.1 State restriction

- 7.1.1 The USSD report 2019 noted: ‘The government occasionally interpreted laws to restrict press freedom... Two laws give the government oversight of media... Sixteen other laws restrict media operations and place restrictions on freedom of the press.’<sup>136</sup>
- 7.1.2 Stonewall in the ‘Global Workplace Briefings 2018, Kenya’ noted: ‘The Kenya Film Classification Board [KFBC] regulates the creation, broadcasting, possession, distribution and exhibition of films and stage plays as provided for in Section 15 of the Films and Stage Plays Act. The Board has banned LGBT-related content from being aired or watched in Kenya on the ground that such content is against public morals.’<sup>137</sup> The KFBC, on their website, provided the following details of their mandate: ‘The Kenya Film Classification Board is a State Corporation mandated by the Films and Stage Plays Act Cap 222 of Laws of Kenya to regulate the creation, broadcasting, possession, distribution and exhibition of films in the country with a view to promote national values and morality.’<sup>138</sup>
- 7.1.3 Freedom House, ‘Freedom on the Net 2018, Kenya’, published 1 November 2018 noted ‘...content is periodically targeted for violating the country’s social mores [norms]. For example, the movie "Rafiki" was banned from web and TV broadcasts in April 2018 for ostensibly promoting homosexuality in violation of "moral values.”’<sup>139</sup>
- 7.1.4 CNN in the article ‘Kenya lifts ban on lesbian film 'Rafiki' making it eligible for Oscars’, 21 September 2018 noted:  
  
‘A Kenyan high court has temporarily lifted the ban on 'Rafiki' a movie about love between two women. The ruling will allow Kenyan adults to view the movie for the first time in the country for just one week.  
  
‘The film was banned by Kenya’s Film and Classification Board (KFBC) in April because of its lesbian theme. Kenya’s Film and Classification Board (KFBC) said 'Rafiki' was banned because of intent to "promote lesbianism," in the country...Its director Wanuri Kahiu filed a lawsuit earlier this month challenging the censorship board’s ruling.’<sup>140</sup>
- 7.1.5 The ILGA report 2019 noted:  
  
‘Some advances linked the legal with the cultural, as in when Kenya temporarily lifted its ban on the film “Rafiki”, which has lesbian content, to allow it to be eligible for Oscar consideration as the Kenyan entry for “best foreign film.” Although the film was seen by Kenya’s national film censorship

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<sup>136</sup> USSD, ‘USSD report 2019’ (section 2), 11 March 2020, [url](#)

<sup>137</sup> Stonewall, ‘Global Workplace Briefings 2018, Kenya’ (p.1), July 2018, [url](#)

<sup>138</sup> KFBC, ‘Our Mandate’, undated, [url](#)

<sup>139</sup> Freedom House, ‘Freedom on the Net 2018, Kenya’, (Introduction) 1 November 2018, [url](#)

<sup>140</sup> CNN, ‘Kenya lifts ban on lesbian film 'Rafiki' making it eligible for Oscars’, 21 September 2018, [url](#)

body as promoting “homosexuality”, a court temporarily allowed the film to be screened. While there were likely nationalist interests in the lifting of the ban, the film played to crowded enthusiastic audiences.’<sup>141</sup>

See also [Societal attitudes and treatment](#)

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## 7.2 Reporting on LGBTI issues

The Conversation, a not-for-profit media outlet that uses content sourced from academics and researchers, in its article dated 22 February 2019 noted:

‘Many prominent political and religious leaders in Kenya are vocal on issues of homosexuality. And the Kenyan Film Classification Board has banned several gay-themed films in recent years because they would promote “immorality”.

‘But it seems that attitudes might be changing slowly. One example of this is that the Kenyan media reflect a wide range of opinions on LGBTI related matters and don’t hesitate to challenge and criticise politicians using homophobic rhetoric. This isn’t echoed in the media of some other countries in the region.

‘There is also a growing visibility of LGBTI people in Kenya, which has helped to give a face to an issue that was previously rather abstract to most Kenyans.

‘President Uhuru Kenyatta’s repeated statement that for most Kenyans today homosexuality is a “non-issue” is also interesting, because it leaves open the possibility of future social and political change on the subject.’<sup>142</sup>

- 7.2.1 The New Yorker, a US magazine in ‘The Gay-Rights Activists Hoping for a Legal Victory in Kenya’, 3 March 2019 observed ‘In the past decade... as news outlets have reported on the issue of homosexuality, Kenyans have seen queer people on television and read about them in newspapers, putting human faces to the community for the first time.’<sup>143</sup>

See also [Societal attitudes and treatment](#)

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Section 7 updated: 07 January 2019

## 8. Access to services

For information on access to services generally, see the [Kenya: Country Background Note](#)

### 8.1 Healthcare

- 8.1.1 The GALCK report 2016 noted:

‘The Government clearly falls short in its Constitutional mandate to provide the highest attainable standard of health for all citizens. In addition, the

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<sup>141</sup> ILGA, ‘State sponsored Homophobia 2019’ (p.27), March 2019, [url](#)

<sup>142</sup> The Conversation, ‘Explainer: what’s at stake in Kenyan court case...’, 22 February 2019, [url](#)

<sup>143</sup> The New Yorker, ‘The Gay-Rights Activists Hoping for a Legal Victory in Kenya’, 3 March 2019, [url](#)

research participants all spoke of cases in which 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. Many LBQ women would rather avoid seeking medical services at all than risk having their privacy breached by medical professionals.<sup>144</sup>

- 8.1.2 The same organisation in the publication ‘World AIDS Day 2018’ dated 1 December 2018 stated:

‘The road to ending AIDS is far from over. Whereas the Kenyan HIV response has been progressive thus far, widespread homophobia, biphobia, transphobia, stigma, discrimination and targeted sexual and gender-based violence continue to impede access and uptake of quality HIV services among gay men and other men who have sex with men, female and male sex workers, people who use and inject drugs and transgender people.

‘Criminalization of consensual sex between two male adults and sex work still exists in Kenya. Harm reduction services are impacted by the misguided perception that they promote the use and distribution of drugs. Transgender HIV programming is yet unrecognised by the state, thus impacting access to trans affirming healthcare. In addition, no attention is paid to the socio-economic and political susceptibilities of lesbian, bisexual and queer womxn to HIV.’<sup>145</sup>

- 8.1.3 The Health and Human Rights Journal publication ‘Kenyan High Court Threatens the HIV Response’, 8 June 2019 discussed the evidence presented in relation to healthcare in the High Court case, determined on 24<sup>th</sup> May 2019:

‘This evidence showed that criminal laws that punish same sex sexual acts drive LGBT persons and men who have sex with men (MSM) away from healthcare and HIV services for fear of being identified as gay, discriminated against, persecuted or prosecuted.

‘When people do access services, the reproachful attitudes of healthcare workers, reinforced and legitimised by the criminal law, leads to LGBT persons and MSM being treated with hostility and denied services. The existence of the criminal sanctions further inhibits healthcare, HIV-prevention services, and access to information and counselling particular to the needs of LGBT persons and MSM.

‘The evidence illustrated that the environment of stigma and discrimination is exacerbated and sustained by the law which contributes to MSM’s vulnerability to HIV, thereby compromising the country’s HIV response. The experts gave extensive references in support of their claims, from local studies, international consensus at the World Health Organization, UNAIDS, and the government’s own policy documents.’<sup>146</sup>

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<sup>144</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p.21) 12 February 2016,[url](#)

<sup>145</sup> GALCK, ‘World AIDS Day 2018’, 1 December 2018, [url](#)

<sup>146</sup> The Health and Human Rights Journal, ‘Kenyan High Court Threatens...’, 8 June 2019 [url](#)

- 8.1.4 LVCT Health, a Kenyan non-governmental and not-for-profit organisation noted the work done by the Towards Universal Comprehensive Health Care (TOUCH) Plus project which ended in March 2019:

‘[The] main aims were twofold:

‘To integrate HIV and Sexual and Reproductive Health (SRH) services for Lesbian, Gay, Bisexual, Transgender (LGBT) persons in 27 public health facilities in Kenya.

‘To reduce harmful social outcomes, resulting from stigma and discrimination, violence and sexual abuse as some of the documented challenges faced by the LGBT community who have recorded high HIV prevalence rates.

‘The 2 year project, which was implemented in Nairobi, Mombasa, Vihiga, Kakamega Bungoma and Siaya counties, and was a continuation of phase 1 TOUCH project which had successfully offered the same services to Men who have Sex with Men (MSM) in Mombasa County.

‘One of the key successes attributed to the project was its ability to reduce the barriers to access and uptake of HIV & SRH services by MSM and LGBT persons and integrate them in public health facilities.’<sup>147</sup>

- 8.1.5 Although without direct reference to LGBTI persons, the USSD report 2019 noted:

‘The government, along with international and NGO partners, made progress in creating an enabling environment to combat the social stigma of HIV and AIDS and to address the gap in access to HIV information and services. The government and NGOs expanded their staffing support at county levels for counseling and testing centers to ensure provision of free HIV/AIDS diagnosis... Stigma nonetheless continued to hinder efforts to educate the public about HIV/AIDS and to provide testing and treatment services. The government continued to support the HIV Tribunal to handle all legal matters related to stigma and discrimination. The tribunal, however, lacked sufficient funding to carry out its mandate across all 47 counties and thus still functioned only out of Nairobi.’<sup>148</sup>

See also [Existing civil society and LGBTI groups](#) and [Continued criminalisation of consensual same-sex relationships - High Court ruling, 24 May 2019](#)

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## 8.2 Employment

- 8.2.1 The GALCK report 2016 noted: ‘Many of the participants, especially the self-identifying studs [term used to describe masculine presenting women], reported being denied employment opportunities on account of their gender performances... These discriminatory practices against LBQ women reduce their economic opportunities and effectively lower their quality of life.’<sup>149</sup>

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<sup>147</sup> LVCT Health, ‘Providing health services to MSM and LGBT Communities ...’, June 2019, [url](#)

<sup>148</sup> USSD, ‘USSD report 2019’ (section 6), 11 March 2020, [url](#)

<sup>149</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p.37) 12 February 2016, [url](#)

- 8.2.2 Stonewall in the 'Global Workplace Briefings 2018, noted: 'Section 5 of the Employment Act, Cap 226 of the Laws of Kenya, prohibits employment discrimination based on a limited list of grounds including HIV status. The list does not include sexual orientation or gender identity. There are no other non-discrimination provisions making reference specifically to sexual orientation and gender identity.'<sup>150</sup>
- 8.2.3 The same report, in an interview with the founder of Sullivan Reed, a Kenyan LGBT group noted in July 2018:  
'10 international corporations participated in the study and we made several interesting discoveries. There was a real gap in employee awareness on LGBT issues in general, as well as with regard to their companies' diversity and inclusion LGBT policies and actions. Employers on the other hand sometimes have an optimistic perception of what the workplace is like for their LGBT employees. The good news is that both employees and employers believe that championing LGBT workplace equality leads to better productivity from the workforce. In mid-2017 we launched the Colorful Workplaces programme, which seeks to bridge this gap. Through workplace interventions, we've since found that in Kenya it's more about building a social-cultural case for diversity and inclusion than building a business case.'<sup>151</sup>
- 8.2.4 The 'Compilation on Kenya' submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review, 18 November 2019 stated:  
'Noting...the testimonies about stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex persons in the workplace and when seeking employment, the Working Group on the issue of human rights and transnational corporations and other business enterprises recommended that Kenya step up efforts to address gender-based discrimination and sexual harassment in the workplace, including with a view to protecting all individuals, irrespective of their sexual orientation or gender identity.'<sup>152</sup>
- 8.2.5 The USSD report 2019 noted: 'There are no legal employment protections for LGBTI persons, who remained vulnerable to discrimination in the workplace.'<sup>153</sup>

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### 8.3 Accommodation

- 8.3.1 The GALCK report 2016 noted: '...the participants also stated that many LBQ women face evictions from their homes. Again, the self-identifying studs, claimed to be more in danger than their more 'femme' looking counterparts. ...Many narrated being (or having friends who were) unlawfully evicted from their homes on suspicion of their sexual orientation and / or their gender non-conformity...evictions tended to occur in lower middle class

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<sup>150</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p.1), July 2018, [url](#)

<sup>151</sup> Stonewall, 'Global Workplace Briefings 2018, Kenya' (p.1), July 2018, [url](#)

<sup>152</sup> UN OHCHR, 'Compilation on Kenya' (p.7) 18 November 2019, [url](#)

<sup>153</sup> USSD, 'USSD report 2019' (section 6), 11 March 2020, [url](#)



and lower class neighborhoods where people interact more intensively with each other than in high-class areas, and where social ties are geared more towards cohesion and control. Interestingly, some evidence from the interviews shows that particular religious or political events may trigger such violence by landlords and neighbors. For instance, the highest incidences of violence in the Kenyan Coast, which has a largely Muslim population, are reported during Ramadan.’<sup>154</sup>

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Section 8 updated: 08 January 2020

## 9. LGBTI groups, civil society and human rights NGOs

### 9.1 Ability to function

See [LGBTI organisations allowed to register as NGOs - Court of Appeal ruling, 22 March 2019](#)

9.1.1 The USSD report 2019 noted: ‘Authorities permitted LGBTI advocacy organizations to register and conduct activities.’<sup>155</sup>

9.1.2 Pink News, a UK-based online newspaper, in the article ‘Staff arrested in Kenya LGBT centre for ‘recruiting’ gay youth’, 24 November 2018 stated:

‘Two members of staff at an LGBT+ organisation in Mombasa, Kenya, were arrested after police received a “tip off” about gay-related activities in the area. Police raided the non-governmental organisation today and arrested two members of staff after receiving the tip off, according to Nairobi News.

‘According to the local news outlet, the police accused the group of “recruiting youth in the area to join the gay community.” The staff members were held for more than four hours where they were interrogated by police, however they were let go earlier today.’<sup>156</sup>

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### 9.2 Existing civil society and LGBTI groups

9.2.1 [ILGA](#), the International lesbian, gay, bisexual, trans and intersex association lists 15 civil society member groups in Kenya on their page ‘ILGA Member organisations’ available on their [website](#). Stonewall listed LGBT groups and communities in its document ‘Global Workplace Briefings 2018, Kenya’<sup>157</sup>

9.2.2 The Astraea Lesbian Foundation for Justice website noted the establishment of the African Intersex Movement during a meeting of Intersex activists from several African countries at a regional meeting in Kenya in June 2019<sup>158</sup>.

9.2.3 Ishtar MSM, is a community based organization that advances sexual health rights of men who have sex with men (MSM), based in Nairobi. Their [website](#) details services available<sup>159</sup>.

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<sup>154</sup> GALCK, ‘Research on The Lived Experiences of Lesbian...’ (p. 25), 12 February 2016, [url](#)

<sup>155</sup> USSD, ‘USSD report 2019’ (section 6), 11 March 2020, [url](#)

<sup>156</sup> Pink News, ‘Staff arrested in Kenya LGBT centre for ‘recruiting’ gay youth’, 24 November 2018, [url](#)

<sup>157</sup> Stonewall, ‘Global Workplace Briefings 2018, Kenya’ (p.1), July 2018, [url](#)

<sup>158</sup> Astraea Lesbian Foundation for Justice, ‘African Intersex Movement...’ 3 July 2019, [url](#)

<sup>159</sup> Ishtar MSM, ‘Our Service’ webpage, undated, [url](#)

9.2.4 The Transgender Education and Advocacy (TEA) website states it ‘...is an international human rights organization working towards defending and promoting the human rights of transgender/transsexual people. TEA is registered in Kenya by the NGO Coordination Board under the Ministry of Interior and Coordination of National Government.’<sup>160</sup> Their [website](#) provides detail of their mandate and services.

See also [Healthcare](#), [Employment](#) and [Societal attitudes and treatment](#)

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<sup>160</sup> TEA, ‘About Us’ webpage, undated, [url](#)

# Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal context
  - Constitution
  - Penal code
  - Challenges to the law
  - High court ruling
- State attitudes and treatment
  - Government position
  - Arrests and detention
  - Arrest of LGBT persons and prosecutions for other offences
  - Prosecution of same-sex acts
  - Police violence
  - Police responses to reports of anti-LGBT violence / protection
  - Ombudsman/Complaints mechanism(s)
- Societal attitudes and treatment
  - Societal norms
  - Public opinion
  - Violence and discrimination
  - Pro-LGBT marches/gay pride
  - Gay 'scene' or 'community'
  - Family treatment
  - Religious attitudes
  - Media
- Access to services
  - Healthcare
  - Accommodation
  - Employment
  - Education
- LGBT groups, civil society and human rights NGOs

- Government recognition / restrictions of LGBT NGOs
- Existing groups

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# Version control

## Clearance

Below is information on when this note was cleared:

- version **3.0**
- valid from **02 April 2020**

## Changes from last version of this note

Updated country of origin information (COI) and assessment.

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