



# KENYA LGBTI

Landscape Analysis  
of Political, Economic  
& Social Conditions



**Astraea** LESBIAN FOUNDATION FOR JUSTICE

**LGBT GLOBAL  
DEVELOPMENT  
PARTNERSHIP**



## Kenya LGBTI: Landscape Analysis of Political, Economic & Social Conditions

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Cover photo: Gay and Lesbian Coalition of Kenya protest against floggings. Nairobi, Kenya. Photo credit: Suleiman Mbatiah

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# INTRODUCTION

The bodies and sexuality of Kenyan people have been the locus of much heated debate, struggle and tension in Kenya's history. Experiences of Kenyans who deviated from the prescribed sex and gender identities and relations in the pre-colonial period have not been well documented, though a growing body of research highlights complex realities of multiple sex, sexual and gendered lives in post-colonial Kenya.

Against this backdrop, Kenya occupies a contested space in the global landscape of lesbian, gay, bisexual, trans\*, and intersex (LGBTI) people's rights.<sup>1</sup> Over the past twenty years, LGBTI activists have laid the groundwork of strong national organizations, burgeoning rural groups, and strategic alliances with other Kenyan social movements and human rights causes. LGBTI organizations have invested in raising the visibility and shifting public opinion in favor of LGBTI rights with notable success, and activists have made important headway through the courts.

Moral and legal systems regulating and restricting same-sex conduct were inscribed in Kenya during the colonial period and remained in place after political independence in 1963. Today, homosexuality remains criminalized in Kenya, and there is no legal protection from discrimination based on one's sexual orientation or gender identity. Activists say that Kenya's relatively new constitution may be used to pave the way for LGBTI rights protections down the road, but today, LGBTI Kenyans are frequently subject to abuse. LGBTI people face violence openly stoked by political and

religious leaders, public opinion is overwhelmingly opposed to LGBTI rights, and religious fundamentalism is on the rise throughout the region. Kenya's LGBTI movement has worked hard to prevent anti-LGBTI legislation in the face of regional criminalization efforts stemming from Uganda's 2014 anti-homosexuality bill. Even as they hold the line to prevent heightened criminalization, activists are determined to pursue openings to decriminalize homosexuality, secure legal protections and affirm the LGBTI communities' access to their economic, social and cultural rights.

What follows is a landscape analysis of the social, political, and economic conditions for LGBTI people in Kenya. This report is developed out of research by Wanja Muguongo and produced by Astraea Lesbian Foundation for Justice as part of the Lesbian, Gay, Bisexual, and Transgender (LGBT) Global Development Partnership.<sup>2</sup>

This report draws on a unique combination of data and expertise from policy, development, government, media, legal, and academic sources, and most critically, Kenyan LGBTI organizations and activists themselves.<sup>3</sup> In synthesizing diverse material and first-hand insight, the report provides a window into what life is like for LGBTI Kenyans, an overview of Kenya's LGBTI social movement, and a summary of the opportunities and challenges activists face as they work to secure LGBTI rights protections and advocate for equitable, meaningful change.

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1 A note on terms: The notation "trans\*" is used to refer to the entire range of possible gender identities, including but not limited to transgender, transsexual and transvestite and many specific to local cultures and contexts. In addition, this report uses the acronym LGBTI (lesbian, gay, bisexual, trans\* and intersex) to be broadly inclusive of sexual orientation, gender identity and bodily diversity. The term LGBT or the identification of specific groups, such as lesbians or trans\* people, are used where these are reflective of organizations or activities referenced.

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2 For more information on the LGBT Global Development Partnership, see page 2.

3 Methodology: Research entailed a literature review of writing, research and documentation of the Kenyan LGBTI movement, including literature commissioned and undertaken by members of the Kenyan LGBTI movement as well as individuals and organizations outside the movement. The research was also informed by qualitative research with individuals active in the Kenyan LGBTI movement in urban and rural areas.

# LIFE FOR LGBTI KENYANS

## Legal Protections

Formally, Kenya is governed by an expansive, values-based constitution that asserts principles of anti-discrimination, inclusion, and human rights. Hard fought for by civil society, the 2010 Kenyan Constitution recognizes the “aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law,” and its Bill of Rights guarantees broad protections. Eventually, LGBTI activists note, the constitution could be used to argue for the establishment of more explicit protections, like recourse for hate crimes and ensuring bodily autonomy of intersex persons.

Despite this progressive constitution, Kenya’s penal code continues to criminalize “carnal knowledge against the order of nature,” and same-sex conduct carries a punishment of up to 14 years in prison.<sup>12</sup> In certain coastal regions, municipal by-laws call for additional criminal sanctions.<sup>3</sup> In practice, LGBTI people’s lives are repeatedly criminalized; without explicit, enforceable legal protections or supportive social conditions, LGBTI Kenyans are at grave risk of violence and discrimination as well as economic insecurity and poor health.

While, historically, same-sex conduct has rarely been prosecuted under the penal code, the criminalization of homosexuality is used to justify a wide range of rights violations, including: harassment by police and state officials; torture, inhuman and degrading treatment; undermining one’s right to privacy; blackmail and extortion by security agencies and other non-state actors; denial of employment; violations of housing rights; interference with the right to education; poor access to health care; and medical research abuse.<sup>4</sup> Without the right to official identification that reflects their gender identity, trans\* and gender non-conforming people are especially vulnerable to abuse.

Threats of even more sweeping criminalization have emerged in response to the Ugandan Anti-Homosexuality Act from 2014 (see page 6). In the past year, members of the Kenyan Parliament have urged stricter enforcement of the penal code that makes homosexuality a crime, including “calls for

## In Kenya, criminalization of homosexuality has been used to justify:

- Harassment by police and state officials
- Torture
- Invasion of privacy
- Blackmail and extortion by security agencies and other non-state actors
- Denial of employment
- Violations of housing rights
- Interference with the right to education
- Poor access to health care
- Medical research abuse

citizens to arrest suspected gays and lesbians where the police fail to act.”<sup>5</sup> Other officials have defended Kenya’s prosecution—indeed, persecution—of LGBTI people and likened homosexuality to terrorism. Aden Duale, the majority leader of the Kenyan National Assembly, for example, boasted that between 2010 and March 2014, the Kenyan state had prosecuted 595 cases of homosexuality—an assertion activists say is exaggerated and inaccurate—and declared, “It is as serious as terrorism and as any other social evil.”<sup>6</sup> In July 2014, Bishop Julius Kalu of the Mombasa Anglican Church of Kenya went even further to say to a congregation that homosexuality was a greater threat than terrorism.<sup>7</sup>

The comparison of homosexuality to terrorism is more than just rhetoric, activists warn. In fact, they are worried that new anti-terrorism measures—like the “security” law passed by Parliament in December 2014, which Human Rights Watch says “tramples basic rights”—will be used to justify increased violence and discrimination against LGBTI Kenyans and non-Kenyans, including refugees.<sup>8,9</sup> LGBTI Ugandan refugees who sought safety in Kenya had already reported harassment and abuse in refugee camps; taking note of their vulnerability, the United Nations Refugee Agency decided to prioritize their cases for resettlement.<sup>10,11</sup>

## Regional Hostility to LGBTI Rights: The Impact of Uganda’s “Anti-Homosexuality Act” on Kenya

In February 2014, Uganda signed into law the Anti-Homosexuality Act, dramatically increasing criminal consequences for “consensual sexual activity between adults of the same sex,” including life imprisonment. The law also criminalized the “promotion of homosexuality,” posing risks for health care workers and human rights defenders who work with LGBTI populations. The law had a swift, negative impact on LGBTI Ugandans who reported a spike in human rights abuses immediately following its passage; hundreds reportedly fled to Kenya and other countries.<sup>12 13 14</sup>

The impact of Uganda’s anti-homosexuality law was felt throughout the region. LGBTI issues were catapulted to the forefront of public and political debate, and LGBTI people were suddenly at heightened risk of violence and discrimination.<sup>15 16</sup>

Kenyan LGBTI activists reported a dramatic increase in LGBTI rights violations following the passage of Uganda’s law. In one incident in February 2014, the same month it was passed, two lesbians were attacked and stripped naked by mobs in Nairobi.<sup>17</sup> The timing of the law also coincided with new Kenyan anti-terrorism security guidelines. As a result, newly arriving LGBTI Ugandans were rounded up in Kenyan refugee sweeps in Nairobi and transferred to a remote northern refugee camp where some were met with violence and hostility.<sup>18</sup> One LGBTI refugee was reportedly hospitalized in June after another refugee hurled stones and slurs at him.<sup>19</sup>

Uganda’s anti-homosexuality law has also inspired similarly reactionary legislation in Kenya and neighboring countries. In 2014, for example, the Republican Liberty Party in Kenya proposed its own anti-LGBTI legislation calling for life imprisonment or public stoning to death.<sup>20</sup> In August 2014, the Kenyan Parliament’s Committee on Justice and Legal Affairs found the bill unconstitutional, though activists say it succeeded in contributing to a heightened climate of fear among LGBTI Kenyans.<sup>21</sup>

Although opportunistic legislation similar to Uganda’s has not made serious advancements in Kenya, and Uganda’s own law was overturned on technical grounds,<sup>22</sup> increased hostility towards LGBTI people throughout the region has forced Kenya’s LGBTI movement to shift resources and strategies to protect lives and defend human rights gains. Today, LGBTI organizations are strengthening their ability to track and respond to human rights abuses nationwide and placing greater emphasis on the importance of collaboration, rebooting efforts like the national Gay and Lesbian Coalition of Kenya (GALCK).

Even amidst this negative tide, trans\* rights advocates have made some headway pursuing change through the courts. In 2013, Alexander Ngugi Nthungi was awarded 200,000 Kenyan Shillings (US\$2,300) in damages after the police stripped her to determine her gender identity. A rather progressive legal argument, the judge’s ruling stated that, “whatever Nthungi’s choice was in relation to his mode of dressing and regardless of the fact that he perceived himself as a woman, he still retained his inherent worth and dignity to which all humans are entitled.”<sup>23</sup>

In another set of crucial wins for trans\* rights activists and the broader LGBTI movement, the High Court issued two landmark rulings on behalf of the group Transgender Education and Advocacy (TEA) in 2014. In the first case, TEA had sued the Kenyan government’s Non-Governmental Organizations Coordination Board because

it had refused to grant the organization official status. The Board had argued that the documents of the three transgender women listed in the application were invalid because their names did not match their gender. But the High Court issued a forceful ruling on TEA’s behalf, declaring that the three women had legally changed their names; that the Board had denied the group’s constitutional right to freedom of assembly; and that the Board acted in a manner that was “unfair, unreasonable, unjustified and in breach of the rules of natural justice.” The court ordered the Board to register TEA and provide compensation for legal costs.<sup>24</sup> Within three months of this victory, in a separate case, the High Court ordered the Kenya National Examinations Council (KNEC) to amend the academic certificate of TEA leader Audrey Mbugua to reflect her name and remove a male gender marker.<sup>25</sup>

With respect to recognition of intersex persons, in December 2014, a Kenyan court ordered the government to issue a birth certificate to an intersex child and ordered the Attorney General to name an appropriate body to conduct a census of intersex Kenyans and develop guidelines for their recognition and support.<sup>26</sup>

## Social, Economic, and Health Conditions

### *Economic Security and Access to Health*

LGBTI Kenyans are routinely denied core human rights—from access to health care and employment to education and housing—that place them at disproportionate risk of poverty, economic injustice, and poor health.<sup>27</sup>

Economic insecurity is especially acute for intersex, trans\* and gender non-conforming individuals. Without access to official identification that reflects their gender identity, they are prevented from accessing secure, living-wage jobs. Even when LGBTI people do find work, research shows that “knowledge of their sexual orientation and gender identity place[s] them at a disadvantageous position in terms of career progress, promotion, harsh working environments, sexual harassment and a higher risk of dismissal.”<sup>28</sup> LGBTI youth are placed at a particular disadvantage early on: According to the aforementioned research submitted for the United Nations Universal Periodic Review, between 2012-14, 21 Kenyan youth reported that they had been expelled from school because of perceived or actual sexual orientation or gender identity, primarily from boarding high schools.<sup>29 30</sup>

LGBTI Kenyans also experience great difficulty accessing quality, appropriate, and non-discriminatory health services—a challenge shared across the LGBTI spectrum, but one that is compounded by class, legal status, gender identity, and geographic location. A gay man living in a refugee camp in northern Kenya, for example, will face more obstacles than a middle- or upper-class gay man living in Nairobi who can afford the cost of private care. Meanwhile, lesbian and bisexual women, along with intersex, trans\* and gender non-conforming Kenyans, face some of the most significant barriers to care. Many LGBTI individuals avoid hospitals and clinics altogether for fear of encountering discrimination and ignorance, while others who do attempt to go to the doctor report being mocked or harassed.<sup>31 32</sup>

There are very few Kenyan physicians who are able and willing to address intersex, trans\* and gender-non-conforming people’s unique health needs—whether it is providing hormone therapy, physical transition surgery, or mental health services to trans\* communities or respecting the bodily autonomy and physical integrity of intersex children.<sup>33</sup>

This is in part, activists report, because Kenya has no policies or guidelines for health care professionals on how to deal with trans\* and gender non-conforming patients, nor intersex patients, and these topics are not appropriately addressed in medical school. As a result, for example, it is common for intersex babies to be subjected to unnecessary, irreversible and harmful “normaliz-ing” medical surgeries to conform to societal understanding of gender. The Kenyan Medical Practitioners and Dentists Board has been in the process of creating guidelines for treating patients with “gender identity disorder,” their term for trans\* people, but it is unclear if this is positive or if the guidelines will erect additional barriers to care.

A positive step in health care came in March 2015, when Kenya’s High Court deemed several sections of the “HIV and AIDS Prevention and Control Act, No.14 of 2006” (“HIV/AIDS Act”) unconstitutional for failing to protect the rights of people living with HIV/AIDS.<sup>34</sup> The act permitted disclosure of patients’ HIV status in some cases and criminalized certain types of HIV/AIDS transmission. Prior to the ruling, the HIV/AIDS Act compounded the stigma LGBTI people already face in seeking non-discriminatory health care and posed the threat of legal repercussions for people living with HIV or AIDS.

### *Violence and Discrimination*

LGBTI people in Kenya face widespread violence and discrimination—from physical violence that takes the form of riots, beatings, lynching, and mobs to violent hate speech that manifests in text messages, posters, books, social media, and websites.<sup>35</sup> LGBTI activists have repeatedly been denied the right to formally register their organizations with the government.<sup>36 37</sup> And LGBTI individuals, especially sex workers, face routine violence and harassment by state officials such as police officers and city council representatives.<sup>38 39</sup> According to Human Rights Watch, “police and municipal security agents have been singled out as primary perpetrators of abuse” subjecting LGBTI people to “harassment, extortion, arbitrary arrest and detention without charge or on trumped up charges, denial of services, sexual assault, and rape.”<sup>40 41</sup>

In a joint submission to the United Nations Periodic Review of Kenya in 2015, four organizations—the National Gay and Lesbian Human Rights Commission (NGLHRC), the Gay and Lesbian Coalition of Kenya (GALCK), the Coalition of African Lesbians, and the Sexual Rights Initiative—presented findings from their collective analysis of discrimination claims made by over 800 lesbian, gay, and bisexual individuals between 2012 and 2014. They found that more than 84% “reported being treated unfairly and unequally on the basis of their real or perceived sexual orientation, gender identity and expression,” subjected to abuses such as evictions,

dismissal from employment, blackmail and extortion, and being reported to the police. Twelve lesbians said they were raped for failing to conform to gender norms. All twelve chose not to report their assaults for fear of stigma and the potential reactions of law enforcement. In interviews, gay male sex workers shared that they had been “coerced into sex by male security officers from state and local authorities as a bribe for their release upon arrest during night patrols.” Ninety-five percent of respondents had experienced “verbal violence and threats” and approximately 70% referenced being coerced into heterosexual relationships and marriages. The report also cited instances in which gay men and lesbians “committed suicide on account of social exclusion and societal instigated emotional anxiety over their sexual orientation.”<sup>42</sup>

### Making the Case for Improving Documentation of LGBTI Lives

In the face of limited data on LGBTI lives, activists are taking research into their own hands, conducting community-based investigations and creating websites and social media platforms to gather, document, and share information about LGBTI Kenyans’ lives.<sup>43</sup> **None on Record**, an African LGBTI digital media organization, for example, led an in-depth multi-media training for members of the Nyanza, Rift Valley and Western Kenya LGBTIQ Coalition in 2014. Their instruction inspired participants to create the **Kisumu Digital Media Project**, which is now documenting human rights abuses against LGBTI people in western Kenya and gathering LGBTI people’s stories—including those of LGBTI prisoners and LGBTI people living with disabilities—to share through the launch of a new website and podcast.

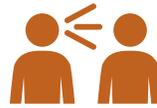
### Cultural and Religious Context

Kenya’s colonial history has greatly impacted the ways in which sexual orientation and gender identity are understood today. Colonial powers considered African sexuality solely in relation to reproduction; “homoerotic desires or agencies,” they believed, were far too sophisticated for Africans.<sup>44</sup> Such thinking carried over into ethnographic scholarship, which until the mid-twentieth century denied the existence of same-sex practices on the continent. Meanwhile, strongly conservative Victorian ethical, moral, and legal systems were imposed upon Kenya, and a normalizing of heterosexual relations with two-gendered and two-sexed categories took root.<sup>45</sup> These early representations, the scholar Desiree Lewis writes, have “been central to many present-day taboos, laws

## LESBIAN, GAY, AND BISEXUAL EXPERIENCES OF DISCRIMINATION:



84% UNFAIR OR UNEQUAL TREATMENT



95% EXPERIENCED VERBAL VIOLENCE OR THREATS



70% COERCED INTO HETEROSEXUAL RELATIONSHIPS OR MARRIAGES

Survey of 800 LGB people 2012 to 2014, presented to UN Periodic Review

and attitudes surrounding sexuality in Africa.”<sup>46</sup> Today, much of Kenya is subject to a conservative and moral code that is heavily informed by a Christian and Muslim majority. A 2014 Gallup poll showed that 88% of Kenyans think homosexuality is “morally unacceptable.”<sup>47</sup> Meanwhile, conservative, religious fundamentalist forces—with financial backing from the Christian right in the United States—are on the rise.<sup>48</sup>

In recent years, religious leaders have used the Bible and the Quran to incite violence against LGBTI people with devastating effect. In 2010, for instance, Christian and Muslim religious leaders in Mtwapa, a town along Kenya’s coastline, urged the closing of the Kenya Medical Research Institute (KEMRI), a government organization that offers HIV/AIDS-related services. They led an armed mob of two to three hundred people to surround the health center, which they claimed provided counseling services to “criminals.”<sup>49</sup> Several other attacks followed in the coming days, including the severe beating of two men, one a KEMRI volunteer. Government officials did not act to quell the vigilante attacks, and police did not hold members of the mob accountable. Bishop Chai, a representative to the National Council of Churches of Kenya and one of the religious leaders responsible for encouraging the attacks, declared, “We thank God for saving this town from being turned to Sodom and Gomorrah.”<sup>50 51</sup>

Politicians have drawn on pervasive religious and cultural opposition to LGBTI rights to justify their opposition to the decriminalization of homosexuality, often decrying the “propaganda” of the LGBTI “machinery.” Some of Kenya’s most prominent political leaders have made slanderous comments



Source: Gallup Poll (2014)

about LGBTI people and denounced LGBTI rights. Daniel Arap Moi, the second president of Kenya, once said, “Kenya has no room or time for homosexuals and lesbians. Homosexuality is against African norms and traditions, and even in religion it is considered a great sin.”<sup>52</sup> In 2010, the former prime minister, Raila Odinga, called for the arrest of all homosexual people, arguing that there were more women than men in Kenya, and hence no need for same-sex relationships.<sup>53,54</sup> In a debate leading up to the 2013 election, the current deputy president, William Ruto, compared homosexual people to dogs.<sup>55</sup> And after United States President Barack Obama urged the protection of LGBTI people’s rights in Africa, the current president and deputy president responded: Kenya is a God-fearing country, they said, and as such will uphold its religious values.<sup>56</sup>

Obama’s eagerly anticipated visit to Kenya in sparked heightened controversy. In the lead-up to the trip, the Republican Liberty Party threatened to organize 5,000 people to march in the streets naked to protest the “importation of gay rights.” During a press conference, President Kenyatta responded to a question on LGBTI issues with the following: “for Kenya today, the issue of gay rights is really a non-issue. We want to focus on other areas that are day-to-day living for our people.”<sup>57</sup> LGBTI activists note that ironically, the challenges he mentioned as “foremost on the minds of Kenyans,” namely health, inclusivity of women, infrastructure, education and economic development, are also key priorities for LGBTI communities in Kenya.<sup>58</sup>

There are signs of progress that signal a cultural shift in favor of LGBTI rights. Today, many LGBTI individuals have supportive families of origin, families of choice, and religious and cultural communities. The increased visibility and presence of LGBTI people have also created communities of mutual care and support. In Nairobi and Kisumu, a few LGBTI-friendly faith institutions are slowly emerging.<sup>59</sup> In a recent interview, Audrey Mbugua, an activist with the group Transgender Education and Advocacy, lauded changes in Kenya’s social environment: “A huge section of the society now understand[s] what transgender is. In my local village a new term

“A huge section of the society now understand[s] what transgender is. In my local village a new term was born ‘manzi chali.’ For me it is a moment of pride since it shows that our society is trying to accommodate the concept of third gender....”

- Audrey Mbugua, activist with Transgender Education and Advocacy

was born ‘manzi chali.’ For me it is a moment of pride since it shows that our society is trying to accommodate the concept of third gender....”<sup>60</sup>

The media has also begun to play a more positive role in raising the visibility of LGBTI people, and frequently features debates and news about LGBTI rights. Amidst the rise of pro-criminalization political statements following the Ugandan Anti-Homosexuality Act, journalists increasingly questioned politicians’ anti-LGBTI rhetoric—a reflection of LGBTI activists’ progress in promoting responsible coverage of LGBTI issues. Activists also say coverage can be poorly researched—portraying sexual orientation and gender identity as a “lifestyle choice”—or worse, a vehicle for fueling bias against LGBTI communities. But more sympathetic stories have appeared in recent years—enough so that the National Gay and Lesbian Human Rights Commission’s annual Gay and Lesbian Awards now includes a prize for journalists’ responsible coverage.<sup>61</sup>

Yet, despite an increase in responsible press coverage of LGBTI issues and lives, there are examples of officials’ attempts to stifle LGBTI stories. In 2014, the Nairobi-based arts collective NEST released “Stories of Our Lives,” a film that features five fictional vignettes based on the real lives of LGBTI Kenyans. Shortly after its world premiere at the Toronto Film Festival, the Kenyan Film Classification Board banned the film in Kenya, censoring it for “obscenity, explicit scenes of sexual activities and (for promoting) homosexuality, which is contrary to...national norms and values.” But the Board’s decision, the filmmakers said, is at odds with the interests of regular Kenyans; since the ban, they say, they have been “drowning in requests to see the film.”<sup>62</sup>



# KENYA'S LGBTI MOVEMENT

Kenya's first known LGBTI organization, Ishtar MSM, an HIV/AIDS group, was established in 1997. Since then, a social movement striving for change on behalf of LGBTI Kenyans has become increasingly robust: In 2011, there were over 18 LGBTI groups working in Kenya; as of 2012, there were more than 26.<sup>63 64</sup> Today Kenya's LGBTI movement is increasingly diverse, made up of people across the LGBTI spectrum and led by a growing number of activists organizing not just in Nairobi, but in other cities and rural areas as well.

Across the country, Kenya's LGBTI activists are employing a range of strategies to bring about policy and cultural change. One of the most successful has been the movement's investment in raising the visibility of LGBTI people—by staging protests, organizing public events, promoting responsible press coverage, and pursuing grassroots digital media strategies—in order to shift cultural beliefs and the law in favor of LGBTI rights. LGBTI groups have been strengthened by two important coalitions, the Gay & Lesbian Coalition of Kenya

LGBTI activists are also advocating for legal and policy change on the national and international stage as part of a comprehensive, multi-tiered approach that brings together media advocacy, human rights sensitization, movement building, and legal/policy strategies.

and VOWWEK, helping to coordinate holistic security and capacity-building efforts. LGBTI groups and these coalitions have also engaged in extensive networking to forge strategic relationships with many civil society allies who now support an LGBTI-inclusive agenda, including mainstream human rights, health, feminist, and pan-African organizations, as well

## Promoting Justice for Women's Sexual and Gender Diversity in Rural Kenya

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

In 2014, for example, VOWWEK brought together eight village elders, eight chiefs, and four policewomen to participate in a forum about LGBTI women's rights. The group discussed gender-based violence in their villages, including relevant legal protections, informal justice systems, leadership, and conflict resolution. While participants acknowledged LGBTI people lived in their communities, they blamed them for moral decay and vowed to uphold cultural norms; the police officers also referenced Kenya's penal code, which criminalizes same-sex relationships and highlighted the Ugandan government's new, stiffer approach. Still, VOWWEK noted a shift over the course of the training; in the end, everyone agreed that violence against LGBTI women based on gender identity or sexual orientation would be treated as a crime, and that victims would require their support. After the training, VOWWEK stayed closely engaged with the village chiefs, and opinion leaders and set up a paralegal training for LGBTI women to help each other get justice. They note that at least two chiefs have become change agents in their communities, actively solving conflicts related to violence against LGBTI women.

as cultural and state institutions like the National Museums of Kenya and the Kenya National Commission for Human Rights. As a result, Kenya's LGBTI movement has assumed a much more visible, public presence in mainstream civil society, even gaining acceptance from local authorities.

LGBTI activists are also advocating for legal and policy change on the national and international stage as part of a comprehensive, multi-tiered approach that brings together media advocacy, human rights sensitization, movement building, and legal/policy strategies. Today, an important focus of movement leaders is to challenge the criminalization of homosexuality and other LGBTI rights violations through the courts, a sight of recent headway in the last few years—in the areas of trans\* rights, for example, as mentioned earlier, and the rights of persons living with HIV/AIDS.

### Movement Building Highlight: Gay and Lesbian Coalition of Kenya

The **Gay and Lesbian Coalition of Kenya (GALCK)** is a coalition of 16 LGBTI organizations based in the Upper Rift, Nairobi and Coastal regions, working to achieve an improved quality of life for LGBTI communities and a strong, integrated Kenyan LGBTI movement. GALCK's extensive net-working with government bodies, service providers and civil society partners over the years has helped to bring about a greater mainstreaming of LGBTI issues within health and human rights arenas. As part of its movement building commitment, GALCK brings visibility to marginalized parts of the LGBTI movement. GALCK recently released its new report "Research on the Lived Realities of Lesbian, Bisexual and Queer Women in Kenya" (2015) calling for inclusive organizing and increased support for the priorities of LBQ women. The report details overlooked rights abuses faced by LBQ women, including family-based violence, sexual violence, lack of access to mental health support and exclusion from economic opportunities.

In January 2015, in response to a United Nations recommendation that Kenya decriminalize homosexuality and adopt legal protections for LGBTI people, Kenya's attorney general, Githu Muigai, declared, "It is not Government policy to discriminate against persons based on their sexual orientation and gender identity." He also said Kenya would pass legislation to protect LGBTI people from discrimination. While activists pointed to Kenya's criminalization of same-sex conduct as evidence to the contrary, Attorney General Muigai's statements may signal an increased openness on the part of his office to engage in efforts to establish of legal protections.<sup>65</sup>

### Advocacy Highlight: National Gay and Lesbian Human Rights Coalition

The **National Gay and Lesbian Human Rights Commission (NGLHRC)** is an independent human rights organization working to ensure equality and full inclusion for sexual and gender minorities in Kenya. Founded in 2012, NGLHRC provides legal assistance to LGBTI people nationwide in cases of discrimination, sexual and gender violence, forced evictions, blackmail, extortion, and unlawful firing. By early 2015, NGLHRC had attended to over 700 cases.

In 2013, the Kenyan Non-Governmental Organizations Coordination Board refused to grant NGLHRC government recognition on the grounds that the group's name was "unacceptable" because Kenya's penal code "criminalizes gay and lesbian liaisons." NGLHRC challenged the decision, and after six attempts, in April 2015, Kenya's High Court issued a groundbreaking reversal, allowing NGLHRC to formally register as a Kenyan NGO and arguing that to do so was their constitutional right of association.<sup>66</sup>

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

# CONCLUSION

Today, Kenya's LGBTI movement faces unprecedented challenges and opportunities. On the one hand, increased regional hostility has made life more violent and precarious for LGBTI people in Kenya and those working tirelessly to defend their rights. On the other hand, drawing strength from regional and international networks, Kenya's LGBTI activists are making critical strides, improving the capacity of organizations and coalitions to engage the public and policymakers in campaigns for social change. But there is

a long road ahead. Ultimately, activists must generate sufficient political will to bring about lasting security for LGBTI Kenyans, and this will no doubt require strategic, long-term partnerships with funders and activist allies from within Kenya and around the world. In Kenya now, there is an opportunity to reverse course, to resist pressure to succumb to the opportunistic political scapegoating of LGBTI people, to live up to the promise of Kenya's Constitution, and to respect global standards for justice and equality for all.

## Recommendations for Advocates, Allies, and Funders

The following recommendations are based on analysis presented in this report and reflect the needs and priorities identified by LGBTI movement actors in Kenya:

1. Leverage the Constitution and Bill of Rights to ensure the protection of the rights of LGBTI communities and utilize strategic litigation strategies to secure anti-discrimination protections and redress for rights violations.
2. Support collective movement-wide efforts to secure national policy reform, decriminalize homosexuality, and pass anti-discrimination laws.
3. In addition to challenging discriminatory laws and practices and promoting protection from violence, ensure protection of the full range of economic, social, and cultural rights.
4. Increase civil society support for LGBTI rights by continuing to promote responsible, accurate press coverage, and raising awareness through social media and the arts.
5. Increase access to non-discriminatory key services in healthcare.
6. Invest in the development of a holistic strategy that will establish a sustainable, national infrastructure inclusive of rural communities.
7. Deepen relationships between LGBTI organizations and other social justice sectors; further establish the LGBTI movement's role as a reciprocal, progressive partner.
8. Increase and expand donor investment in Kenya's LGBTI movement, specifically in organizations led by and for those who have been traditionally marginalized within the movement such as inter-sex individuals, trans\* and gender-non conforming individuals, and lesbian and bisexual women. Offer flexible, general support that enables groups to respond nimbly and strategically within a shifting political and cultural environment.
9. Support and expand efforts to document and investigate the realities of the Kenyan LGBTI community, including human rights abuses.
10. Invest in building the skills and capacity of movement activists in the areas of organizational development, strategy development (including advocacy, base-building, alliance-building), and leadership development—specifically second-tier leadership in order to ensure a powerful, sustainable movement.
11. Support LGBTI organizations in strategically engaging the United Nations, the African Commission for Human and Peoples' Rights, the East African Court of Justice and other regional and international mechanisms to protect LGBTI rights.
12. International support for Kenyan LGBTI rights should be made in consultation with local activists to ensure that increased visibility does not heighten security threats for LGBTI people.

# NOTES

- 1 The Kenyan penal code, sections 162, 163 and 165, criminalizes carnal knowledge against the order of nature – archaic language that has been interpreted as the criminalization of homosexuality.
- 2 The law in Kenya recognizes only two sexes, which are assumed to correspond to only two genders: female/woman and male/man. Many trans\*, intersex and gender non-conforming individuals do not fall in either of the two binary genders or sexes recognized by law in Kenya, and there is no legislation specifically relating to trans\*, intersex and gender non-conforming people.
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