



Compliance with the Covenant on Economic, Social and Cultural Rights: LGBTIQ+ Rights

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

and

The Eagles for Life Kenya

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States, including LGBTIQ+ individuals who have experienced discrimination and violence based on sexual orientation, gender identity and expression, and sex characteristics.

The Eagles for Life Kenya (TEFL-K) is an organization working in Kenya with programs designed to advocate for human rights, especially the rights of LGBTIQ+ people. The organization has been in operation since 2010. In the course of doing its work, TEFL has come to realize that LGBTIQ+ people in Kenya continue to face daunting challenges in their quest for full realization of their fundamental rights and freedoms. The challenges are aggravated by cultural and religious traditions that underpin the morality of the local society. TEFL-K's vision is thus: 'A just and Inclusive Society for Sexual and Gender Minorities.' TEFL-K seeks to achieve this by pursuing a mission 'To create a just and inclusive society for gender and sexual minorities by empowering LGBTIQ+ people to claim for their rights, enhance access to responsive services by engaging duty bearers on policy, stimulating dialogues with the general public to promote tolerance and respect for diversity in Kenya'.

EXECUTIVE SUMMARY

1. The criminalization of private consensual same-sex sexual activity between adults and stigmatization of lesbian, gay, bisexual, transgender, intersex, queer, and other sexual and gender minority (LGBTIQ+) individuals contributes to violations of their rights to work, just and favorable conditions of work, protection of the family and children, adequate standard of living, physical and mental health, and education.
2. Kenya lacks laws that permit transgender people to legally change their gender. Transgender individuals who engage in sexual activity with cisgender people of a different gender (*e.g.*, transgender men who have sex with cisgender women and transgender women who have sex with cisgender men) may fall victim to the law criminalizing consensual same-sex sexual activity between adults.
3. In this report we use the acronym LGBTIQ+ to refer to individuals who self-identify as lesbian, gay, bisexual, transgender, intersex, and/or queer. These terms necessarily do not include everyone who may experience violations of their human rights on the basis of their real or perceived sexual orientation, gender identity, gender expression, and/or sex characteristics (“SOGIESC”), which is why we also include a “+” with the acronym. Any use of a modified acronym is intentional in that we are speaking only about certain members of the LGBTIQ+ population.
4. Information in this report includes first-hand information from LGBTIQ+ Kenyans, both in Kenya and those that have sought asylum abroad, has been used in this submission with their permission.

I. Criminalization of consensual same-sex sexual activity and hate speech contributes to stigmatization of and discrimination against LGBTIQ+ people (List of Issues paras. 10, 11)

5. In its 2023 List of Issues, the Committee requested further information on what steps the Government of Kenya had taken to adopt comprehensive anti-discrimination legislation that would prohibit discrimination “on all grounds” and to provide “effective remedies for the victims” of discrimination.¹ The Committee further asked for information on the “measures taken to decriminalize sexual relations between consenting adults of the same sex and ensure that no one is discriminated against in accessing health care, other social services or other rights as a result of their sexual orientation or gender identity.”²
6. In referencing the Government of Kenya’s State report³, the Committee requested information on the results of the Government’s policies and actions meant to protect the rights of LGBTI people and provide an explanation as to how these actions “addressed the

¹ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, (Mar. 28, 2023), U.N. Doc. E/C.12/KEN/Q/6, ¶ 10.

² Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, (Mar. 28, 2023), U.N. Doc. E/C.12/KEN/Q/6, ¶ 11.

³ Committee on Economic, Social and Cultural Rights, *Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant, due in 2021*, (Nov. 1, 2022), U.N. Doc. E/C.12/KEN/6, ¶¶ 61-65.

social stigmatization, negative stereotypes and prejudice they face.”⁴ These policies and actions include institutions in which anyone can lodge a complaint of an infringement of rights, regardless of their SOGIESC;⁵ legislation and policies “that attest to the principles of...non-discrimination;”⁶ sensitization trainings for healthcare workers, judges, prosecutors, law enforcement, and other public officers;⁷ and collecting data on intersex individuals.⁸

7. Despite these clear requests for information, the Government of Kenya provided no further information in its Reply to the List of Issues on LGBTQ+ issues.⁹ Regarding intersex issues, the Government of Kenya did note that it had enacted a new Children’s Act that “recognized” intersex children¹⁰ and that there is a draft bill on the rights of intersex people, which was the result of collecting data on intersex people.¹¹
8. The criminalization of private consensual same-sex sexual activity between adults and stigmatization of LGBTIQ+ individuals contributes to violations of their rights to work, just and favorable conditions of work, protection of the family and children, adequate standard of living, physical and mental health, and education. The violation of these rights will be discussed more in subsequent sections.
9. Kenya criminalizes consensual same-sex sexual activities between adults. Under Sections 162 and 163 of the Penal Code, “[a]ny person who...has carnal knowledge of any person against the order of nature...permits a male person to have carnal knowledge of him or her against the order of nature...is guilty of a felony and is liable to imprisonment for fourteen years.”¹² Any attempt “to commit any of the offenses specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.”¹³ The last amendment made to

⁴ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, (Mar. 28, 2023), U.N. Doc. E/C.12/KEN/Q/6, ¶ 11.

⁵ Committee on Economic, Social and Cultural Rights, *Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant, due in 2021*, (Nov. 1, 2022), U.N. Doc. E/C.12/KEN/6, ¶ 61.

⁶ Committee on Economic, Social and Cultural Rights, *Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant, due in 2021*, (Nov. 1, 2022), U.N. Doc. E/C.12/KEN/6, ¶ 62.

⁷ Committee on Economic, Social and Cultural Rights, *Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant, due in 2021*, (Nov. 1, 2022), U.N. Doc. E/C.12/KEN/6, ¶¶ 63-64.

⁸ Committee on Economic, Social and Cultural Rights, *Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant, due in 2021*, (Nov. 1, 2022), U.N. Doc. E/C.12/KEN/6, ¶ 65.

⁹ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, (June 11, 2024), U.N. Doc. E/C.12/KEN/RQ/6, ¶ 31.

¹⁰ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, (June 11, 2024), U.N. Doc. E/C.12/KEN/RQ/6, ¶ 6.

¹¹ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, (June 11, 2024), U.N. Doc. E/C.12/KEN/RQ/6, ¶¶ 12, 49.

¹² The Penal Code Act (2022) THE LAWS OF KENYA, REVISED EDITION Cap. 63 §§ 162, 163.

¹³ The Penal Code Act (2022) THE LAWS OF KENYA, REVISED EDITION Cap. 63 § 162.

these provisions was in 2003.¹⁴

10. Section 165 of the Penal Code punishes indecent practices between males: “Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.”¹⁵ Because Kenya lacks legal gender recognition, trans women are legally considered men and, thus, could be subject to these laws.¹⁶
11. While sections 162-165 of Kenya’s Penal Code do not criminalize LGBTIQ+ identities, they do criminalize same-sex sexual conduct and have been used to prosecute LGBTIQ+ people.
12. The Government of Kenya continues to use Section 165 of the Penal Code to prosecute LGBTIQ+ individuals for consensual same-sex sexual activity between adults.¹⁷ The enforcement of these laws reinforces stigma against LGBTIQ+ people and contributes to violations of their economic and social rights.
13. The law is vague and opaque; the vocabulary of the legal provisions does not define what “unnatural carnal knowledge” constitutes. This fosters arbitrary interpretation and application of the law because police officers and government officials have considerable discretion in their interpretation of these provisions. Police and county security agents often arrest LGBTIQ+ individuals under these provisions of the Penal Code based solely on their own assumptions of sexual conduct drawn from a victim’s manner of dressing, walking, and gender expression.¹⁸
14. On 22 February 2024, Kenya’s Supreme Court, ruled in *NGO Coordination Board vs Eric Gitari & Others* that the reference to “sex” in the equality and non-discrimination clause of the Constitution must be interpreted to include sexual orientation of any gender.¹⁹ Although this ruling pertains to the right to freedom of association and has not directly addressed the criminalization of consensual same-sex sexual activity between adults, nor Article 45 of the Constitution’s prohibition on equal marriage, the ruling should provide broader protections for LGBTIQ+ people in all areas.²⁰
15. In response to the Supreme Court’s decision, a member of Parliament, Peter Kaluma,

¹⁴ The Penal Code Act (2022) THE LAWS OF KENYA, REVISED EDITION Cap. 63.

¹⁵ The Penal Code Act (2022) THE LAWS OF KENYA, REVISED EDITION Cap. 63 § 165.

¹⁶ International Lesbian, Gay, Bisexual, Trans and Intersex Association, “LGBTI Rights in Kenya,” accessed Aug. 26, 2024, <https://database.ilga.org/kenya-lgbti>.

¹⁷ International Lesbian, Gay, Bisexual, Trans, and Intersex Association World, “Legal Frameworks: Criminalisation of consensual same-sex sexual acts – Kenya Enforcement Overview,” accessed July 30, 2024, <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

¹⁸ Email from Kenyan NGO to The Advocates for Human Rights (Jan. 6, 2026) (on file with authors).

¹⁹ Sam Kisika, *Kenyan lawmaker’s bill would further crackdown on LGBTQ rights*, Washington Blade, Sept. 22, 2023, <https://www.washingtonblade.com/2023/09/22/kenyan-lawmakers-bill-would-further-crackdown-on-lgbtq-rights/>.

²⁰ THE CONSTITUTION OF KENYA, Apr. 7, 2010 (Rev. 2022), art. 45(2) (Kenya).

proposed the Family Protection Bill (the “Bill”) in February 2023.²¹ This may be “a significant legislative hurdle for the protection of LGBT rights in Kenya.”²² The Bill prohibits homosexuality and same-sex marriage.²³ It also creates new and longer punishments for individuals engaging in consensual same-sex sexual activity between adults, such as a minimum of ten years imprisonment.²⁴ The Bill also penalizes “publicly identifying as a member of the LGBTQI+ community or wearing Pride colours,” and threatens expulsion for individuals seeking asylum or refuge on the basis of SOGIE.²⁵ The Bill has never been tabled.

16. Further, one member of the government wanted the Attorney General to oppose the ruling.²⁶ A second member of parliament introduced legislation seeking a “a total ban on discussion, publication and dissemination” of information pertaining to LGBTIQ+ issues.²⁷ Further, both the Parliament and the Senate attacked the judiciary because of this decision and several members of Parliament publicly called for the killing and arrest of LGBTIQ+ Kenyans.
17. Government speech by State officials, including the current president, has overwhelmingly been anti-LGBTIQ+, and LGBTIQ+ human rights defenders fear that the current administration “will simply perpetuate discriminatory policies and attitudes towards” their communities.²⁸ These public speeches contribute to the stigmatization of LGBTIQ+ people.
18. According to an article published in the International Journal of Environmental Research

²¹ Sam Kisika, *Kenyan lawmaker’s bill would further crackdown on LGBTQ rights*:

Provisions include 50-year prison sentence for gays and lesbians convicted of non-consensual sex, Washington Blade, Sept. 22, 2023, <https://www.washingtonblade.com/2023/09/22/kenyan-lawmakers-bill-would-further-crackdown-on-lgbtq-rights/>; The Parliament of Kenya, “Legislative Proposal Tracker,” Aug. 22, 2024, <http://www.parliament.go.ke/sites/default/files/2023-07/LEGISLATIVE%20PROPOSAL%20TRACKER%20-%20AS%20AT%2024%20JULY%202023.pdf>.

²² William Hibbitts, *Legislating Identity: A Critical Analysis of the Anti-LGBT Bills in Kenya and Ghana*, Jurist News, Apr. 23, 2024, <https://www.jurist.org/commentary/2024/04/legislating-identity-a-critical-analysis-of-the-anti-lgbt-bills-in-kenya-and-ghana/>.

²³ The Family Protection Bill (2023) (Kenya).

²⁴ The Family Protection Bill (2023) Part II, § 4(1) (Kenya).

²⁵ International Lesbian, Gay, Bisexual, Trans, and Intersex Association World, “Legal Frameworks: Criminalisation of consensual same-sex sexual acts – Kenya Enforcement Overview,” accessed July 30, 2024, <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

²⁶ International Lesbian, Gay, Bisexual, Trans, and Intersex Association World, “Legal Frameworks: Criminalisation of consensual same-sex sexual acts – Kenya Enforcement Overview,” accessed July 30, 2024, <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

²⁷ Njoki Kihui, *Nyali MP Mohamed Seeks Total Ban Of Gay Discussions*, *Published*, CapitalNews, March 15, 2023, <https://www.capitalfm.co.ke/news/2023/03/nyali-mp-mohamed-ali-seeks-total-ban-of-gay-discussions-publication/>; International Lesbian, Gay, Bisexual, Trans, and Intersex Association World, “Legal Frameworks: Criminalisation of Consensual Same-sex Sexual Acts – Kenya Enforcement Overview,” accessed July 30, 2024, <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

²⁸ International Lesbian, Gay, Bisexual, Trans, and Intersex Association World, “Legal Frameworks: Criminalisation of consensual same-sex sexual acts – Kenya Enforcement Overview,” accessed July 30, 2024, <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

and Public Health, “sexual and gender minority (SGM) people in Kenya face pervasive socio-cultural and structural discrimination. Persistent stress stemming from anti-SGM stigma and prejudice may place SGM individuals at increased risk for negative mental health outcomes.”²⁹ Furthermore, “[d]ue to pervasive societal stigma that SGM people experience in Western Kenya, some may experience discrimination in hiring and in the workplace.”³⁰

19. Another study found that “[s]exual stigma is commonly reported among GBMSM [gay, bisexual, and other men who have sex with men] in Kenya, and can result in a substantial burden of physical, mental, and emotional abuse.”³¹
20. LGBTIQ+ people also experience stigma and discrimination within religious settings. For example, “Archbishop Jackson Ole Sapit of the Anglican Church speculated that the alleged spread of homosexuality was a sinister ploy by environmentalists to depopulate the globe in an effort to address climate change.”³²
21. LGBTIQ+ individuals face discrimination from religious leaders in Kenya with interviewees reporting that religious leaders have sometimes specifically targeted LGBTIQ+ individuals or describe LGBTIQ+ people as an evil that needs to be addressed.³³

II. Right to work (art. 6) and Right to just and favorable conditions of work (art. 7)

22. LGBTIQ+ individuals face discrimination in the workplace, both when applying for jobs and while employed. One gay individual noted that he had to leave a position with a tourism company after his boss found out he was dating a man. The boss said that by having him as an employee he was “destroying the business.” In addition, he mentioned

²⁹ Gary W. Harper, Jessica Crawford, Katherine Lewis, Caroline Rucuh Mwochi, Gabriel Johnson, Cecil Okoth, Laura Jadwin-Cakmak, Daniel Peter Onyango, Manasi Kumar, and Bianca D.M. Wilson, “Mental Health Challenges and Needs among Sexual and Gender Minority People in Western Kenya,” *International Journal of Environmental Research and Public Health*, Feb. 1, 2021, 1311, (discussing mental health challenges and needs among sexual and gender minority people in western Kenya). Also available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7908383/#:~:text=Background%3A%20Sexual%20and%20gender%20minority,for%20negative%20mental%20health%20outcomes>.

³⁰ Gary W. Harper, Jessica Crawford, Katherine Lewis, Caroline Rucuh Mwochi, Gabriel Johnson, Cecil Okoth, Laura Jadwin-Cakmak, Daniel Peter Onyango, Manasi Kumar, and Bianca D.M. Wilson, “Mental Health Challenges and Needs among Sexual and Gender Minority People in Western Kenya,” *International Journal of Environmental Research and Public Health*, Feb. 1, 2021, 1311, (discussing mental health challenges and needs among sexual and gender minority people in western Kenya). Also available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7908383/#:~:text=Background%3A%20Sexual%20and%20gender%20minority,for%20negative%20mental%20health%20outcomes>.

³¹ Christine J. Korhonen, Brian P. Flaherty, Elizabeth Wahome, Pascal Macharia, Helgar Musyoki, Parinita Battacharjee, Joshua Kimani, Monika Doshi, John Mathenge, Robert R. Lorway, Eduard J. Sanders, and Susan M. Graham, “Validity and Reliability of the Neilands Sexual Stigma Scale among Kenyan Gay, Bisexual, and Other Men Who Have Sex With Men,” *BMC Public Health*, Apr. 14, 2022, 754, <https://bmcpubhealth.biomedcentral.com/articles/10.1186/s12889-022-13066-3>.

³² Al Jazeera, “Why are Kenya and Uganda cracking down on LGBTQ rights?” Mar. 23, 2023, <https://www.aljazeera.com/news/2023/3/23/why-are-kenya-and-uganda-cracking-down-on-lgbtq-rights>.

³³ Interview with participant, Kisii, Kenya, Jan. 9, 2019.

when he was trying to apply for a job at a catering company; the job application said they were only looking for heterosexual people. This case is one of many LGBTIQ+ individuals experiencing discrimination in the workplace or when trying to enter the job market.³⁴

23. In some instances, documented discrimination in the workplace pushed LGBTIQ+ individuals into sex work as their only option for employment.³⁵

III. Protection of the family and children (art. 10)

24. Historically, many intersex children in Kenya were killed at birth. A midwife noted in 2017 that this is beginning to change as more people give birth in hospitals, but it may still be a reality in rural places, as some parents and community members see intersex children as a curse or someone to be stigmatized and shunned.³⁶
25. Despite this history, Kenya has taken important steps to advance the rights of intersex people. Including officially counting intersex people in the 2019 National Population census through a new option to self-identify as intersex.³⁷
26. An openly intersex person was also sworn in as a Commissioner of the Kenya National Commission on Human Rights in 2022.³⁸
27. In February 2025, Kenya officially recognized intersex as an option in the birth registration processes: “The updated Births and Deaths Registration Act now includes Intersex as a category in official records, marking a historic step toward inclusivity and legal recognition for intersex persons.”³⁹
28. Although the Government of Kenya has been making important strides in the protection of intersex people’s rights, there is not yet a standalone law that comprehensively addresses intersex identity documents, which is important given the difficulties many intersex individuals have in changing their gender markers on their identification documents.⁴⁰ Further, there is a lack of clarification on the rights of intersex adults, despite growing protections for intersex youth (see paragraph 44 below).

IV. Right to adequate standard of living (art. 11)

³⁴ Interview with participant in Kenya, January 2019.

³⁵ Interview with participant in Kenya, January 2019.

³⁶ Helen Grady and Anne Soy, *The midwife who saved intersex babies*, BBC News, May 4, 2017, <https://www.bbc.com/news/world-africa-39780214>.

³⁷ Max Bearak, *A new census in Kenya is counting people never counted before*, The Washington Post, Aug. 28, 2019, https://www.washingtonpost.com/world/africa/kenya-census-intersex-and-indigenous-people/2019/08/28/fbeca98e-c529-11e9-8bf7-cde2d9e09055_story.html.

³⁸ Hivos, “Celebrating inclusion of intersex persons in Kenya’s highest human rights body,” accessed May 17, 2022, <https://hivos.org/blog/celebrating-inclusion-of-intersex-persons-in-kenya-s-highest-human-rights-body/>.

³⁹ Makena Ndung’u, *Kenya makes history as intersex persons officially recognized in birth registration*, HapaKenya, Feb. 8, 2025, <https://hapakenya.com/2025/02/08/kenya-makes-history-as-intersex-persons-officially-recognized-in-birth-registration/>.

⁴⁰ Email from Kenyan NGO to The Advocates for Human Rights (Jan. 6, 2026) (on file with authors).

29. In June 2022, the Kenyan organization TEFL-K, a co-author of this joint submission, was targeted in the Kisii region of Kenya. On 12 June 2022, a video of four gay men in Kisii town was shared by a blogger over multiple social media platforms. Comments on the video included threats to TEFL-K and named LGBTIQ+ individuals, including members of TEFL-K staff and allies. As a result, four TEFL-K staff members were evicted from their rental house; TEFL-K organized their relocation to Busia. On 15 June 2022, the TEFL-K staff was forced to temporarily relocate to other towns. Tragically, one of the TEFL-K staff members who was forced to go into hiding died on 16 June 2022, of an apparent suicide. By 18 June 2022, TEFL-K staff had documented at least 12 physical attacks, several more cases of evictions, and 23 incidents of cyberbullying.⁴¹

V. Right to physical and mental health (art. 12)

30. Many LGBTQ+ individuals experience violence, detention, deprivation of basic needs, and other human rights violations committed by their families, religious leaders and other non-State actors under the guise of so-called “conversion therapies,” which are a common practice in Kenya. A report found that “478 respondents described incidents in which they or other LGBTIAQ+ [Lesbian, Gay, Bisexual, Transgender, Intersex, Asexual, and Queer] Kenyans had experienced abuses, including intentional violence, by practitioners in an effort to compel change” of their sexual orientation, gender identity, or gender expression.⁴² Respondents reported experiencing “unethical physical and medical ‘treatments,’ beatings and forced sex or marriage and prolonged detention in homes or camps.”⁴³

31. An anonymous individual described how, as a teenager, he was subjected to so-called “conversion therapy” in which “he was given electric shocks and shown pictures of ‘ruptured anuses and wounded penises’ by people who told him that if he didn’t stop being gay, he would ‘meet the same fate.’”⁴⁴ Other reported “conversion therapy” practices include being given drugs and hormones, rape, kidnapping, and starvation.⁴⁵

32. Some healthcare providers refuse to treat LGBTQ+ individuals because of their sexual orientation. Healthcare providers often use Section 162-165 of the Penal Code and their religious beliefs to deny services to LGBTQ+ individuals. In one instance, a gay man decided to go to a public hospital for Pre-Exposure Prophylaxis (PrEP) medication but was refused treatment from the doctors because they stated: “We do not treat people like you

⁴¹ Email and What’s App communications from TEFL-K to The Advocates for Human Rights (June 19, 2022) (on file with authors).

⁴² Galck+, *Shame Is Not A Cure: So-Called Conversion “Therapy” Practices in Kenya* (2022), 2, accessed Aug. 20, 2024, https://cms.galck.org/uploads/Shame_Is_Not_A_Cure_502787c233.pdf.

⁴³ Galck+, *Shame Is Not A Cure: So-Called Conversion “Therapy” Practices in Kenya* (2022), 2, accessed Aug. 20, 2024, https://cms.galck.org/uploads/Shame_Is_Not_A_Cure_502787c233.pdf.

⁴⁴ *I was afraid I was going to die’: Kenyan survivor of ‘conversion therapy*, OpenDemocracy, accessed Aug. 20, 2024, <https://www.opendemocracy.net/en/5050/conversion-therapy-africa-lgbtqi-survivors/>.

⁴⁵ *I was afraid I was going to die’: Kenyan survivor of ‘conversion therapy*, OpenDemocracy, accessed Aug. 20, 2024, <https://www.opendemocracy.net/en/5050/conversion-therapy-africa-lgbtqi-survivors/>.

here.”⁴⁶ Other concerns include: lack of clinics that will treat LGBTIQ+ patients,⁴⁷ high cost of treatment, an insufficient number of providers, understaffed medical centers, and geographic barriers.⁴⁸

33. Some healthcare providers at government facilities also deny LGBTIQ+ individuals from accessing “basic services such as treatment for sexually transmitted infections, tuberculosis, and malaria” if they do not receive bribes from their LGBTIQ+ patients.⁴⁹
34. Some common barriers reported by young men who have sex with men (YMSM) include “hostile healthcare settings that are uncondusive for YMSM to disclose and openly discuss same-sex practices with healthcare providers..., lack of provider knowledge on the unique health needs of YMSM, as well as experiences of stigma and discrimination in healthcare settings.”⁵⁰ Additional research conducted on the health experiences of YMSM in Kenya demonstrated that “[s]exual stigma...[is] known to deter YMSM from actively and consistently seeking [healthcare] services.”⁵¹ In fact, “the hostile health climates in public health facilities and campus clinics caused YMSM to postpone healthcare seeking until symptoms worsened, resulting in poor health outcomes.”⁵²
35. There are also clear distinctions between experiences with public healthcare providers compared to private NGOs which provide services to key populations. Although a platform allowing government agencies to work with key populations exists, LGBTIQ+ individuals’ distrust of healthcare professionals may prevent them from attempting to access these services.⁵³ Many individuals only go to NGOs and civil society organizations for healthcare services because of the relationship of trust that exist between them. These direct services are limited, however, specifically in rural areas. Therefore, LGBTIQ+ individuals

⁴⁶ Interview with participant, Migori, Kenya, Jan. 8, 2019.

⁴⁷ Stephanie Haase, Virginia Zweigenthal, Alex Muller, Barriers in Access to Healthcare for Kenyan Queer Womxn and Trans Men: Findings of a Cross-Sectional Online Survey and Interviews, (Dec. 1, 2021).

<https://assets.researchsquare.com/files/rs-1076697/v1/5ccce701-feda-4a12-bdcb-cfedf2e932cb.pdf?c=1638377442>

⁴⁸ Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, *Public Health Innovations* (Jul. 2020).

⁴⁹ Jackson Okata, *Forced to pay bribes at every step: How trans and intersex people say they survive in Kenya*, CNN, <https://www.cnn.com/interactive/asequals/trans-intersex-people-kenya-survival-as-equals-intl-cmd/>.

⁵⁰ Samuel Waweru Mwaniki, Peter Mwenda Kaberia, Peter Mwangi Mugo, and Thelsa Palanee-Phillips, “What if I get sick, where shall I go?: a qualitative investigation of healthcare engagement among young gay and bisexual men in Nairobi, Kenya,” *BMC Public Health*, Jan. 2, 2024, <https://bmcpubhealth.biomedcentral.com/articles/10.1186/s12889-023-17555-x>.

⁵¹ Samuel Waweru Mwaniki, Peter Mwenda Kaberia, Peter Mwangi Mugo, and Thelsa Palanee-Phillips, “What if I get sick, where shall I go?: a qualitative investigation of healthcare engagement among young gay and bisexual men in Nairobi, Kenya,” *BMC Public Health*, Jan. 2, 2024, <https://bmcpubhealth.biomedcentral.com/articles/10.1186/s12889-023-17555-x>.

⁵² Samuel Waweru Mwaniki, Peter Mwenda Kaberia, Peter Mwangi Mugo, and Thelsa Palanee-Phillips, “What if I get sick, where shall I go?: a qualitative investigation of healthcare engagement among young gay and bisexual men in Nairobi, Kenya,” *BMC Public Health*, Jan. 2, 2024, <https://bmcpubhealth.biomedcentral.com/articles/10.1186/s12889-023-17555-x>.

⁵³ Levis Nderitu, *Key Population Hero: Addressing stigma and discrimination among LGBT people in Kenya*, Linkages, Dec. 9, 2016, <https://linkagesproject.wordpress.com/2016/12/09/key-population-hero-a-addressing-stigma-and-discrimination-among-lgbt-people-in-kenya/>.

are dependent on the existence of private entities to provide them with adequate access to health services.⁵⁴

36. Many LGBQ+ individuals do not disclose their sexual orientation to healthcare providers because they fear doing so could affect their treatment or that healthcare providers will violate their privacy, which could affect their reputation in the community. In one case, an individual who identifies as a sexual minority stated that “It is impossible, I would feel ashamed. I do not want doctors to start talking about me.”⁵⁵ In another case, a gay man changed his name when looking for sexually transmitted infection (STI) treatment services out of fear of confidentiality issues.
37. There have been credible reports that some healthcare providers have reportedly conducted forced anal examinations that were unrelated to the health concerns presented by the individual seeking treatment once they learn or suspect the patient is LGBTIQ+.⁵⁶
38. LGBTI refugees and asylum seekers in Kenya also noted major barriers to accessing services, due to lack of necessary documentation and insufficient clinics and service providers in refugee camps.⁵⁷
39. A July 2020 report states that the Ministry of Health is “generally considered an ally in the struggle for LGBTI equality,” and highlights the role of the National AIDS & STI Control program in addressing discrimination and violence.⁵⁸ It is important to point out, however, that the HIV and AIDS framework highlights interventions targeting men who have sex with men, but not LGBTIQ+ interventions.⁵⁹
40. The Ministry of Health is currently working with the transgender community to develop a “National Transgender Health Strategy” and the Government has also committed to supporting the first National MSM Transgender and Research Conference in Kenya.⁶⁰ The Ministry of Health, however, has not yet developed other specific policies related to LGBTIQ+ people.⁶¹
41. In 2020, the Ministry of Health Taskforce on Mental Health recommended that the

⁵⁴ Müller, A., Daskilewicz, K. and the Southern and East African Research Collective on Health (2019). ‘Are we doing alright? Realities of violence, mental health, and access to healthcare related to sexual orientation and gender identity and expression in Kenya: Research report based on a community-led study in nine countries’. Amsterdam: COC Netherlands. P. 33

⁵⁵ Interview with participant, Nairobi, Kenya, Jan. 17, 2019.

⁵⁶ Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya’s Coast* (United States: Human Rights Watch, September 2015).

⁵⁷ John Ndiritu, *The Challenges Facing Refugees in Kakuma Refugee Camp, Kenya: A Report by the Organization for Refugees, Asylum and Migration (ORAM) and Rainbow Railroad*, (Oct. 2021), https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98_db18b86c46744fb98648ccff1640e165.pdf.

⁵⁸ *Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya*, Public Health Innovations (July 2020), [https://www.theadvocatesforhumanrights.org/Res/SOGIE%20SC%20Norm%20Shift%20Research%20Report%20report%20v2F%20\(002\).pdf](https://www.theadvocatesforhumanrights.org/Res/SOGIE%20SC%20Norm%20Shift%20Research%20Report%20report%20v2F%20(002).pdf).

⁵⁹ Information received from Kenyan NGO (Mar. 18, 2022).

⁶⁰ *Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya*, *Public Health Innovations* (Jul. 2020).

⁶¹ Information received from Kenyan NGO (18 March 2022).

Government declare “mental health” a national emergency,⁶² but the Taskforce failed to mention LGBTIQ+ people as a key population in their strategy or identify sexual orientation and gender identity and expression as factors linked to mental health concerns.

42. The Kenya Mental Health Policy 2015-2030 states several guiding principles including that “mental health is a human right which should be respected regardless of religion, gender, culture and socioeconomic status” and that “services should be provided equally to all individuals in a community irrespective of their gender, age, caste, color geographical location, culture, and social class.”⁶³ It does not mention sexual orientation, gender identity, gender expression, or sex characteristics in its definition of non-discrimination. The Policy also identifies several vulnerable groups, including women and children, but does not mention LGBTIQ+ people.⁶⁴
43. Transgender people in Kenya interviewed for a recent study stated that mental health services tailored to the needs of transgender people, such as gender dysphoria or body dysmorphia, were only available in a small number of organizations and also noted negative attitudes from healthcare workers and lack of knowledge or experience in working with transgender patients to meet their needs, which made it necessary for the patient to educate the provider.⁶⁵ Transgender respondents felt it was especially difficult for them to access healthcare services, as providers did not have the requisite knowledge to deal with gender dysphoria and co-morbidities affecting transgender people. Respondents also noted that the lack of access to mental health services resulted in negative coping mechanisms such as substance use within these communities.⁶⁶
44. In 2022, Kenya passed the Children Act which recognizes intersex children and offers certain protections to intersex children under Sections 21, 23, 26(3), 64(3), 95(2)(b), 144(l), and 144(z), including restrictions on medical interventions.⁶⁷ This “new law requires intersex children to be treated with dignity and have equal access to basic services like medical treatment and education, in addition to social protection services as a special need. It also requires the accommodation of intersex children in child protection centers and other

⁶² Mental Health Taskforce urges government to declare mental health a National Emergency, *Ministry of Health*, (Jul. 7, 2020). <https://www.health.go.ke/mental-health-taskforce-urges-government-to-declare-mental-health-a-national-emergency-nairobi-tuesday-july-7-2020/>.

⁶³ Kenya Mental Health Policy 2015-2030, *Ministry of Health*, (Aug. 2015). <https://publications.universalhealth2030.org/uploads/Kenya-Mental-Health-Policy.pdf>.

⁶⁴ Kenya Mental Health Policy 2015-2030, *Ministry of Health*, (Aug. 2015). <https://publications.universalhealth2030.org/uploads/Kenya-Mental-Health-Policy.pdf>.

⁶⁵ Stephanie Haase, Virginia Zewigenthal & Alex Müller, *Barriers in Access to Healthcare for Kenyan Queen Womxn and Trans Men: Findings of a Cross-Sectional Online Survey and Interviews*, Research Square (Dec. 1, 2021), <https://assets-eu.researchsquare.com/files/rs-1076697/v1/91bcb43c-8144-46fb-9a80-1143d9a0f586.pdf?c=1664261068>.

⁶⁶ *Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya*, Public Health Innovations (July 2020), [https://www.theadvocatesforhumanrights.org/Res/SOGIE%20SC%20Norm%20Shift%20Research%20Report%20report%20v2F%20\(002\).pdf](https://www.theadvocatesforhumanrights.org/Res/SOGIE%20SC%20Norm%20Shift%20Research%20Report%20report%20v2F%20(002).pdf).

⁶⁷ The Children Act (2022) KENYA GAZETTE SUPPLEMENT No. 119.

facilities.”⁶⁸ Further, “[i]t also protects intersex children from so-called sex normalization surgeries, and such procedures will only be done with a doctor’s recommendation.”⁶⁹ There are not, however, similar protections for intersex adults, nor is it clear what rights an intersex child has when they become adults.

45. Sexual encounters for LGBTIQ+ individuals tend to be unsafe and risky because of social prejudice and stigmatization. One interviewee mentioned two males could never rent a room together in a hotel, which contributed to sexual encounters being dangerous. He also noted that this discriminatory practice further contributed to the lack of safer-sex practices in sexual encounters between LGBTIQ+ individuals.

VI. Right to education (arts. 13-14)

46. There are credible reports that many LGBQ+ individuals do not enjoy the right to access education. According to Article 53 (1) (b) of the Constitution, however, every child has a right to free and compulsory education.⁷⁰ In addition, Article 56 (b) provides protection for minorities and marginalized groups to ensure special opportunities for their educational development.⁷¹
47. In 2022, then-Cabinet Secretary of Education, George Magoha, gave an “extensive speech where he use[d] homophobic and stigmatizing language,” including in his statement that, “if you are a homosexual in a boarding school and you are hopping from a bed of another student to another, your rights end there.”⁷²
48. According to interviews conducted by The Advocates for Human Rights, one of the co-authors of this report, multiple LGBQ+ interviewees reported being expelled from schools because of their sexual orientation. School administrators expelled and suspended students who were seen engaging in same-sex conduct. School staff members expressed concern about LGBQ+ students “influencing” other students into same-sex relations. According to interviewees, schools maintain policies to actively identify LGBQ+ students. One of the LGBQ+ interviewees described headmasters physically abusing LGBQ+ students until they confessed their sexual orientation and encouraging them to give up other LGBQ+ students’ names.⁷³
49. The LGBQ+ individuals interviewed also experienced harassment at school from other students and enjoyed little protection from school administrators. In one case, a student who others had assumed to be gay was targeted with physical and verbal abuse from other students because of his perceived sexual orientation. When he decided to go to the

⁶⁸ Sam Kisika, *Landmark intersex rights law takes effect in Kenya*, Washington Blade, Aug. 8, 2022, <https://www.washingtonblade.com/2022/08/08/landmark-intersex-rights-law-takes-effect-in-kenya/>.

⁶⁹ Sam Kisika, *Landmark intersex rights law takes effect in Kenya*, Washington Blade, Aug. 8, 2022, <https://www.washingtonblade.com/2022/08/08/landmark-intersex-rights-law-takes-effect-in-kenya/>.

⁷⁰ THE CONSTITUTION OF KENYA, Apr. 7, 2010 (Rev. 2022), art. 53(1) (Kenya).

⁷¹ THE CONSTITUTION OF KENYA, Apr. 7, 2010 (Rev. 2022), art. 56(b) (Kenya).

⁷² Press Release, National Gay and Lesbian Human Rights Commission, *CS MAGOHA SHOULD STOP TARGETING LGBTIQ+ LEARNERS*, U.N. Doc. (Feb. 15, 2022). Also available online at <https://nglhrc.com/wp-content/uploads/2022/05/NGLHRCPressReleaseWebVersion-1.pdf>.

⁷³ Interview with participant in Kenya, Jan. 2019.

Deputy Director of the school with his mother to inform them of the situation and demand protection, he was asked to pay 2,000 Ksh, the equivalent of about 20 US dollars, to the Deputy Director in order to ensure his protection.⁷⁴

50. In 2022, LGBTIQ+ students protested the government proposal by the Cabinet of Ministers to restrict their access to boarding schools.⁷⁵ Reports highlighted the proposition by the then-Cabinet Secretary of Education that “homosexual students be barred from boarding schools.”⁷⁶

VII. Suggested recommendations for the Government of Kenya

51. The coauthors of this report suggest the following recommendations for the Government of Kenya:

- Adopt a comprehensive anti-discrimination law affording protection to all individuals, irrespective of sexual orientation, gender identity, gender expression, or sex characteristics.
- Issue a moratorium stopping all investigations and prosecutions of individuals based on Sections 162 (a & c), 163 and 165 of the Penal code which criminalize private consensual same-sex sexual activity between adults.
- Repeal Sections 162 (a & c), 163, and 165, of the Penal Code, which criminalize consensual same-sex sexual activity between adults and immediately release from prison or police custody anyone convicted or held under suspicion of these crimes.
- Draft and adopt legislation in consultation with LGBTQ+ organizations that permits transgender individuals to change their legal gender.
- Undertake public sensitization and education campaigns to combat discrimination, violence, and stigma, with special emphasis on LGBTIQ+ individuals.
- Reject the proposed Family Protection Bill if or when it is tabled before parliament for consideration into law, on account of the grave threat it presents to fundamental freedoms and rights in the Constitution of Kenya, 2010.
- Create an independent investigation oversight committee (within the Independent Police Oversight Authority or the Kenya National Commission on Human Rights) to which individuals experiencing discrimination and abuse based on their sexual orientation, gender identity, gender expression, and sex characteristics by law enforcement can file complaints.
- Enact a comprehensive intersex-specific law that extends explicit protections to intersex adults, including bodily autonomy, protection from non-consensual medical

⁷⁴ Interview with participant in Kenya, Jan. 2019.

⁷⁵ VOA News. *Kenyan LGBT Students Protest Suggestion They be Banned from Boarding Schools*. (Jan.13, 2022). Available at: <https://www.voanews.com/a/kenyan-lgbt-students-protest-suggestion-they-be-banned-from-boarding-schools/6395390.html>

⁷⁶ VOA News. *Kenyan LGBT Students Protest Suggestion They be Banned from Boarding Schools*. (Jan.13, 2022). Available at: <https://www.voanews.com/a/kenyan-lgbt-students-protest-suggestion-they-be-banned-from-boarding-schools/6395390.html>

interventions, legal recognition across identity documents, access to healthcare and social services, and protection from discrimination throughout adulthood.

- Take concrete legal and policy measures, including the provision of adequate human rights training to health personnel and educators to eliminate all forms of stigma and discrimination in healthcare and educational settings.
- Take measures to prevent law enforcement from arbitrarily arresting individuals based on their real or perceived sexual orientation by training the police on human rights of LGBTIQ+ people.
- Take steps to raise public awareness in order to mitigate social prejudices, stigmatization, harassment, discrimination, and violence against individuals because of their sexual orientation, gender identity, gender expression, and sex characteristics.
- Combat hate speech, online harassment, and surveillance related to sexual orientation and gender identity, and amend the hate speech and disinformation law to include sexual orientation and gender identity as a protected ground from hate speech.
- Adopt a comprehensive hate crimes law that includes hate crimes based on sexual orientation, gender identity, gender expression, or sex characteristics.