



KENYA

Compliance with the International Covenant on Economic, Social and Cultural Rights

Suggested List of Issues on the ESC Rights of LGBTIQ+ Persons

Submitted by The Advocates for Human Rights, an NGO in special consultative status since 1996, with

The Eagles for Life Kenya and Oasis Research

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Founded in 1983, **The Advocates for Human Rights** is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. 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 publications. 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 in Kenya.

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+ persons. The organization has been in operation since 2010. In the course of doing its work, TEFL has come to realize that LGBTIQ+ persons in Kenya continue to face daunting challenges in their quest for full realization of their fundamental rights and freedoms. The challenges are aggravated by culture 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+ Persons 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'.

Oasis Research is research consultancy established in 2010 to provide research and advisory services in the fields of good governance, human rights, rule of law, access to justice, law enforcement through comparative approaches and best practices for the benefit of all stakeholders integral to policy making and implementation in Kenya. Oasis Research also provides technical

support on applicability of international human rights standards under municipal law. As part of its outreach activities and pro-bono work, Oasis Research has in partnership with non-governmental organizations undertaken human rights training on sexual and reproductive health rights and punitive laws affecting key populations from accessing medical treatment. The programmes involve training of policymakers, faith-based organizations, law makers on existing practices and policies that prevent access to health through justification of discrimination, violence and stigmatization.

EXECUTIVE SUMMARY

1. The Government of Kenya fails to prevent human rights violations against individuals based on their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The criminalization of consensual same-sex relations of lesbian, gay, bisexual, transgender, intersex, queer, and other sexual and gender minorities (LGBTIQ+) adults leaves them at serious risk of harm and institutional absence. LGBTIQ+ people in Kenya report discrimination, violence, lack of protection by law enforcement and government officials, and limited access to services. LGBTIQ+ individuals with disabilities and other marginalized identities are particularly at risk for such human rights violations.
2. This report provides an overview of human rights developments related to sexual orientation and gender identity and expression (SOGIE) since Kenya's last review in 2016. It concludes that the Government of Kenya has failed to uphold its human rights obligations regarding sexual orientation and gender minorities, resulting in violence, discrimination, and a context of fear for members of these groups. This report reviews specific human rights violations that require immediate attention by the Government of Kenya, including the right to freedom from discrimination, the right of everyone to an adequate standard of living, fair work, and education. The report also addresses the intersectional violations perpetrated against LGBTIQ+ individuals with disabilities.
3. In January 2019, civil society organizations and human rights researchers conducted fieldwork to map the human rights violations of LGBTIQ+ individuals in Kenya. This report is based on first-hand information collected from the interviews and desk research of news media outlets and reports on the issues of LGBTIQ+ individuals in Kenya.
4. Interviews were conducted with twenty LGBQ+¹ individuals living in the areas of Kisii, Nyamira, Homa Bay, Migori, and Nairobi. A portion of the study also focused on interviews with seven Deaf LGBQ+ individuals to understand their lived experiences and the intersections between two marginalized identities. The interviews primarily focused on the participants' interactions, as LGBQ+ persons, with law enforcement and government officials, health and education service providers, religious leaders, members of society, and vigilante groups. In addition, researchers visited local NGOs to gather data on cases of LGBTIQ+ human rights violations in Kenya.
5. All information in this report is used with express consent of the participants. This report also includes first-hand information used with permission from The Advocates' asylum clients about their experiences, as well as information provided by NGOs in Kenya that work on SOGIE issues.

Kenya fails to uphold its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

6. As a State Party to the ICESCR, Kenya has an obligation to protect and respect the exercise of the rights of all people – including LGBTIQ+ individuals – from discrimination (Article 2 (2)). The Government of Kenya has an obligation under the ICESCR to take progressive steps to fulfill the rights to fair work conditions to all people in its jurisdiction (Article 6), the

¹ Sample consisted only of individuals who identified as lesbian, gay, and bisexual.

highest attainable standard of physical and mental health (Article 12), and education (Article 13)

I. Non-discrimination (Art. 2 (2))

7. In its 2016 Concluding Observations, The Committee on Economic, Social and Cultural Rights (“The Committee” or “ESCR Committee”) expressed concern about the criminalization of consensual sexual relations between adults of the same sex under the Penal Code. The ESCR Committee observed the stigmatization, social exclusion, and discrimination in the enjoyment of social services — particularly healthcare services — that lesbian, gay, bisexual, transgender, and intersex persons endure.²
8. The ESCR Committee recommended to the Kenyan State the decriminalization of sexual relations between consenting adults of the same sex.³
9. In the State Party report, Kenya presented to the Committee the actions it had taken to raise awareness among public officers and law enforcement officers about the universality of rights and non-discrimination “among the population at large”⁴ by The National Gender and Equality Commissions and non-governmental organizations, as part of the country’s fulfillment of its international obligations under the ICESCR. The actions the Kenyan State presented do not achieve the minimum core obligations of non-discrimination under Article 2 (2) of the Covenant.
10. Sensitization efforts of key law enforcement stakeholders, including police and administrators, about discrimination against LGBTIQ+ individuals have largely been left to non-governmental organizations. Further, there are no studies on the impact of existing sensitization programs on stigma and discrimination.

A. Criminalization of sexual relations between consenting adults of the same sex

11. In its State Party report, the Kenyan State stated, “sexual relations between same-sex persons are expressly prohibited by national law and are unacceptable to Kenyan culture and values. However, every person in Kenya, whatever their orientation, is guaranteed the full protection of the law if their rights are violated. There are several institutions set up where all persons can lodge complaints claiming the infringement of rights. These include the Independent Policing Oversight Authority (IPOA), the Kenya National Commission on Human Rights (KNCHR) and the National Police Service (NPS) and some Civil Society Organizations (CSOs).”⁵ The Kenyan State did not provide information regarding the accessibility and adequation of such procedures, the effectiveness of these institutional procedures, and practical and measurable outcomes on remedy or accountability to those individuals who have experienced human rights abuses based on their sexual orientation or gender identity.

² Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fifth periodic reports of Kenya*, (April 6 2016), UN. Doc E/C.12/KEN/CO/2-5, ¶ 21.

³ Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fifth periodic reports of Kenya*, (April 6 2016) UN. Doc E/C.12/KEN/CO/2-5, ¶ 22.

⁴ Committee on Economic, Social and Cultural Rights, *Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant*, due in 2021, (November 14 2022) UN. Doc. E/C.12/KEN/6, ¶ 64.

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, (November 14 2022) UN. Doc. E/C.12/KEN/6, ¶ 61.

12. Kenya, along with more than 20 other African countries, continues to criminalize consensual adult same-sex sexual relations by law.⁶ Under Section 162 of Kenya’s Penal Code, any person who has “unnatural carnal knowledge against the order of nature” is guilty of a crime of up to fourteen years imprisonment. In addition, under Section 165 of the Penal Code, any male person who commits any act of “gross indecency” with another male person is guilty of a felony of up to five years imprisonment. Yet police officers utilize the existing legal provisions to harass LGBTIQ+ individuals more often than to prosecute them.⁷
13. While sections 162-165 of Kenya’s Penal Code do not criminalize LGBTIQ+ identities, they do criminalize same-sex sexual conduct. Even the vocabulary of the legal provisions is vague because it does not define what “unnatural carnal knowledge” constitutes. Therefore, police officers and government officials have considerable discretion in their interpretation of these provisions. They often arrest LGBTIQ+ individuals under these provisions of the Penal Code based solely on their own assumptions of sexual conduct.

B. Lack of measures to protect against discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics

14. **Although Kenya has taken some steps towards implementing and adopting a more comprehensive anti-discrimination law, the State party has taken no specific actions to date to provide protection on the basis of sexual orientation or gender identity and expression.** Kenya’s State Report lists several actions that the Government claims to have taken as anti-discrimination measures against sexual orientation and gender identity, such as “... sensitization forums for judges, prosecutors, the police, prison officers, and law and policy makers on how to handle matters concerning LGBT individuals are conducted.”⁸ The State report lacks data about the number of public servants to whom the sensitization was provided, and about the effectiveness of those sensitization forums have had in making transformational changes on discrimination practices .
15. Kenya did take an important step towards recognizing intersex persons by including in the 2019 National Population census a new option to identify as intersex. In addition, an intersex person was recently appointed as a commissioner on the Kenya National Commission on Human Rights.⁹
16. Not much progress, however, has been made in additional areas of concern to the Kenyan intersex community, including recognition of intersex status on birth certificates and other official documents as recommended by the Task Force on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya or registration of intersex persons as proposed in the Registration of Persons Bill 2019.¹⁰

⁶ International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, by Aengus Carroll and Lucas Ramón Mendos (Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association, May 2017), 26.

⁷ Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya’s Coast* (United States: Human Rights Watch, September 2015); see also *Data Collection and Reporting on Violence Perpetrated Against LGBTIQI Persons in Botswana, Kenya, Malawi, South Africa and Uganda*, Arcus Foundation (Oct. 2019).

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, (November 14 2022) UN. Doc. E/C.12/KEN/6 , ¶ 63.

⁹ Information received from Kenyan NGO (18 March 2022).

¹⁰ Information received from Kenyan NGO (18 February 2021).

17. Further, there has been little progress on reviewing social protection mechanisms to ensure the protection of intersex individuals' dignity and personal security; the safeguarding against violation of intersex persons' rights based on their sex characteristics; and protection against discrimination, stigma, and violence.¹¹

C. Discrimination against LGBTIQ+ persons

1. LGBTIQ+ individuals in Kenya face daily discrimination because of their sexual orientation, gender identity and expression, and/or sex characteristics

18. Although constitutional provisions ensure equality for every person under the law, sexual orientation, gender identity and expression, and sex characteristics are not explicitly protected identities under the Constitution.
19. LGBTIQ+ individuals in Kenya experience discrimination when accessing public spaces. In interviews conducted by The Advocates for Human Rights with twenty LGBTQ+¹² individuals, most reported that they had been denied access to some bars, clubs or restaurants. In some instances, individuals reported that they had been attacked in public spaces. One individual expressed that “in a restaurant, someone drunk started calling me names. I was told to walk out of the room....”¹³ Another individual stated, “When I go to restaurants you hear them talking about me. Some may come and mock me. I have lost a lot of friends because of who I am.”¹⁴ The LGBTQ+ individuals interviewed were aware of the public spaces where they faced more danger and spread the word to other LGBTQ+ people to reduce further confrontations.
20. 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.
21. LGBTIQ+ individuals face discrimination from religious leaders in Kenya. Interviewees reported that religious leaders have sometimes specifically targeted LGBTIQ+ individuals who perceive LGBTIQ+ people as an evil that needs to be addressed. Many of the people interviewed shared the view that religious leaders and practitioners purposefully excluded from religious settings. One of the individuals interviewed said, “I stopped going to church. They stigmatize you and do not let you sit near people. You cannot pray or sing, they would preach about you.”¹⁵ Many interviewees similarly reported that they stopped going to church because of the treatment and hate speech they had received. Many of these participants also expressed an interest in returning to church should the conditions change.
22. Many of the individuals interviewed noted the importance of training religious leaders about LGBTIQ+ issues to decrease discrimination based on sexual orientation, gender identity and expression, and sex characteristics. For example, the Nyanza Rift Valley and Western Kenya

¹¹ Information received from Kenyan NGO (18 February 2021).

¹² Sample consisted only of individuals who identified as lesbian, gay, and bisexual.

¹³ Interview with participant, Migori, Kenya, Jan. 8, 2019.

¹⁴ Interview with participant, Migori, Kenya, Jan. 8, 2019.

¹⁵ Interview with participant, Kisii, Kenya, Jan. 9, 2019.

Network (NYARWEK) has focused on training religious leaders on LGBTIQ+ issues as part of their work.

2. Discrimination against LGBTIQ+ persons with disabilities

23. The seven Deaf interviewees reported experiencing widespread human rights violations because of their intersecting marginalized identities. Participants noted that LGBTIQ+ advocacy groups often overlook their specific needs and therefore their human rights violations are not adequately addressed by advocacy groups.
24. Deaf interviewees reported that they have less access to information compared to other members of the LGBTIQ+ community. The Deaf LGBQ+ participants expressed a need for documents and training around LGBTIQ+ advocacy tailored to the Deaf community. Further, interviewees noted they lacked knowledge around safer-sex practices because trainings on safer-sex practices did not accommodate their disability.
25. The Deaf LGBQ+ individuals interviewed expressed fear of coming out in their own community due to homophobia and biphobia within the Deaf community. Because of this, most of the participants expressed that they would only discuss LGBTIQ+ topics with hearing people. Since the Deaf community is so small, they feared discussing LGBTIQ+ topics within the Deaf community would damage their reputation throughout the entire Deaf community. One participant said, “For us is so difficult, if you talk, everyone knows.”¹⁶ Deaf LGBQ+ individuals expressed the additional fear that coming out could leave them without the protection of the Deaf community.

D. Failure to protect LGBTIQ+ individuals from acts of violence, harassment, and abuse stemming from discrimination based on sexual orientation, gender identity and expression, and sex characteristics

1. Violence, including sexual violence, against LGBTIQ+ individuals

26. LGBTIQ+ individuals in Kenya experience widespread discrimination that often leads to violations of their rights to life, liberty, and security.
27. LGBQ+ individuals shared with the authors of this report that they feared being assaulted by family members if they disclosed their sexual orientation. In one case, a lesbian was physically and verbally assaulted by her male family members. While they physically assaulted her, they told her “You are not enough to be a human being.”¹⁷ In another case, a 25-year-old bisexual man was physically assaulted by his father and forced to abandon his house and family because of his sexual orientation. Interviewees said that they were afraid to report these violations to law enforcement and other government officials because doing so could potentially exacerbate the situation.

¹⁶ Interview with participant, Nairobi, Kenya, Jan. 15, 2019.

¹⁷ Interview with participant, Nyamira, Kenya, Jan. 9, 2019.

28. The Kenyan Government fails to protect LGBTIQ+ individuals from human rights violations by members of their communities or to educate the public about LGBTIQ+ rights. LGBQ+ interviewees also reported suffering attacks from members of their local community based on their sexual orientation. LGBTIQ+ individuals who are more open about their status as a sexual or gender minority are more at risk of aggression from people in their communities.¹⁸ In addition, a 2016 survey found that 40% of Kenyan respondents strongly agreed that being LGBTIQ+ should be a crime.¹⁹
29. The LGBQ+ individuals interviewed reported instances of physical assaults due to their sexual orientation. In one case, a lesbian woman was physically attacked by another woman when trying to explain her sexual orientation. While these types of physical assaults were common, interviewees reported that verbal assaults by community members constituted the majority of attacks against LGBQ+ individuals. Some of the participants stated that “They [community members] threaten that they will beat you when you are alone; that is why you never walk alone.”²⁰ Other interviewees reported hearing comments such as: “You should be banned and killed”²¹ and “[You] should be treated like dogs.”²² Therefore, interviewees reported that they are forced to protect themselves, without support from members of the community, law enforcement officials, or family members.
30. Law enforcement officials actively target and persecute LGBTIQ+ individuals by utilizing Section 162(a),(c) and 165 of the Penal Code.²³ They threaten LGBTIQ+ individuals and use violence to extract confessions.
31. The individuals interviewed for this report described frequent persecution and arrests of LGBIQ+ individuals by law enforcement officials. A common pattern emerged from the interviews in which LGBIQ+ individuals were arrested because of their sexual orientation, but charged for other crimes like loitering, gambling, or simply detained without a formal charge. In one instance, one interviewee reported that he was attacked by a law enforcement officer because he was walking late at night with his partner. He stated, “He [the law enforcement officer] gave me a slap I will never forget. They have never been friendly to us.”²⁴ A common experience among the LGBQ+ individuals interviewed for this report was for law enforcement officials to pressure LGBQ+ individuals they had detained for bribes in exchange for their release. This was possible in large part, because law enforcement officials had not brought official charges against the LGBQ+ individuals.
32. Police also use violence against LGBTIQ+ individuals in detention. A gay male client of The Advocates was meeting with other LGBTIQ+ activists in a restaurant when police entered and arrested them, telling them they were “evil.” One police officer hit the client on the back of the neck with an AK47. The officers took him and his friends to a detention center, where a police

¹⁸ Neela Ghoshal, *Lesbian, Bisexual, and Queer Women Speak Out in Kenya*, Huffington Post, Feb. 20, 2016, https://www.huffingtonpost.com/neela-ghoshal/lesbian-bisexual-and-queer-women-speak-out-in-kenya_b_9280166.html.

¹⁹ International Lesbian, Gay, Bisexual, Trans and Intersex Association, *The ILGA-RIWI 2016 Global Attitudes Survey on LGBTIQ+ People in Partnership with LOGO* (2016).

²⁰ Interview with participant, Homabay, Kenya, Jan. 12, 2019.

²¹ Interview with participant, Homabay, Kenya, Jan. 12, 2019.

²² Interview with participant, Migori, Kenya, Jan. 8, 2019.

²³ Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya’s Coast* (United States: Human Rights Watch, September 2015).

²⁴ Interview with Participant, Migori, Kenya, Jan. 8, 2019.

officer sexually assaulted and verbally abused the client due to his sexual orientation. The police officer justified his actions, claiming “this is what you wanted.” Ultimately, the client fled Kenya for fear of further abuse and being outed to his family.²⁵

33. Vigilante groups are another primary source of fear for LGBTIQ+ individuals because of their violent attacks on LGBTIQ+ individuals that are supported by members of the community and even LGBTIQ+ individuals’ family members. Vigilante groups specifically target LGBT individuals in Kenya by creating fear and promoting violence. Most of the participants interviewed expressed great fear of vigilante groups, especially those living in rural areas. For example, interviewees said, “If they know you are gay they will kill you. They just kill,”²⁶ and “They think you are promoting satanism, them murdering you would be very easy.”²⁷ The LGBTIQ+ individuals interviewed for this report universally observed that law enforcement officials are unwilling to prevent attacks by or protect LGBTIQ+ individuals from vigilante groups.²⁸
34. In June 2022, the Kenyan organization TEFL-K, a co-author of this joint submission, was targeted in the Kisii region of Kenya. On June 12, 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 June 14, 2022, police raided a community hotspot mentioned by the blogger who had shared the video and arbitrarily arrested five individuals, who were later released after TEFL-K intervention. TEFL-K also received information that the vigilante group known as Sugungu Sungungu was planning to conduct raids on all SOGIE hotspots in Kisii and making threats against TEFL-K staff. On June 15, 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 June 16, 2022 of an apparent suicide. By June 18, 2022, TEFL-K staff had documented at least 12 physical attacks, several more cases of evictions, and 23 incidents of cyberbullying.²⁹
35. There have been, however, some positive steps forward in Kenya. One example is a three-year partnership between an NGO based in Kisumu, Keeping Alive Societies Hope (KASH), and the Kisumu police to address arbitrary arrests and physical attacks of female sex workers, men having sex with men, and other security threats and harassment. The project involved training programs for the public and police, as well as media campaigns. It resulted in a reduced number of arrests and sexual violence against and enhanced protection of LGBTIQ+ people, as well as better relations between the LGBTIQ+ community and police.³⁰

²⁵ Interviews with clients of The Advocates (2015-2018). On file with authors.

²⁶ Interview with participant, Nyamira, Kenya, Jan. 9, 2019.

²⁷ Interview with participant, Kisii, Kenya, Jan. 12, 2019.

²⁸ Katy Migiro, *Homophobic Mobs Attack LGBT People in Kenya with Impunity*, All Africa, Sept. 28, 2015, <https://allafrica.com/stories/201509280135.html>.

²⁹ Email and What’s App communications to The Advocates for Human Rights from TEFL-K, June 19, 2022.

³⁰ Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, *Public Health Innovations* (Jul. 2020) at 16.

2. *Lack of accountability for law enforcement and vigilante groups who commit human rights violations against members of the LGBTIQ+ community*

36. Due to arrests and persecution by law enforcement, LGBQ+ individuals in Kenya reported that they distrust law enforcement officials. LGBQ+ individuals interviewed expressed their inability to report criminal cases to the police and government agencies because doing so would affect them negatively. In some instances, respondents were the victims of crimes and human rights violations, but they did not seek help from police because the underlying violation happened because of their sexual orientation. For example, when one gay man was blackmailed by someone from his local community, he decided to pay 10,000 KSh, the equivalent of about 100 US dollars, rather than report the incident to the authorities out of fear that it would damage his reputation.

II. Right to work (Art. 6)

37. 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 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. In some instances, documented discrimination in the workplace pushed LGBTIQ+ individuals into sex work as their only option for employment.³¹

III. Right to physical and mental health (Art. 12)

38. In its 2016 Concluding Observations, the ESCR Committee expressed its concern about the inadequate budgetary allocation to the health sector, the limited coverage of the National Health Insurance Fund, and “the significant share of out-of-pocket payments in health expenditure, which limit access to health for disadvantaged and marginalized persons.”³² The ESCR Committee recommended to “put an end to the social stigmatization of homosexuality and ensure that no one is discriminated in accessing healthcare and other social services owing to their sexual orientation or gender identity.”³³

39. In its State Report, Kenya reported that it had engaged in “sensitization of healthcare workers to reduce stigmatizing attitudes in healthcare settings; the development and dissemination of population-specific and user-friendly information; and the promotion of the acceptance of all persons as part of the community for increased service uptake.”³⁴ This response, however, lacks data regarding whether there exists a targeted national public policy on gender identity and sexual orientation, or if the information disseminated belongs to isolated programs.

³¹ Interview with participant in Kenya, January 2019.

³² Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fifth periodic reports of Kenya*, UN. Doc E/C.12/KEN/CO/2-5 ¶ 51.

³³ Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fifth periodic reports of Kenya*, (April 6 2016) UN. Doc E/C.12/KEN/CO/2-5, ¶ 51.

³⁴ Committee on Economic, Social and Cultural Rights, Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant, due in 2021, (November 14 2022) UN. Doc. E/C.12/KEN/6, ¶ 63.

40. Interviewees reported facing significant barriers to accessing healthcare. Participants' experiences with healthcare providers showcase the barriers that exist as LGBQ+ individuals try to access essential services. There was a clear distinction 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.³⁵
41. Most of the LGBQ+ individuals interviewed for this report decided not to disclose their sexual orientation to healthcare providers because they feared doing so could affect their treatment. In addition, interviewees expressed fear regarding the lack of privacy for patients and how it could affect their reputation in the community. In one case, an LGBQ+ individual stated that "It is impossible, I would feel ashamed. I do not want doctors to start talking about me."³⁶ In another case, a gay man changed his name when looking for sexually transmitted infection (STI) treatment services out of fear of confidentiality issues. It was clear from the interviews that LGBQ+ individuals mistrust healthcare providers, especially providers in public hospitals. Further, some healthcare providers have reportedly conducted forced anal examinations that were unrelated to the health concerns presented by the individual seeking treatment.³⁷
42. Some healthcare providers refuse to treat LGBQ+ 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 LGBQ+ individuals. In one instance, a gay man decided to go to a public hospital for Pre-Exposure Prophylaxis (PrEP) medication but was refused treatment from the doctors because they stated: "We do not treat people like you here."³⁸ Other concerns include: lack of clinics that will treat LGBTIQ+ patients,³⁹ high cost of treatment, an insufficient number of providers, understaffed medical centers, and geographic barriers.⁴⁰
43. Interviewees emphasized the importance of training healthcare service providers on dealing with LGBTIQ+ individuals. Many interviewees stated that they would only go to NGOs and civil society organizations for healthcare services because of the relationship of trust that existed between them. Some of the participants expressed a lack of civil society organizations and NGOs providing direct services, however, specifically in rural areas. Therefore, LGBTIQ+

³⁵ Levis Nderitu, *Key Population Hero: Addressing stigma and discrimination among LGBT people in Kenya*, Linkages, Dec. 9, 2016, <https://linkagesproject.wordpress.com/2016/12/09/key-population-hero-addressing-stigma-and-discrimination-among-lgbt-people-in-kenya/>.

³⁶ Interview with participant, Nairobi, Kenya, Jan. 17, 2019.

³⁷ Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya's Coast* (United States: Human Rights Watch, September 2015).

³⁸ Interview with participant, Migori, Kenya, Jan. 8, 2019.

³⁹ 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>

⁴⁰ Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, *Public Health Innovations* (Jul. 2020).

individuals are dependent on the existence of private entities to provide them with adequate access to health services.⁴¹

44. Transgender people in Kenya interviewed for a recent study stated that mental health services tailored to the needs of transgender persons, such as gender or body dysmorphia, were only available in a small number of organizations. They also noted healthcare workers' negative attitudes and their 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 on how best to provide care.⁴² 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 persons. Respondents also noted that the lack of access to mental health services resulted in negative coping mechanisms such as substance use within these communities.⁴³ LGBTIQ+ refugees and asylum seekers in Kenya also noted major barriers to accessing healthcare services, due to lack of necessary documentation and insufficient clinics and service providers in refugee camps.⁴⁴
45. A July 2020 report states that the Ministry of Health is "generally considered an ally in the struggle for LGBTIQ+ equality," and highlights the role of the National AIDS & STI Control program in addressing discrimination and violence.⁴⁵ It is important to point out, however, that the HIV and AIDS framework highlights interventions targeting men who have sex with men only, but not those that address the LGBTIQ+ communities.⁴⁶
46. 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.⁴⁷ The Ministry of Health, however, has not yet developed other specific policies related to LGBTIQ+ persons.⁴⁸

⁴¹ 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

⁴² 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.researchsquare.com/files/rs-1076697/v1/5ccce701-feda-4a12-bdcb-cfedf2e932cb.pdf?c=1638377442>.

⁴³ Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, *Public Health Innovations* (Jul. 2020).

⁴⁴ 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.

⁴⁵ Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, *Public Health Innovations* (Jul. 2020).

⁴⁶ Information received from Kenyan NGO (18 March 2022).

⁴⁷ Analysis and documentation of Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya, *Public Health Innovations* (Jul. 2020).

⁴⁸ Information received from Kenyan NGO (18 March 2022).

47. In 2020, the Ministry of Health Taskforce on Mental Health recommended that the Government declare “mental health” a national emergency,⁴⁹ but the Taskforce failed to mention LGBTIQ+ persons as a key population in their strategy or identify sexual orientation and gender identity and expression as factors linked to mental health concerns.
48. 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.”⁵⁰ It does not mention sexual orientation or gender identity and expression in its definition of non-discrimination. The Policy also identifies several vulnerable groups, including women and children, but does not mention LGBTIQ+ persons.⁵¹

IV. Right to education (Arts. 13–14)

49. In its State report, the Kenyan Government reported the Education Act 2012 as one of the “legislation and policies have been developed that attest to the realization of the principles of equality and non-discrimination.”
50. Our interviews also suggest LGBQ+ individuals do not enjoy the right to access to education in Kenya despite the government’s international and constitutional obligation to provide the right to education to all people. According to Article 53 (1) (b) of the Constitution, every child has a right to free and compulsory education. In addition, Article 56 (b) provides protection for minorities and marginalized groups to ensure special opportunities for their educational development.
51. Multiple LGBQ+ interviewees reported being expelled from schools based on their sexual orientation. School administration expelled and suspended students who were seen engaging in same-sex conduct. School staff members expressed concern about LGBQ+ students “influencing” other students into same-sex relations. According to interviewees, schools maintained policies to actively identify LGBTIQ+ students. One of the LGBQ+ interviewees described how headmasters would physically abuse LGBTIQ+ students until they confessed their sexual orientation and were encouraged to give up other LGBTIQ+ students’ names.⁵²
52. 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 Deputy Director of the school with his mother to inform them of the situation and demand protection, he was asked

⁴⁹ 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/>.

⁵⁰ Kenya Mental Health Policy 2015-2030, *Ministry of Health*, (Aug. 2015).
<https://publications.universalhealth2030.org/uploads/Kenya-Mental-Health-Policy.pdf>.

⁵¹ *Id.*

⁵² Interview with participant in Kenya, Jan. 2019.

to pay 2,000 Ksh, the equivalent of about twenty US dollars, to the Deputy Director in order to ensure his protection.⁵³

53. In the current year, 2022, LGBTIQ+ students have protested the government proposal —by the Cabinet of Ministers — to restrict their access to boarding schools.⁵⁴ Reports highlighted the proposition by the Cabinet Secretary for Education that “homosexual students be barred from boarding schools.”⁵⁵

I. Suggested Questions for the Government of Kenya

54. Suggested questions related to legislation:

- What steps has the Kenyan government taken to decriminalize sexual relations between consenting adults of the same sex under the Penal Code?
- What steps has the Kenyan government taken to enact and implement a comprehensive equality and anti-discrimination law outlawing discrimination on the grounds of sexual orientation, gender identity and expression, and sex characteristics as recommended by the ESCR Committee in its last review?
- What steps has the Kenyan government taken to implement laws and policies that affirm the rights of intersex persons and transgender persons to change names and gender markers in government-issued documentation?

55. Suggested questions relating to acts of violence, harassment, abuse, and discrimination against LGBTIQ+ individuals:

- What concrete steps has the State taken to raise awareness to mitigate social prejudices, stigmatization, harassment, discrimination, and violence against individuals because of their sexual orientation, gender identity and expression, and/or sex characteristics?
- What concrete steps has the State taken to include gender and sexuality concerns, specifically LGBTIQ+ concerns, and health information in university and medical school criteria?
- What concrete steps has the State taken to protect LGBTIQ+ individuals’ exercise of their right to education and stop the practice of expelling LGBTIQ+ students from schools because of their sexual orientation, gender identity and expression, and/or sex characteristics?
- What concrete steps has the State taken to collaborate with civil society organizations working on LGBTIQ+ issues and support their work by creating joint projects to prevent violations and build protections for LGBTIQ+ individuals?
- What concrete steps has the State taken to put measures in place to protect individuals from discrimination and abuse based on their sexual orientation, gender identity and expression, and/or sex characteristics by religious leaders?

⁵³ Interview with participant in Kenya, Jan. 2019.

⁵⁴ 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>

⁵⁵ *Id.*

- What concrete steps has the State taken to prevent law enforcement from arbitrarily arresting individuals based on their sexual orientation, gender identity and expression, and/or sex characteristics?
 - What concrete steps has the State taken to prevent human rights violations perpetrated by vigilante groups and prosecute the perpetrators?
56. **Suggested questions relating to lack of accountability for abuse and harassment committed by members of law enforcement and vigilante groups:**
- What steps has the State taken to ensure inclusion of LGBTIQ+ issues in the curriculum used to train law enforcement officers?
 - What steps has the State taken to hold members of law enforcement and vigilante groups accountable for human rights violations against LGBTIQ+ individuals?
 - What steps has the State taken to ensure LGBTIQ+ persons whose fundamental rights are violated are adequately compensated?
 - What steps has the State taken to establish an independent and impartial mechanism to investigate allegations of torture and abuse of LGBTIQ+ individuals in detention?
57. **Suggested questions related to LGBTIQ+ persons with disabilities:**
- What steps has the State taken to engage with Deaf LGBTIQ+ individuals in order to gain information about their specific needs?
 - What steps has the State taken for training to government officials, law enforcement, and the community at large to educate them about the specific needs of Deaf LGBTIQ+ individuals?
 - What steps has the State taken to provide protection to LGBTIQ+ persons with disabilities, such as Deaf individuals, who are more vulnerable to discrimination, harassment, and violence?