Analysis and documentation of

Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIE-SC) norm shift in Kenya

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Nguru Karugu	Public Health Innovations (PHI)
Chris Ouma	Public Health Innovations (PHI)
Jeffrey Walimbwa	Public Health Innovations (PHI)
Muthoni Ngige	Public Health Innovations (PHI)
Serah Nduta	Public Health Innovations (PHI)
Owuor Olungah	University of Nairobi
Evans Gichuru	Kemri-Wellcome Trust Research Institute, Mombasa

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Abbreviations and Acronyms

AIDS:	Acquired Immune Deficiency Syndrome
AJWS:	American Jewish World Service
ALFJ	Astraea Lesbian Foundation for Justice
CDC:	US Centre for Disease Control and Prevention
CEDAW:	Committee on the Elimination of All Forms of Discrimination against Women
COK:	Constitution of Kenya (2010)
GALCK:	Gay and Lesbian Coalition of Kenya
GOK:	Government of Kenya
HIV:	Human Immunodeficiency Virus
HIVOS:	Humanistic Institute for Cooperation with Developing
INEND:	Initiative for Equality and Non-Discrimination
IPOA:	Independent Policing Oversight Authority
IPSK:	Intersex Persons Society of Kenya
KCPF:	Kenya Christian Professional Forum
KII:	Key Informant Interview
KHRC:	Kenya Human Rights Commission
KLRC:	Kenya Law Reform Commission
KNHRC:	Kenya National Commission on Human Rights
LEHA:	LBQ Education on Health and Advocacy
LGB:	Lesbian, Gay and Bisexual
LGBT:	Lesbian, Gay, Bisexual and Transgender
LGBTI:	Lesbian, Gay, Bisexual, Transgender and Intersex
MOH:	Ministry of Health (Kenya)
MSM:	Men who have sex with Men
NASCOP:	National AIDS & STI Control Program (Kenya)
NCCK:	National Council of Churches of Kenya
NCHRD:	National Coalition of Human Rights Defenders
NGLHRC:	National Gay and Lesbian Human Rights Commission
NGO:	Non-Governmental Organization

NYARWEK:	Nyanza, Rift Valley and Western Kenya Network
NSI:	Norm Shift Intervention
OSIEA:	The Open Society Initiative for Eastern Africa
PHI:	Public Health Innovations
SAC:	Study Advisory Committee
SOGIE:	Sexual Orientation and Gender Identity Expression
SOGIE-SC:	Sexual Orientation, Gender Identity, Expression and Sex Characteristics
TGNC:	Transgender and Gender Non-Conforming
UHAI EASHRI:	East African Health and Rights Initiative
UN:	The United Nations

Definition of Key terms

For purposes of this research, the following definitions were adopted and operationalized;

A. Definitions and clarification on terminologies relating to SOGIE-SC:

a) **SOGIE:** is an acronym that stands for Sexual Orientation, Gender Identity, and Gender Expression. For this study, the acronym SOGIE-SC has been adopted to include "sex characteristics," covering intersex persons. SOGIE-SC is therefore used here to cover Lesbian Gay Bisexual Transgender and Intersex (LGBTI) persons.

b) **Gender minority:** refers to people; (i) whose inner self-identity does not match gender assigned at birth, (ii) whose gender expression (or socially assigned gender) does not match gender assigned at birth, or (iii) whose social expression does not conform to relevant cultural norms and expectations of gender.

c) **Intersex:** is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male.

d) **Sexual orientation:** is an enduring pattern of romantic or sexual attraction (or a combination of these) to persons of the opposite sex or gender, the same sex or gender, or to both sexes and more than one gender.

e) **Transgender:** is an umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.

f) **Gender:** refers to socially constructed characteristics of men and women e.g. norms, roles, and relationships between groups of people.

g) **Gender identity:** refers to a person's internal sense and personal experience of gender.

h) **Gender Norms**: refers to the expectations of what it means to be a man or woman, including social and political roles, responsibilities, rights, entitlements and obligations, and the power relations between men and women.

i) **Gender Expression:** refers to the external display of one's gender, through a combination of appearance, disposition, social behavior, and other factors, generally measured on a scale of masculinity and femininity. Gender expression does not always match gender identity.

j) Based on a common misconception that has led to various people referring to the LGBTI communities as simply **homosexual,** this study does not assume that the LGBTI and/or the SOGIE-SC banner is synonymous with being homosexual. Hence, the term 'homosexuality' shall only be used while referring to people who are primarily sexually attracted to persons of the same sex. Terming all persons who fall under the LGBTI banner as homosexual is erroneous, as this grouping includes those who do not engage in homosexual (same sex) relationships.

B. Definitions of terminologies relating to norms:

k) **A norm** is a social construct that exists as a collectively shared belief about what others do (*what is typical*) and what is expected of others to do within the group (*what is appropriate*). Meaning, people conform to group expectations out of the human need for social approval and belonging. If individuals depart from a norm, they frequently lose social approval and may be ostracized, or sanctioned in some other way. Expectations and

conformity vary from society to society and the deviations may not always reflect legal and policy mechanisms set out or sanctioned.

l) **A social norm** is a set of social expectations shared within a valued *reference group*. It is important to note that there are many variations of definitions of social norms used by different sectors and fields. However, in the broadest terms, there is agreement that social norms are *"beliefs about which behaviors are appropriate within a given group."* They are the perceived standards of acceptable attitudes and behaviors prevalent within a community/group; they are informal and often implicit rules that most people accept and abide by. There is also agreement that norms play an important role in shaping individual and group behavior, that they are meaningful in the context of groups/group identity, and that whether a person complies with a norm depends on multiple internal and external factors. By and large, social norms refer to the rules governing a behavior, not the behavior itself.[1,2] It is also important to note that some norms may perpetuate harmful practices and reinforce gender and other inequities.

m) **A reference group** can be defined as *"everyone who matters to an individual in a certain situation."*[3] Or simply individuals whose opinions matter to you and shape your behavior. Reference groups differ by behavior and by population groups and are crucial for understanding social norms. Thus, reference groups do have varying influences on individuals and the norms that may underpin behaviors.

n) **Social exclusion** can be defined as the "the lack of or denial of resources, rights, goods and services, and the inability to participate in the normal relationships and activities available to the majority of people in a society, whether in economic, social, cultural or political arenas."[4]

o) **Best practice** refers to a promising norm-shifting intervention, methodology or technique that has been generally accepted as superior to any alternatives because it produces results that are superior to those achieved by other means or because it has become a standard way of doing things, e.g., a standard way of shifting social or legal norms relating to LGBTI issues.

p) **Actor** is a person, individual or participant in processes or platforms relating to the subject or sector of interest. In this research project, an actor is a person/individual who is involved and/or engaged on issues relating to norms, gender and sexuality, human rights, religion, culture, legal and policy matters, and practice.

q) **Feminist Research** will encompass generation of new knowledge (understanding the lived realities of LGBTI communities within their diversity in gender identity and expression) and the production of social change (including analysis and documentation of norm shifting interventions) among LGBTI communities in Kenya. It will also encompass feminist research methodologies that acknowledge the positionality of the researcher, use ethical data collection methods, seek to represent human diversity, and recognize the pervasive influence of gender relations among other things.

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[1]Bapu Vaitla et al., Social Norms and Girls' Well-Being: Linking Theory and Practice (Washington: Data2X, 2017), 28.
[2]Cristina Bicchieri, Norms in the wild: How to diagnose, measure, and change social norms (Oxford: Oxford University Press, 2016).
[3]Bicchieri, Norms in the Wild.
[4]Ruth Levitas et al., The Multi-Dimensional Analysis of Social Exclusion (Bristol: University of Bristol, 2007).

Chapter 1
Background and Context

Introduction

In 2016, led by LGBTI rights groups, activists filed petitions in the High Court of Kenya seeking to strike down Sections 162 (a), (c) and 165 of the Penal Code of Kenya. The petitions: *Petition Number 150 of 2016 (referred to as the first Petition) and Petition Number 234 of 2016 (referred to as the second Petition)*, heard jointly in January and February 2018, argued that the disputed sections violated rights guaranteed to all Kenyans in Chapter 4 of the 2010 Constitution of Kenya (COK, 2010). The activists further argued that the Penal Code was an outdated colonial handover; *the unfortunate legacy of British colonial law first introduced into Kenya in 1948 and last revised in 1967*.

#Repeal162, as the petitions were popularly known, gained momentum on social media as people from all over the world rallied together and stood in solidarity with the Kenyan LGBTI community. After a postponement of the ruling on February 22, 2019, it was expected that the High Court would make a historical judgment in favor of a marginalized and disenfranchised LGBTI community. However, the High Court in a ruling delivered by a three-judge bench on May 24, 2019, decided that it had not been provided with enough evidence of discrimination against the LGBTI community to change the law.

Human rights groups believed that a positive outcome would have been a major step forward for equality and non-discrimination, regardless of one's sexual orientation, gender identity and expression. They opined however that while a victory would have provided a golden opportunity to protect the human rights of LGBTI persons, it would not have meant that LGBTI people in Kenya would immediately be fully free or treated as equals by their fellow citizens. A victory would have only underscored how much more work needed to be done.

Despite documented victories by the LGBTI communities across Africa in promoting reforms to repeal restrictions on sexual orientation and gender identity, social inclusion is yet to be fully realized in most countries, Kenya included. Stigma, discrimination and violence still stubbornly persist and the dominant cultural and religious traditions range from indifferent to antagonistic when it comes to rights of LGBTI persons.

Norms matter because they influence behavior. Since some norms perpetuate harmful practices and reinforce gender and other inequities, a solid understanding of existing norms in a specific community; who maintains (or is perceived to maintain) these norms, and how they relate to behaviors, is critical in programming. Shifting norms and beliefs especially around gender identity and sexual orientation, and accepting diversity of bodies that include intersex variations, are among the greatest challenges faced by the LGBTI community. Norms around gender, sexuality and sex characteristics that do not conform to the male/female binary can greatly influence how individuals, societies, institutions, and even the State behave and act towards LGBTI persons i.e. norms can support discrimination and use of violence; and norms can also help protect against the violence and discrimination of LGBTI people.

Statement of the problem

Research on norm change has been fairly limited with many prevailing questions that would help inform and refine norms theorization.[5] Current research on what works to change norms is primarily related to health and gender, with many of these studies focusing on projects that are explicitly on normative approaches being implemented primarily in rural communities. More is needed to understand what is effective in different sectors[6] and contexts. Research on

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[5]Institute for Reproductive Health, *Learning Collaborative: Advancing Research and Practice on Normative Change for Adolescent Sexual and Reproductive Health and Well-being Developed for the Convening Meeting* (Washington: Georgetown University and FHI 360, 2016).
[6]Institute for Reproductive Health, *A Landscape Review: Addressing Social Norms in Six USAID Sectors* (Washington: Georgetown University, 2019).

LGBTI persons is limited in Kenya, and existing data is not disaggregated to cover population-specific characteristics such as gender and binary identities.

Without data and analysis that understands the root causes fueling discriminatory norms to inform a theory/pathway of change to shift those norms, it is difficult to design programs and formulate policies that are comprehensive and responsive to the health and rights needs of LGBTI persons.

Research goal and objectives

The aim of the study was to generate evidence on SOGIE-SC norm shift in Kenya. Generally, the research intended to answer the following question: *what is the impact of norms on the lived realities of SOGIE-SC communities and how can these be shifted to be more inclusive*?

Specifically, the research had the following questions:

i) *How do norms affect the lived realities of SOGIE-SC communities in Kenya?*

ii) *How has SOGIE-SC norm shift work been done in Kenya?*

iii) *What are the opportunities and barriers to norm shift for SOGIE-SC communities in Kenya?*

The study was guided by the following objectives:

i) *To identify and document the effect of norms on the lived realities of SOGIE-SC communities in Kenya.*

ii) *To identify and document promising practices for SOGIE-SC norm shift work in Kenya.*

iii) *To explore opportunities and barriers that impact SOGIE-SC norm shift work in Kenya.*

Chapter 2

Literature

Introduction

This chapter gives a summary of the findings from literature review and highlights areas of investigation guided by the research objectives.

Understanding social norms

The study of social norms has a long history in sociological thought, and conceptualizations of social norms have been developed across multiple disciplines in the social sciences and fields of thought. Across various sectors, social norms are considered important because they determine the roles, responsibilities and power that drive inequalities based on age, sex, education, disability, ethnic differences, and other factors.[7] Norms identified during the study were sorted into the following broad categories: legal, religious and cultural norms.

Theories to changing social norms

Various theories have been postulated to explain how social norms interact to influence social order. Such theories include:

*(i) **Marxist theory** - proposes determinants of behavior, focusing on power and social coercion to maintain social order.*

*(ii) **Structuration theory** - developed by Anthony Giddens, this theory considers social norms as both motivation for, and consequences of, individual behavior. Social psychological thought emphasizes the idea of conforming to valued practices because of a desire to conform.*

*(iii) **Gender socialization theory** - offers understanding of the process of how gender is acquired and the influence of various institutions in teaching and reinforcing gender.*

*(iv) **Game theory** - utilizes the idea of equilibrium in economics to explain the emergence and maintenance of social norms. This theory helps to explain support for harmful practices through adherence to norms because others do so, and because there is no incentive to change.*

Norm creation and maintenance

The multi-disciplinary generation of theories has led to varied understandings of how social norms are created and upheld, and how norms influence behavior, with little consensus on any single theory. However, it is important to note that theory is critical to the success of social norm interventions because it guides thinking regarding what we expect to happen and why we expect it to happen. Theories of change to shift social norms hypothesize that changing social norms is an important component of many behavior change interventions. Theorists have also recognized that social norms can manifest and be maintained by multiple factors. For example, in the Theory of Normative Social Behavior developed by Rimal and Real, the influence of social norms on behavior is proposed to be moderated by three factors: (i) behavioral (*outcome expectations—positive or negative*); (ii) individual (*self-efficacy and ego involvement—behavior*

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[7]Institute for Reproductive Health, *A Landscape Review.*

aligns with a person's own self-perception); and (iii) contextual (*norms*).[8]

Moreover, created and maintained by human interaction, social norms function at both individual and collective levels. Integral to understanding norms, attitudes are held by individuals whereas norms are socially manifested and maintained. Structural drivers may keep norms in place even as individual attitudes have fallen out of favor with a practice. In addition, it is critical to note that some norms are more susceptible to change than others; some norms change quickly while others change very slowly. Hence, there are norms that may be challenged by resistance and those which are relatively easy to shift. It is equally important to have knowledge on the types of incentives that are most effective for a particular audience, and the key dimensions of norm change that should be included in a "minimum package" of activities that address such norms.[9]

Social norms are often perceived as generating incentives and barriers to the results that different project interventions and programs seek to achieve. In addition, social norms are understood to limit the ability of marginalized and disadvantaged populations e.g. sexual and gender minorities, persons with disabilities, rural populations etc. to participate in interventions. By and large, there is wide variation in the extent to which sectors, and programs within sectors, identify and describe the specific social norms that drive behaviors. While an intervention may also address other determinants of behavior i.e. the needs for knowledge, skills, capacity and policy, social norms are considered a key influence on behavior and require clear strategies to identify and address them.

Study conceptual framework

The conceptual framework for this research is built on Bronfenbrenner's ecological model,[10] which points out the relationships between multiple levels of the socioecological system. The adaptations included putting the LGBTI community and/or LGBTI persons at the inner circle where various domains intersect around power[11] (gender and sexuality). The approach used in developing this framework identified norms (social and legal[12]) as the sole focus of work. Thus, the modification of Bronfenbrenner's model highlights the researchers' understanding that norms exist within—and shape and concurrently are shaped by—the systems (institutions and society) in which they are embedded. The framework also attempted to describe and explain how these norms (social and legal) interact with, and are influenced by, other individual and social structural factors. Central to this research framework were the following elements:

a) Multiple relationships between domains (power, individual, institutional and social); the intersections of these domains represent opportunities to develop or transform desired outcomes. In other words, multilevel approaches that target these intersecting opportunities may be able to leverage norm change for improved lived realities of LGBTI persons.

b) The role of power in decisions to adhere to (or not to adhere to) existing norms, and in identifying who benefits from retaining conventional norms, as central to understanding how norms develop and persist. Norms "compliance" and "deviance" are central components of social norms theory. Thus, this framework presents power as being a central feature underlying and enforcing social norms, as well as behavior and lived realities of LGBTI persons.

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[8]Rajiv N. Rimal and Kevin Real, "How Behaviors are Influenced by Perceived Norms: A Test of the Theory of Normative Social Behavior," *Communication Research* 32, no. 3 (2005): 384-414.

[9]Robert B. Cialdini and Melanie R. Trost, "Social Influence: Social Norms, Conformity and Compliance," in *The handbook of social psychology*, ed. Susan T. Fiske, Daniel T. Gilbert and Gardner Lindzey (New York: McGraw-Hill, 1998), 151-192.

[10]Urie Bronfenbrenner, *The Ecology of Human Development: Experiments by Nature and Design* (Cambridge: Harvard University Press, 1979). Bronfenbrenner´s ecological system theory is used to mainly describe human development including human socialization, since socialization is seen as a fruit of development. According to Bronfenbrenner, development and socialization are influenced by the different width rounds or circles of the environment with which a person is in active inter-relation. This includes three significant assumptions: 1) person is an active player, exerting influence on his/her environment, 2) environment is compelling the person to adapt to its conditions and restrictions, and 3) environment is understood to consist of different size entities that are placed one inside another, of their reciprocal relationships and of micro-, meso-, exo- and macrosystems. For social norms, Bronfenbrenner's model places norms in context, demonstrating the role they have in yielding behavioral outcomes and the importance of other factors to these same outcomes.

[11]This study recognizes why power is an important element that must be included in the proposed framework. The study will utilize feminist theories in framing the concept, understanding of "Power," what is power, how it is defined, and how it influences social norms.

[12]In this context, legal norms refer to written rules – laws and regulations, for instance – enforced by formal organs (such as the State) with the authority to prosecute non-compliers. This is study is cognizant of the fact that legal and social norms can influence each other, both positively (when one causes the shift and realignment of the other) and negatively (when one "crowds out" the other).

Since the literature reviewed including the research was framed along the human rights pillars of equality and non-discrimination, the adaptations of the Bronfenbrenner's model led to putting desired outcome within three norms domains intersecting around the pivot of power and denoting the interaction between norm dynamics and human rights outcomes (LGBTI inclusion). Hence, the conceptual framework for the research was as follows;
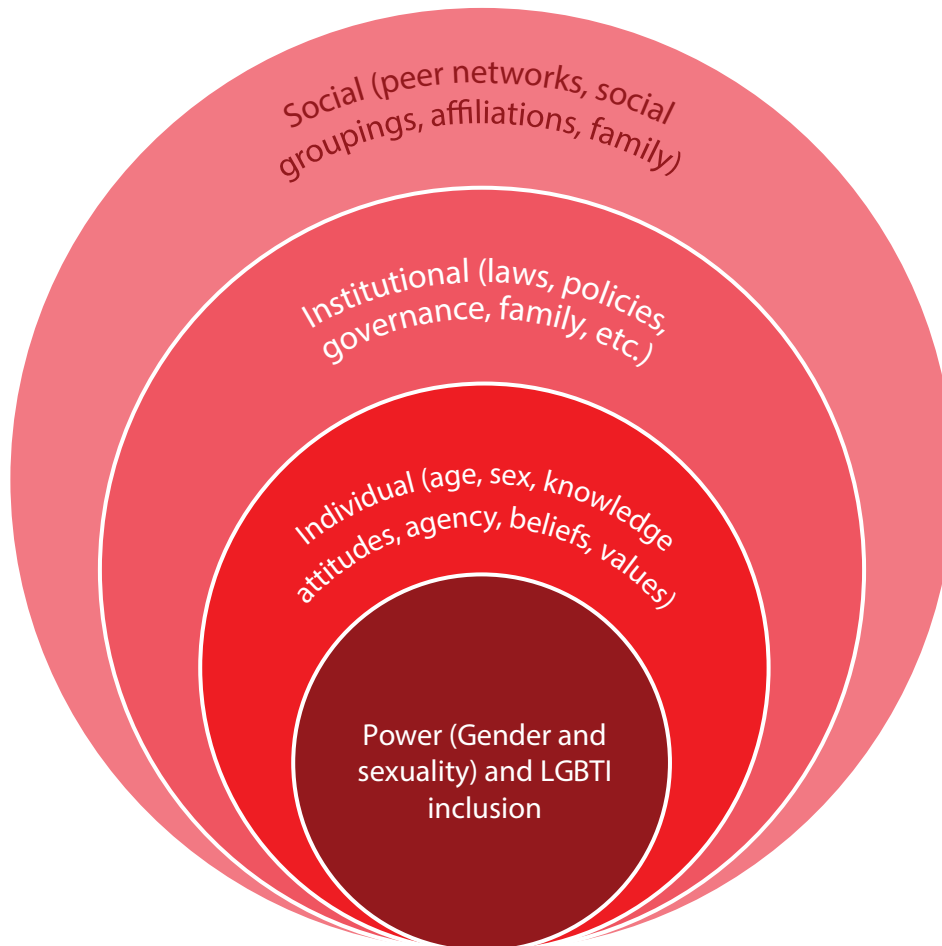
Figure 1: The diagram above represents the conceptual framework for this research

This framework was designed to highlight the understanding that social and legal norms are embedded in the social ecology. Power is at the center, interacting within and between each of the three domains to form, enforce and transform social and legal norms, as illustrated by the inner circle. The inner circle is labeled power and LGBTI inclusion, to emphasize the importance of power and how power affects norms around gender and sexuality, and hence the lived realities of LGBTI communities. The inner circles represent the way that social and legal norms are shaped by elements of the social system, and in turn shape those systems.

The individual domain includes age, sex, ethnicity, knowledge, attitudes, values, beliefs, self-efficacy, skills, and agency. The social domain includes social and peer networks, family configuration, social capital and support, and positive deviants. And the domain labeled institutional encompasses polices and laws, governance structures, and religious institutions. Overall, this framework looked at how cultural, religious and legal conceptualizations tend to impact the lived realities (human rights) of LGBTI communities.

Chapter 3

Research methodology

Introduction

This research was largely qualitative in nature and utilized both primary and secondary data sources. The research focused more on qualitative methodology, since qualitative methods have been highlighted as being particularly useful for understanding the nuances and specific contexts in which social norms operate, and in identifying the drivers of change.

Study Design

The research involved collecting both primary and secondary data focused on understanding promising practices for promoting norm change related to LGBTI rights in the context of Kenya. This study used a participatory action research design employing a feminist research approach. Mixed data collection techniques that included secondary literature review, case study analyses and key informant interviews were utilized. The feminist research approach was adopted because of its emphasis on analyzing power dynamics that surface between the researchers and the community in all stages of research, including shared responsibility and ownership of the research processes and findings.

Utilizing principles of good participatory practice, a Research Advisory Committee (RAC) was constituted to provide technical support to the Research Team. This comprised of experts drawn from LGBTI networks and organizations, the academia, research and funding institutions. The RAC was involved in protocol and research tools development and review, data collection processes oversight, and report development and review. Additionally, the research engaged members of the LGBTI community as research assistants and respondents. A total of 10 research assistants were selected through a competitive process from LGBTI communities and taken through a 2-day in-depth training. Finally, the draft research report benefitted from inputs of selected LGBTI community members and the advisory committee who participated in a convening to disseminate preliminary findings. Their additional insights and recommendations have been included in this final report.

The research process

The research focused on three main phases: a literature review, Key Informant Interviews (KII) and qualitative data collection for case studies. The **first phase** included conducting literature review with documents from multiple sources: organizational papers and web pages, grey literature research articles, peer-reviewed journal articles, and summative organizational papers on research best practices. The sampling framework started with known articles based on authors' expertise. Literature review materials were obtained through: a*) data bases including Google Scholar, ScienceDirect, and JSTOR, using keywords and a combination of search terms; b) List of references and citations from relevant documents and learning collaborative websites; and c) Consultation with and/or referral by AJWS research and program experts and study advisory committee members on known documented SOGIE-SC interventions that contained a norm change component.* Eligible materials were reviewed in full and relevant information on norm shifting interventions/programming extracted in an excel spreadsheet for analysis. Therefore, this report should not be seen as a systematic, comprehensive review and documentation of SOGIE-SC norm shifting interventions and best practices in Kenya, but rather a focused exploration.

The **second phase** included collecting qualitative data, i.e., conducting of interviews with key thought leaders on issues of norm change. The key informants were purposively sampled: a total of forty-three potential respondents, drawn from the LGBTI community, academia, CSOs, and the religious, cultural, and legal fraternities, were mapped out and targeted to be interviewed. This was an actor-driven study where the decision to select the study locations was informed by presence of actors, individuals and organizations involved with and/or working on SOGIE-SC norm shift work in Kenya. The selection criteria for key informants included: adult of consenting age (18 years and above) with knowledge of SOGIE-SC issues and/or SOGIE-SC norm change work, willingness to participate and being an actor in religion, culture, law, community organizing, and policy making. The mapping and selection of the actors was aimed at including both urban and rural settings and a range of organizations that work with LGBTI communities. Using actors as the basis for study area selection, eight (8) counties were selected namely: Nairobi, Kisumu, Mombasa, Uasin Gishu, Wajir, Isiolo, Bungoma and Kilifi. These counties additionally provided geographic, cultural, religious and programming variations and diversity. Eventually, out of the 43 targeted respondents, a total of thirty-two (32) participants who were available were interviewed.

Prior to actual data collection, a one-day pre-test of tools was undertaken. The pre-test aimed to test the tools' coherence, validity and feasibility of application, language consistency (English to Kiswahili and vice versa), time taken and interviewer skills. Key Informant Interviews followed a semi-structured guide. During the interview, the interviewer(s) took notes for future analysis and some interviews were audio recorded. Data was collected in both English and Kiswahili languages.

The **third phase** of the research focused on documenting case studies relating to SOGIE-SC norm shifts in Kenya. The case studies were documented using a case study documentation tool that was developed and sent to selected LGBTI-led organizations who were implementing SOGIE-SC norm shifting interventions in the study areas. The focus of the case studies was to understand the background and context of the program interventions, the problem or the issue affecting LGBTI communities/persons in the respective areas, interventions that were designed to address the problem, the outcome following the implementation of the norm shifting intervention, lessons learned in the process, and sustainability plan, if any. Selection of the case studies was based on presence of enduring SOGIE-SC norm shift interventions targeting individuals, institutions and communities at a given LGBTI organization. A total of four case studies describing promising practices in SOGIE-SC norm shifting interventions addressing SOGIE-SC issues in Kenya were documented.

Data management and analysis

All the data collected during the study including digital audio recordings and notes of all interviews and transcripts, were kept in a secure and locked place only accessible to authorized individuals involved in the study. The data collected was coded with unique identifiers where only the study investigators would interpret the codes.

Qualitative data was transcribed verbatim, typed in word editors, imported into MS Excel and subjected to qualitative data analysis techniques. The framework analytical approach was used to identify and code for key emerging themes. The research team members then, individually and as a group, identified key themes from both the KIIs and the literature review, using inductive analysis where themes emerge from interviews and the literature. Eight data analysis sessions were held with members of the research team to discuss, reflect, triangulate data, collaboratively identify key themes, and to synthesize data into final findings. Content analysis was then applied to all the research data and triangulated to validate the findings. Analysis of study data was guided by the power analysis of existing norms, using factors and indicators identified at individual, institutional and social levels.

Ethical considerations

Ethical clearance to conduct this study was obtained from the AMREF Health Africa Ethics & Scientific Review Committee (ESRC) —Reference Number P714/2019. Individual written consent was obtained from all study participants. Interviews were conducted at a place of the participant's choice but one which also allowed for audio-recording and safeguarded the safety of the participants and researchers. The two-day training of research assistants emphasized confidentiality of participants and their data. All data collected as part of this study was de-identified to

safeguard participants' privacy. All interview digital audio recordings and notes were stored in a secure facility that is only accessible to authorized individuals involved in the study.

Study limitations

This research has some limitations that should be kept in mind when reading the findings of this report. One of the greatest limitations of this study was the fact that the topic is under-researched. Secondly, only literature in the English language was reviewed and included in this study. This could have overlooked norm shift work conducted in other languages, in Africa and beyond. Thirdly, being an actor-driven process, the study was limited to only eight (8) counties in Kenya, and this could have overlooked norm shift interventions that may have happened in the remaining thirty-nine (39) counties. The study may therefore not be representative of the forty-seven (47) counties in Kenya. Although not representative of the variations in social, cultural, geographical, and related diversity of contexts in Kenya, the results from these Counties were generalized to urban, peri-urban and rural settings in Kenya.

Despite the limitations, this research is the first cross-sectional study to establish and document SOGIE-SC norm shift work in Kenya. It shows that the human rights of LGBTI persons are highly violated in Kenya due to normative issues.

Chapter 4

Research findings

Introduction

This section presents research findings from both secondary data sources (literature review) and primary data sources (case studies and qualitative interviews with selected LGBTI community members and allies involved in norm shifting interventions in Kenya). The results presented are guided by the research areas of investigation (research objectives).

Existing norms and their effects on LGBTI lived realities in Kenya

Legal norms

Legal norms identified in this study were primarily found at institutional level, unlike social (religious and cultural) norms which operate and/or have influence at individual, institutional and social level.

Constitutionalism: The Constitution of Kenya (COK 2010) is the country's supreme law with normatively binding force on political actors and institutions, including the lawmakers. COK 2010 protects the right to equality and non-discrimination (Article 27) and the right to dignity (Article 28).

The research noted that the constitutional review process, pre-2010, entailed an in-depth conversation around human rights, including active debate on the issues of rights of sexual and gender minorities, and resulted in the development of a robust bill of rights that included among others, clauses on non-discrimination, domestication of international laws, etc. The Bill of Rights (Part 4 of the Kenyan Constitution) recognizes and protects human rights and fundamental freedoms of all the citizens of the republic including, possibly for the first time, sexual and gender minorities.

Thus far, the enforcement of the Constitution (COK 2010) has afforded protection of human rights to LGBTI communities, particularly in instances where the LGBTI community has actively utilized the courts and the Constitution to push for their rights as citizens of the country. In this research, some study participants observed that since the promulgation of the Constitution, its positive interpretations have led to numerous wins in the judiciary for LGBTI communities. For example, in 2014, Transgender Education and Advocacy (TEA) had a major win on the removal of the gender marker from a school certificate for individuals who have changed their genders. Similarly, in the same year, TEA's request to be registered and the refusal of the NGO Board to accept their registration led to a court appeal: the court ruled in favor of TEA stating that the Board's rejection of TEA's registration was *"unfair, unreasonable, unjustified and in breach of rules of natural justice,"* violating the constitutional freedom of association.

Legal institutions and their actions: The research established that the LGBTI community's engagement with Kenyan courts was an important aspect of possible legal norm change within the legal realm. One respondent posited that since the promulgation of the Constitution in 2010 (COK, 2010), LGBTI communities have continued to file various cases in Kenyan courts. While the cases in court may or may not have a normative change effect, some respondents felt that the continued accumulation of cases has created opportunity for conversation within the judicial fraternity

that will eventually lead to a normative shift.

> *"The more the discussions are being had, the more this is likely to lead to more understanding and tolerance. For example, we have seen court proceedings that are highlighted in the media having a spillover effect into the conversations in public spheres."* KII 001

Training of judicial officers: A combination of court victories and the progressive constitutional provisions has created an opportunity for LGBTI groups to engage with the judicial structures strategically, through the direct training of judges and magistrates at the Judicial Training Institute. LGBTI organizations like TEA and the National Gay and Lesbian Human Rights Commission (NGLHRC) have and continue to offer such training to judicial officers. Some of these judges who have undergone the training have sat on cases affecting the LGBTI community resulting in positive/favorable outcomes.

Policy development and adoption: Another highlighted area where legal norms are concerned was in the health sector policy development. The research respondents observed that the entry point of the LGBTI community (*commonly referred to and collectively defined as Key Populations (KPs) by the Ministry of Health, Kenya*) into the MOH health policies was through the right to health. After concerted effort and advocacy by LGBTI groups in the mid-2000s, the Ministry of Health through its subsidiaries, NASCOP and NACC began including some members of marginalized communities into their National HIV strategic plans. Since 2009, men who have sex with men (MSM) and sex workers (female, male and transgender) have been included in national policy documents with laid out targets and strategies of engagement. In 2019, the transgender community began earnest engagement with the same entities and presently, multiple national policy documents are being generated by the government on HIV/Health and the transgender community. This action has been particularly in response to the HIV pandemic, partly data/evidence-driven[13] and partly global conversation/funding, and not necessarily from a human rights perspective. In effect, change in health policy has increased access to health-care services. However, this heavily leans towards HIV/AIDS care and treatment for MSM and now transgender communities. This has also resulted in health practitioners' increased engagement with KP groups and individuals including MSM and transgender persons in Kenya. The study did not, however, make an inquiry on what the national discourse or services around MSM and transgender communities would look like if there was no HIV funding in the country.

Government registration of more LGBTI groups: Research participants opined that due to the witnessed LGBTI legal wins in courts (e.g. in the NGLHRC and TEA registration cases), and successful health policy conversations (MSM spin-off and HIV policy), Kenya has experienced proliferation of LGBTI groups operating in different parts of the country. The proliferation and/or visibility of LGBTI-led and LGBTI serving organizations has led to LGBTI individuals becoming more visible in their communities, making them seem less different from other members of society. However, it is critical to note that most of these groups do not expressly frame their advocacy in terms of LGBTI rights when seeking recognition/registration from the state.

Government approval of LGBTI-related studies: Study respondents also argued that the fact that a number of studies (both community-driven and/or targeting LGBTI communities) involving LGBTI communities had been ethically approved and/or given the go-ahead by government bodies signified a normative shift.

Utilization of legal prohibitions: While there is no organized and targeted state attack on LGBTI persons, the very existence of laws that criminalize same sex sexual acts is often utilized by law enforcement agencies to blackmail, extort and even prosecute LGBTI individuals.

Religious norms

In Kenya, religion is considered central to people's lives. It is also widely used as a justification for social exclusion and discrimination of LGBTI individuals. This research sought to identify religious norms that are central to existing

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[13]Kenya AIDS Indicator Survey (KAIS) report and Mode of Transmission (MOT) Study.

religions in the study locations, and the effect these norms have on the lived experiences of LGBTI communities in Kenya. The following religious norms were identified at the individual, institutional and societal levels:

At the individual level, this study established that teachings, sermons and preaching in religious circles were based on interpretation of the scriptures. The interpretation of religious teachings and/or doctrines with regard to homosexuality has been used as a tool to propagate hate, hostility and destruction by the religious faithful. The study noted that references to verses in the Bible and the Quran that justify the non-acceptance of homosexual marriage, and also the referencing of the account of Sodom and Gomorrah are often used by theologians and religious leaders to foster arguments on the condemnation of homosexuality. The study further noted that political leaders often use explicitly religious arguments against homosexuality, denouncing it as "un-biblical" and "un-Christian." For example, in 1999, former President Daniel Arap Moi denounced homosexuality, describing it as a scourge that went against Christian teachings and African traditions.[14] It is critical to notice that in the 2016 consolidated petition to challenge the constitutionality of sections 162(a), (c) and 165 of the Penal Code, an elected Senator was enlisted as an interested party '*to secure the diversity of Kenyan Cultures in their common rejection of homosexuality*'.

Further, the study established that the use of emotive and repulsive words by religious leaders influenced how their congregants treat LGBTI persons with some congregants justifying attacks. One faith leader stated,

> "*…conservative religious leaders use their pulpits to preach hate. Faith leaders doing this are usually following their belief system and are not always aware of the actual impact that can happen at the community level*" (KII 006, D9).

In some instances, religious leaders have endorsed use of violence against LGBTI persons. For example, in February 2010, religious leaders and their followers presided over a day-long hunt for "gay" men in Kenya's coastal area including several searches of private residences, and summary arrests in an attempt to forestall a rumored gay wedding. They closed down a Medical Research Institute HIV clinic that was alleged to be 'initiating young men into homosexuality and same sex marriages'.[15]

This study notes that these strong individual religious interpretations, beliefs and views have in effect led to organized anti-gay and 'pro-family' campaigns from religious circles e.g. the Kenya Christian Professional Forum (KCPF)[16] continue to spread hate toward LGBTI people and influence how LGBTI persons are treated in public. These findings echo results of a study[17] conducted in 2010 by UHAI-EASHRI, which showed that religious and cultural beliefs had served to intensify the problems faced by LGBTI persons in the East African region. In Kenya, in particular, the study reported that religious establishments and traditions have continued to promote opposition to homosexuality. This in effect has resulted in LGBTI persons living in fear, in secret, and not wanting to expose themselves. As described by one of the key informants,

> "*…marginalized people are always afraid of exposing themselves. They live in fear and that contributes a lot to their further marginalization. They believe that they are not entertained within the society and having that in mind, they always tend to isolate themselves. Most of their forums are very secretive…it shows that they are not ready to be known.*" (KII 009).

In another study done to establish Kenyan religious leaders' views on same-sex sexuality and gender non-conformity, it was established that some religious leaders' perspectives (individual perceptions and attitudes) were predominantly

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[14]"Moi Condemns gays," BBC News, accessed December 7 2020, http://news.bbc.co.uk/2/hi/africa/461626.stm
[15]Nguru Karugu and Monica Mbaru, *Lived Realities, Imagined Futures: A Lesbian, Gay, Bisexual, Transgender and Intersex Baseline Survey Republic of Kenya* (Nairobi: 2011).
[16]Note that KCPF which is an organization that comprises Christian Professionals engaged in different sectors of the economy, and whose main objects is to campaign for the consideration of the perspectives and ideals held by Christian Professionals in Kenya and by extension all other Christians in legal-policy formulation and public debate on topical and sensitive issues, was enlisted as an interested party in the consolidated Petition filed by LGBTI activists in the High Court in Kenya in 2016.
[17]UHAI-EASHRI, *A people condemned: The Human Rights Status of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in East Africa* (Nairobi: 2010).

negative, with limited acceptance of sexual and gender minorities. About 37 per cent of predominantly Muslim faith leaders interviewed, endorsed the use of violence in the maintenance of social values, especially regarding homosexuality and nonconformity.[18] In this study, some of the faith leaders interviewed stated that homosexuality is associated with Satan, evil spirits and illuminati, which result in the rejection and mistreatment of LGBTI persons in the society. One faith leader said,

> *"LGBTI persons are not free. This is due to oppression, name calling and mistreatment from the congregation. Gays are connected with illuminati and they are denied access to /inheritance of ancestral land, rejection in the community, school, etc."* (KII 010).

The belief that homosexuality is satanic/evil is implied as being *'a threat to their faith and values.'*

There are, of course, exceptions to the rule of religious bigotry. For example, Reverend Kimindu, coordinator of the Other Sheep Ministry East Africa, says that his ministry is an attempt to reach out to those people whom the church is not reaching, people who are marginalized even within the church, those the Bible calls the "other sheep," including but not limited to LGBTI individuals. Rev. Kimindu's opinions around homosexuality and gender identity were considered particularly problematic by the Church hierarchy in the aftermath of the debate surrounding the 1998 Lambeth conference. His ministry to the LGBTI community resulted in his effective exclusion from the mainline Anglican Church in Kenya. In the same light, the Cosmopolitan Affirming Church (CAC), an LGBTI church launched in 2013 by a group of Kenyan activists who wanted to create an affirmative space for spiritual nourishment for LGBTI people of faith, provides a rare space where the Kenyan LGBTI community can worship without judgment, hatred and vitriol as characterized by many contemporary religious pulpits.

At an institutional level, study findings showed that religious teachings are guided by doctrines which are institutionalized. With majority of Kenyans being either Christians or Muslims, the research noted that the Bible and the Quran formed the basis of religious teachings. The major religions, Islam and Christianity, promote heterosexuality and consider homosexuality a sinful act. This is arguably because same sex unions are viewed as lacking procreative potential, and this therefore dictates eternal celibacy for homosexuals.

This study also established that some religious institutions prescribe punishment to LGBTI people and their families e.g. ex-communication from the church and/or from religious activities. One of the participants observed that in most cases, religious leaders do this to divert attention from real issues, and to be seen to be doing the 'right thing' as guided by scripture. One respondent noted that religious leaders promote anti-homosexuality rhetoric

> *"…possibly as a way to divert scandals from their own churches and this helps to distract from the real issues. They are afraid of losing their own congregations. It has been tradition to oppose LGBTI people and this is now a belief they hold strongly to."*

At the social level, the study noted that majority of the Kenyan population prescribe to a form of religion that is deeply rooted in strong beliefs and practices. Participants in this study noted that there are instances where religious beliefs and doctrines have been used to propagate hostility and punishment through actions such as ex-communication of LGBTI persons by their family members or ex-communication of religious leaders who are allies of LGBTI persons. In such circumstances, some affected families disown their children who are LGBTI or take them to be 'prayed for' as a way to sanctify them.

Cultural norms

Culture plays a significant role in framing the public discourse on sexuality, gender identity and expectations in Kenya and beyond. Studies have shown that cultural beliefs, practices and patterns have been used to shape narratives to justify exclusion and human rights violations of LGBTI persons. This research explored existing cultural norms in Kenya and their effects on the lived realities of LGBTI persons.

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[18]David K. Mbote, et al., "Kenyan Religious Leaders' Views on Same-Sex Sexuality and Gender Nonconformity: Religious Freedom versus Constitutional Rights" *The Journal of sex research 55*, no. 4-5 (2016): 630–641.

This study noted that in Kenya, culture and traditions are as diverse and varied as the numerous ethnic groups and tribal inclinations that define them. Kenya's culture reflects cultural diversity with over 40 ethnic groups with different cultural values, cultural influence and cultural identity. Observers note that it is very difficult to talk about a singular Kenyan culture and tradition: what exists is a notion of culture! However, amidst this diversity, the study observed similarity in the application and effects of cultural values, beliefs and practices on the lived realities of LGBTI communities, across the different ethnic communities in Kenya.

This study established that the notion of the 'un-Africanness' of homosexuality still persists and has influence on attitudes and perceptions towards LGBTI communities. For example, some cultural leaders interviewed during this research termed homosexuality 'unnatural and un-African, acting against their customs and culture', etc. A respondent observed that,

> *"Being LGBT is bad and is not acceptable. It is against the customs and culture of the community."* (KII 014)

Another participant discoursed that, *"By and large, homosexuality has been termed un-African. Some cultural leaders term the act 'unnatural' and/or consider homosexuality a 'curse."* (KII 011).

These sentiments echo those of past studies (such as Epprecht, 2013) who documented that homosexuality has been described as a lifestyle (issue of choice or preference) which is foreign to Africans and is considered morally, culturally and religiously wrong by the majority of African society. Moreover, some cultural leaders have politicized the notion of 'cultural relativism asserting that human rights are western notions imposed on the populations of the South, unrelated to the reality of non-western world cultures.'[19]

The study also noted that there is a culture of silence that surrounds sex and sexuality in many East African communities. This notion around discussions of sex is seen by some actors as the likely deterrent to discussion of the existence of alternative sexual practices in ethnic groups in Kenya.

At an institutional level, the research established that the family system serves as the epicenter of social protection and basic unit of the Kenyan society. Respondents asserted that it symbolizes unity and societal continuity and that through it, an individual's sense of belonging, including socialization, are defined and prescribed. This was well expressed by one participant:

> *"We were brought up that way. We were taught by our elders who were very keen to keep and preserve the purity of the community. As we grew up, we knew that was the way because it was African and not from somewhere else."* (KII 014).

Moreover, COK 2010 recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.[20] In part, the Constitution demands that the State promotes all forms of national and cultural expression. COK 2010 also enshrines the right to family: the institution of marriage is highly valued by all the traditional cultures in Kenya, especially in the rural areas. Marriage is the base of creating a family: kinship relationships ultimately derive their legitimacy from the family. The value of the lineage emphasizes the importance of the family for purposes of passing on family name and property to future generations. However, it is critical to note that the family is also the cornerstone of capitalism/private property in which women's labor is used to support the creation of a family structure that inherently keeps women in subjugated positions for the benefit of patriarchy. It also explains why kicking people out of kinship and especially from their right to inherit property remains such a potent means of policing/punishing LGBTI persons.

This study noted that Kenyan society works towards presenting an appearance of universal conformity to a fecund

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[19]Adamantia Pollis and Peter Schwab, Human Rights: Cultural and Ideological Perspectives (New York: Praeger Publishers, 1979) 8.
[20]The Constitution of Kenya, Chapter Two, Article 11.

heterosexual norm, and that the cultural framing and connotation around sexuality, marriage and family system was deeply-rooted in the Kenyan society. For example, study respondents noted that because LGBTI people exist in contradiction to cultural expectations of gendered stereotypes e.g. gender expression including performance of masculinity and femininity, procreation, family continuity, marriage to persons of the opposite sex, etc. they become alienated and excluded from social protections, thereby increasing their vulnerability to hostility like *'homophobic'* rape, violence and discrimination. One participant noted that such vulnerabilities manifested in the form of

> *"Non-acceptance and non-involvement in larger society activities, discrimination, and ex-communication through the traditional justice system especially for the Mijikenda community, where LGBTI persons were taken to a place called milalani…and left there to die."* (KII 011).

The study notes that the embedded patriarchal structures defining gender roles and stereotypes put LGBTI persons on the margins of society.

Research findings also established that heteronormative cultural templates ground assertions of non-normative sexualities as immoral and pathological. One respondent asserted,

> *"Our culture says that sex is between a man and a woman, so they are not accepted because of culture and traditions. In Kenya, such a person is seen as a curse in the community"* (KII 011).

Study respondents noted that once discovered, LGBTI persons, more often than not get disowned by their families resulting in homelessness. Those disowned by their families are likely to miss out on education and family inheritance, amongst other benefits that come with heteronormativity. Some studies have shown that cultural invocations have been widely used to justify violations of human rights against sexual and gender minorities.[21,22,23]

SOGIE-SC norm shifting interventions in Kenya

The research also sought to establish norm shift efforts geared towards shifting negative legal and social norms that cause the violation of rights of LGBTI persons. Further, the research intended to identify promising practices for SOGIE-SC norm shift work in Kenya. Findings showed that there are a number of efforts and activities geared towards shifting negative norms at individual, institutional and social levels, to improve the lived realities of LGBTI persons in Kenya. These efforts include:

SOGIE-SC norm shift efforts in the legal realm

Norm shifting efforts at the individual level: Within the legal realm, while a lot of norm shifting activities have happened at the institutional level, the actual norm change has been witnessed at individual levels. This has been a result of sustained and objective engagement with courts and other legal institutions. LGBTI organizations have successfully engaged with the judiciary after realizing the low level of information and understanding of LGBTI issues within legal corridors. There has been deliberate and intentional engagement with legal institutions, and exposure and training of judges to enhance their knowledge and understanding of LGBTI issues, including through information sharing between the LGBTI community and judges.

Specifically, TEA has engaged with the Judicial Service Training Institute while NGLHRC has engaged with the Judges and Magistrates Association. Some of the judges who have participated in the trainings have sat in judgment on LGBTI related cases in court and there have been positive judgments and directions from their rulings. As one respondent noted,

> *"…it depends on the type of judicial officer: whether they are conservative or progressive. Conservatism is based on personal beliefs i.e. making the law to fit one's personal beliefs. Progressive judges are willing to engage and interrogate the law e.g. as was done in the registration cases of TEA and NGLHRC. The judgements were from a progressive perspective/judge while in the first anal test case at the coast, the judgment was*

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[21] Dominic McGoldrick, "The Development and Status of Sexual Orientation Discrimination under International Human Rights Law," *Human Rights Law Review* 16, no. 4 (2016): 613–668.

[22] Naureen Shameem, *Rights at Risk,* (Observatory on the Universality of Rights, 2017) 1-36.

[23] Shameem, *Rights at Risk.*

from a conservative judge." (KII 001, D12).

Case Study: Empowering communities and institutions via information sharing by TEA

Background:

Transgender individuals continue to face high levels of stigma, discrimination and isolation in Kenyan society. Specific and directed issues that affect transgender communities are not well understood or advocated for even within LGBTI lead spaces. For example, transgender persons have difficulty accessing change of names, photographs and gender markers in official documents such as birth certificates, national identity cards, passports, driving licenses, academic certificates and other documents used by all Kenyans in their day to day activities. Without these basic documents, navigating one's lived reality becomes near impossible for transgender individuals. In the healthcare sphere, gender-affirming care is almost non-existent. Healthcare providers are not equipped with knowledge and skills to manage gender dysphoria and other co-morbidities affecting transgender persons. Transgender persons face challenges from a wide range of spaces e.g. the police, schools, society, CSOs, healthcare institutions / providers, families, etc. Generally, the general public is ignorant about transgender persons.

Intervention:

Transgender Education and Advocacy (TEA) led by lead trans activist, Audrey Mbugua, has designed and implemented several projects to empower individuals (magistrates and judges), target communities (Transgender and LGBTI communities) and institutions (the judiciary, legislature, medical and law schools, state departments and government ministries) with accurate information about transgender persons. The program utilizes training and sensitization workshops, strategic litigation, media features with mainstream and alternative media, social media (Facebook), research, etc. The aim is to raise/increase awareness of transgender people and their issues and increase legal recognition and protection of transgender persons. TEA engages at the individual, community and at institutional levels.

Results:

The interventions and engagements have resulted in multiple positive results for transgender communities in Kenya. For example, the program's quest for change of name initiative has enabled at least thirty (30) transgender and intersex persons to legally change their names in their documents, protecting them from human rights violations and enabling them to live fulfilling lives. The media/public awareness campaigns have empowered transgender people and given them access to information empowering them in their journeys of self-discovery. TEA's strategic litigation initiative has enabled transgender persons in Kenya to defend and promote their constitutional rights and freedoms. By and large, the previously oppressive gender norms that target transgender persons and the larger LGBTI community have been challenged, including perceptions of what transgender persons can achieve.

Keeping Alive Societies Hope (KASH) has also been partnering and engaging with the police in Kisumu to ensure maximum security and protection of LGBTI persons and other Key Population members/communities.
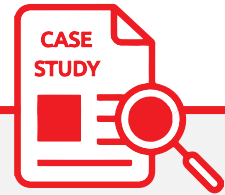
Case Study: Partnership with the police to ensure safety and security of LGBTI persons by KASH

Background:

Until 2017, there were complaints and reports of physical attacks, rape and arbitrary arrests of female sex workers and men having sex with men by the general public. LGBTI persons and other members of the Key Populations including sex workers were attacked and harassed by the public and the police, with some raped and physically assaulted.

Intervention:

In July 2017, Keeping Alive Societies Hope (KASH) designed a three-year project called the 'Security Scale Up Project' that was geared towards solving the security issues among key populations in Kisumu County. The project aimed at ensuring maximum security and protection of LGBTI communities, whilst safeguarding their rights and enhancing social inclusion through partnership with the police and community gatekeepers. KASH partnered with the Regional Police Training Center and undertook a series of training sessions for the police and general public on human rights and LGBTI issues. Select police officers and community gatekeepers were provided with additional training as trainers of trainers (TOTs). The project also targeted the media to stimulate a non-stigmatizing view on LGBTI persons when reporting.

Results:

The project reached 68 police officers from three police stations, 30 community leaders and 25 members of the general public with training on LGBTI human rights and LGBTI issues. 10 police officers and five members of the general public were further trained as TOTs and went on to train their peers on the same topics. This project recorded norm shifts through reduced number of arrests and increased protection of LGBTI members including those who were engaged in sex work. There has also been reduced rape as well as increased understanding and co-existence between the LGBTI community and the police.

Strategic litigation: The continued engagement of the judicial system through strategic litigation was found to be an important avenue for norm shifts in the legal domain. The "Baby A" case (*Baby A (Suing through the Mother EA) and Another v Attorney General and 6 Others [2014] eKLR, Petition No. 266 of 2013)* led to a court ruling instructing the legislative branch to develop policies and laws providing guidance on intersex persons in Kenya. This has led to the recognition of intersex as a third gender and subsequent inclusion of the third gender marker 'I' in the survey tool during the 2019 National Census. This is a move that is likely to encourage an inclusionary legal culture. Additionally, transgender persons have previously filed and won cases before the High Court in Nairobi, in a bid to have the names and gender on their identity documents changed. NGLHRC has also successfully argued different cases before the courts in Kenya, including one about the registration of their organization with an organization name that has the words 'gay and lesbian' in it. Although the decision in this case was appealed by government and is pending at the Supreme Court, one respondent noted that,

> "…the NGLHRC registration win means LGBQ organizations can operate legally and has led to opening up of government institutions. Additionally, the clear-cut win by NGLHRC in the anal testing case caused a reduction in anal testing in Kilifi County" (KII 002, E12).

> Another respondent added, *"…I am not sure that the continued cases in court have a normative change effect, but they create discussions that will eventually lead to normative shift. More discussions are being had and this is leading to more understanding and tolerance."* (KII 001, D12).

Sustained and continued engagement with the Academia: Different LGBTI groups that are implementing various norm shift work with different universities and colleges e.g. GALCK, have engaged with students in various public universities to hold debates on topics relating to sexuality and gender 101 and are

> *"…tapping into the younger population which is more tolerant as was evident through the reaction to the Repeal Case on social media, where younger lawyers were supportive of the repeal and trashed the judgement while older lawyers were supportive of the ruling."* (KII001, D14).

Moreover, some universities and law schools are engaged through moot courts. Further efforts have been made to ensure that universities embed human rights and sexuality topics in their training curriculum. For example, St. Paul's University has expanded its theological curriculum to include topics on human sexuality.

Continued health framing in policy review and development: Most LGBTI groups working on health issues have continued to utilize health framing as an entry point to expand the narrow HIV approach to comprehensive SRHR. This has seen the expansion of this focus to include MSM and ITGNC persons. It has also led to the development of a comprehensive LGBTI SRHR policy guideline in Kisumu County, through collaboration between NYARWEK, FHOK and the Kisumu County Health Department. This process can potentially be replicated in other counties across the country. Thus, the study identified the need to continue the health framing language in policy review and development efforts, in addition to legal framing because as one respondent noted,

> *"…the ITGNC community has more legal progression may be because it is a health issue or it is seen from a medical lens."* (KII 002, E12).

The Government of Kenya through the Ministry of Health has made commitments to include MSM in their HIV/AIDS programming, for example, recognizing MSM as a key population despite same-sex activity being criminalized in the country. Recently, the transgender community gained recognition as members of Key Populations leading to government commitment to develop the Transgender National Health Strategy.[24] Lastly, the government has also committed support to hold the first ever National MSM - Transgender Health and Research Conference. All these are significant pointers to LGBTI normative shifts using health framing.

Continued engagement in the political sphere with law makers: A number of LGBTI groups have continued to engage with the human rights caucus in the national legislature and with women caucus groups in some of the County legislatures. Furthermore, LGBTI community activists have been successful in bringing LGBTI concerns to light by engaging with national human rights entities including the Kenya National Human Rights Commission (KNHRC), using various mechanisms. These include engagement in the administration of rights discourses including health, and other state programming. One respondent confirmed that engagement by noting that,

> *"…engagement in spaces like the parliamentary caucus and human right caucus has made government aware of the existence of the community and its issues."* (KII 002, E12).

Some of these engagements have seen LGBTI concerns being embedded in human rights groups' mandates. KNHRC, a constitutional body, has institutionalized LGBTI human rights into its strategic plans and has gone ahead to sensitize the judicial system on LGBTI safety and protection.

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[24]The Ministry of Health (MOH) is working (at the time of conducting this research) closely with the transgender community to develop a "National Transgender Health Strategy," the first in the region and one that presents opportunity for the expansion of LGBTI health rights to all.

Examples of Norm Shift Interventions in the religious realm

Direct engagement between LGBTI persons and faith leaders: This research established that engaging LGBTI persons, face-to-face, with religious leaders and sharing their lived experiences with religious leaders led to change in perception, reduced bias, prejudice, and exclusion of members of the community.

> *"…we have used religion to talk about love and inclusion and created space for LGBTI people to engage with their faith. We are fostering norms that allow for inclusivity and for LGBTI persons to practice faith like any other Kenyans. This has been through engaging faith leaders and helping them to understand the lived realities of LGBTI people. This has brought understanding and a positive shift."* (KII 006, D8).

Another respondent observed that, *"…testimonies of LGBTI people during training of religious leaders change the religious leaders."* (KII 009, G14).

Further, another respondent said that *"…the pastor was clear that after his interaction with LGBTI people, his conscience does not allow him to exclude LGBTI people who come for spiritual nourishment. His interaction also showed that we are all humans and he could not reject them."* (KII 006, D8).

LGBTI-faith institutions engaging with mainstream faith leaders: Apart from individual LGBTI persons engaging directly with other faith leaders, LGBTI-led faith institutions also engage directly with mainstream religious leaders.

> *"There is positive change within the religious sector with the existence of the Cosmopolitan Affirming Church that has opened its doors to religious members of the LGBTI communities…"* (KII 019, H11).

> *"An example is the United Methodist Church from Migori…it is one of our ally churches. When we started, it was very hostile against LGBTI people. Through joint services and understanding, the pastor has changed. He even stated that he would welcome the community to Migori and they are welcome. Encouraging religious leaders to look beyond theology, and start seeing actual people who are LGBTI has really been effective since they understand they are talking about real people behind many of these conversations…"* (KII 006, D8).

Training of cultural and religious leaders: The study noted that some LGBTI groups are collaborating and working with progressive religious leaders who create space for direct engagement between LGBTI persons and religious congregations, through sharing of testimonies on their lived realities. NYARWEK is working with religious leaders in Western Kenya (KII 005, H12) while PEMA has been training religious leaders at the Coastal region. One religious leader trained by PEMA said,

> *"…I have personally changed my perception, and I can very well remember I was a harsh critic. I was conservative. But the training from PEMA actually changed my thinking. I have also been involved as a trainer and we have trained more than two thousand religious leaders…"* (KII 007, E8).

In effect, PEMA has trained more than 670 faith leaders and TOTs. NYARWEK has trained over 600 faith leaders.

CASE STUDY

Case Study: Engagement with religious and other societal leaders by NYARWEK

Background:

In a baseline study conducted in 2015 in Western Kenya, findings revealed that the region was conservative in its understanding of LGBTI issues i.e. many of the respondents were not receptive to LGBTI persons and/or did not want to be associated with them. Similarly, there were rampant cases of discrimination in both private and public domains especially in health facilities, administrative spaces and in the security sector. The discrimination was largely due to ignorance and misinformation. Societal leaders (religious and political leaders), often used anti-LGBTI rhetoric that reinforced stigma and instigated violence against LGBTI persons. These negative views were often echoed by the media.

Intervention:

NYARWEK designed a program to (i) facilitate dialogue between LGBTI persons and societal leaders, particularly political and religious leaders; (ii) engage with the media to ensure a non-stigmatizing image of LGBTI persons; and (iii) improve the capacity of LGBTI communities to build and strengthen alliances, build their resilience and increase their wellbeing. The '*Strong in Diversity Project*' is a three-year project implemented by NYARWEK, PEMA Kenya and Positive Vibes.

Results:

So far, over 600 faith leaders have participated in the training and dialogues, and have been involved in the expansion of the engagements with LGBTI communities. 11 of the trained faith leaders were directly involved in policy advocacy activities for LGBTI communities, along with the five political leaders of the County Assembly of Kisumu that were trained. Trained faith leaders changed in attitudes (as recorded in the pre-training and post-training results) and their commitment to working with LGBTI communities and KP groups has been visible.

Norm shift in the cultural realm

Familiarity and direct contact and engagement with LGBTI Persons: As with religious leaders, this study found that even among cultural leaders, a shift in perceptions and attitudes is more likely to happen when there is physical and direct contact with LGBTI persons. Some LGBTI groups have deliberately engaged in the sensitization of cultural leaders on LGBTI issues, leading to change of perceptions and attitudes. This has been achieved through storytelling and sharing of lived realities by LGBTI persons, community theatre, etc.

> *"Some kaya elders like me have been sensitized on LGBTI rights and this has changed our attitudes."* (KII 011, D8) and (KII 011, D11).

Engaging other actors in the communities: Beyond religious, cultural and political leaders, LGBTI activists and organizations have engaged other actors in their communities including families of LGBTI persons and as a result of this for example,

> *"families that had rejected their children are now reunited."* KII 005, H12) and (KII 10, H11).

Similarly, some LGBTI groups are reaching out to their communities by engaging in larger societal activities e.g. communal cleaning activities, environmental conservation, community service etc. As one respondent noted,

> *"…there are groups working with various aspects of society that are about effecting change. For example, LEHA is involved in cleaning and planting trees at The 14 Falls in Thika and this has had a shift on how people see LGBTI people in the area. Refugee LGBTI groups are working closely with Chiefs and training them about*

> *LGBTI refugee issues. Some organizations and CBOs in slum areas like Mukuru and Kibera are creating spaces where LBQ women can address the issues they face within the slum areas including issues like gender based violence. There is also Coast Women for Women, an organization for LBQ women with children, which engages with women and mothers in the larger community to discuss issues that affect children. Minority Womyn in Action (MWA), a LBQ organization, works with the girl child initiative to provide sanitary pads for girls in schools."* (KII 017, F11).

Other organizations have and continue to engage with would-be perpetrators of violence against LGBTI persons e.g. Boda Boda (motorcycle) riders who provide the most common means of transport.

CASE STUDY

Case Study: Engagement with boda boda operators by INEND

Background:

In 2010, a group of boda boda operators/riders and community members attacked two gay men in Mtwapa and dragged them to a police station demanding that the police arrest them. This incident led to an increase in violations of the rights of sexual and gender minorities by boda boda operators in other counties in the region. The frequent attacks by boda boda riders made the lives of LGBTI persons difficult and risky.

Intervention:

The Initiative for Equality and Non-Discrimination (INEND) reached out to the boda boda leaders from the areas in which the majority of the attacks happened, in order to understand what informed their violent actions. In 2017, INEND, in partnership with Coast LGBTI organizations, implemented a project dubbed 'engaging known or perceived perpetrators of violence' with boda boda operators as the primary target. The project is aimed at shifting norms on societal perceptions of sexual and gender minorities, through educating boda boda operators about the human rights and lived realities of LGBTI persons. As such, the boda boda leaders and operators were taken through sensitization trainings on sexuality and gender diversity. All trainings under this project were geared towards changing participants' perceptions and attitudes towards sexual and gender minorities. Further to the training, INEND convened roundtable discussions with LGBTI and boda boda leaders to obtain feedback and suggestions for their improved engagement on the intervention.

Results:

Within the first year of implementation, a project evaluation showed that reports by LGBTI persons of attacks from boda boda operators had reduced by 50 per cent. A network of allies has also been created among boda boda operators, who alert INEND of impending risks so as to secure LGBTI members beforehand.

Opportunities and barriers to SOGIE-SC norm shift work in Kenya

Barriers to LGBTI norm shift work in Kenya

The research also sought to identify factors that would hinder LGBTI norm shift in Kenya. Findings identified a number

of barriers to shifting legal and social norms relating to the lived realities of LGBTI persons. Barriers were found to exist at individual, institutional and societal levels, and include:

Legal norms

a. **Deep-rooted socio-cultural beliefs and practices:** Some law makers including judicial officers still fall back to socio-cultural beliefs when making and/or interpreting laws and policies. This was evidenced in a recent state-focused ban on LGBTI content in the media, which is a major setback to SOGIE-SC norm shift. Previous attempts to create visibility of LGBTI persons via film (Rafiki and Stories of Our Lives), for example, have been banned/blocked by the state.

b. **Language:** Limited understanding and comprehension of the concepts of gender identity and gender expression, including language used in advocacy is a barrier. The use of "rights" language, "coded" language and "English/westernized" framing is considered problematic as majority of the population is unable to connect with it. This also includes persistent use of acronyms like LGBTI, SOGIE-SC, etc. For example, in the case of *Richard Muasya v Hon Attorney General*,[25] the High Court confused sex and gender assuming that sex denoted the presence of gender. Thus, for the court, creating an 'intersex' category would be akin to creating a third gender and not a third sex. The use of rights or overly 'westernized language' re-enforces the notion that SOGIE-SC issues are un-African.

Social norms (cultural and religious)

a. **Deep-rooted socio-cultural beliefs and practices:** The study noted that deeply-rooted socio-cultural beliefs and practices were a major barrier to changing social norms. It also established that the highly hierarchical nature of religious institutions and their leadership was a stumbling block to penetrating and influencing faith institutional structures, along with safety concerns. As one respondent said,

> *"The reason, I think, that pastors do not openly support the LGBTI community is basic: most of them are not courageous enough to defend SOGIE rights. Also, most of them are not influential enough to take that step plus the issue of leadership hierarchy in most churches where most of them are just juniors in their churches."* (KII 010, H16).

It also emerged that there was limited understanding and comprehension of gender identity and gender expression within social (religious and cultural) circles. Cultural and religious definitions of family and marriage and use of 'rights' language was also found to be a limitation to shifting social norms.

b. **Anti-gay organizing:** The emergence of anti-gay campaigns and continued organizing within religious circles and formation of groups such as the Kenya Christian Professional Forum (KCPF), mostly funded by foreign/western evangelicals, has gradually become a key barrier to LGBTI norm shift in Kenya. Groups such as KCPF, which act as conservative organizing spaces, continue to spread hate in their spaces and in the media, propagating hatred toward LGBTI people. KCPF brings together Christian professionals such as lawyers, teachers and doctors among others from institutions where norms are created and policed.

Opportunities for LGBTI norm shift work in Kenya

This research also identified multiple opportunities for LGBTI norm shifts identified during interviews with key informants.

Opportunities for shifting legal norms

The study identified the following as significant opportunities within the legal realm:

a. **Training and mentorship:** Existing LGBTI organizations (TEA, NGLHRC, PEMA, etc.) have established clearly the ability and opportunity to engage with legal structures and individuals through training and mentorship. These engagements have proved critical particularly when judgements are made by either magistrates or judges who have been exposed to them. Additionally, LGBTI groups have successfully participated in Court Users Committees in different counties ensuring information sharing about LGBTI communities is part of

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[25]Richard Muasya v Hon Attorney General (2010) petition 27 of 2007

these committee discussions, and this should be scaled up across the country. Similarly, in law schools, there is opportunity to engage, train and mentor young and more progressive law students as champions of the rights of LGBTI persons.

b. **Strategic litigation:** The Kenyan LGBTI movement generated a multi-tier approach to decriminalization over 10 years ago. At its core was an understanding that there was need to engage courts with strategic litigation cases that could build on each other to support the need to repeal archaic, Victorian and colonial laws like the Penal Code. Research participants felt that despite the loss of the decriminalization case, this strategy was still important in the move to repeal the criminalizing laws. The continued accumulation of cases creates opportunity for discussions within the judicial fraternity that will eventually lead to normative shift.

c. **The progressiveness of the Constitution (COK, 2010)**: The LGBTI community has in the past utilized the progressive nature of the Kenyan Constitution to demand equality and justice for their communities. The COK 2010 also entrenches an elaborate Bill of Rights that affords constitutional protection from discrimination. As noted by one activist,

> *"The Constitution is very much open and liberal to the LGBTI community. Some clauses can be relied on to defend ourselves, even without much effort to work with judiciary and other legal experts." (KII 021, J11).*

d. **Continued use of health framing:** Kenya's Ministry of Health (MOH) is generally considered an ally in the struggle for LGBTI equality. The National AIDS & STI Control Program (NASCOP) in particular, takes violence and discrimination against LGBT people seriously and integrates rights initiatives into its programming. Beyond the utilization of an LGBTI health framing, NASCOP has intervened at the county level when LGBTI communities face attacks from political or religious circles. They have utilized their governmental positioning to engage directly and strategically with these entities. Partnership with and sensitization of public health facilities and health professionals can lead to institutionalized or individualized shifts in attitudes and perceptions within the health sector.

e. **Partnership for policy development:** The study noted that there are promising partnerships and policies that can lead to SOGIE-SC norm shift in Kenya. The HIV/AIDS strategic framework/plan for example gives the counties mandate to operationalize strategic direction number 4 that talks about Key Populations, with emphasis on adopting a human rights-based approach in designing interventions. There is also the gender mainstreaming policy at county levels, which speaks to curbing violence affecting LGBTI persons. LGBTI activists and organizations can scale up use of these entry points to advocate for norm shifts as has been done before.

> *"LGBTI organizations have participated in some counties to engage around the development of a comprehensive sexuality curriculum. At the national level, LGBTI groups are working with other mainstream groups as was witnessed during the decriminalization case and among others, this work has led to the institutionalization of LGBTI work into the strategic plans of partners like KNHRC." (KII 0017, F11).*

f. **Sustained engagement with the political and legislative domain:** While this engagement has been done strategically i.e. privately and not within the public domain, it was found to be an important aspect of advocacy work needing to be continued and scaled up, to include devolved structures at county level. This is a long term and intensive strategy that must be continuously done even after the change of government every 5 years.

g. Kenya's positioning as a global nation leading to **Kenyan government adopting a nuanced position on LGBTI rights**: Successive parliaments have declined to follow in the footsteps of neighboring countries that have enacted new, even harsher legislation.

Opportunities for shifting religious norms

Significant opportunities in the social realm include:

a. **Tapping into circles of faith leaders and cultural leaders** e.g. the Kaya elders in Coastal Kenya and some members of the Luo Council trained by NYARWEK in Western Kenya, along with societal leaders like Police officers and Boda Boda riders whose perceptions have been shifted. As one respondent recommended,

> *"There is need to give the faith leaders who have shifted their attitudes and perceptions a platform to share and discuss ways for them to engage with their more conservative peers. This could be effective in cultivating allies."*

Similarly, ongoing engagement and sensitization of cultural leaders on LGBTI issues that has, thus far, led to change of perception and attitude, is an excellent opportunity to continue creating visibility and helping the general public comprehend LGBTI issues.

b. **Portrayal of LGBTI realities through storytelling**: this can be done through creating stories and increasing visibility, using media and other innovative alternative platforms, and using language and framing that is localized to African and Kenyan contexts including vernacular, among others.

c. **Working directly with families of LGBTI people**: this can be done through helping such families create safe spaces to share their experiences as parents of LGBTI persons, and equipping them with the necessary information to understand their LGBTI children and/or siblings.

d. **Ongoing interaction between LGBTI persons/organizations and mainstream faith leaders:** Religious leaders interviewed for this study were emphatic on the need for interaction between LGBTI persons and religious leaders. Some stated that their understanding and initial views of the community was purely based on what they understood from their religious doctrines and personal beliefs. After meeting LGBTI persons face-to-face, and listening to their stories on lived realities, their understanding changed significantly. They now had a better understanding of the issues affecting the community and more importantly that LGBTI persons are like any other person within their congregations.

e. **Engagement of LGBTI faith leaders with mainstream non-LGBTI faith leaders:** The engagement of LGBTI faith leaders with mainstream faith institutions in rural areas has had a profound effect. LGBTI groups working directly with religious leaders provides excellent opportunities to create interventions to reduce prejudice. This includes the working relationship between LGBTI faith leaders and other faith leaders and joining them in faith traditions. The increased contact with LGBTI persons has a potential to affect social norms as part of theoretically informed and evidence-based interventions.

> *"Kenyans are not as violent as we think and there is room for conversation particularly in faith spaces. This needs to be explored more. The PEMA and NYARWEK curriculums of engaging with faith leaders need to be scaled up."* (KII 006, D17).
>
> *"Kenya Catholic Conference of Bishops (KCCB) efforts to reach out to allies and members of LGBTI community; St. Paul's University incorporates elements of human sexuality into their training of ministers; in Bondo, NYARWEK has worked with religious leaders who have formed inter-faith network that provides a platform for LGBTI persons to express themselves without danger of being excommunicated; in the legal space, the inclusion of Intersex persons in the 2019 National Census. ...The fact that some religious leaders are able to sit down and listen to SOGIE-SC conversation... all these are excellent opportunities for SOGIE-SC norm change in Kenya"* (KII 005, H12).

Opportunities for shifting cultural norms

a. **Production and sharing Kenyan LGBTI content in media:** Presently, LGBTI visibility in media is primarily of foreign images. Attempts at providing visibility of Kenyan LGBTI lived realities have consistently been blocked and banned by the state (*Rafiki* and *Stories of Our Lives*). Despite this hurdle, there is need to continue to push and make visible the lived realities of LGBTI persons in various formats and outlets. This includes the opportunity to use other innovative media (e.g. video, use of community vernacular radio) and other platforms (e.g. social media: twitter, podcasts, etc.), and language/ framing that is localized, particularly vernacular. Progressive and/or brave journalists who can report human rights and/or tell stories of LGBTI persons need to be identified, trained and engaged.

b. **Parents of LGBTI persons:** From the study, it was clear that accepting and supportive parents of LGBTI persons have not been adequately engaged in norm changing activities. They are a powerful tool for norm shifting thought processes and there needs to be intentional engagement with them.

c. **Trained cultural leaders:** Cultural leaders who have been trained and/or exposed to LGBTI issues can

become excellent champions and mentors to other leaders. There is need to tap into ongoing engagement and sensitization of cultural and religious leaders on LGBTI issues. This can be achieved through storytelling and sharing of lived realities.

d. The study also noted that culture is not static. Thus, an opportunity exists to tap into the generational changes being witnessed in Kenyan society.

> *"The current generation has changed in so many ways evident in the manner in which they do things, so, seemingly, things work for them without the help of the elders".* (KII 014 G18 &19).

Opportunities on cross-cutting issues

a. Willingness of government to approve LGBTI-related researches and limited research on LGBTI norm shifts in Kenya. Research to understand LGBTI issues and/or generate data also presents an opportunity to shift norms

> *Research such as this and 'Are we Doing Alright' recently launched at the African Commission, have been very forthcoming and informing for LGBTI programming. Research on trans issues is what created these shifts for trans communities. Through the data they were able to provide proof and argument to the MOH. There is still a lot to do."* (KII 0017, F11).

b. It also emerged that while media has largely contributed to the backlash against LGBTI persons in Kenya, social media has also been used to counter hateful narratives and influence discourse. It therefore presents huge opportunities for advocacy and sensitization to shift people's attitudes and perceptions towards LGBTI persons.

c. Other opportunities to shift SOGIE-SC norms include: existing lessons from past and ongoing norm shifting interventions that are excellent for cross learning; existence of allies at the grassroots including partners such as KNHRC, Kituo cha Sheria, Defenders Coalition, etc.

Chapter 5

Discussion of the findings

Introduction

The first step of this research involved identifying norms that affect the lived realities of LGBTI persons in Kenya. The second step in the study focused on establishing the effects of these norms on the lived realities of LGBTI persons. And the third step in the discussion focused on identifying specific norm shifting interventions that future SOGIE-SC norm shift work can learn from. Study participants shared examples of promising practices, the strategies they used to shift LGBTI norms and what (opportunities and barriers) they learned in the process.

LGBTI rights

All human beings are entitled to human rights by virtue of simply being human. As such, what is referred to in this research report as sexual and gender minorities' rights or LGBTI rights are in fact all the human rights protected in international law as applied to human beings. It is not a special category of rights. Thus, use of the terms 'sexual and gender minorities' rights' or 'LGBTI rights' in this research refers to the rights that have already been agreed upon by the state (Kenya) as entitlements to all human beings.

This research confirms that LGBTI persons in Kenya lack societal protections accorded to their heterosexual counterparts because they fall outside defined social and cultural norms based on their sexuality and gender expressions. This contributes to social exclusion that prevents LGBTI persons from participating fully in social, economic and political spheres of society. LGBTI persons have to navigate heightened levels of social stigma, discrimination and violence especially persons who are more visible or who are considered to have transgressed rigid constructions of gender (for intersex individuals, trans men and trans women this adds layers of systemic navigation of their identity) and gendered norms.

Based on the research findings, one would say that the Kenyan society continues to grapple with the issue of sexual and gender diversity with data suggesting that many Kenyans are opposed to human rights protections on grounds of sexual orientation and gender identity and expression. This position is supported by the Pew Research Survey findings of 2013 which suggested that many Kenyans (90% of the survey respondents) were opposed to LGBTI issues.

Existing norms

Legal norms

This research established that there are numerous norms (both legal and social) on gender and sexuality. Despite norm diversity, even within religious, cultural and traditional beliefs, a common denominator of prejudice against LGBTI persons is evident in Kenya. Many factors contribute to opposition to enjoyment of rights by LGBTI persons including conservative religious teachings, colonial legacies, the taboo on sex related issues, strict adherence to a gender binary and gender norms, as well as a lack of understanding of sexual and gender diversity.[26]

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[26]Kenya Human Rights Commission, *The Outlawed Amongst Us: A Study of the LGBTI Community's Search for Equality & Non-Discrimination in Kenya* (Nairobi: 2011)

The COK 2010 is a major legal norm with both positive and negative effects on LGBTI rights. For example, the Constitution has been used to advance intersex rights in Kenya. It has also been utilized in referencing the right to health. Similarly, in the past, international laws have been successfully referenced in the NGLHRC registration case. However, in the decriminalization case, while COK 2010 was extensively referenced, the judges dismissed, on technical grounds, various sections of the same Constitution that were referenced by the petitioners. Despite Kenya recognizing international human rights laws and anchoring it into its Constitution (COK, 2010), these human rights legislations and laws have not trickled down into social spaces and movements. The international laws were considered in the case but were ruled out as not binding. Although the judges took substantial time to review relevant international laws and precedents set, in an unprecedented manner, they ruled that these instances did not apply. The research therefore finds that the decision/ruling in the decriminalization case could possibly have been influenced by political and social decisions and not necessarily constitutional provisions. Thus, both COK 2010 and international laws remain relevant and effective tools (that must be utilized in future litigation) with huge opportunities for pursuing legal norm shift to ensure LGBTI inclusion. LGBTI groups and activists must continue utilizing similar legal avenues, both locally and internationally, in their norm shifting efforts.

Contrary to the discussion within the corridors of justice which referenced international laws severally, throughout the research, respondents from both legal and social realms never made reference to international human rights laws as a determinant or norm influencer. One would then argue that since international laws are not mentioned in the interviews, this confirms the contestation of international laws and the argument around LGBTI issues being a 'western imposition'. At present, using or referring to international human rights framing language in LGBTI norm shift efforts in Kenya may not be central to the ongoing norm shifting strategies. Moreover, one needs to note that several domestic factors influence the receptivity of norms concerning social minorities.[27]

Kenya still has a very conservative courts/justice system as indicated by the decriminalization case judgement. Judicial officers are still influenced by their cultural values in interpreting and applying the law. It is equally important to note that cultural forces continue to reshape social realities for LGBTI folk life in Kenya. The May 24, 2019 ruling[28] read in part, *"…homosexuality insulted traditional morality being that the sections strived to uphold cultural and moral values."* The ruling emphasized the centrality of culture and religion, and the views of the majority. Overall, social norms (cultural and religious norms) seem to have much stronger influence on the lived realities of LGBTI persons compared to legal norms. However, further analyses using the spectrum of norm strength is required to establish the extent of the influence or the effect of each of these norms on the lived realities of LGBTI communities.

Social norms

Despite culture being considered an important aspect of human society in Kenya, this research noted that discussion around cultural norms is still very one-sided in favor of the 'culturalists': a notion of culture as a concept existing within and controlled largely in the political realm. Cultural norms are driven by various forces, interests and influences including religious, historical, political and geo-political interests.

Empirically, the literature on cultural attitudes towards LGBTI persons in Kenya is very limited and ignores nuances in attitudes based on the demographic of age, gender, class, and region. However, anecdotal data suggests that there is more affirmation and tolerance of same-sex sexualities in urban city dwellings, among young tech-savvy people and middle-class Kenyans. The lack of data probably reflects the need for LGBTI persons to coin, reclaim and re-appropriate their own myths and space.

Although religion is a major factor in fueling homophobia in Africa, faith institutions are not only sites of struggle but have also been reclaimed by African LGBTI activists in support of their cause. Scholars[29] note that there is need to move

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[27]Phillip M. Ayoub, "Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation," *European Journal of International Relations* 21, no. 2 (2014): 293–322.

[28]Response to joint Petition No. 150 & 234 of 2016 challenging sections 162 (a), (b) and 165 of the Penal Code Act that violate the constitutional rights of LGBTI persons in Kenya.

[29]Adriaan van Klinken, "Beyond African Religious Homophobia: How Christianity is a source of African LGBT activism," LSE, accessed December 7, 2020, https://blogs.lse.ac.uk/religionglobalsociety/2018/07/beyond-african-religious-homophobia-how-christianity-is-a-source-of-african-lgbt-activ-

beyond a narrow focus on African religious homophobia as religion plays multiple and complex roles in contemporary dynamics of African sexualities. An anthology dubbed *Stories of Our Lives*[30] provides a fascinating insight into the lives of LGBTI persons in the Kenyan context by narrating their navigation of cultural, social and political complexities. Many stories mention religion, with reference to their upbringing in a religious background at home, school and in church. Several stories also testify to an ongoing self-religious commitment, active participation in faith communities and a relentless faith in God.

One of the major arguments presented by the study participants (religious and cultural leaders) against the protection of LGBTI rights is that homosexuality is 'un-African'. This notion of cultural relativism has been abused by past Kenyan political elites to claim that LGBTI persons have no place in Kenya, and by extension Africa. However, it is important to note that the lack of cultural currency means this notion has no stronghold on the people, as there is an increased sense of individuality in the present Kenyan society.

Intersectionality and norm interactions

This research notes that there are a lot of interactions between legal norms and social norms in Kenya. For example, the Constitution of Kenya 2010, which is a state legislation, recognizes culture and religion. The Constitution has incorporated some institutions and their norms into state legal systems (institutional and normative recognition respectively), and thus produced pluralism within state legal systems. Hence, customary and religious legal systems continue to be socially observed. An example is the Constitution's explicit recognition and creation of 'customary law', 'kadhi courts', 'sharia laws', etc. This is so even when there have been attempts – some successful - to use legal systems including the Constitution and other pieces of legislation to counter certain religious and cultural beliefs and practices e.g. early marriages and female genital mutilation (FGM) that are seen to promote inequality and/or violate rights of women and girls.

Most importantly, this research is also cognizant of the fact that although Kenya has adopted a wide array of constitutional and statutory provisions aimed at striking a balance between judicial independence from undue political manipulation and judicial responsiveness to widespread popular values, the effects of these measures are strongly shaped by several key factors related to the broader structure and distribution of political and organizational powers in Kenyan society. The study noted the political influence, particularly the Executive, on Kenyan courts. Moreover, legal institutions and judicial decisions are influenced by both legal norms and the political process.

Norm shifts

This research established that already, there are many examples of interventions that have been effective in shifting norms in Kenya. Most of the LGBTI norm shift activities are happening in different sectors such as the health, religious and legal sectors. However, it is critical to note that most of the LGBTI norm shifts are witnessed in the legal realm at individual and institutional levels. The LGBTI movement in Kenya employs different strategies to counter violence and discrimination. The norm change approach is merely complimentary to these efforts because of the various reasons why norms need to be shifted.

Despite the deeply-rooted traditions and cultural beliefs, Kenyan society has witnessed a shift in perception and acceptance towards LGBTI persons, depicted by minimal interference from the cultural leaders and the general public with the ever visible LGBTI communities in Kenyan society. Since the 2010 organized attack in Mtwapa by religious leaders, there were no other cases or evidence of such organized attacks by the time this report was published. The ALFJ 2015 study noted that *'there were signs of progress that signal a cultural shift in favor of LGBTI rights'.* In particular, the study noted that there were many LGBTI individuals who had supportive families of origin, families of choice, and religious and cultural communities. The increased visibility and presence of LGBTI people has also created communities of mutual care and support. In Nairobi and Kisumu, a few LGBTI-friendly faith institutions are slowly emerging.

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[30]Klinken, LSE.

Available literature points to the fact that current research relating to what works to change norms is primarily related to health and gender, with many of these studies focusing on projects that are explicitly on normative approaches being implemented in rural communities in Kenya. Thus, more is needed to understand what is effective in different sectors and contexts.

Importantly, this study notes that norm shifts must fall within a multi-pronged approach and not be entirely independent. This research also notes that time is an important variable in both social and legal norm shifts if change is to be realized. For sustained legal norm shifts to be realized, early engagement with young progressive lawyers for example, including law students in the universities via moot courts is paramount.

By and large, in any given ecological system, norm shifts can happen at different levels, i.e., individual, institutional and social levels. Findings of this study show that LGBTI norm shifts have mainly happened at individual and institutional levels. Kenya is yet to experience LGBTI norm shifts at societal levels. However, there are examples of norm shifts that have happened at social levels such as direct engagement with boda boda riders and family members leading to familiarity and change of perception of members of such social groups. Norm shifts at institutional levels have mainly been influenced by key individuals within those institutions to appeal to and influence decisions. Thus far, through strategic engagement with these individuals, LGBTI groups have been able to influence certain norms leading to significant shifts in the perceptions and attitudes of their constituents and sections of the general public towards LGBTI persons. Examples include the head of key population programs within NASCOP and the Chair of NACC (over 10 years ago), leading conversations about LGBTI persons within their institutions.

Drivers of norm change

Evidence of LGBTI norm shift in Kenya points to the fact that social norms are not static and, therefore, change as a result of various overlapping factors happening over time. From this research, we learn that LGBTI movements and organizations are generally able to function relatively freely, with a vibrant social movement. In Kenya, societal attitudes towards LGBTI persons are gradually beginning to change as LGBTI individuals and organizations work extensively in different parts of the country to promote awareness and respect for LGBTI persons.

This research demonstrates that norm shifts are driven by different factors at the individual (*choice, empowered and inspired champions, brave and fearless*), institutional (*knowledge of institutions that contribute to LGBTI rights violations, how they work, and how to engage with the system*), and societal level (*empowered communities*).

While SOGIE-SC norm shifts in Kenya have been facilitated by various factors such as the changing legal environment, and enhanced and rigorous efforts by the LGBTI community to reach out to allies and the general public, the media (mainstream and social) has greatly - and will continue to - impacted on LGBTI norm change conversations in the country. For example, media depictions in film, songs, the news, etc., are an important force in shaping how individuals conceptualize and value other groups of people, especially ones that are not familiar. As such, media representations are a leading force in the creation of stereotypes about LGBTI individuals. An example is the media portraying and/or representing the decriminalization case as a push for legalization of same-sex marriage in Kenya. The media (print/TV/radio plus social media) are not only a powerful source of ideas about LGBTI persons, but are also one place where these ideas have been articulated, worked on, transformed, corrupted and/or elaborated. Media experts have a great deal of power over how society views and values LGBTI persons in Kenya.

Engaging LGBTI persons, face-to-face, seems to be effective in creating familiarity and change in individual norms on their view towards LGBTI persons. Contact and direct engagement with LGBTI persons and various members of society either at the individual level, with institutions and/or social groups has had a positive impact on how these members of society view, treat and/or interact with LGBTI persons. Humans far too often fear that which is different and unknown. Discrimination is, by definition, based on the perceived difference between people. With increased contact comes familiarity, which reduces implicit bias and intergroup anxiety. Strategies for reducing other forms of discrimination, like racism, recommend direct contact between groups. Additional indirect contact is important

where individuals see positive interactions between members of their group with those of another.

SOGIE-SC norm diffusion and Norm Shifting Interventions sustainability

From the analysis, the research notes that within Kenya, norms around LGBTI rights have not been incorporated into Kenya's legal and cultural code which theorists argue is necessary to complete norm diffusion. Thus, it is clear that norm diffusion needs to be re-conceptualized to include a contextual dimension i.e., the way in which we see norm diffusion and show the need to look toward the inclusion of a local lens.[31] The re-conceptualization should be expected to allow for allies and other players, both on the national stage and the ground, to understand and gather the tools needed to spread certain norms, such as LGBTI rights, in a way that will lead to actual local change. Moreover, norms need to be allowed to mature in a way befitting of the locale in which they operate. Scholars posit that a norm can only be said to have truly diffused once society has accepted the norm.

Thus, scalability of some of the norm shifting interventions documented in this report may need to show external validity to all venues and contexts. Further, it would be important to test the effectiveness of these SOGIE-SC social norm shifting interventions in a broader set of contexts before appreciable scalability.

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[31] Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58, no. 2 (2004): 239-275.

Chapter 6
Conclusion and Recommendations

Conclusion

This research has tried to distill and adapt extensive literature on prevailing norms and their effect on the lived realities of LGBTI persons, and norm shift work in Kenya. And in summary, the research draws the following conclusions:

Existing norms and their effects:. This research was able to identify existing legal and social (religious and cultural) norms that impact the lived realities of LGBTI persons in Kenya. This study established that the norms investigated, i.e., legal, cultural and religious, do not all exert the same amount of effect on the LGBTI person's lived realities. By and large, simple observation shows us that some behaviors are more consistently followed than others because norms vary in strength. Overall, social (cultural and religious) norms proved a much stronger influence compared to legal norms. However, further analyses using the spectrum of norm strength is required to establish the extent of the influence or the effect of each of these norms on the lived realities of LGBTI persons.

SOGIE-SC norm shift: Norm change is gradual and long-term hence knowledge of the norm in question is critical to SOGIE-SC norm shift. This is because people are more aware of them as they engage in a particular behavior. In other words, the direct norm is more immediately salient to the behavior in question. Indirect social norms, on the other hand, do not dictate a particular behavior. Indirect norms may be strong and people may believe in them, but because the specific behaviors demanded by indirect norms are a matter of interpretation, they are less immediately or concretely salient in any particular situation. And from a change perspective, behavior that is dictated by a direct social norm may be more difficult to change because there is only one behavior that meets the group's expectation.

SOGIE-SC norm shifting efforts in Kenya: The study established that already, there are many examples of interventions that have been effective in shifting social norms in Kenya. This norm shift work presents opportunities for future effective and sustained SOGIE-SC norm shift work in Kenya and Africa as a whole. Presently, most of these interventions that challenge social norms supportive of LGBTI discrimination and rights violation are often integrated with other approaches. Much of the norm shifts identified and documented in this research have happened at the individual and institutional level. However, it is important to note that not all of the interventions described herein have been evaluated. Notably, much has been done on legal norms but a whole lot needs to be done on socio-cultural norm shift. Kenya is making a lot of progress in matters of law and policy, with organizations like the National Gay and Lesbian Human Rights Commission (NGLHRC), Transgender Education and Advocacy (TEA) and the Gay and Lesbian Coalition of Kenya (GALCK) at the forefront of litigation approaches. However even with these improvements in law and policy, there are still challenges within Kenyan society in terms of people's beliefs and practices towards LGBTI persons.

Barriers and opportunities for future SOGIE-SC norm shift: While evidence from this research points to numerous opportunities for SOGIE-SC norm shifting efforts, there are a number of factors that may also hinder SOGIE-SC norm shifting interventions from delivering desired results. Thus, in designing and planning for the strategic roll out of Norm Shifting Interventions, one must consider these factors.

"Stigma is the biggest challenge to changing social norms. Norm shift can be addressed through: (a) education from the lowest level to start this conversation around diversity early; (b) working with religious leaders: religious leaders come out to preach against LGBTI communities; (c) the LGBTI community should engage the legislature themselves. Lots of people who are homophobic have not been exposed and are really ignorant; (d) probe more about curriculum development and SOGIE issues for training the police, MTC, medical schools, prison services and other areas where the LGBTI community receives a lot of violations and stigma and discrimination." (KII 001, E13)

Recommendations

This section highlights thoughts and expert opinion on the way forward as far as SOGIE-SC norm shift/change is concerned. Note that the research findings and recommendations are drawn largely from the many voices of LGBTI persons and allies including LGBTI-led groups and organizations working for and with LGBTI persons. These recommendations are grounded in their stories, opinions and experiences. They are also drawn from relevant data and past research reports, including best practice approaches to LGBTI key issues.

The recommendations are linked to the research objectives which will underpin success in designing and implementing successful and sustainable SOGIE-SC norm shift interventions in Kenya.

Recommendations for shifting legal norms

a. **Training and mentorship:** There is need to identify and train judges and magistrates to increase their knowledge and comprehension of LGBTI issues. Training can be done through the Judicial Training Institute and/or in collaboration with human rights organizations such as KNCHR and KHRC. Additionally, LGBTI-led groups should continue engaging with law schools via moot courts to train and mentor law students, and engage (via court users' committees) and mentor progressive young lawyers as champions for LGBTI rights.

b. **Strategic litigation:** There is need to continue utilizing past court decisions (from previous cases) to pursue other rights and strengthen strategic litigation on rights of LGBTI persons. In addition, the LGBTI movement needs to continue utilizing the progressive nature of the Constitution to demand equality and justice for their communities.

c. **Continued use of health framing**: In addition to legal framing, there is need for a policy expansion to include LGBTI health and stigma free services. It is also necessary to continue engaging with the health sector and to expand its services to the entire LGBTI community.

d. **Sustained engagement with political leaders and the legislature**: Strategic advocacy and lobbying taking advantage of the relevant parliamentary committees, caucuses, and existing political capital needs to be continued.

e. **Kenya's positioning as a global nation leading to the Kenyan government adopting a nuanced position on LGBT rights**: There is need to pursue and continue engaging with all the arms of government to explore options for the repeal of harmful laws as well as the need for the government to not only recognize its LGBTI citizens, but to also introduce equality and anti-discrimination laws (as they have said they would) that protect LGBTI persons in Kenya.

Recommendations for shifting religious norms

a. Set up platforms for interactions between LGBTI persons and faith leaders.

b. Organize and/or scale up engagement of LGBTI faith leaders with mainstream non-LGBTI faith leaders.

c. Continued individual engagement with religious leaders. This should be scaled up with the lessons learned from both PEMA Kenya and NYARWEK.

d. With the proliferation of organized hate groups targeting LGBTI communities, there is need to develop a mechanism for monitoring these groups and their activities, as well as ensuring that there are counter narratives and actions towards the same.

e. There should be intentional and concerted efforts both directly and through media to ensure continued information flow and education on sexual orientation, gender identity and expression. This can help address issues relating to limited understanding, comprehension, and knowledge of gender identity and gender expression as well as sexuality in general. There should not be an assumption that there is general understanding and comprehension of LGBTI related issues.

Recommendations for shifting cultural norms

a. Put strategies in place to engage cultural and religious entities to provide counter narratives on the existing definition of family and marriage. In addition, interventions being designed need to be cognizant of the language and messaging used to get the information out.

b. There must be concerted efforts to continue producing and sharing Kenyan LGBTI content in media. This includes the utilization of alternative means of sharing information such as social media. There should also be the production of books, magazines and other forms of media for the sharing of stories of Kenyan LGBTI persons.

c. There is need to reach out to parents of LGBTI persons and work directly with them as allies to break barriers.

d. Mentor cultural leaders as champions to further engage other cultural leaders.

Recommendations on cross-cutting issues

a. There is need to invest more in African-based research (KII 022 D13). These researches need to focus on the following topical areas:

    -   Interrogate different communities in Kenya to establish their level of progressiveness with regard to acceptance of LGBTI persons (include comparative aspects on which communities or ethnic groups are LGBTI inclusive and/or accepting).

    -   Quantitative analysis to show data segregated by culture/ethnic group on acceptance/disapproval of homosexuality.

    -   Interrogate degree of progressiveness in the religious realm (compare the mainstream versus evangelical religious groups; which ones are more inclusive/progressive).

    -   Document LGBTI norm shift opportunities and barriers that may vary between the different parts of the LGBTI community.

    -   African practices that are not heteronormative to deconstruct the notion that African sexuality is not diverse.

    -   Research on how LGBTI issues are understood by unearthing stories of same gender unions in Kenya and Africa.

b. Conduct policy and curriculum review to include topics on sexuality and understanding population diversity etc. e.g. at law schools, in police academies, theological schools, medical schools, etc.

c. Map allies at the grassroots and meaningfully engage with them with particular focus on rural areas.

d. Forge partnerships and bolster engagement with existing allies e.g. KNHRC, Kituo cha Sheria, Defenders Coalition, etc.
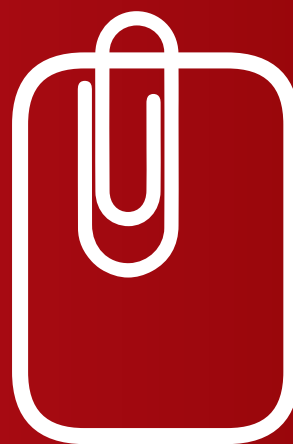
ANNEX

Annex 1: Effects of existing norms

The table below summarizes the effects of existing legal, policy and social norms on the lived realities of LGBTI persons in Kenya.

Summary of effects of legal norms

Existing legal and policy norm	Effect of the norm	Respondents' remarks
The Constitution, COK 2010	• Opened up human rights space. • Positive interpretation has led to numerous legal victories. • Created a devolved system of governance which increased LGBTI persons' access to policy spaces. They are using these spaces to influence local approaches to SOGIE-SC issues. • Has repressive as well as the emancipatory potential. • Progressive sections promise protection from discrimination towards all citizens and yet has specific discriminatory sections targeting 'same sex' sexualities on topics of marriage and family.	*"LGBTI persons are not enjoying their constitutional rights; they cannot access health services; and even people who pretend to support LGBTI communities have high levels of homophobia. LGBTI persons cannot express themselves freely."* (KII 001)
Adoption of progressive policies	• Enhanced access to healthcare for LGBTI persons. • The Government of Kenya is increasingly supporting Key Population groups. • Improved intersex legal and policy framework	*"The environment is not inclusive. Visibility and recognition of LGBTI persons is still low, and the environment is full of stigma and discrimination. This leads to violence, isolation and discrimination against LGBTI persons. Most LGBTI persons have suffered depression due to the neglect and the stigma they face."* (KII 020)
Legal institutions and their actions (court decisions and rulings)	• Lead to stigma, discrimination, violence, erratic and arbitrary attacks, blackmail, murder, etc. • LGBTI persons treated as 'non-existent' leading to fear, stigma and discrimination. • Expanded the protections of the Constitution to LGBTI persons e.g. freedom of association.	
Registration of LGBTI led groups	• Increased visibility of LGBTI persons thereby erasing negative stereotypes. • Reduced social stigma and created a shift towards tolerance. • Led to the recognition of the groups as legal entities that can benefit from funding and government support.	*"Arbitrary arrests and prosecution of people who are suspected and/or are queer using laws such as the Sexual Offences Act; expulsion from schools, jobs, and health centers; and blackmail have led to suicide. Some LGBTI persons have been murdered. The decriminalization case heightened vulnerability and led to increased attacks."* (KII 001, E11)
Approval of studies on/ targeting SOGIE-SC issues	• Generating new knowledge. • Inform better SOGIE-SC programming.	
Legal prohibitions and criminalization e.g. Penal Code	• Used to blackmail LGBTI persons. • Members of the public and law enforcers use sections of the Penal Code to reinforce and reaffirm certain norms. These create a climate of fear and result into increased cases of stigma, mental health issues, cases of suicide, etc.	

ANNEX

Summary of effects of social norms

Existing religious norms	Effect of the norm	Respondents' remarks
Religious teachings (guided by doctrines).	• Prejudicial and discriminatory views that are extremely judgmental, leading to feelings of rejection & isolation.	*"LGBTI persons are not free; this is due to oppression, name calling and mistreatment from the different religious congregations. Gays are connected with illuminati; they are denied access to/inheritance of ancestral land; they suffer rejection in their communities and schools etc."* (KII 010)
Reference to scriptures.	• This causes condemnation and self-stigma. • Religious LGBTI persons live painful lives in the 'toxic closet' as a result of the fear of condemnation.	
Sermons and preaching directed to LGBTI persons, based on interpretation of the scriptures.	• These sermons spread hate and this drives LGBTI persons away; leads to stigma; and denies them an opportunity to get spiritual nourishment. • Congregants use these sermons to justify attacks on LGBTI persons.	*"Kenya Christian Professional Forum has worked hard to create resistance against LGBTI people. They continue to spread hate in their spaces and the media. Conservative religious leaders use their pulpits to preach hate."* (KII 006)
Notion of protecting 'our' faith and values	• Ostracization and name calling.	
Organizing within religious circles	• Increased stigma, discrimination and violence	
Ex-communication of LGBTI persons.	• Exclusion from spiritual nourishment.	*"When LGBTI persons face violence, they cannot report because of guilt that who they are is wrong and fear of being arrested."* (KII 019)
Beliefs around 'Africanness.'	• Affected persons get disowned leading to homelessness. • Missing out on education.	*"Most LGBTI persons are not employed and are homeless, especially transgender persons."* (KII 016)
Heteronormative cultural template i.e. expectations due to rigid gender norms.	• Affected persons get disowned leading to homelessness. • Missing out on education. • General lower economic development outcomes.	*"Kaya elders have not accepted LGBTI persons. They discriminate against them and in some instances, they ex-communicate them through the traditional justice system. For Mijikenda for example, LGBTI persons were taken to Milalani and left there to die. This practice has however since died out."* (KII 011)
Embedded and replicated patriarchal structures and connotation around power.	• LGBTI persons are subjected to violence like 'homophobic/corrective' rape, discrimination etc.	
Culture of silence. It is taboo to discuss sex in many communities, or the existence of alternative sexual practices.	• Ostracization and name calling. • Stigma and discrimination due to misinformation, prejudice, rhetoric and myths.	

Existing cultural norms	Effect of the norm	Respondents' remarks
Cultural framing and connotation around sexual orientation, marriage and the family system.	• Ostracization and name calling. • LGBTI persons are rejected by their communities and families, and forced to live in the closet. They therefore miss out on education, family inheritance and are vulnerable to joblessness and high poverty levels. • Some intersex children are killed as they are considered to be curses to their families.	*"LGBTI persons are forced to live in a closet. They are left out of family functions like weddings and funerals because they are not considered as part of the family. Some of them have been disinherited because they are not considered as part of the family anymore."* (KII 020)

Annex 2: Case studies of SOGIE-SC norm shift activities in Kenya

CASE STUDY 1: Engagement with boda boda operators by INEND

Background: In 2010, a group of boda boda operators/riders and community members attacked two gay men in Mtwapa (town in Kilifi County, located in Kenya's coastal region) and dragged them to a police station demanding that the police arrest them. This incident led to an increase in violations of the rights of sexual and gender minorities by boda boda operators in other counties in the region, including Mombasa County. Since boda bodas are the most common means of transport in Kenya – they are cheap and convenient - and their stages/boarding areas are busy and populated, they are inescapable. The frequent attacks by boda boda riders made the lives of LGBTI communities in Mombasa County difficult and risky. The Initiative for Equality and Non-Discrimination (INEND) reached out to the boda boda leaders from the areas in which the majority of the attacks happened in order to understand what informed their violent actions. Since 2017 to date, INEND, in partnership with Coast LGBTI organizations, has been implementing a project dubbed **"Engaging known or perceived perpetrators of violence"** with boda boda operators as the primary target**.** The project is aimed at shifting norms on societal perceptions of sexual and gender minorities through educating boda boda operators about the human rights and lived realities of LGBTI persons.

Project implementation strategy: A mapping exercise was conducted to identify the 'hotspots' of violence. Planning meetings were held with area leaders of the locations considered as hotspots. During these meetings, opinions on prevention and response mechanisms were collected and used to inform requisite training components. A sensitization tool kit on sexuality and gender diversity with modules on the bill of rights, stigma and discrimination, religion and its impact on sexuality, and gender was developed. The sensitization tool kit included a video highlighting the plight and lived realities of sexual and gender minorities whose intention was to put a 'human face' to the violence and its effects among victims. Area leaders of the identified 'hotspots' with prevalent attacks were taken through the sexuality and gender diversity sensitization training. INEND reached out to a purposively selected group of boda boda leaders and operators, specifically those who spearheaded and oversaw the attacks. Purposive selection was informed by their influence in the boda boda sector. The boda boda leaders and operators were taken through the sensitization training on sexuality and gender diversity. All trainings under this project were geared towards changing participants' perceptions and attitudes towards sexual and gender minorities by a) creating awareness and fostering dialogue so that they were more open minded and less inclined to attack and b) creating allies within the sector who could stand up for LGBTI persons when the need arose. Upon completion of the sensitization training for both groups of trainees, participants with changed perceptions were identified and taken through further training as peer trainers. These trainings and preparatory processes were undertaken by INEND staff that included the Advocacy Officer, Research and Documentation Officer and the Executive Director. Further to the training, INEND convened roundtable discussions with LGBTI and boda boda leaders to obtain feedback and suggestions for their improved engagement in the intervention.

Results: Within the first year of implementation, a project evaluation showed that reports by LGBTI persons concerning violence from boda boda operators reduced by 50 per cent. A network of allies has also been created among boda boda operators who alert INEND of impending risks so as to secure LGBTI members beforehand. For instance, during the decriminalization case litigation period, a network of boda boda operators were strategically positioned to evacuate LGBTI members in violent areas. Feedback from project review interviews and round table dialogues has been used to inform program intervention response. However, results from these exercises and the evaluation have not been published yet.

Observations and Key Lessons:

Lessons learnt from this project indicate that:

- Equipping society with information has potential to change mindsets and shift norms significantly.

- Engaging boda boda and LGBTI leaders in the project design and implementation helped address real issues in real time.

- Partnerships with other organizations has helped in scaling up the project in other regions of the country.

- Training TOTs not only provides a pool of skills and knowledge within the target audience but also increases boda boda operators' levels of engagement, interest and ownership since it is easier for them to relate with their peers.

Some of the challenges experienced include rigidity in learning exhibited by select homophobic operators who are close minded, and lack of enough resources for the program, resulting in the engagement of only a small number of operators at a time. However, these can be overcome through more sensitization and fundraising.

Replicability: Other organizations have reached out to INEND to adopt/implement similar projects due to its impact. INEND intends to work with them to achieve this mission. However, replicating the project would require engaging the audience and obtaining their views in the design, implementation and monitoring processes before engagement. Scaling up the boda boda work requires resources, both monetary and human.

Sustainability: The project resources included the entire INEND team and finances (conference payment, transport reimbursement among other logistics). This project has been funded by AJWS and UHAI. This project has been a continuous intervention carried out in Mombasa County, since there are new boda boda operators entering the business daily.
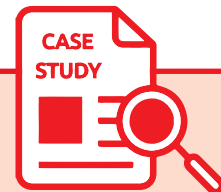
CASE STUDY 2: Engagement with religious leaders by NYARWEK

Background: A baseline study conducted in 2015 in Kisumu and its environs including Siaya, Kisii, Busia, Migori, and Homabay indicated that the region is conservative in its understanding of LGBTI related issues. Many of the respondents to the baseline were not receptive of LGBTI persons or did not want to be associated with them. Discrimination in private and public domains was rife especially in the areas of health, administration and security. The discrimination was seen to be largely due to ignorance and misinformation, requiring comprehensive attitudinal change programming targeting societal drivers of the negative perception of LGBTI persons including county, local administration officers and societal leaders inclusive of religious and political leaders. The study found that both rights holders (LGBTI persons) and duty bearers (government) referred to culture and religion to explain the basis of their discrimination. Yet religion was also seen as a potential source of promotion of inclusion since God does not confer on humans the authority to judge one another.

Problem: LGBTI persons do not enjoy equal rights and still face discrimination and exclusion. Societal leaders, particularly religious and political leaders often use anti-LGBTI rhetoric that reinforces stigma and instigates violence against LGBTI persons. These negative views are often echoed by the media. The effect of this exclusion has a negative impact on the wellbeing of LGBTI persons and their ability to claim their rights and participate equally in society. Additionally, there is inadequate capacity to build LGBTI resilience and increase wellbeing and build safe spaces for dialogues and development of allies among societal leaders, particularly political leaders, religious leaders, and the media.

Intervention: The *Strong in Diversity Project* is a three-year project implemented by NYARWEK, PEMA Kenya and Positive Vibes that is meant to ensure the resilience and greater social inclusion and recognition of LGBTI rights with focus on societal leaders like religious leaders, political leaders and the media.

The intervention has three components attached to it. At its core is its main methodology of facilitating dialogue between LGBTI persons and political and religious leaders. A second component is programming to engage with the media to ensure a non-stigmatizing image of LGBTI persons. Finally, the third component focuses on improving the capacity of LGBTI communities to build and strengthen alliances, build their resilience and increase their wellbeing.

Objectives: Due to the prevailing state of hostility and stigma directed towards LGBTI persons primarily from faith, political leaders and the media, a set of objectives were generated for the *Strong in Diversity Project*. They included: a) increased engagement on NSHP at the county and national levels; b) increased engagement of potential allies across sectors and movements through rigorous advocacy and planning; c) increased media coverage of LGBTI persons' lived realities from a human rights perspective; and d) LGBTI persons become empowered and more resilient to claim their rights.

Project implementation strategy: This is a three-year project targeting 135 LGBTI persons and the establishment of 85 new allies. The target groups include religious and political leaders, media and LGBTI persons. NYARWEK utilized its cluster organizing approach to establish the project. NYARWEK covers over nine counties in Western Kenya with over 15 LGBTI member organizations. These organizations are organized into clusters for more effective programming for LGBTI communities. NYARWEK was therefore able to identify religious and political leaders through the cluster structure for their intervention.

The intervention, which includes a pre-training and post-training survey component, is primarily focused on establishment of dialogue between faith leaders and LGBTI persons. The various modules utilized cover a wide array of subjects. These include providing definitions of LGBTI communities, their needs, the recorded violations they experience due to societal stigma and discrimination; discussions of power and the source of discrimination; heteronormative privilege; interrogation of scriptures of the holy books that are often utilized to attack LGBTI persons (these scriptural engagements are led by faith leaders themselves); issues around security and violations affecting LGBTI persons; and establishment of safe spaces for continued dialogue between faith leaders, political leaders and LGBTI persons.

Results: So far, over 600 faith leaders have participated in the trainings and dialogues and they have been involved in the expansion of the engagements with LGBTI communities. Additionally, eleven (11) of the trained faith leaders were directly involved in policy advocacy activities for LGBTI communities, along with five (5) trained political leaders of the Kisumu County Assembly. This involvement led to the removal of a bill tabled in the Kisumu County government to deregister organizations serving LGBTI communities in Kisumu County. The trained faith leaders changed in attitude as recorded in the pre-training and post-training results and increased their commitment to working with LGBTI communities and other Key Population groups. Other outcomes include: increased capacity of LGBTI groups' ability to work with faith communities within their own organizations; improved interaction between LGBTI communities and faith leaders; engagement with the National Gender and Equality Commission and the media having direct effect at the county and national advocacy spaces; etc.

Lessons learned: Working directly with individuals as opposed to institutions is more effective in shifting norms relating to perceptions and attitudes. Religious institutions are highly hierarchical and this makes it very hard to penetrate through to the top leadership. Continued engagement and direct contact with various leaders and members of the society is critical in creating familiarity.

Sustainability: The partnerships and good working relations that have been established with various institutions such as the County Assembly, leadership of some churches and national government agencies are key to future engagement and sustainability of the project.
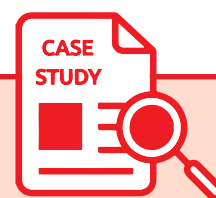
CASE STUDY 3: Empowering communities and institutions via information sharing by TEA

Background: Transgender individuals continue to face high levels of stigma, discrimination and isolation in Kenyan society. Specific and directed issues that affect transgender communities are not well understood or advocated for, even within LGBTI lead spaces. For example, transgender persons have difficulty accessing change of names, photographs and gender markers in official documents such as birth certificates, national identity cards, passports, driving licenses, academic certificates and other documents used by all Kenyans in their day to day activities. Without these basic documents, navigating one's lived reality becomes near impossible for transgender individuals.

Problem: There is stigma, discrimination and isolation of transgender communities in various spheres of society. In the healthcare sphere, gender-affirming care is almost non-existent. Healthcare providers are not equipped with the requisite knowledge and skill to manage gender dysphoria and other co-morbidities affecting transgender persons. Finally, the general public is ignorant about transgender persons. The assumption often is that transgender women are effeminate gay men and transgender men are lesbians. Police brutality against transgender women is rampant and so is the impunity within the security sector. Finally, media sensationalization of transgender persons including airing forced stripping by the general public reinforces stereotypes and misinformation that only heightens violations targeted at transgender persons.

Intervention: The Transgender Rights Advocacy Projects (TRAP I, II & III) and Transgender and Intersex Rights Advocacy Project, were designed to empower the target communities (Transgender and LGBTI communities) and institutions (government, judiciary) with the correct information about transgender persons. The projects utilize training and sensitization workshops, strategic litigation, media features with mainstream and alternative media, social media (Facebook), research, public forums organized by parliament and state departments. The aim is to actively seek services that are traditionally denied to transgender persons and challenge transphobic duty bearers.

Objectives: The program has four overall objectives: a) increased awareness of transgender people and their issues; b) increased legal recognition and protection of transgender persons; c) improved economic and human rights status of transgender persons; and d) reduced prevalence and incidence rates of poor health outcomes such as HIV, mental illness, substance abuse, suicidality, and other morbidities and mortalities.

Project implementation strategy: TEA engages at the individual, community and institutional levels. Transgender persons face challenges from a wide range of spaces e.g. the police, schools, society, CSOs, healthcare institutions/providers, families etc. Therefore, the approach must be multilayered for effectiveness. TEA's approach is dependent on the problem(s) that need to be addressed and the opportunities presented. Examples include sensitizing and advocating for development of guidelines for the management of gender dysphoria, filing cases in Kenya's courts to seek redress for human rights violations or to compel state officers to perform their statutory duties.

Results: TEA's intervention and engagements have resulted in multiple positive results for transgender communities in Kenya. The change of name initiative has enabled at least thirty (30) transgender and intersex persons to legally change their names in their documents, thus protecting them from human rights violations and enabling them to live fulfilling lives. The media/public awareness campaigns have empowered transgender people and given them access to information, thereby empowering them in their journeys of self-discovery. TEA's strategic litigation initiative has also enabled transgender persons in Kenya to defend and promote their constitutional rights and freedoms where these have been denied by transphobic elements in the society. These and other initiatives have significantly challenged oppressive gender norms that target transgender persons. They have also challenged the perception of what transgender persons can achieve.

Observations and key lessons:

1. **Consistency in knocking on doors is important**: TEA has knocked on doors consistently and over time

on a wide array of government institutions that have direct effect on transgender communities. These have included: Ministry of Health, Ministry of Home Affairs, National Security and Ministry of Education. TEA engages and continues to write to other institutions including the Kenya National Examination Council (KNEC), National Registration Bureau, Department of Immigration Services, Civil Registration Department, the Judiciary, the Medical Practitioners and Dentist Board/Council, Kenya Institute of Curriculum Development (KICD), Commission for Administrative Justice (CAJ), Kenya National Hospital (KNH), Liverpool VCT, Kenya Medical Association (KMA), Kenya Psychiatric Association, Kenya Police, Kenya Magistrates and Judges Association, Media Council of Kenya, and the Daily Nation, etc. This consistency in reaching out has created crucial relationships and provided the much-needed access for transgender persons to engage duty bearers and other stakeholders in improving their policies, perceptions and practices, as regards transgender persons and their rights.

2. **Empowering our target communities with the right information on transgender issues:** From the initial survey of TEA's interaction with various sectors of society, two universal observations were made: (i) majority of the audiences had never met a transgender person and did not even know they existed and what their needs were; and (ii) there was a high level of transphobia and a lot of stigma towards transgender persons. It is from these observations that TEA realized the need to engage in a wide array of targeted interventions to address this level of ignorance around transgender persons. Access to this information has been crucial in demystifying myths and misconceptions about transgender persons.

3. **Utilization of personal stories/lived realities of transgender persons:** TEA made an observation that the utilization of international legal regimes and international narratives does not always resonate with the Kenyan public at large. Utilization of localized personal stories and transgender struggles seemed to be better understood since most Kenyans could relate to them.

4. **Language:** In getting information out on transgender communities, there needs to be avoidance of "Americentric" and "Eurocentric" language. These tend to distort the conversation being held. There is need to utilize local languages and terminologies for targeted audiences.

5. **Sustainability:** Issues of resources abound. Additionally, it is important to ensure that donor support is contextual and focused on the needs of the transgender communities and not the donor priorities.
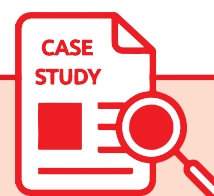
**CASE
STUDY**

CASE STUDY 4: Partnership with the police to ensure safety and security of LGBTI persons by (KASH)

Background: The Security Scale Up Project, was a three-year project implemented by Keeping Alive Societies Hope (KASH) from July 2017 to September 2019 in Kisumu County. The project was geared towards solving the security issues among Key Populations in Kisumu County after complaints and reports of physical attacks, rape and arbitrary arrests of female sex workers and men having sex with men by the general public. Upon project implementation, a shift in the norms was observed with reduced attacks and harassment of Key Populations by the public and police, reduced rape as well as increased understanding and co-existence between the LGBTI community and the police, including offering protection to male and female sex workers.

Project implementation strategy: The project aimed at ensuring maximum security and protection for LGBTI communities, whilst safeguarding their rights and enhancing social inclusion through partnership with the police and community gatekeepers. The expected outcomes for this project were: reduced harassment by the public; increased understanding between sex workers and police; reduced rape and physical assaults; and meaningful engagement of all the parties. The entry point for the project was the regional police training center where KASH had been undertaking a series of other trainings. A mapping exercise was undertaken to identify the

risky zones. Mobilization was then conducted from the identified risky areas through the Officer Commanding Station. Monthly meetings with community gatekeepers and training of police and general public on human rights and LGBTI issues were undertaken. Select police officers and community gatekeepers were provided with additional training as trainers of trainers (TOTs). The project also targeted the media to stimulate a non-stigmatizing view of LGBTI persons when reporting. Monthly monitoring was conducted through focus group discussions, policy meetings and surveys (baseline, midterm and end line). Additional tools used for monitoring and evaluation included training registers and reports, violence forms and security plans.

Results: The project reached 68 police officers from three police stations, 30 community leaders and 25 members of the general public with training on LGBTI human rights and LGBTI issues. 10 police officers and five members of the general public were further trained as TOTs and further trained their peers on the same topics. This project recorded norm shifts through reduced number of arrests and increased protection of LGBTI members including those who were engaged in sex work. The best practices were constant engagement of the stakeholders and monitoring of the processes. Limited budget and deeply rooted cultural and religious beliefs and inclinations among targeted participants were some of the challenges experienced during project implementation.

Replicability: This project model can be easily adopted and replicated in varied contexts and populations.

Sustainability: Financial and human resources are required for project implementation. Fundraising and mobilization are necessary steps to scale up and ensure sustainability.

Annex 3: Research Team

Study investigators

#	Name	Responsibility
1	Nguru A. Karugu	Principal Investigator
2	Chris Ouma	Co-Investigator
3	Serah Nduta Njenga	Co-Investigator
4	Jeffrey Walimbwa Wambaya	Co-Investigator
5	Muthoni Ngige Valentine	Co-Investigator
6	Professor Owuor Olunga	Co-Investigator
7	Evans Gichuru	Co-Investigator

Field workers and research assistants

#	Name
1	Danson Munene
2	David Ochora
3	Edwin Gumbe
4	Elizabeth Ongindi
5	Evans Nyango'a
6	Khamisi Mohammed
7	Rose Sila
8	Sandra Mugo
9	Vincent Odira
10	Wawira Neru

Collaborating institutions providing technical oversight, support and advisory

1. **Nyanza, Rift Valley and Western Kenya Network (NYARWEK):** was formed in 2009 to be a voice of the LGBTI community with a view to build capacities of its members, integrate views and advocate for the rights of LGBTI persons in the Western and Nyanza regions. Its mandate is to coordinate and link activities of the member groups, build their capacities, integrate and collate their views for lobbying and advocacy. NYARWEK will offer technical support and guidance as part of the Study Advisory Committee throughout the study implementation period.

2. **Gay and Lesbian Coalition Kenya (GALCK):** is a network of Kenyan gays' and lesbians' organization, located in Nairobi, and whose mission is to promote the interests and rights of lesbian, gay, bisexual, and transgender (LGBT) people and organizations in Kenya. GALCK's main areas of work are addressing human rights, access to health services and capacity development of its member organization. GALCK works with the government, health providers and partners to enhance adequate access to health services for the LGBTs. GALCK will participate in the Study Advisory Committee throughout the study implementation period.

3. **The National Gay and Lesbian Human Rights Commission (NGLHRC):** is an independent human rights institution working for legal and policy reforms towards equality and full inclusion of sexual and gender minorities in Kenya. NGLHRC will provide technical assistance and support as part of the Study Advisory Committee.

4. **JINSIANGU:** is a Kenyan-based organization established in 2012 to increase safe spaces for and enhance the wellbeing of intersex, transgender and gender non-conforming (ITGNC) people in Kenya. The name 'JINSIANGU' is coined from a combination of the Swahili words 'Jinsia Yangu' meaning 'My gender'. JINSIANGU is committed to ITGNC–led pro-humanity and pro-equality organizing. JINSIANGU will provide technical support and advice as a member of the Study Advisory Committee.

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Contributing Organisations

INTERSEX PERSONS SOCIETY OF KENYA

**National Gay and Lesbian
Human Rights Commission**

NYARWEK NETWORK

JINSIANGU

KEMRI | Wellcome Trust

25483-00603, Nairobi
nguruk@phi-africa.com

AMERICAN
JEWISH
WORLD
SERVICE

American Jewish World Service
45 West 36th Street,
New York, NY 10018