



Kenya
Alternative Report Relating to the Rights of LGBTI Persons

**Submitted by The Advocates for Human Rights, an NGO in special consultative status, with
The Eagles for Life, Sign Ishara, and Oasis Research**

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Founded in 1983, **The Advocates for Human Rights** is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact-finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States, including LGBTI individuals who have experienced discrimination and violence based on sexual orientation and/or gender identity in Kenya.

The Eagles for Life is a community-based organization formed in 2010, located in Kisii-Kenya. It champions the rights of sexual minorities, advocates for improved access to health services, and fights for the inclusion of minority persons in the policy formulation processes. The Eagles for Life works in the areas of human rights, economic empowerment, and self-advocacy.

Sign Ishara is a Kenyan consultancy firm that works to encourage inclusivity in all aspects of disability, with particular expertise in the areas of disability and education. They are involved in advocacy and the rights of persons living with a disability and endeavor to see all schools becoming disability friendly. In addition, Sign Ishara focuses on developing materials that help the Deaf community to better perform in academic settings.

Oasis Research is research consultancy established in 2010 to provide research and advisory services in the fields of good governance, human rights, rule of law, access to justice, law enforcement through comparative approaches and best practices for the benefit of all stakeholders integral to policy making and implementation in Kenya. Oasis Research also provides technical support on applicability of international human rights standards under municipal law. As part of its outreach activities and pro-bono work, Oasis Research has in partnership with non-governmental organizations undertaken human rights training on sexual and reproductive health rights and punitive laws affecting key populations from accessing medical treatment. The programmes involve training of policymakers, faith-based organizations, law makers on existing practices and policies that prevent access to health through justification of discrimination, violence and stigmatization.

EXECUTIVE SUMMARY

1. The Government of Kenya fails to prevent human rights violations against individuals based on their sexual orientation and/or gender identity (SOGI). The criminalization of consensual same-sex relations of lesbian, gay, bisexual, transgender, and intersex (LGBTI) adults leaves them at serious risk of harm. LGBTI persons in Kenya report discrimination, violence, lack of protection by law enforcement and government officials, and limited access to services. LGBTI individuals with disabilities and other marginalized identities are particularly at risk for such human rights violations.
2. This report provides an overview of human rights developments related to sexual orientation and gender identity since Kenya's last review in 2012. It concludes that the Government of Kenya has failed to uphold its human rights obligations regarding sexual orientation and gender identity minorities, resulting in violations and a context of fear for these groups. This report will review specific human rights violations that require immediate attention by the Government of Kenya, including the right to freedom from discrimination, harassment, and abuse, accountability for members of law enforcement and vigilante groups, and disability rights.
3. In January 2019, civil society organizations and human rights researchers conducted fieldwork to map the human rights violations of LGBTI individuals in Kenya. This report is based on first-hand information collected from the interviews and desk-research on news media outlets and reports on the issues of LGBTI individuals in Kenya. Interviews were conducted with twenty LGB¹ individuals living in the areas of Kisii, Nyamira, Homa Bay, Migori, and Nairobi. A portion of the study also focused on interviews with seven Deaf LGB individuals to understand their lived experiences and the intersections between two marginalized identities. The interviews primarily focused on the participants' interactions, as LGB persons, with law enforcement and government officials, health and education service providers, religious leaders, members of society, and vigilante groups. In addition, researchers visited local NGOs to gather data on cases of LGBTI human rights violations in Kenya. All information in this report is used with express consent of the participants in the study. This report also includes first-hand information used with permission from The Advocates' asylum clients about their experiences, as well as information provided by NGOs in Kenya that work on SOGI issues.

Kenya fails to uphold its obligations under the International Covenant for Civil and Political Rights (ICCPR)

I. Non-discrimination (List of issues paras. 4-5)

A. Anti-discrimination legislation

4. In its 2020 List of Issues in relation to the fourth periodic report of Kenya (LOI), the Human Rights Committee ("Committee") requested that Kenya indicate what legislative and other measures have been taken to combat discriminatory laws and social practices based on sex, sexual orientation, gender identity, disability, socioeconomic status, HIV/AIDS status, ethnic

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

affiliation, and several other characteristics.² The Committee also asked the Kenyan government to include information about steps taken to develop comprehensive anti-discrimination legislation.³

5. In its replies to the List of Issues, the government of Kenya noted that though it does not have specific anti-discrimination law, the principles of non-discrimination are upheld in several relevant laws. These laws include an HIV and AIDs Prevention and Control Act and the Persons with Disability Bill, among others.⁴ The government also noted that the Registration of Persons Bill of 2019 provides for registration of intersex persons.⁵
6. Although Kenya has taken some steps towards implementing and adopting a more comprehensive anti-discrimination law, **the State party has to date taken no specific actions to provide protection on the basis of sexual orientation and gender identity.** Kenya's Universal Periodic Review Implementation Matrix 2015-2019⁶ lists several actions that the government claims to have taken as anti-discrimination measures against sexual orientation and gender identity, such as conducting surveys on diversity in the public service sector, finalizing the Draft Equality Policy, and conducting a survey on the number of women in the public and private sectors. These actions do not address the issue of sexual orientation and gender identity; rather, they focus on women's rights and gender diversity. Kenya's government has not taken concrete steps to create inclusive laws that specifically protect individuals from violence and discrimination based on their sexual orientation or gender identity. The State Party report describes legislation of general application that does not specifically protect LGBTI individuals from violence, discrimination, or harassment.
7. Kenya took an important step towards recognizing intersex persons by including in the 2019 National Population census a new option to identify as intersex. Not much progress, however, has been made in additional areas of concern to the Kenyan intersex community, including recognition on birth certificates and other official documents as recommended by the Task Force on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya or registration of intersex persons as proposed in the Registration of Persons Bill 2019.⁷
8. Further, there has been little progress on reviewing social protection mechanisms to ensure that the dignity and personal security of intersex persons are protected, safeguard against violation of their rights based on the gender identity, protect them against discrimination, stigma, and violence.⁸

² Human Rights Committee, *List of Issues in Relation to the fourth periodic report of Kenya*, 1 July 2020, U.N. Doc. CCPR/C/KEN/Q/4, ¶4.

³ Human Rights Committee, *List of Issues in Relation to the fourth periodic report of Kenya*, 1 July 2020, U.N. Doc. CCPR/C/KEN/Q/4, ¶4.

⁴ Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶ 24.

⁵ Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶29.

⁶ Kenya Office of the Attorney General and Department of Justice, *Universal Periodic Review 2nd Cycle Implementation Matrix 2015-2019*, accessed March, 21, 2019, https://www.upr-info.org/sites/default/files/document/kenya/session_21_-_january_2015/kenya_2nd_cycle_final_matrix_2016.pdf

⁷ Information received from Kenyan NGO (18 February 2021).

⁸ Information received from Kenyan NGO (18 February 2021).

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

9. In its August 2012 Concluding Observations, the Committee expressed concern that Kenya's Penal Code continues to criminalize "same-sex relations between consenting adults of the same sex."⁹ The State Party made no mention of the Committee's concerns in their replies to the Concluding Observations.¹⁰
10. In its 2020 LOI, the Committee asked Kenya to "report on measures taken to decriminalize sexual relations between consenting adults of the same sex. In this regard, please include information on the 2019 High Court ruling on petition No. 150 of 2016, which upheld sections 162 and 165 of the Penal Code criminalizing sexual relations between consenting adults of the same sex."¹¹
11. In its replies to the Committee, the Kenyan Government stated that same-sex sexual relations are "deemed unacceptable to the Kenyan culture and values."¹² The government added that the High Court ruled in 2019 that sections 162 and 165 of the Penal Code do not violate the Constitution, arguing that these acts "are contrary to culture and the society's morals."¹³
12. Kenya, along with more than 20 other African countries, continues to criminalize consensual adult same-sex sexual relations by law.¹⁴ Under Section 162 of Kenya's Penal Code, any person who has "unnatural carnal knowledge against the order of nature" is guilty of a crime of up to fourteen years imprisonment. In addition, under Section 165 of the Penal Code, any male person who commits any act of "gross indecency" with another male person is guilty of a felony of up to five years imprisonment. Yet police officers utilize the existing legal provisions to harass LGBTI individuals more often than to prosecute them.¹⁵
13. While sections 162-165 of Kenya's Penal Code do not criminalize LGBTI identities, they do criminalize same-sex sexual conduct. Even the vocabulary of the legal provisions is vague because it does not define what "unnatural carnal knowledge" constitutes. Therefore, much police officers and government officials have much discretion in their interpretation of the provisions. They often arrest LGBTI individuals under these provisions of the Penal Code based solely on their own perceptions of sexual conduct.

C. Failure to protect LGBTI individuals from acts of violence, harassment, abuse, and discrimination based on sexual orientation or gender identity

⁹ ICCPR, *Concluding Observations on the third periodic report of Kenya*, U.N. Doc. CCPR/C/KEN/CO/3, (31 August 2012), ¶ 8.

¹⁰ ICCPR, *Concluding Observations on the third periodic report of Kenya, Information received from Kenya on follow-up to the concluding observations*, U.N. Doc. CCPR/C/KEN/CO/3/Add.1

¹¹ Human Rights Committee, *List of Issues in Relation to the fourth periodic report of Kenya*, 1 July 2020, U.N. Doc. CCPR/C/KEN/Q/4, ¶5.

¹² Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶30.

¹³ Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶34.

¹⁴ International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, by Aengus Carroll and Lucas Ramón Mendos (Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association, May 2017), 26.

¹⁵ Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya's Coast* (United States: Human Rights Watch, September 2015).

Violence, harassment, and abuse

14. In its August 2012 Concluding Observations, the Committee expressed concern about “reports of acts of violence, harassment and abuse against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons based solely on their sexual orientation or gender.”¹⁶ The Committee urged the Kenyan government to take steps to mitigate social stigmatization of the LGBTI community. The State Party failed to address the Committee’s concerns in their replies to the Concluding Observations.¹⁷
15. In its 2020 LOI, the Committee asked the Government of Kenya to, “Please also elaborate on measures taken by the State party (a) to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals against harassment, discrimination and violence perpetrated by both State officials and private individuals, including discrimination against them in relation to housing, the provision of goods and services, education and health care, and in the form of extortion and arbitrary arrest and detention by law enforcement officials, and of barriers to access to justice....”¹⁸
16. The Government of Kenya response to the Committee’s LOI seeks to rely on sensitization efforts undertaken by governmental agencies such as the National Gender and Equality Commission (NGEC) and NGOs to educate police officers about discrimination against LGBTI individuals, although no specific government programs were cited. Sensitization of key law enforcement stakeholders including police and administrators has largely been left to non-governmental organizations. Further, there are no studies on the impact of existing sensitization programs on stigma and discrimination.
17. LGBTI individuals in Kenya experience widespread violations of their right to life, liberty, and security. In 2015, for example, two men in Kenya were arrested and charged with committing “unnatural” offenses and the trafficking of “obscene material.”¹⁹
18. LGB individuals shared with the authors of this report that they feared being assaulted by family members if they disclosed their sexual orientation. In one case, a lesbian was physically and verbally assaulted by her male family members. While they physically assaulted her, they expressed “you are not enough to be a human being.”²⁰ In another case, a 25-year-old bisexual man was physically assaulted by his father and forced to abandon his house and family because of his sexual orientation. Interviewees reported that they were afraid to report these violations to law enforcement and other government officials because it could potentially exacerbate the situation.
19. The Kenyan government fails to protect LGBTI individuals from human rights violations by members of their communities or to educate the public about LGBTI rights. LGB individuals also reported suffering attacks from members of their local community based on their sexual

¹⁶ ICCPR, *Concluding Observations on the third periodic report of Kenya*, U.N. Doc. CCPR/C/KEN/CO/3, (31 August 2012), ¶ 8.

¹⁷ ICCPR, *Concluding Observations on the third periodic report of Kenya, Information received from Kenya on follow-up to the concluding observations*, U.N. Doc. CCPR/C/KEN/CO/3/Add.1

¹⁸ Human Rights Committee, *List of Issues in Relation to the fourth periodic report of Kenya*, 1 July 2020, U.N. Doc. CCPR/C/KEN/Q/4, ¶5.

¹⁹ Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya’s Coast* (United States: Human Rights Watch, September 2015).

²⁰ Interview with participant, Nyamira, Kenya, Jan. 9, 2019.

orientation. LGBTI individuals who present themselves more openly in Kenyan society are more at risk of aggression from people in their communities.²¹ In addition, a 2016 survey found that in Kenya 40% of respondents strongly agreed that being LGBTI should be a crime.²²

20. LGB individuals reported instances of physical assaults due to their sexual orientation. In one case, a lesbian woman was physically attacked by another woman when trying to explain her lifestyle. While these types of physical assaults were common, verbal assaults constituted the majority of attacks on LGB individuals in Kenya from other community members. Some of the participants stated that “they threaten that they will beat you when you are alone; that is why you never walk alone.”²³ Other comments included: “you should be banned and killed”²⁴ and “we should be treated like dogs.”²⁵ Therefore, LGB individuals are forced to protect themselves, without support from members of the community, law enforcement officials, or family members.
21. Law enforcement officials actively target and persecute LGB individuals by utilizing Section 162(a),(c) and 165 of the Penal Code.²⁶ They threaten LGBTI individuals and use violence to extract confessions.
22. LGB individuals interviewed for this report described frequent persecution and arrests of LGB individuals by law enforcement officials. A common pattern emerged from the interviews in which LGB individuals were arrested because of their sexual orientation, but charged for other crimes like loitering, gambling or simply detained without a formal charge. In one instance, an MSM²⁷ man was attacked by a law enforcement officer because he was walking late at night with his partner. He stated, “He gave me a slap I will never forget. They have never been friendly to us.”²⁸ A common experience among the LGB individuals interviewed for this report was for law enforcement officials to pressure them for bribes in exchange for their release, in large part because there were no official charges to bring against them.
23. Police also use violence against LGBTI individuals in detention. One client of The Advocates, a gay man, was meeting with other LGBTI activists in a restaurant when police barged in and arrested them, telling them they were “evil.” One police officer hit the client on the back of the neck with an AK47 pistol. The officers took him and his friends to a detention center, where a police officer sexually assaulted and verbally abused the client due to his sexual orientation. The police officer justified his actions, claiming “this is what you wanted.” Ultimately, the client fled Kenya for fear of further abuse and being outed to his family.²⁹
24. Vigilante groups are another primary source of fear for LGBTI individuals because of their violent attacks on LGBTI individuals that are supported by members of the community and

²¹ Neela Ghoshal, *Lesbian, Bisexual, and Queer Women Speak Out in Kenya*, Huffington Post, Feb. 20, 2016, https://www.huffingtonpost.com/neela-ghoshal/lesbian-bisexual-and-queer-women-speak-out-in-kenya_b_9280166.html.

²² International Lesbian, Gay, Bisexual, Trans and Intersex Association, *The ILGA-RIWI 2016 Global Attitudes Survey on LGBTI People in Partnership with LOGO* (2016).

²³ Interview with participant, Homabay, Kenya, Jan. 12, 2019.

²⁴ Interview with participant, Homabay, Kenya, Jan. 12, 2019.

²⁵ Interview with participant, Migori, Kenya, Jan. 8, 2019.

²⁶ Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya’s Coast* (United States: Human Rights Watch, September 2015).

²⁷ Men who have sex with men

²⁸ Interview with Participant, Migori, Kenya, Jan. 8, 2019.

²⁹ Interviews with clients of The Advocates (2015-2018). On file with authors.

even LGBTI individuals' family members. Vigilante groups specifically target LGBT individuals in Kenya by creating fear and promoting violence. Most of the participants interviewed expressed great fear of vigilante groups, especially those living in rural areas. Statements like: "if they know you are gay they will kill you. They just kill,"³⁰, "they think you are promoting satanism, them murdering you would be very easy."³¹ The LGB individuals interviewed for this report universally observed that law enforcement officials are unwilling to prevent attacks or protect LGBTI individuals from vigilante groups.³²

Lack of accountability for law enforcement and vigilante groups who commit human rights violations against members of the LGBTI community

25. In its August 2012 Concluding Observations, the Committee expressed concern that investigations and prosecutions for allegations of torture committed by police and vigilante groups remain inadequate.³³

26. In its follow-up to the Concluding Observations, the State Party explained that the national Police Service Act of 2011 and the Independent Policing Oversight Authority (IPOA) help to ensure members of law enforcement are held accountable before the public. These measures appear to be limited to torture occurring in detention, however, rather than general allegations of torture perpetrated by law enforcement. There was no explicit mention of abuse perpetrated by law enforcement against individuals based on their sexual orientation.³⁴

27. The Government of Kenya responded to the Committee's LOI:

30. ... [E]very person in Kenya, whatever their orientation, is guaranteed the full protection of the law in the event that their rights are violated. There are a number of institutions set up where all persons can complain about the infringement of rights. These include the Independent Policing Oversight Authority (IPOA), and the Kenya National Commission on Human Rights (KNCHR) and the National Police Service.³⁵

28. In an annex to its replies, the government provided a list of cases of complaints of excessive force by law enforcement officials.³⁶ The list does not represent all cases brought against law enforcement. The annex also indicates that these complaints move slowly, delaying justice for LGBTI individuals who seek it.³⁷

29. Because of their experience of arrests and persecution by law enforcement, LGB individuals in Kenya reported that they distrust law enforcement officials. LGB individuals interviewed expressed their inability to report criminal cases to the police and government agencies because

³⁰ Interview with participant, Nyamira, Kenya, Jan. 9, 2019.

³¹ Interview with participant, Kisii, Kenya, Jan. 12, 2019.

³² Katy Migiro, *Homophobic Mobs Attack LGBT People in Kenya with Impunity*, All Africa, Sept. 28, 2015, <https://allafrica.com/stories/201509280135.html>.

³³ ICCPR, *Concluding Observations on the third periodic report of Kenya*, U.N. Doc. CCPR/C/KEN/CO/3, (31 August 2012), ¶ 11.

³⁴ ICCPR, *Concluding Observations on the third periodic report of Kenya, Information received from Kenya on follow-up to the concluding observations*, U.N. Doc. CCPR/C/KEN/CO/3/Add.1. ¶ 38-40.

³⁵ Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶30.

³⁶ Human Rights Committee, *Annex to the Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. doc. CCPR/ARL/KEN/44161/E.

³⁷ Information received from Kenyan NGO (19 February 2021).

it would affect them negatively. In some instances, respondents suffered crimes and human rights violations, but they did not seek services because the complaint was about a situation that happened because of their sexual orientation. For example, when one gay man was blackmailed by someone from his local community, he decided to pay 10,000 KSh, the equivalent of about 100 US dollars, rather than report the incident to the authorities out of fear that it would damage his reputation.

Access to Education

30. Our interviews also suggest LGB individuals do not enjoy the right to access to education in Kenya despite the government's international and constitutional obligation to provide the right to education. According to Article 53 (1) (b) of the Constitution, every child has a right to free and compulsory education. In addition, Article 56 (b) provides protection for minorities and marginalized groups to ensure special opportunities for their educational development.
31. Multiple LGB individuals reported being expelled from schools based on their sexual orientation. School administration expelled and suspended students who were seen engaging in same-sex conduct. School staff members expressed concern about LGB students "influencing" other students into same-sex relations. According to interviewees, schools maintained policies to actively identify LGBTI students. One of the participants described how headmasters would physically abuse LGB students until they confessed their sexual orientation and were encouraged to give up other LGB students' names.
32. LGB individuals also experience harassment at school from other students and enjoy little protection from school administrators. In one case, a perceived gay student was targeted with physical and verbal abuse from other students because of his sexual orientation. When he decided to go to the Deputy Director of the school with his mother to inform them of the situation and demand protection, he was asked to pay (2,000 Ksh), the equivalent of about twenty US dollars, to the Deputy Director in order to ensure his protection.

Access to Healthcare

33. The State party replied to the Committee's LOI paragraph 5 by stating that the existing legislation provides equal access for public services, including education and health. It suggested that none of the laws, including education and health laws, have been used to justify denial of services to LGBT person. Yet, day to day realities demonstrate that LGBT individuals have been denied public services in hospitals and schools due to their sexual orientation and identity.³⁸
34. In its replies to the LOI, the Government of Kenya acknowledged awareness that stigma is a barrier to accessing services, including HIV treatment. It also stated, "Some of the measures taken by the State to address the situation include: sensitization of health care workers to reduce stigmatizing attitudes in healthcare settings; the development and dissemination of population specific and user friendly information; and the promotion of the acceptance of all persons as part of the community for increased service uptake."³⁹

³⁸ Information received from Kenyan NGO (18 February 2021).

³⁹ Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶33.

35. Interviewees expressed that they faced significant barriers to accessing healthcare. Participants' experiences with health care providers showcase the barriers that exist as LGB individuals try to access essential services. There was a clear distinction between experiences with public healthcare providers versus private NGOs which provide services to key populations. Although a platform allowing government agencies to work with key populations exists, LGB individuals' distrust of healthcare professionals may prevent them from attempting to access these services.⁴⁰
36. Most of the LGB individuals interviewed for this report decided not to disclose their sexual orientation to health care providers because they feared it could affect their treatment. In addition, interviewees expressed fear regarding the lack of privacy for patients and how it could affect their reputation in the community. In one case, an LGB individual stated that "It is impossible, I would feel ashamed. I do not want doctors to start talking about me."⁴¹ In another case, a gay man changed his name when looking for STI treatment services out of fear of confidentiality issues. It was clear from the interviews that LGB individuals mistrust health care providers, especially providers in public hospitals. Further, some health care providers have reportedly conducted forced anal examinations.⁴²
37. Health care providers refuse to treat LGB individuals because of their sexual orientation. Health care providers often use Section 162-165 of the Penal Code and their religious beliefs to deny services to LGB individuals. In one instance, a gay man decided to go to a public hospital for Pre-Exposure Prophylaxis (PrEP) medication but was refused treatment from the doctors because they stated: "we do not treat people like you here."⁴³ Therefore, even though there is a platform in place to work with high-risk populations, LGBTI individuals still risk limited access to services because of ongoing prejudice against them.
38. Interviewees emphasized the importance of training health care service providers on dealing with LGBTI individuals. Many LGB individuals stated that they would only go to NGOs and civil society organizations for health care services because of the relationship of trust that existed between them. Some of the participants expressed a lack of civil society organizations and NGOs providing direct services, however, specifically in rural areas. Therefore, LGBTI individuals are dependent on the existence of private entities to provide them with adequate access to health services.

Discrimination

39. In response to the Committee's LOI question about what measures Kenya has taken to protect LGBTI individuals against discrimination perpetrated by both State officials and private individuals, the Government of Kenya responded:

32. The GOK actively promotes the fair provision of all public goods and services to all persons without discrimination, notwithstanding their sexual orientation and gender identity or expression. To this end, several

⁴⁰ Levis Nderitu, *Key Population Hero: Addressing stigma and discrimination among LGBT people in Kenya*, Linkages, Dec. 9, 2016, <https://linkagesproject.wordpress.com/2016/12/09/key-population-hero-addressing-stigma-and-discrimination-among-lgbt-people-in-kenya/>.

⁴¹ Interview with participant, Nairobi, Kenya, Jan. 17, 2019.

⁴² Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya's Coast* (United States: Human Rights Watch, September 2015).

⁴³ Interview with participant, Migori, Kenya, Jan. 8, 2019.

pieces of legislation and policies have been developed that attest to the realization of the principles of equality and non-discriminations. These include, inter alia; the Health Act 2017, the Education Act 2012 and the Diversity Policy for the Public Service, 2016. One is not required to indicate his/her sexual orientation when accessing any government service.⁴⁴

33. ...Sensitization forums for judges, prosecutors, the police, prison officers, and law and policy makers on how to handle matters concerning LGBT individuals are conducted.⁴⁵

40. **LGBTI individuals in Kenya face discrimination daily because of their sexual orientation and/or gender identity.** Although constitutional provisions ensure equality for every person under the law, neither sexual orientation nor gender identity are explicitly protected identities under the Constitution.
41. LGB individuals face discrimination in the workplace, both when applying for jobs and while employed. One gay individual expressed that he had to leave a position with a tourism company after his boss found out he was dating a man. The boss expressed that by having him as an employee he was “destroying the business.” In addition, he mentioned when he was trying to apply for a job at a catering company, the job application said they were only looking for straight people. Many other cases showcased the struggle of LGB individuals when trying to enter the job market. In some instances, documented discrimination in the workplace pushed LGB individuals to go into sex work as their only option for employment.
42. LGB individuals experience discrimination when accessing public spaces. For example, most interviewees reported that they were denied access to some bars, clubs or restaurants. In some instances, LGB individuals were attacked in public spaces because of their sexual orientation. One individual expressed that “in a restaurant, someone drunk started calling me names. I was told to walk out of the room because more people kept joining; there were ten.”⁴⁶ Another LGB individual stated, “When I go to restaurants you hear them talking about me. Some may come and mock me. I have lost a lot of friends because of who I am.”⁴⁷ LGB individuals were aware of the public spaces where they faced more danger and spread the word to each other to prevent further confrontations.
43. Sexual encounters for LGB individuals tend to be unsafe and risky because of social prejudice and stigmatization. One participant mentioned two males could never rent a room together in a hotel which made the sexual encounters dangerous and unprotected. He mentioned this practice further advanced the lack of protection in sexual encounters between LGB individuals.
44. LGB individuals face discrimination from religious leaders in Kenya. On some occasions, LGB individuals have been particularly targeted by religious leaders who perceive them as an evil that needs to be addressed. Many of the participants shared the sentiment that they were excluded from religious settings both by religious leaders and religious practitioners. One LGB individual expressed, “I stopped going to church. They stigmatize you and do not let you sit near people. You cannot pray or sing, they would preach about you.”⁴⁸ Many participants

⁴⁴ Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶32.

⁴⁵ Human Rights Committee, *Replies of Kenya to the list of issues in relation to its fourth periodic report*, 27 January 2021, U.N. Doc. CCPR/C/KEN/RQ/4, ¶33.

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

⁴⁷ Interview with participant, Migori, Kenya, Jan. 8, 2019.

⁴⁸ Interview with participant, Kisii, Kenya, Jan. 9, 2019.

expressed they stopped going to church because of the treatment and hate speech they received as LGB individuals; when asked if they would like to go to church if the treatment and conditions changed, they expressed an interest in returning.

45. Many of the LGB individuals noted the importance of training religious leaders about LGBTI issues to decrease discrimination based on sexual orientation and gender identity. For example, the Nyanza Rift Valley and Western Kenya Network (NYARWEK) has focused on training religious leaders around LGBTI issues as part of their work. They expressed that much of the discrimination against LGBTI individuals is based on religious reasons. For instance, denying services to LGBTI individuals often occurs because service providers discriminate based on their religious beliefs.

D. LGBTI persons with disabilities

46. Deaf LGB individuals reported experiencing widespread human rights violations because of their intersecting marginalized identities in the Kenyan context. Participants expressed that LGBTI advocacy groups often overlook their specific needs, and therefore they still experience human rights violations.
47. Deaf LGB individuals lack access to information compared to other members of the LGB community. Participants expressed a need for documents and training around LGBTI advocacy tailored to the Deaf community. Further, deaf individuals expressed a lack of knowledge around safe sex practices because they are excluded from key populations training due to their disability.
48. Deaf LGB individuals expressed fear of coming out in their own community due to homophobia in the Deaf community. Because of this, most of the participants expressed that they would only discuss LGB topics with hearing people. Since the Deaf community is so small, they feared discussing LGB topics would damage their reputation throughout the entire Deaf community. One participant expressed, “there are so many in school, no one stands up. For us is so difficult, if you talk, everyone knows.”⁴⁹ Deaf LGB individuals fear coming out since it could leave them without the protection of their Deaf community.

II. Suggested recommendations to the Government of Kenya

49. Recommendations related to non-discrimination:

- Decriminalize sexual relations between consenting adults of the same sex under the Penal Code by omitting sections 162 and 165.
- Take steps to create specific legislation preventing discrimination against individuals based on sexual orientation and gender identity in line with Article 27 of the Constitution.

50. Suggested recommendations relating to acts of violence, harassment, abuse, and discrimination against LGBTI individuals:

⁴⁹ Interview with participant, Nairobi, Kenya, Jan. 15, 2019.

- Take steps to raise awareness in order to mitigate social prejudices, stigmatization, harassment, discrimination, and violence against individuals because of their sexual orientation.
- Include gender and sexuality concerns, specifically LGBTI concerns, and health information in university and medical school criteria.
- Provide training for government officials, educators, healthcare providers, and law enforcement with respect to LGBTI issues.
- Stop the practice of expelling LGBTI students from schools because of their sexual orientation and/or gender identity.
- Collaborate with civil society organizations working on LGBTI issues and support their work by creating joint projects to prevent violations and build protections for LGBTI individuals?
- Put measures in place to protect individuals from discrimination and abuse based on their sexual orientation by religious leaders.
- Take measures to prevent law enforcement from arbitrarily arresting individuals based on their sexual orientation.
- Prevent human rights violations perpetrated by vigilante groups and prosecute the perpetrators.
- Improve data collection efforts and disseminate information when arresting individuals under sections 162-165 of the Penal Code.

51. Suggested recommendations relating to lack of accountability for abuse and harassment committed by members of law enforcement and vigilante groups:

- Take steps to ensure inclusion of LGBTI issues in the curriculum used to train law enforcement officers.
- Hold members of law enforcement and vigilante groups accountable for human rights violations against LGBTI individuals.
- Take steps to ensure LGBTI persons whose fundamental rights are violated are accorded compensation.
- Establish an independent and impartial mechanism to investigate allegations of torture and abuse of LGBTI individuals in detention.

52. Suggested recommendations related to LGBTI persons with disabilities:

- Take steps to engage with deaf LGBTI individuals in order to gain information about their specific needs.
- Provide training to government officials, law enforcement, and the community at large to educate them about the specific needs of deaf LGBTI individuals.
- Provide protection to LGBTI persons with disabilities, such as deaf individuals, who are more vulnerable to discrimination, harassment, and violence.