



## Kenya

### **Joint Stakeholder Report for the United Nations Universal Periodic Review: LGBTIQ+ Rights**

**Submitted by The Advocates for Human Rights,**

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

**The Eagles for Life Kenya,**

and

**National Gay & Lesbian Human Rights Commission**

**for the 49th Session of the Working Group on the Universal Periodic Review**

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

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

**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.

## EXECUTIVE SUMMARY

1. The criminalization of private consensual same-sex sexual activity between adults leaves sexual and gender minorities at serious risk of harm and systematic exclusion. Lesbian, gay, bisexual, transgender, intersex, queer, and other sexual and gender minority (LGBTIQ+) individuals in Kenya report discrimination, violence, blackmail and extortion, hate crimes, harassment, arrests, prosecution, lack of protection by law enforcement and government officials, stigma while accessing services, and denial of services altogether.
2. Kenya lacks laws that permit transgender people to legally change their gender. Transgender individuals who engage in sexual activity with cisgender people of a different gender (*e.g.*, transgender men who have sex with cisgender women and transgender women who have sex with cisgender men) may fall victim to the law criminalizing consensual same-sex sexual activity between adults.
3. In this report we use the acronym LGBTIQ+ to refer to individuals who self-identify as lesbian, gay, bisexual, transgender, intersex, and/or queer. These terms necessarily do not include everyone who may experience violations of their human rights on the basis of their real or perceived sexual orientation, gender identity, gender expression, and/or sex characteristics (“SOGIESC”), which is why we also include a “+” with the acronym. Any use of a modified acronym is intentional in that we are speaking only about certain members of the LGBTIQ+ population.
4. Information in this report includes first-hand information from LGBTIQ+ Kenyans, both in Kenya and those that have sought asylum abroad, has been used in this submission with their permission.

### I. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

**Themes: Constitutional and legislative framework; Lesbian, gay, bisexual and transgender and intersex persons (LGBTI)**

#### **Status of Implementation: Not Accepted, Not Implemented**

5. In its Third Cycle UPR, Kenya received and noted 16 recommendations to reform its laws to decriminalize consensual same-sex sexual activity between adults and to pass legislation to prevent discrimination and combat violence against LGBTIQ+ individuals.<sup>1</sup>
6. Kenya criminalizes consensual same-sex sexual activities between adults. Under Sections 162 and 163 of the Penal Code, “[a]ny person who...has carnal knowledge of any person against the order of nature...permits a male person to have carnal knowledge of him or her against the order of nature...is guilty of a felony and is liable to imprisonment for fourteen years.”<sup>2</sup> Any attempt “to commit any of the offenses specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.”<sup>3</sup> The last amendment made to these provisions was in 2003.<sup>4</sup>
7. Section 165 of the Penal Code punishes indecent practices between males: “Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with

him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.”<sup>5</sup>

8. While sections 162-165 of Kenya’s Penal Code do not criminalize LGBTIQ+ identities, they do criminalize same-sex sexual conduct and have been used to prosecute LGBTIQ+ persons. These sections of the law are discriminatory on the basis of sex (for example, section 165 targets only men) and breach numerous constitutional rights under the Constitution of Kenya 2010.
9. The law is also vague and opaque; the vocabulary of the legal provisions does not define what “unnatural carnal knowledge” constitutes. This fosters arbitrary interpretation and application of the law because police officers and government officials have considerable discretion in their interpretation of these provisions. Police and county security agents often arrest LGBTIQ+ individuals under these provisions of the Penal Code based solely on their own assumptions of sexual conduct drawn from a victim’s manner of dressing, walking, and gender expression.
10. Kenya took an important step towards recognizing intersex persons by including in the 2019 National Population census a new option to identify as intersex.<sup>6</sup> An openly intersex person was sworn in as a Commissioner of the Kenya National Commission on Human Rights in 2022.<sup>7</sup> Kenya also passed the Children Act of 2022 which recognizes intersex children and offers certain protections to intersex children under Sections 21, 23, 26(3), 64(3), 95(2)(b), 144(l), and 144(z), including restrictions on medical interventions.<sup>8</sup> This “new law requires intersex children to be treated with dignity and have equal access to basic services like medical treatment and education, in addition to social protection services as a special need. It also requires the accommodation of intersex children in child protection centers and other facilities.”<sup>9</sup> “It also protects intersex children from so-called sex normalization surgeries, and such procedures will only be done with a doctor’s recommendation.”<sup>10</sup>
11. Although the Children Act does take steps to protect intersex children, there are no similar laws that protect adult intersex people. In addition, it is not clear under the Children Act which “gender marker should be applied to intersex newborns or whether any processes for gender marker amendments exist”.<sup>11</sup>
12. Despite the passage of the Children Act, there has not been much further progress with regard to 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.<sup>12</sup>
13. Fortunately, the legislature did not include provisions from the Children Act of 2001 that prohibited LGBQ people from adopting children when they passed the new Children Act.<sup>13</sup>
14. Moreover, although transgender people are able to change their names pursuant to general name change statutes, there is no established procedure to change their gender markers.<sup>14</sup>
15. On 22 February 2024, Kenya’s Supreme Court, ruled in *NGO Coordination Board vs Eric Gitari & Others* that the reference to “sex” in the equality and non-discrimination clause

of the Constitution must be interpreted to include sexual orientation of any gender.<sup>15</sup> Despite the ruling affirming the constitutional right to freedom of association, including for LGBTIQ+ individuals, which has strengthened the legal argument for the recognition and registration of LGBTIQ+ groups and provided them with formal avenues to advocate for broader rights, the ruling has not directly addressed the criminalization of consensual same-sex sexual activity between adults, nor Article 45 of the Constitution's prohibition on equal marriage.<sup>16</sup>

16. In spite of the increase in intersex rights, the removal of LGBTQ people from the prohibited list of adoptive parents, and the freedom of association judgment, LGBTIQ+ individuals in Kenya continue to experience widespread violations of their human rights, including their rights to life, liberty, and security.
17. The Government of Kenya continues to use Section 165 of the Penal Code to prosecute LGBTQ+ individuals for consensual same-sex sexual activity between adults.<sup>17</sup> In 2021, two men were reportedly charged with violations under Section 162 (c) of the Penal Code; however, the charges were later dropped.<sup>18</sup> In 2022, two trans women were reportedly tried for “indecent practice between males contrary to Section 165 of the Penal Code, Cap 63 Laws of Kenya.”<sup>19</sup>
18. Kenyan law enforcement officials reportedly target and persecute LGBTQ+ individuals by actively utilizing Section 162(a), (c) and 165 of the Penal Code.<sup>20</sup> They threaten LGBTQ+ individuals, extort bribes, and use violence to extract confessions.<sup>21</sup>
19. The year 2021 marked “an increase of violence against LGBTI persons in Kenya, including the murder of three LGBTI persons.”<sup>22</sup> There are credible reports that “[o]ne lesbian woman was raped and murdered by eight individuals in Kisii. A trans woman was murdered by a gang on her home from work in Nairobi. [A] gay man who worked as a paralegal was murdered by unknown individuals in Mombasa.”<sup>23</sup> To date, the police have not sufficiently investigated nor prosecuted the perpetrators of any of these crimes
20. In January 2023, a well-known LGBTIQ+ activist, Edwin Chiloba, was reportedly smothered to death.<sup>24</sup> Following Chiloba's death, many LGT people saw an increase in harassment, including threats by non-State actors on social media.<sup>25</sup> Transgender people continue to face severe violence, including death, at the hands of non-State actors.<sup>26</sup>
21. Although law enforcement rarely enforces the laws criminalizing consensual same-sex sexual activity, many members of law enforcement threaten enforcement in order to extract bribes from LGBTQ+ people in order to avoid imprisonment.<sup>27</sup>
22. Some healthcare providers at government facilities also deny LGBTIQ+ individuals access to “basic services such as treatment for sexually transmitted infections, tuberculosis, and malaria” if they do not receive bribes from their LGBTIQ+ patients.<sup>28</sup>
23. In Kenya, “sexual and gender minority people regularly experience human rights violations, including physical assault from mobs and vigilantes, rape and sexual assault by police, and institutional barriers to housing, education, and employment. The rates of these abuses, however, are not experienced equally: compared to gay and bisexual cis-gender men in Kenya, LBQ [Lesbian, Bisexual, and Queer] womxn are at a particularly heightened risk for human rights violations and disparities in health outcomes”<sup>29</sup> on account of their gender, gender identity and expression, and sexual orientation. The rates of violence are

especially severe in Western Kenya; for example, in Kisumu, a survey of LGB womxn aged 19-60 revealed that “38% of respondents reported experiencing anti-SGM violence”; “37% of respondents reported forced sexual encounters with men”; and “44% of respondents reported experiencing intimate partner violence.”<sup>30</sup>

24. has established a pattern of violence toward gay and bisexual men and other men who have sex with men (GBMSM) in Kenya. According to an article published in the *International Journal of Environmental Research and Public Health*, “38% of GBMSM individuals reported...experiencing sexual minority-based violence.”<sup>31</sup> This report also noted that GBMSM individuals regularly experience violence from family members, friends, and intimate partners.<sup>32</sup>
25. Violence toward LGBTQ individuals was particularly severe during the COVID-19 pandemic. One LGBTQ organization reported that there were “up to 10 attacks per month on the LGBTQ community” at the beginning of the pandemic.<sup>33</sup>
26. Following the *NGO Coordination Board vs Eric Gitari & Others* ruling interpreting the Constitution’s prohibition on sex-based discrimination to also include discrimination on the basis of sexual orientation, there has been an “outpouring of abuse and death threats...and a surge of abuse” toward LGBTQ+ people.<sup>34</sup> (See paragraph 15 above).
27. Many individuals experience violence, detention, deprivation of basic needs, and other human rights violations committed by their families, religious leaders and other non-State actors under the guise of “conversion therapies,” which are a common practice in Kenya. A report found that “478 respondents described incidents in which they or other LGBTIQ+ [Lesbian, Gay, Bisexual, Transgender, Intersex, Asexual, and Queer] Kenyans had experienced abuses, including intentional violence, by practitioners in an effort to compel change” of their sexual orientation, gender identity, or gender expression.<sup>35</sup> Respondents reported experiencing “unethical physical and medical ‘treatments,’ beatings and forced sex or marriage and prolonged detention in homes or camps.”<sup>36</sup>
28. An anonymous individual described how, as a teenager, he was subjected to “conversion therapy” in which “he was given electric shocks and shown pictures of ‘ruptured anuses and wounded penises’ by people who told him that if he didn’t stop being gay, he would ‘meet the same fate’.”<sup>37</sup> Other reported “conversion therapy” practices include being given drugs and hormones, rape, kidnapping, and starvation.<sup>38</sup>
29. When LGBTIQ+ people experience violence by State and non-State actors, law enforcement and government officials often do not sufficiently investigate and prosecute perpetrators. For example, the police response to the 17 April 2022 murder of a queer, non-binary person in Karatina, Nyeri County was “inadequate,” in part because police failed to secure critical evidence – including the possible murder weapon – prompting the deceased individual’s family and friends to investigate.<sup>39</sup> The victim was found dead in their apartment after experiencing “rape, broken limbs and multiple stab wounds in the neck and chest area.”<sup>40</sup>
30. There are also reports of LGBTIQ+ people experiencing harassment by police officers, including police officers regularly stopping them in an attempt to extort them for bribes (see paragraph 56 below).<sup>41</sup> One member of the LGBTIQ+ community noted that “she had

to spend 10 days in custody at Mombasa Central Police Station because it took her that long to raise \$100 for a bribe.”<sup>42</sup> During that time, police sexually assaulted her twice.<sup>43</sup>

31. In November 2022, law enforcement officials in Migori County arrested an individual who is believed to be a transgender woman because the female officer found the individual’s appearance “suspiciously masculine.” Law enforcement forced the individual to undress in their presence so as to reveal their genitals for purported gender confirmation and to present their National ID card. Law enforcement arrested the individual after finding that the individual had male sexual organs, and their National ID had male gender markers and a male name.<sup>44</sup> Transgender and intersex people have also reported that law enforcement officials have demanded bribes in order to avoid detention.<sup>45</sup>

### **Theme: Equality & non-discrimination**

#### **Status of Implementation: Partially Accepted, Not Implemented**

32. During its last UPR, the Government of Kenya received and noted 12 recommendations pertaining LGBTIQ+ people’s rights to equality and non-discrimination, and to combat violence and stigmatization against them.<sup>46</sup>
33. The Government has through the Kenya Film Classification Board been engaging in censorship and banning of documentaries and films that depict LGBTIQ+ relationships, such as *I Am Samuel* and *Rafiki*.<sup>47</sup>
34. Government speech by State officials, including the current president, has overwhelmingly been anti-LGBTIQ+, and LGBTIQ+ human rights defenders fear that the current administration “will simply perpetuate discriminatory policies and attitudes towards” their communities.<sup>48</sup>
35. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (“ILGA”) reports that President William Ruto’s anti-LGBTIQ+ remarks appear to be an effort to bolster support within religious communities, which has likely contributed to “an increase of numbers of LGBTQ+ persons of faith who have been intentionally outed in church.”<sup>49</sup>
36. Several high-ranking government officials within the Kenyan government did not support the Supreme Court’s decision in *NGO Coordination Board vs Eric Gitari & Others* (see paragraphs 15 above). One member of the government wanted Kenya’s Attorney General to oppose the ruling.<sup>50</sup> Another member of parliament introduced legislation seeking a “a total ban on discussion, publication and dissemination” of information pertaining to LGBTIQ+ issues.<sup>51</sup> Further, both Parliament and the Senate attacked the judiciary because of this decision and several members of Parliament publicly called for the killing and arrest of LGBTIQ+ Kenyans.
37. In addition, according to a press release by the National Gay & Lesbian Human Rights Commission, Cabinet Secretary Mahoga gave an “extensive speech where he use[d] homophobic and stigmatizing language,” including in his statement that, “if you are a homosexual in a boarding school and you are hopping from a bed of another student to another, your rights end there.”<sup>52</sup>
38. According to an article published in the International Journal of Environmental Research and Public Health, “sexual and gender minority (SGM) people in Kenya face pervasive

socio-cultural and structural discrimination. Persistent stress stemming from anti-SGM stigma and prejudice may place SGM individuals at increased risk for negative mental health outcomes.”<sup>53</sup> Furthermore, “[d]ue to pervasive societal stigma that SGM people experience in Western Kenya, some may experience discrimination in hiring and in the workplace.”<sup>54</sup>

39. Another study found that “[s]exual stigma is commonly reported among GBMSM [gay, bisexual, and other men who have sex with men] in Kenya, and can result in a substantial burden of physical, mental, and emotional abuse.”<sup>55</sup>
40. In addition to stigma and discrimination by State and non-State actors, LGBTIQ+ people also experience stigma and discrimination within religious settings. For example, “Archbishop Jackson Ole Sapit of the Anglican Church speculated that the alleged spread of homosexuality was a sinister ploy by environmentalists to depopulate the globe in an effort to address climate change.”<sup>56</sup>
32. In June 2022, the Kenyan organization TEFL-K, a co-author of this joint submission, was targeted in the Kisii region of Kenya. On June 12, 2022, a video of four gay men in Kisii town was shared by a blogger over multiple social media platforms. Comments on the video included threats to TEFL-K and named LGBTIQ+ individuals, including members of TEFL-K staff and allies. As a result, four TEFL-K staff members were evicted from their rental house; TEFL-K organized their relocation to Busia. On June 14, 2022, police raided a community hotspot mentioned by the blogger who had shared the video and arbitrarily arrested five individuals, who were later released after TEFL-K intervention. TEFL-K also received information that the vigilante group known as Sungu Sungu was planning to conduct raids on all SOGIE hotspots in Kisii and making threats against TEFL-K staff. On June 15, 2022, the TEFL-K staff was forced to temporarily relocate to other towns. Tragically, one of the TEFL-K staff members who was forced to go into hiding died on June 16, 2022 of an apparent suicide. By June 18, 2022, TEFL-K staff had documented at least 12 physical attacks, several more cases of evictions, and 23 incidents of cyberbullying.<sup>57</sup>

### **Theme: Right to Health**

#### **Status of Implementation: Accepted, Not Implemented**

41. During its last UPR, the Government of Kenya received and supported three recommendations related to sexual and reproductive health services and eliminating stigma and discrimination in health settings.<sup>58</sup>
42. Transgender people in Kenya interviewed for a recent study stated that mental health services tailored to the needs of transgender persons, such as gender dysphoria or body dysmorphia, were only available in a small number of organizations and also noted negative attitudes from healthcare workers and lack of knowledge or experience in working with transgender patients to meet their needs, which made it necessary for the patient to educate the provider.<sup>59</sup> Transgender respondents felt it was especially difficult for them to access healthcare services, as providers did not have the requisite knowledge to deal with gender dysphoria and co-morbidities affecting transgender persons. Respondents also noted that the lack of access to mental health services resulted in negative coping



mechanisms such as substance use within these communities.<sup>60</sup>

43. LGBTI refugees and asylum seekers in Kenya also noted major barriers to accessing services, due to lack of necessary documentation and insufficient clinics and service providers in refugee camps.<sup>61</sup>
44. A July 2020 report states that the Ministry of Health is “generally considered an ally in the struggle for LGBTI equality,” and highlights the role of the National AIDS & STI Control program in addressing discrimination and violence.<sup>62</sup> It is important to point out, however, that the HIV and AIDS framework highlights interventions targeting men who have sex with men, but not LGBTIQ+ interventions.<sup>63</sup>
45. The Ministry of Health is currently working with the transgender community to develop a “National Transgender Health Strategy” and the Government has also committed to support the first National MSM (men who have sex with men) Transgender and Research Conference in Kenya.<sup>64</sup>
46. In 2020, the Ministry of Health Taskforce on Mental Health recommended that the Government declare “mental health” a national emergency,<sup>65</sup> but the Taskforce failed to mention LGBTIQ+ people as a key population in their strategy or identify sexual orientation, gender identity, and/or gender expression as factors linked to mental health concerns.
47. The Kenya Mental Health Policy 2015-2030 states several guiding principles including that “mental health is a human right which should be respected regardless of religion, gender, culture and socioeconomic status” and that “services should be provided equally to all individuals in a community irrespective of their gender, age, caste, color geographical location, culture, and social class.”<sup>66</sup> It does not mention sexual orientation, gender identity, gender expression, or sex characteristics in its definition of non-discrimination. The Policy also identifies several vulnerable groups, including women and children, but does not mention LGBTIQ+ people.<sup>67</sup>
32. Some common barriers reported by young men who have sex with men (YMSM) include “hostile healthcare settings that are uncondusive for YMSM to disclose and openly discuss same-sex practices with healthcare providers..., lack of provider knowledge on the unique health needs of YMSM, as well as experiences of stigma and discrimination in healthcare settings.”<sup>68</sup> Additional research conducted on the health experiences of YMSM in Kenya demonstrated that “[s]exual stigma which is defined as negative regard, inferior status, and relative powerlessness that society collectively accords to any non-heterosexual behavior, identity, relationship, or community...[is] known to deter YMSM from actively and consistently seeking [healthcare] services.”<sup>69</sup> In fact, “the hostile health climates in public health facilities and campus clinics caused YMSM to postpone healthcare seeking until symptoms worsened, resulting in poor health outcomes.”<sup>70</sup>

### **Theme: Freedom of Association**

48. In February 2023, the Supreme Court of Kenya upheld the right of the National Gay and Lesbian Human Rights Commission (NGLHRC) to become formally registered as a Non-Government Organization (NGO).<sup>71</sup> The Supreme Court explained that Sections 162, 163 and 165 of the Penal Code, and the provisions of Article 24 of the Constitution do not

convey the intention to limit the freedom of association of LGBTIQ+ persons.<sup>72</sup> The Court, however, did point out that all persons are still subject to sanctions if they break existing laws, including Sections 162, 163, and 164 of the Penal Code.<sup>73</sup>

49. Member of Parliament (MP) Kaluma appealed the ruling, asking the Supreme Court to set aside the decision on the grounds that LGBTIQ+ individuals' rights to the freedom of association, and the right to form an association of any kind, is contrary to the provisions of Article 36(3)(a) of the Constitution,<sup>74</sup> Section 14 of the Non-Governmental Organizations Coordination Act,<sup>75</sup> Regulation 8(3)(b) of the Non-Governmental Organizations Regulations,<sup>76</sup> as read together with Sections 162, 163, and 165 of the Penal Code.<sup>77</sup> As a result of the appeal, the Supreme Court ordered MP Kaluma to pay the former NGLHRC Executive Director \$5,000 for time wasted and costs incurred in hearing his appeal and an additional \$2,000 for bringing the case to challenge the ruling.<sup>78</sup>
50. In addition to appealing the Supreme Court's decision, MP Kaluma proposed the Family Protection Bill (the "Bill") in early February.<sup>79</sup> This may be "a significant legislative hurdle for the protection of LGBT rights in Kenya."<sup>80</sup> The Bill prohibits homosexuality and same-sex marriage.<sup>81</sup> It also creates new and longer punishments for individuals engaging in consensual same-sex sexual activity between adults, such as a minimum of ten years imprisonment.<sup>82</sup> The Bill also penalizes "publicly identifying as a member of the LGBTIQ+ community or wearing Pride colours," and threatens expulsion for asylum-seekers and refugees of SOGIE.<sup>83</sup> The Bill has never been tabled.
51. TEFL-K, co-authors of this report, has also faced bureaucratic challenges that impinge their rights to freedom of association. For example, the Kisii County Assembly attempted to impose an annual permit fee on NGOs as part of the proposed Kisii County 2024 Finance Bill. This fee could be interpreted as a way to burden organizations with financial obstacles, particularly those NGOs advocating for marginalized groups like the LGBTIQ+ community.

### **Theme: Refugees & asylum seekers**

52. Despite its own discriminatory laws, Kenya remains one of the few African countries that accepts LGBTI refugees fleeing persecution.<sup>84</sup> An estimated 350 LGBTI individuals live in Kenya's Kakuma Refugee Camp and Kalobeyei Integrated Settlement.<sup>85</sup> This number only accounts for those who self-identified as LGBTI and does not count LGBTI refugees living outside of the camps, with the largest numbers being in Nairobi. In March 2021, the UNHCR estimated that there were about 1000 LGBTI refugees in Kenya.<sup>86</sup> Individuals fleeing persecution for their LGBTI identities typically spend an average of 2.7 years as asylum seekers.<sup>87</sup> One reason for fast tracking resettlement for LGBTI refugees is the violence and social stigma they experience in the camps. Over 90 per cent of the asylum seekers reported being verbally assaulted, while over 80 per cent reported having been physically assaulted.<sup>88</sup>
53. Expressions of violence toward LGBTIQ+ individuals are particularly severe at the refugee camp in Kakuma. According to a joint report published by Amnesty International and the NGLHRC, "LGBTI asylum seekers and refugees in Kenya face intersectional discrimination and violence...[as well as] violent homophobic attacks, threats and intimidation."<sup>89</sup> The report characterized the conditions in the camp as "extremely

dangerous...with hate crimes occurring at alarming rates...LGBTI individuals in Kakuma camp have suffered physical and sexual violence and other serious human rights abuses, including violations of their right to be free from torture and ill-treatment, because of their sexual orientation, gender identity and/or expression, or sexual characteristics.”<sup>90</sup>

54. Of the LGBTI refugees in Kakuma interviewed, 83 percent reported physical violence and 26 percent reported sexual violence; of transgender respondents, 100 percent reported physical assaults and 67 percent reported sexual assaults.<sup>91</sup> The majority of that violence was committed by fellow refugees.<sup>92</sup> A further 88 percent of those interviewed reported that police denied them assistance due to their sexual orientation or gender identity; other reports noted that police demanded bribes that refugees were unable to pay.<sup>93</sup>
55. For example, one news source reported about “50 queer refugees camped outside the UNHCR reception center at Kakuma for safety reasons...were attacked with ‘knife stabs, stones, and clubs.’”<sup>94</sup>
56. In a further example, an individual who identified as queer and a resident of the Kakuma refugee camp died after being burned by petrol bombs thrown into the camp’s Block 13, where a group of LGBTIQ+ refugees resided.<sup>95</sup>

## **II. RECOMMENDATIONS**

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

- Take concrete legal and policy measures, including the provision of adequate human rights training to health personnel, to eliminate all forms of stigma and discrimination in health settings.
- Ensure transparent and effective investigations in cases where human rights defenders have been harmed and adopt a law protecting human rights defenders in accordance with international standards.
- Continue with the security sector reforms to enable the police to effectively protect and respect human rights.
- Take measures to prevent law enforcement from arbitrarily arresting individuals based on their real or perceived sexual orientation by training the police on human rights of LGBTIQ+ persons.
- Hold members of law enforcement and vigilante groups accountable for violence and human rights violations against LGBTIQ+ individuals by prosecuting violators and providing remedies to victims.
- Take steps to raise public awareness in order to mitigate social prejudices, stigmatization, harassment, discrimination, and violence against individuals because of their sexual orientation, gender identity, gender expression, and sex characteristics.
- Combat hate speech, online harassment, and surveillance related to sexual orientation and gender identity, and amend the hate speech and disinformation law to include sexual orientation and gender identity as a protected ground from hate speech.
- Adopt a comprehensive hate crimes law that includes hate crimes based on sexual orientation, gender identity, gender expression, or sex characteristics.

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<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya*, (March 20, 2020), U.N. Doc. A/HRC/44/9 ¶ 144.25 Adopt a comprehensive equality and non-discrimination law that affords protection to all individuals regardless of their sexual orientation or gender identity or expression (Norway); ¶ 144.26 Adopt a comprehensive anti-discrimination law affording protection to all individuals, irrespective of sexual orientation or gender identity or expression (Canada); ¶ 144.27 Decriminalize consensual sexual relations between adults of the same sex and expand its anti-discrimination legislation to include a prohibition of discrimination on the basis of sexual orientation and gender identity (Iceland); ¶ 144.28 Repeal all provisions which criminalize consensual same-sex relations, and adopt appropriate policies and measures to tackle stigmatization, harassment, discrimination and violence against individuals because of their sexual orientation (Australia); ¶ 144.29 Step up efforts against discrimination, with special emphasis on lesbian, gay, bisexual, transgender and intersex persons and women, and eradicate female genital mutilation (Czechia); ¶ 144.30 Take the necessary political and legislative measures to combat discrimination based on sexual orientation and gender identity (Dominican Republic); ¶ 144.31 Repeal laws that criminalize homosexuality, and combat violence based on sexual orientation and gender identity (Chile); ¶ 144.32 Combat discrimination against lesbian, gay, bisexual, transgender and intersex persons and repeal provisions penalizing homosexuality (France); ¶ 144.33 Decriminalize consensual same-sex conduct and adopt measures to tackle discrimination based on sexual orientation (Italy); ¶ 144.34 Adopt laws, policies and measures to prevent violence and discrimination on the grounds of sexual orientation and gender identity and expression (Malta); ¶ 144.35 Repeal sections 162, 163 and 165 of the Penal Code and decriminalize same-sex conduct between adults (Malta); ¶ 144.36 Repeal legislation that criminalizes consensual sexual relations between adults of the same sex, in

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particular sections 162 and 165 of the Penal Code (Mexico); ¶ 144.37 Decriminalize consensual same-sex relationships between adults, and enact comprehensive anti-discrimination laws to safeguard the realization of human rights for all individuals, irrespective of sexual orientation or gender identity (New Zealand); ¶ 144.38 Decriminalize sexual relations between consenting adults of the same sex, as recommended previously (Slovenia); ¶ 144.39 Decriminalize consensual sexual relations between adults of the same sex (Spain); ¶ 144.40 Repeal sections 162, 165 and 181 of the Penal Code, which criminalize lesbian, gay, bisexual, transgender and intersex status, conduct and/or expression (United States of America).

<sup>2</sup> The Penal Code Act (2022) THE LAWS OF KENYA, REVISED EDITION Cap. 63 §§ 162, 163.

<sup>3</sup> The Penal Code Act (2022) THE LAWS OF KENYA, REVISED EDITION Cap. 63 § 162.

<sup>4</sup> The Penal Code Act (2022) THE LAWS OF KENYA, REVISED EDITION Cap. 63.

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<sup>46</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya*, (Mar. 20, 2020) U.N. Doc. A/HRC/44/9 ¶ 144.27 Decriminalize consensual sexual relations between adults of the same sex and expand its anti-discrimination legislation to include a prohibition of discrimination on the basis of sexual orientation and gender identity (Iceland); ¶ 144.28 Repeal all provisions which criminalize consensual same-sex relations, and adopt appropriate policies and measures to tackle stigmatization, harassment, discrimination and violence against individuals because of their sexual orientation (Australia); ¶ 144.29 Step up efforts against discrimination, with special emphasis on lesbian, gay, bisexual, transgender and intersex persons and women, and eradicate female genital mutilation (Czechia); ¶ 144.31 Repeal laws that criminalize homosexuality, and combat violence based on sexual orientation and gender identity (Chile); ¶ 144.32 Combat discrimination against lesbian, gay, bisexual, transgender and intersex persons and repeal provisions penalizing homosexuality (France); ¶ 144.33 Decriminalize consensual same-sex conduct and adopt measures to tackle discrimination based on sexual orientation (Italy); ¶ 144.35 Repeal sections 162, 163 and 165 of the Penal Code and decriminalize same-sex conduct between adults (Malta); ¶ 144.36 Repeal legislation that criminalizes consensual sexual relations between adults of the same sex, in particular sections 162 and 165 of the Penal Code (Mexico); ¶ 144.37 Decriminalize consensual same-sex relationships between adults, and enact comprehensive anti-discrimination laws to safeguard the realization of human rights for all individuals, irrespective of sexual orientation or gender identity (New Zealand); ¶ 144.38 Decriminalize sexual relations between consulting adults of the same sex, as recommended previously (Slovenia); ¶ 144.39 Decriminalize consensual sexual relations between adults of the same sex (Spain); and ¶ 144.40 Repeal sections 162, 165 and 181 of the Penal Code, which criminalize lesbian, gay, bisexual, transgender and intersex status, conduct and/or expression (United States of America).

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- <sup>58</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya*, (Mar. 20, 2020) U.N. Doc. A/HRC/44/9 ¶ 142.197 Continue strengthening HIV prevention and education policies and programmes in the health sector (Dominican Republic); ¶ 142.202 Review all legal, policy and structural barriers that impede the provision of sexual and reproductive health services, in particular against adolescent girls, young women and members of key populations more vulnerable to HIV, and implement comprehensive human rights-based programmes in this area (Portugal); ¶ 142.203 Take concrete legal and policy measures, including the provision of



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adequate human rights training to health personnel, to eliminate all forms of stigma and discrimination in health settings (Portugal).

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<sup>81</sup> The Family Protection Bill (2023) (Kenya).

<sup>82</sup> The Family Protection Bill (2023) Part II, § 4(1) (Kenya).

<sup>83</sup> International Lesbian, Gay, Bisexual, Trans, and Intersex Association World, “Legal Frameworks: Criminalisation of consensual same-sex sexual acts – Kenya Enforcement Overview,” accessed July 30, 2024, <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

<sup>84</sup> John Ndiritu, *The Challenges Facing Refugees in Kakuma Refugee Camp, Kenya: A Report by the Organization for Refugees, Asylum and Migration (ORAM) and Rainbow Railroad*, (Oct. 2021), [https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98\\_db18b86c46744fb98648ccff1640e165.pdf](https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98_db18b86c46744fb98648ccff1640e165.pdf).

<sup>85</sup> John Ndiritu, *The Challenges Facing Refugees in Kakuma Refugee Camp, Kenya: A Report by the Organization for Refugees, Asylum and Migration (ORAM) and Rainbow Railroad*, (Oct. 2021), [https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98\\_db18b86c46744fb98648ccff1640e165.pdf](https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98_db18b86c46744fb98648ccff1640e165.pdf).

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<sup>88</sup> John Ndiritu, *The Challenges Facing Refugees in Kakuma Refugee Camp, Kenya: A Report by the Organization for Refugees, Asylum and Migration (ORAM) and Rainbow Railroad*, (Oct. 2021), [https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98\\_db18b86c46744fb98648ccff1640e165.pdf](https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98_db18b86c46744fb98648ccff1640e165.pdf).

<sup>89</sup> National Gay & Lesbian Human Rights Commission; Amnesty International, *Kenya: “Justice Like Any Other Person”: Hate Crimes and Discrimination Against LGBTI Refugees* (2023), 7, accessed Aug. 20, 2024, <https://www.amnesty.org/en/wp-content/uploads/2023/05/AFR3265782023ENGLISH.pdf>.

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<sup>90</sup> National Gay & Lesbian Human Rights Commission; Amnesty International, *Kenya: “Justice Like Any Other Person”: Hate Crimes and Discrimination Against LGBTI Refugees* (2023), 39, accessed Aug. 20, 2024, <https://www.amnesty.org/en/wp-content/uploads/2023/05/AFR3265782023ENGLISH.pdf>.

<sup>91</sup> John Ndiritu, *The Challenges Facing Refugees in Kakuma Refugee Camp, Kenya: A Report by the Organization for Refugees, Asylum and Migration (ORAM) and Rainbow Railroad*, (Oct. 2021), [https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98\\_db18b86c46744fb98648ccff1640e165.pdf](https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98_db18b86c46744fb98648ccff1640e165.pdf).

<sup>92</sup> John Ndiritu, *The Challenges Facing Refugees in Kakuma Refugee Camp, Kenya: A Report by the Organization for Refugees, Asylum and Migration (ORAM) and Rainbow Railroad*, (Oct. 2021), [https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98\\_db18b86c46744fb98648ccff1640e165.pdf](https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98_db18b86c46744fb98648ccff1640e165.pdf). at 22-23 (87 per cent of physical assaults were by fellow refugees; 73 per cent of sexual assaults were by fellow refugees; other violence was by the host community or family members).

<sup>93</sup> John Ndiritu, *The Challenges Facing Refugees in Kakuma Refugee Camp, Kenya: A Report by the Organization for Refugees, Asylum and Migration (ORAM) and Rainbow Railroad*, (Oct. 2021), [https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98\\_db18b86c46744fb98648ccff1640e165.pdf](https://af02ef9f-eaff-4f16-a35c-9a7ea58a6250.filesusr.com/ugd/65cf98_db18b86c46744fb98648ccff1640e165.pdf). at 24.

<sup>94</sup> Tim Fitzsimons, *Gay refugees in Kenya report repeated attacks from locals*, NBC News, Jan. 10, 2020, <https://www.nbcnews.com/feature/nbc-out/gay-refugees-kenya-report-repeated-attacks-locals-n1113456>.

<sup>95</sup> Michael K. Lavers, *Gay man burned in Kenya refugee camp dies*, Washington Blade, Apr. 14, 2021, <https://www.washingtonblade.com/2021/04/14/gay-man-burned-in-kenya-refugee-camp-dies/>.