

“LIVED REALITIES, IMAGINED FUTURES”

**A Lesbian, Gay, Bisexual, Transgender and Intersex Baseline Survey
Republic of Kenya**

April 2011

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ABBREVIATIONS & ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights	KIPE	Kisumu Initiative for Positive Empowerment
CDC	Centers for Disease Control and Prevention	KLRC	Kenya Law Review Commission
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	KNASP III	Kenya National AIDS Strategic Plan III 2009/10 – 2012/13
CIC	Constitutional Implementation and Oversight Committee	KNHRC	Kenya National Human Rights Commission
CJPC	Catholic Justice and Peace Commission	LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
CRC	Convention on the Rights of the Child	LVCT	Liverpool VCT
CSW	Commission on the Status of Women	MARPS	Most-at-risk- populations
FIDA	Federation of Women Lawyers - Kenya	MSM	Men who have sex with Men
G-Kenya	Gay Kenya	MWA	Minority Women in Action
GALCK	Gay and Lesbian Coalition of Kenya	NACC	National AIDS Control Council
GEAP	Gender Education Advocacy Program	NASCOP	National AIDS/STD Control Programme
ICCPR	International Covenant on Civil and Political Rights	NGO	Non-governmental Organization
ICJ	International Commission of Jurists	SOGI	Sexual Orientation and Gender Identity
ICRH	International Center for Reproductive Health	SWOP	Sex Workers Outreach Program
KAVI	Kenya Vaccine Initiative	TEA	Transgender Education and Advocacy
KEMRI	Kenya Medical Research Institute	UDHR	Universal Declaration of Human Rights
KHRC	Kenya Human Rights Commission	WSW	Women who have sex with Women

PREFACE

On February 17-18, 2011 East African LGBTI activists together with several donors met in Johannesburg, South Africa to discuss the possibility of conducting a baseline survey on the position of the LGBTI movement in Kenya. The aim of the proposed baseline was to enable LGBTI organisations, activists and allies of the movement (including donors and groups in other movements) achieve certain goals. Some of these goals include:

- monitoring the gains and the losses and how these relate to changes in context or to actions taken by actors for and against SOGI (Sexual Orientation and Gender Identity) rights;
- analysing the strengths and weaknesses over time. This analysis may possibly serve as a basis for strengthening their organizational capacities and strategies both as individual organizations and as a cohort of groups with similar goals;

- assessing and begin to minimize divergences between services provided and those that are needed by LGBTI communities; and
- building from the knowledge that if the technical assistance can be provided regionally, processes will be more horizontal and less hierarchical.

Four broad themes were identified for the Kenyan baseline survey.

- Legal and Policy Context.
- Organizational Capacity & Strength Assessment of Organizations involved in SOGI work.
- Public Discourse and/or Social Acceptance.
- Lived Realities and a Needs Assessment.

METHODOLOGY

Consultants were identified to conduct the assessment and a work plan generated. Desk reviews were conducted on a number of issues among them:

- ★ Kenya’s new constitution with a primary focus on the bill of rights
- ★ Reviewing a number of statutes:
 - ⊗ The Penal Code
 - ⊗ Evidence Act
 - ⊗ Criminal Procedure Code
 - ⊗ Civil Procedure Act
 - ⊗ Law of Succession
 - ⊗ Inheritance Act and
 - ⊗ The Marriage Act

- ★ Reviewing LGBTI related media mentions over a five-year period.
- ★ Review of governmental documents including the Ministry of Health policy documents and the National AIDS Strategic Plan (2009/10 – 2012/13).

A variety of interviews were carried out with mainstream civil society organizations, human rights groups, health providers and individuals working in the media.

The preliminary results of the survey were presented to Kenyan activists at the Changing Faces Changing Spaces Conference (CFCS) May 3-6, 2011. This final report includes feedback provided by Kenyan activists from the CFCS 2011 conference.

BACKGROUND

There is a nascent LGBTI movement in Kenya. For years public discourse on sexual and gender minorities has been largely confined to vague references to the ‘problem’ of homosexuality mostly in schools and prisons.

There is also a marked lack of representation in media from individuals who self-identify as gay, lesbian, or transgender leading to dialogues that are driven by long-held unquestioned assumptions of the ‘newness’ and the ‘un-africaness’ of homosexuality and other sexual minority identifications and practices.

Only within the last decade have sexual and gender minorities in Africa as a whole and East Africa in particular begun to speak up against the misplaced notions of who and what they are and by so doing, to stimulate debate within their societies, not always informed or productive, but always spirited, about the nature and rights of same-sex practicing citizens and citizens with variant gender identities.¹

Contextual factors that have led to increased attention to LGBTI issues

In Kenya, several events have coalesced to inform the ways the LGBTI community continues to emerge and grow.

On the top of this list is the ongoing expansion and involvement of the LGBTI movement in providing information to the public health realm regarding HIV issues specifically affecting the LGBTI community.

LGBTI activists have been involved in various governmental gatherings including the Joint AIDS Peer Review process (from 2006), development of the Kenya National AIDS Strategic Plan III (2009/10 – 2013/2014), as co-investigators of a number of studies focusing on MSM (men who have sex with men) and participation in the first National MSM survey conducted by Population Council in conjunction with the National AIDS & STI Control Program under the Ministry of Public Health and Sanitation.

The government’s prioritization of the need to reach the Most At Risk Populations (MARPS) including MSM has provided a space for illustrating the realities of some members of the LGBTI community.

The outcome of this prioritization has seen ever increasing funds availed to reach out to MSM communities across the country. Mainstream organizations working on HIV issues have started to directly work with MSM communities and as we shall see later, this has led to MSM groups cropping up throughout the country.

The second event was the promulgation of Kenya’s new constitution that took place in August 2010. There were concerted efforts made by influential conservative leaders including religious and political leaders who engaged in a spirited campaign to have the proposed constitution defeated. They often invoked the legalization of abortion and homosexuality

“MARPS including MSM are considered to have a 33% HIV prevalence rate”

1. A People Condemned; The Human Rights Status of LGBTI Persons in East Africa 2009 – 2010.UHAI EASHRI
IMAGINED FUTURES”

as the main reason behind the call for rejection. They carried this mantra

throughout the country and were joined by well-funded conservative western religious groupings in their campaign.

Despite this, their campaign did not match the views of majority of Kenyans who felt they had endured long oppressive regimes spanning over decades. Close to seventy percent of Kenyans who voted at the referendum chose to accept the new constitution. This was a milestone for the republic as well as for LGBTI and other marginalized groups in Kenya.

While the current constitution does not mention sexual minorities specifically, its Bill of Rights is clear on the protections inherent to all its citizens. The inclusion of fundamental principles, values and guarantees set the conceptual framework within which all rights are protected. LGBTI and human rights organizations are now looking at this document to identify areas

that will create additional space and protections for the LGBTI community at large.

The third contextual factor is the expansion of LGBTI organization within the country. Central to the LGBTI movement in Kenya, both in terms of rights initiatives and responses as well as in terms of HIV/public health interventions is the Gay and Lesbian Coalition of Kenya (GALCK). The Coalition was established in 2006 when members of a number of organizations representing and serving lesbian, gay and bisexual people in Kenya attended the first regional LGBTI conference in East Africa at the Grand Regency Hotel in Nairobi.

They issued a joint statement:

“We are indigenous Kenyan women and men who have experienced stigma, discrimination and isolation because of our sexual choice and/or identities. We are seeking our rightful place in our families, communities and society, with all the rights and responsibilities that inhere.”

ACKNOWLEDGEMENT

The preparation and completion of this survey report has been made possible by the collaborative efforts of a number of people and organisations to whom we owe our most sincere gratitude. Firstly, we would like to thank LGBTI human rights activities who assisted in putting together the different parts of the survey. Special mention goes to: Solomon Wambua at GALCK for coordinating all the meetings, Esther Adhiambo of PEMA-Kenya with data collation and all the groups that shared their data and for allowing us to engage with members during the entire survey period.

Secondly, we would like to thank key partners that have supported this survey, UHAI, ARCUS, Urgent Action Fund – Africa, and Hivos for facilitating the process at various points and sharing comments on the report.

Thirdly, the staff of UHAI for engaging with us in intense discussions on the survey, their general support and superb logistical arrangements throughout the

preparation of this report.

Fourthly, we are indebted to ARCUS for providing the financial resources necessary to carry out this survey.

This piece of work would not have been complete without the immeasurable technical support of Melissa Wainaina who did the editing and layout, Eric Shihachi for design & layout and Barbara Klugman for very insightful comments throughout the research period.

Most importantly, we are grateful to all the representatives we interviewed from the LGBTI community and civil society organisations. We also thank those who attended the Kenya Day to validate the survey, for their comments, which greatly enriched the report.

The report was researched and compiled by Nguru Karugu and Monica Mbaru.

KENYA LGBTI LEGAL & POLICY ASSESSMENT

Introduction

Current debates at the United Nations (UN) and Africa Union (AU) seems to have shifted focus from universality of rights especially when at the UN a large minority of states expressed concerns ‘at the attempt to introduce to the United Nations some notions that have no legal foundations in any international human rights instrument.’² A large number of organisations have called for an inclusive statement on LGBTI rights.

In 2010, the AU on the other hand, strongly rejected what they defined as ‘any attempt to undermine the international human rights system by seeking to impose concepts or notions pertaining to social matters, including private individual conduct, that fall outside the internationally agreed human rights legal framework, taking into account that such attempts constitute an expression of disregard to the universality of human rights.’³

The Kenya Context

Under the Kenyan constitution, the principles of equality and non-discrimination are espoused for state organs, state officers, public officers and all persons applying, interpreting and implementing public policy decisions.⁴ This gives human rights defenders

the constitutional support cardinal to the effective exercise of human rights by individuals and groups.

In spite of this, many otherwise passionate human rights protectors have declined to undertake protection work of the rights to equality and non-discrimination on the grounds of sexual orientation and gender identity. During consultations for this baseline survey, individuals and organisations justify their lack of action or in some cases hostility to offering protection towards LGBTI persons or the community by saying that culture and criminal laws were stopping them from attempting to reach out. This is regardless of the fact that there is a good constitutional framework that has a Bill of Rights covering all without discrimination on grounds of sex and/or identity. Majority of human rights groups in Kenya are unwilling to use these protective provisions under the Constitution.

As a consequence, the space for LGBTI persons to enjoy and exercise their constitutional rights is impeded by legal, social, political, and access to justice challenges as expressed in civil and criminal sanctions and repression of the individual as this study established.

However, there exists constitutional, legislative, judicial and other pragmatic opportunities that LGBTI activists can use for effective protection of rights and to reclaim their dignity.

² In December 2008, 66 states signed a statement presented to the UN GA that affirmed the principle that international human rights law protects against sexual orientation and gender identity. 57 states made a counter-statement.

³ AU Assembly 15th ordinary session, 25-27 July 2010 Kampala Uganda, Decision on the promotion of Cooperation, Dialogue and respect for Diversity in the field of Human rights, AU Doc. Assembly/AU/17(XV) add.9, Para 4.

⁴ Article 10(1) of the Constitution of Kenya.

Constitutional Provisions & SOGI

The Constitution of Kenya starts with a proactive preamble that sets out fundamental principles that positively translate cultural diversity, equality and social justice as values to guide an open society. This is further affirmed under Article 2 (6), which make Kenya a monolithic state with all international treaties that have been ratified automatically becoming applicable. This benefit from international law is now guaranteed. All ratified international Conventions that have positively interpreted protection touching on LGBTI matters, become applicable law in Kenya without having to go through Parliament.

Fundamental Victories

The inclusion of equality and non-discrimination provisions under the Constitution is a big leap forward. Even without mentioning SOGI directly, the minimum requirement argued by the LGBTI community was achieved.⁵

The Constitution makes fairly specific provisions covering the rights of minority and marginalised groups. Article 55 requires the State to put in place affirmative action programmes designed to ensure that such groups (a) Participate and are represented in governance and other spheres of life; (b) are provided special opportunities in educational and economic fields; (c) are provided special opportunities for access to employment; (d) develop their cultural values, languages and practices; and (e) have reasonable access to water, health services and infrastructure.⁶

The inclusion of SOGI as a thematic group under the Kenya Universal Periodic Review process undertaken by the Kenya National Commission on Human Rights (KNCHR) is an indication of a key government agency willing to engage and highlight the human rights violations targeting LGBTI persons. The concluding observations and the response from the government for the first time situated SOGI issues squarely on the list of human rights arenas that the government now had to respond through the UPR process. Some recommendations drawn from this report include the right not to be tortured, treated inhumanely or punishment.

Kenya’s Bill of Rights

The Bill of Rights (chapter four) in the constitution applies to everybody. It binds all state organs and all persons as these rights should be enjoyed to the greatest extent possible. All laws developed must confirm to the spirit and intent or inconformity with the Bill of Rights. There are values attached to the Bill of Rights, which become applicable to all persons exercising their constitutional rights. These include ‘...the values that underlie an open and democratic society based on human dignity, equality, equity and freedom.’⁷

The Bill of Rights establishes a society based on democratic values, social justice and fundamental human rights. It lays the foundations for a democratic and open society in which government is rooted. The fundamental principles of equality and non-discrimination of the people and every citizen is equally protected by law. This in turn improves the quality of life of all citizens and frees the potential of each person and this builds a nation where marginalised populations rights are protected, respected and promoted.

What is the significance of the Legal & Policy Assessment in the LGBTI Movement?

States are the principal duty-bearers that come with obligations to citizens who should claim these rights when violated. A state that has ratified a human rights convention is required to:

Respect the rights in question, by not violating them, for example, by not restricting the individual’s sexual or reproductive autonomy, personal freedoms, resources and liberty of personal actions – the enjoyment of all fundamental rights.

Protect those rights by taking actions against third parties who violate them, for example, by enforcing sanctions against violators as well as deterrent measures. Also by enacting laws and policies towards ensuring that these rights are realised and promoted. The state should take measures to protect rights against political, economic and social interferences.

Promote – the state obligation is to encourage

5 GALCK shared a memorandum to the Constitution Review Committee specifically addressing thee two provisions. As a win-win with other groups, it was strategically agreed not to include SOGI directly and to later have these two clauses expanded through a judicial process. This way also strategically placed to avoid the backlash from the anti-reformists from faith based organisations.

6 Article 55 and 37 read together

7 Article 20 (4)(a)

the enjoyment of all human rights, ensure that individuals are able to exercise their rights and freedoms. For example, by promoting tolerance, raising awareness, cohesion and access to facilities.

Fulfil/facilitate those rights by putting in place policy, legislative and administrative processes. An appropriate environment is key to enable and ensure that individuals have an effective benefit of their basic human rights. This can be reflected when the provision of basic needs like health, education, housing and social security is accessible to *all* citizens.

Reported Cases

On the most part, human rights defenders and organisations have failed to take action to protect LG-BTI persons on the basis that Kenyan law criminalises same-sex relations.

Section 162 to 165 of the penal code represents a very significant hurdle to LGBTI individuals.

Some of the implications of the sections of the penal code have resulted in significant

persecution among them:

- ✳ Undermining one’s right to privacy.
- ✳ Harassment by state officials.
- ✳ Interference with the security of the person.
- ✳ Cases of torture, inhuman and degrading treatment.
- ✳ Family rights especially freedom to marry and found a family.
- ✳ Stigma and exclusion from family.
- ✳ Blackmail and extortion by security agencies and other non-state actors.
- ✳ Employment and securing gainful employment.
- ✳ Housing rights and peaceful occupation and enjoyment of rented premises.
- ✳ Expulsion from institutions of learning and interference with right to education & receiving information.
- ✳ Poor access to health care.
- ✳ Medical research abuse

The following table provides illustrative examples drawn from the organisations interviewed:

Name	Details	Law Used	Rights Violated
Abbey	Abbey was arrested by City Council askaris along Kenyatta Avenue in Nairobi near the 680 Hotel for the offence of loitering looking for prostitutes. At the Nairobi Central Police Station Abbey was stripped to ‘confirm’ whether male or female. Charged with the offence of ‘importuning for purposes of prostitution’ contrary to by-law 19(Nairobi).	Nairobi City Council Nuisance By-laws, 2007 loitering laws that affect trans-sex workers.	Privacy Security of the person Inhuman and degrading treatment
Bill	While walking home with his partner, Bill was accosted by members of the public and beaten, dragged along the road and taken to the police for being gay.	Section 94 and 95 Penal Code– breach of the peace	Life Privacy Personal security and safety; Police misuse of authority; Abuse of the law; Fabricated charges
Camilla and three others	Lesbians went to a private hospital for gynaecology pap smear tests, hospital staff demanded information on their husbands and upon learning of their sexual orientation, called others to come and ‘see.’ The medical staff delayed them at the reception and made snide remarks forcing them to leave without taking the tests.	Constitutional rights	Access to health care; Privacy Inhuman treatment; Unprofessional conduct and ethics

Name	Details	Law Used	Rights Violated
Dotty	Employed in a media house, rumours went round about sexual orientation. The environment became very hostile for Dotty, people avoided and shunned. Was summoned by boss and terminated for ‘poor’ performance.	Labour Act	Employment and gainful employment; Stigma and prejudice
Eva	40 years old, ‘unmarried’ and living with partner and a 10-year-old child. Parents died and in a succession case, Eva was denied immovable property (land) and advised to ‘get a husband’ who has enough property to inherit. Evicted from family property and assaulted with partner.	Law of Succession Act Constitutional rights Children’s Act	Inheritance rights/ succession Rights of a dependant; Family rights and freedom to marry; Child/dependants rights
Freddy and six others	Attacked by a mob for being gay and attending a clinic with MSM services. Held by police in custody	Penal Code Constitutional Rights	Life; Privacy; Poor access to health care; Security of the person
Grace	With her friends have been harassed and sometimes threatened with violence for not dressing or’ behaving appropriately like women’. Several instances have also undergone forced counselling or religious rituals to convert them back to the ‘right’ track.	Constitutional rights Penal Code Mental health	Freedom of conscience; religion and belief; Dignity; Privacy Dress; Cultural diversity
Georgio and others	Students. At a party with friends, was accosted and abused for being faggots, bouncers instructed to evict them but still followed outside in the night and chased them out of their rented premises. A fight ensued, one was arrested and held at the local station for a night, bailed out by friends upon ‘payment of a fine’ to the inspector. An FM station held a discussion on the issue with calls with both negative and positive comments on gays. They could not go back to their houses to collect their books and property as community still very hostile	Penal code Section 95 Controlled Tenants Act	and extortion; Housing Rights; Right to education; Lack of media ethics
Harvey and others	Was arrested as he left a nightclub after being sexually harassed by known and unknown persons. At Central police Station was made to stripe naked for a ‘search’ for contraband, but none was found. Later charged for ‘being in possession’ of bhang/cannabis sativa and for being idle and disorderly. Later charges dropped in court for lack of evidence. Harvey left court a broken person	Section 182 Penal code Illegal Drugs Controlled Drugs Act	Security of the person; Privacy; Abuse of office; Fabricated charges
Jackie	A waitress at a local restaurant, Harassed by members of the public for dressing like a ‘woman’ and handed over to the police for impersonation, and obtaining by false pretences. Upon release, police forced her to sign a document that she would never visit the town again.	Section 313 Penal Code and Sexual Offences Act	Inhuman and degrading treatment; Loss of employment; Abuse of office; Due process; Fabricated charges

* Not real names. Names changed are requested by respondent

Other Laws Frequently Used against LGBTI

Law	Provisions	Impact
Evidence Act	Commission of crimes and lack of evidence	Fabricated charges
Law of Succession Act	Property rights and ownership	LGBTI affected and disinherited from family property No succession rights in same-sex rations Challenge to legality of relationships Few LGBTI persons exploit the provision of making wills and making provision for their property
Children’s Act	Adoption, fostering, and child support	Same-sex couples unable to legally have children, unable to make provision for children and dependant. Access to benefits like insurance, medical benefits and legal status of their relationships
Controlled Drugs Act	Commission of crimes and use of controlled drugs	Fabricated cases with statutory offences
Births and Deaths Registration Act	Registration as ‘male’ or ‘female’ only	Fail to acknowledge and record TI persons RM vs. A-G failed to acknowledge the legal gap
Criminal procedure Code	Investigation of crimes Production of evidence Making confessions	Many fabricated cases go on with impunity as the evidence is not challenged. Many LGBTI persons taking a plea of guilty to avoid custodial sentences Many case do not go on trial to challenge the lack of evidence Police use of statutory offences clauses
Defamation Act	Slander and libel	Scandalous information used to deny LGBTI persons job, health care and medical attention, education and other services
Education Act	Access to information, education and learning institution	Actual or perceived sexual orientation to deny LGBTI persons right to education, many are expelled, subjected to stigma, prejudice and creation of a very hostile learning environment and hence forced out of schools.
HIV/AIDS prevention and Control Act	Research and documentation	Frequent abuse and over-use for data collection Failure to access health care and stigma due to the criminalisation of same-sex relations MSM outreach affected
Immigration Act	Registration and movement	Access to passports for TI persons due to the nature of Act provisions Freedom of movement curtailed Access to data and privacy of the person affected Discriminatory practices and differential treatment
Police Act	Police officers executing their mandate	Abuse of office and failure to investigate case No due process in ensuring statutory offences are properly investigated and powers not used to abuse peoples rights

Law	Provisions	Impact
Sexual Offences Act	Sexual offences and failure to protect same-sex reaction amongst consenting adults Right to privacy not protected on the basis of being a constitutional rights Use of child related cases against LGBTI persons	Fabricated charges under the Sexual Offences Act Use of paedophile offences against LGBTI persons LGBTI seeking protection under this law, cases not investigated or taken seriously
Registration	As society/NGO/business/name/trust	Majority of groups have no legal status Cannot access services, recognition Access to resources Without registration, cannot engage as an entity to advocate legal changes Several groups denied opening accounts unless they change names No protection of the law

These case summaries clearly show that human rights violations against LGBTI persons are prevalent and generally not redressed. There is evidence of routine abuse, subjected to physical violence, rape and organised crimes with impunity. It is also clear that harassment by state security agencies is rampant. Hate crimes seem to go unabated and sexual harassment in public spaces and institutions of detention are frequent without recourse to justice and redress. There is an insurgency of fabricated charges used for blackmail and extortion targeting LGBTI.

Service providers particularly in education, security and health care sector omit and negligently fail to provide service to LGBTI persons on grounds of actual or perceived sexual orientation and gender identity. Police constantly fail to record or investigate cases of abuse and instead turn against anybody suspected to be gay [LGBTI persons inclusive] and ‘to appease’ the public fabricate various charges [statutory offences] that do not require production of evidence.

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ORGANIZATIONAL CAPACITY
& STRENGTH ASSESSMENT OF
ORGANIZATIONS INVOLVED IN
SOGI WORK

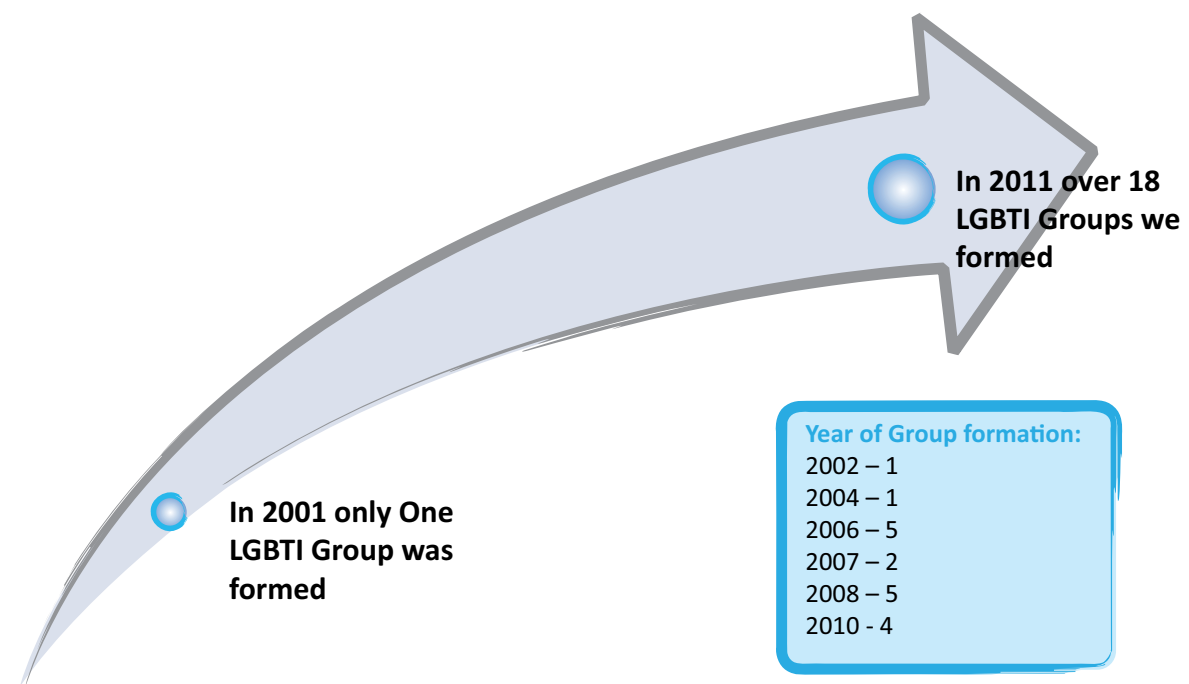
Organizations involved in SOGI work: Capacities & Strengths

There is an emerging LGBTI movement in Kenya. This evident by the ever increasing number of LGBTI organizations in existence and spread throughout the country – from eight LGBTI organizations coming together in 2006 to form the Gay and Lesbian Coalition of Kenya to the now over 17 organizations that responded and participated in this historic baseline survey.

GALCK today is a fully functional organization with a physical office and functional programming. GALCK is located in Nairobi and has expanding networks in Kisumu (Western Kenya) and Mombasa (Coastal Kenya). Other member organisations include, Ishtar MSM which is Kenya’s oldest functional LGBTI organisation that is concerned primarily around HIV and public health issues affecting gay men and other MSM; Minority Women in Action (MWA) that is Kenya’s first lesbian and trans women’s organisation, concerned primarily with women’s health, social space and policy issues, established in 2006; Transgender Education

and Advocacy (TEA), a young organisation concerned with health, policy and rights issues for transgender and intersex people in Kenya; GKT-Kenya (AKA ‘Gay Kenya’), broadly concerned with human rights interventions and income-generation as well as health and policy concerns; PEMA Kenya the only all-encompassing LGBTI organization in the city of Mombasa that focuses on health, policy and rights issues; AFRA Kenya, one of the newest members of Lesbian and Bisexual women which utilizes art as a medium for advocacy. Besides GALCK a new coalition has also been formed in Western Kenya known as NYAWEK and presently has 8 member organizations as part of its network.

The groups vary and have different focus areas. They range from small social groups to larger well-established and staffed organizations. The formation of the groups is a recent phenomenon with few of the groups being over 10 years old. Ishtar MSM registers as the oldest LGBTI organization, formed in 1997 and registered in 2002. Many of the existing organizations were formed after 2006 with the majority being formed after 2007.



The majority of these groups are based in cities and larger towns which literally renders limited to no access to services or mobilization for the majority of LGBTI individuals who live in rural areas.

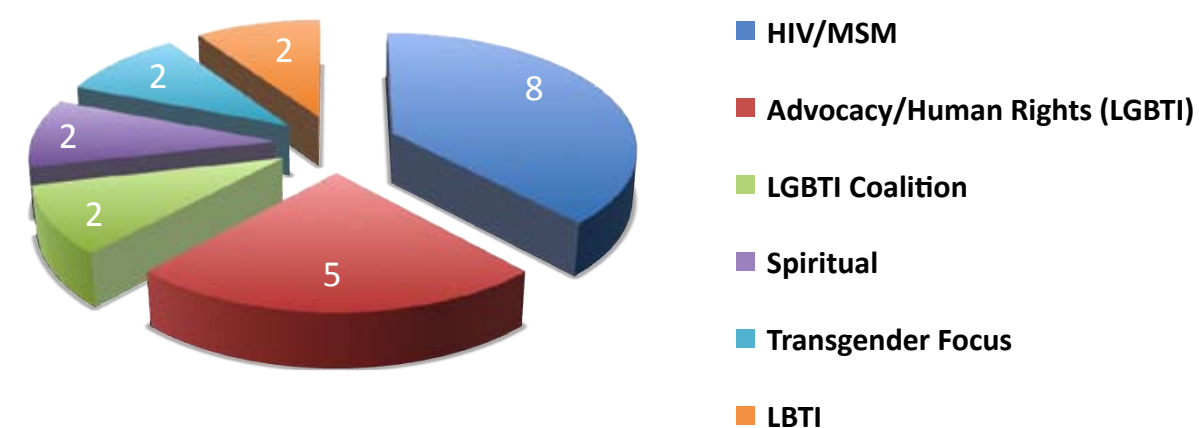
The main cities and towns with LGBTI group presence include Nairobi, Mombasa and Kisumu. Smaller and

forming groups have been identified in Nakuru, Thika, Eldoret and Kisii. In essence only 11 of the 47 counties of the country have an LGBTI group either in formation or already established. Some of the groups in Nairobi are national in nature and reach out to rural communities as part of their programming.

Counties with LGBTI organizations or groups in Kenya



SOGI Organizations Focus Areas*



*Please note there is overlap of organizational focus

A significant proportion of the newly formed groups, especially those in the Western and Rift regions of the country are MSM spin-off entities from mainstream HIV organizations. As mainstream organizations have scaled up their services targeting most at risk populations, a space has been carved for the formation of MSM groups in various towns spotted across the country. As these mainly MSM groups have completed their cycles with the ‘parent’ organizations they have then formed their own independent groups. At the present time many of these emerging groups continue to focus on HIV work with MSM communities. However as they join the larger LGBTI community they are increasingly acquiring skills on community mobilization beyond HIV prevention and MSM communities.

There are only three Lesbians-only groups in the country, **MWA**, **AFRA Kenya** and **Women working with Women (3W’s)**. Other LGBTI organizations include women as well. There is only one transgender and intersex organization in the country, TEA. It has had to spend an inordinate time educating the LGB community on the realities of the transgender and intersex communities even as it advocates in the mainstream world.

Considering the existing criminalizing laws targeting sexual and gender minorities, it was surprising to note that the majority of groups who participated in the baseline survey were registered (11 out of 18). It is important to note that many of these organizations did not register as explicitly as LGBTI organizations but either as self-help groups or CBO’s working with youth, health or HIV programming. Groups have tried to be innovative in order to register without alerting the existing authorities of the work they do. The reality on the ground is that mentioning target groups in their applications would be grounds for registration denial.

Kenyan LGBTI organizations have slowly and deliberately managed to access funding from various sources over the last five years. While the funds accessed are still minimal in comparison to need, they have provided groups with resources to move their various agendas forward. (see attached table: *LGBTI Organizations in Kenya 2011*). A majority of groups interviewed had received some funding for their organizations (10 out of 18). Capacity development and support continues

to be a major requirement for many of the organizations. Development of finance management systems to organization development needs were the most highlighted needs by interviewed groups.

For organizations working on HIV, lack of information and skills on how to reach their particular target groups continues to be a challenge. This is coupled with the lack of commodities (lubricants) to distribute. Majority of organizations are volunteer run. 12 of the 18 reporting organizations are all volunteer run. GALCK, GKT, MWA (3 out of 18) have salaried staff while Ishtar MSM, PEMA Kenya and TEA (3 out of 18) provide stipends for their “staff”.

There is some tension among the various groups on the implication of the seemingly “NGOisation” of the movement with the increasing institutionalization of the various groups (salaries etc). While the tension is minimal at the present time due to the very limited resources available to existing groups, there is need for the movement to take stock of its long-term strategies in mobilizing and integrating the LGBTI community into the Kenyan society.

Reaching Out to Allies

Human rights advocacy and responses by Civil Society Organizations (CSOs) to human rights abuses against LGBTI persons have been few, reactionary and lacking in strategic focus.

Moreover the interventions rarely address the real source of the problem (criminalization and denial of social-economic rights), nor do they build on past responses. Responses by various human rights groups are incident-based - reactionary to crisis. Not proactive. Not based on any ideological appreciation of defending rights based on sexual diversity – sexual orientation and gender identity – all respond to arrests, detentions – yet the root cause of the problem is not addressed – criminalisation of identities.

There is a marked absence of mainstreaming LGBTI programmes in most organizations especially those dealing with women and gender issues. Gender identity and sexual orientation are so intrinsic to the success of any gender programme in women rights and gender-based violence. There have been efforts by LGBTI groups to work in collaboration with women and gender rights organisation on the recent session on CEDAW⁸

The State Agencies

Kenya National Commission on Human Rights (KNCHR) The role of KNHRC under the Constitution is more definitive under Article 59, which establishes the Kenya National Human Rights and Equality Commission with functions that include multiple possibilities for protecting LGBTI rights;

- ✳ Promotion of respect for human rights.
- ✳ Promotion of protection and observance of human rights in public and private spheres.
- ✳ Investigation of complaints against human rights violations.
- ✳ State’s principal agent in ensuring compliance with international human rights obligations.

Recommendations

- ✳ LGBTI individuals and group must participate at the formulation of the forthcoming enabling legislation in the merger of these two bodies – KNHRC and the Gender Equality Commissions.
- ✳ Ensure the enabling legislation addresses the plight of LGBTI persons and strengthens a culture of diversity as regards sexual orientation and gender identity.

Kenya Law Reform Commission (KLRC)

Within the State Law office the Kenya Law Reform Commission, a technical agency under the office of the Attorney-General is tasked with undertaking a thorough audit of all laws vis-à-vis the constitution and undertaking extensive consultations with various stakeholders to review and make drafts for submission to Cabinet and to Parliament.

KLRC has already held consultations on the review of the Penal Code, Sexual Offences Act, Marriage protection laws and has drafted an Equality and Non-Discrimination Bill. GALCK has been engaged in some of the civil society meetings undertaken by the KLRC and should continue this engagement, not just on the Penal Code but as an ongoing process as all laws affect the LGBTI community in one way or the other.

Recommendations

- ✳ There should be an audit of all laws vis-à-vis the constructive response on SOGI issues to help in engaging with the KLRC.
- ✳ Condense the findings into a memorandum and share this with KLRC as a guide to their law

reviews, reforms and drafting processes

- ✳ Participate in all forums seeking to assess other draft bill being undertaken by the KLRC
- ✳ Continuously work with supportive Commissioners.

National Cohesion and Integration Commission

This National body is tasked with the mandate to address hate speech but it has been very conservative in relation to addressing hate speech and hate crimes committed against individuals based on sexual orientation and gender identity.

When contacted during this study, the Secretary took a conservative approach that under the NCI Act No. 12 of 2008, the Commission mandate is only protection against hate speech defined under its Section 13 to ONLY cover groups of persons defined by their colour, race, nationality or ethnic or national origins.

Recommendation

- ✳ Monitor the work of the Commission and encourage it to see its mandate in a wider sense to encompass hate crimes directed at and targeting any group, including LGBTI persons as they are the technical state agency mandate to address ‘hate crimes’.

Civil Society Groups

Kenya Human Rights Commission

The KHRC has always worked with minority, marginalized and disadvantaged groups to enable them, in their own way, articulate, defend and realize their human rights - civil, political, economic, social and cultural.

Under the Equality and non-discrimination programme, KHRC has reached out to Kenya’s LGBTI community. KHRC receive cases of human rights abuses against the LGBTI persons and is able to offer rapid response. This response has made it possible for LGBTI persons from rural areas as far as Mombasa, Kisii, Kisumu and Nairobi and its environs to receive support in times of distress. Under the KHRC Equality Programme, research and documentation of LGBTI human rights violations has been undertaken and is a willing partner in collaborative work with the community.

Recommendations

- ✳ More strategic work on advocacy needs to be effected.

⁸ 47th Session of the Committee on CEDAW, Kenya State Report was up for assessment. No LGBTI groups were able to submit a shadow report. The only women rights organisation that submitted a report failed to address

- ✳ Address decriminalisation work together as one of the leading human rights actors.
- ✳ Undertake joint initiative in the Constitution implementation efforts.
- ✳ Collaboration with KHRC has been key in ensuring a targeted response on issues of stigma and victimisation of LGBTI persons, urgent action and documentation of human rights violations.

Kituo cha Sheria:

It is one of the leading legal aid centres for indigent members of society on land, labour and housing rights. It has a branch in Mombasa and they are willing to engage on national issues affecting the LGBTI community.

In 2010, Kituo Cha Sheria had a breakthrough in court, by submitting a public interest case on behalf of prisoner's right to vote. This ensured prisoners participation in the referendum for the new constitution. Currently there is no relationship between Kituo cha Sheria with any LGBTI group.

Recommendations

- ✳ LGBTI persons and groups can collaborate with kituo on national issues.
- ✳ Learn best practices in public interest litigation that link issues of equality and nondiscrimination into the decriminalisation processes.

Law Society of Kenya

LSK is a professional group bringing together all lawyers registered to practice law in Kenya. As a membership organisation, has a national outreach spread all over the country offering legal services in all courts in Kenya. Within the current government initiatives to implement the constitution, LSK is a stakeholder in all processes to ensure respect of the rule of law.

Since 2007, all LSK members are required to undertake continuous legal education as a prerequisite to renewing their practicing certificates. The LSK has invited any organised groups to register with them to offer the opportunity for learning of their members and to provide forums where members can engage in continuous learning. At this point no LGBTI group has taken this opportunity. Lawyers not fully explored the area of sexual orientation and gender identity; there are gaps that LGBTI groups can fill up and work closely with this professional group.

Recommendation

- ✳ Allies working on decriminalisation should tap on available skills within LSK when lodging court proceedings

Medical and Dentists Board

As a professional group bringing together medical practitioners in Kenya, this board offers the opportunity to engage its members in ensuring high level service provision, health care and respect of ethical issues when attending to the health needs of LGBTI persons. The board also considers complaints against its members who have failed to adhere to stipulated ethical guidelines and it sanctions those found to be errant.

Collaboration already exists involving some LGBTI individuals and groups especially the Transgender and Intersex groups. These are offering much needed outreach collaboration between professional groups and the LGBTI Community. TEA, a member of GALCK has established a working relationship on medical support and more areas of collaboration can be identified.

The board is currently working on constitutional provisions that address health rights and working together with them to support the LGBTI community especially when human rights violations occur is key. By providing giving evidence when cases of torture, inhuman and degrading treatment occur and signing of medical certificates and P3 Form it offers the best interactive opportunities between the LGBTI community and medical practitioners.

Recommendation

- ✳ LGBTI groups, organizations and allies should work with the Board to bring cases to their attention and to be able to provide it with information and guidance to strengthen its constitutional provisions and understanding of ethics in relation to medical practitioners guidelines.

Federation of Women Lawyers Kenya (FIDA)

FIDA is a women-rights organisation founded on the basis of equality and non-discrimination and gender based violence against women in Kenya. It is one of the oldest groups offering legal aid and legal awareness on women rights in Kenya with outstations in Kisumu, Mombasa, and Garissa. It also among the front-runners leading civil society groups and is frequently consulted by government with regard to women rights.

It is part of the wider civil society movement engaging with government in implementing the constitution to ensure a gender audit of every process. It has been very vocal in articulating the need to protect women rights in all public and private spheres of Kenya society. It writes shadow reports to all UN treaty bodies when Kenya is due to report and attends the Commission on the Status of Women (CSW) sessions to file shadow reports on the situation of women rights in Kenya.

FIDA has not been very responsive to LGBTI issues and targeted outreach to its membership and staff would ensure the much-needed collaboration to ensure the protection and mainstreaming of all women rights in their outreach work.

Recommendations

- ✳ Seek legal assistance and aid on current programmes at FIDA to ensure that FIDA programmes also reach LGBTI as LGBTI rights are also women rights.
- ✳ Encourage constituent member working on LGBTI, especially groups like TEA, Minority Women in Action (MWA) and AFRA Kenya to work closely with FIDA on mutual areas on equality and non-discrimination against women in Kenya.
- ✳ Ensure LGBTI persons in Nairobi, Kisumu, Mombasa and Garissa, enjoy the legal aid and awareness services of FIDA offices and officers in those stations.

International Commission of Jurists (ICJ-Kenya):

ICJ-Kenya has an Access to Justice programme that encompassed LGBTI rights but has since stopped to consult with its members regarding the continuation of this programme.

This arose from lack of funding for the project but also the inaction of Board members not willing to 'appear in support' of controversial issues.

In the past, the ICJ-Kenya has been a strategic ally it has done documentation and case research that can benefit the LGBTI community when addressing decriminalisation and SOGI relatedwork.

As a lead, the international secretariat in Geneva has done a policy paper on SOGI that offers a good template to share with various stakeholders when advocating for protection, equality and non-discrimination.

Recommendations

- ✳ A good partner in decriminalisation process as a highly respected body of jurists focused on judicial reforms in Kenya.
- ✳ LGBTI groups and allies can have an understanding for legal support and as amicus in decriminalisation proceedings.
- ✳ ICJ willing to file amicus briefs when addressing SOGI issues.

Faith Based Organisations

Catholic Justice and Peace Commission (CJPC)

CJPC is a leading body that works on issues of peace and justice within the Catholic Church network in Kenya with a widespread outreach of community workers in many parts of the country. CJPC has undertaken one of the most comprehensive paralegal training models on rights-awareness for community members and ensured an active role in matters of politics, national issues, and justice and peace initiatives.

There are very supportive individuals focused on a rights-approach, which is what LGBTI

persons claim which suggests that there may be scope for collaboration.

Recommendations

- ✳ LGBTI organizations need to work with supportive human rights defenders within the CJPC initiative.
- ✳ LGBTI groups and allies should also use materials already in circulation amongst CJPC human rights defenders network to engage with other faith entities.

International Campaigns

International Day Against Homophobia (IDAHO)

Since 2007 GALCK began celebrating IDAHO. The day is marked as a GALCK members' activity with guests from the donor community and strategic LGBTI defenders and supporters invited to participate.

In 2010, GALCK partnered with KHRC to make IDAHO a public event with the general public and media invited in order to engage a wider constructive dialogue. It served to deconstruct stereotypes of LGBTI persons especially in the media and highlight the negative linkage between homophobia and spread of HIV in Kenya. The results were remarkable; there was positive press, building of more alliances with key al-

lies in academia and other sectors and constructive dialogue; conversations had begun.

World AIDS Day

GALCK and its member organizations have successfully participated at the NACC run 'World AIDS Day Activities' since 2006. This has included participating in a march/parade along the major highways of Nairobi carrying their various banners.

The GALCK tent shared by some of its members, especially Ishtar MSM has continued to be the busiest with throngs of Nairobians stopping to ask a variety of questions pertaining to LGBTI communities. While odd questions and stares have been encountered, the vast majority of individuals stopping by the tent have truly been curious and there has never been a negative incident to date.

Human Rights Day

In 2010, GALCK celebrated Human Rights Day by

collaborating with KHRC, the KHRC Human Rights Institute and the KNCHR for a public forum where key speakers addressed SOGI in a public space. The resulting dialogue between Prof. Makau Mutua and Hon. Martha Karua was an eye-opener to many members of the public present – here were fearless human rights defenders, leaders in their own right and professional members of both respected civil society groups like LSK, FIDA and academia willing to publicly defend SOGI and condemn human rights violations against LGBTI persons.

International Transgender Day of Remembrance (TDOR)

Transgender Day of Remembrance (TDoR) memorializes those killed as a result of transphobia and highlights the continuing violence endured by the transgender community.

TEA has held annual sensitization workshops and commemoration events since November 2010.

Hot 96 FM Radio discussions, March 2011 also posted on Facebook

As the interaction above clearly illustrates viral homophobia and transphobia is still the order of the day for the majority of LGBTI Kenyan citizens. Religious and cultural beliefs have only served to heighten the problems faced by LGBTI Kenyans. Verbal and physical attacks targeting LGBTI individuals occur throughout the country. Many do not report these attacks since reporting them to the police could illicit additional attacks.

The Media

The media has played and continues to play a vital role in the formation of public opinion in Kenya and this role has generally been positive and progressive in relation to democratization and some aspects of human rights. For instance, the media was instrumental in informing the public on the constitutional process as well as holding the powers that be to account for the ongoing rampant corruption and impunity so endemic in the Kenyan political environment. As concerns LGBTI rights however, their record has been less stellar. While there have been commendable efforts to balance reporting by some of the media in Kenya, it has not been across the whole media spectrum.

There has been some change registered in media SOGI reporting over time. The only media that has changed noticeably in coverage of LGBTI issues is the print media where there has been a debate and a gradual shift from attacking the morals of the community or making fun of the 'lifestyle' and accompanying every story with biblical and or Koranic anti-gay quotes. Positive/sympathetic stories have been recorded in all the three mainstream print English newspapers – *The Daily Nation*, *The Standard* and *The Star*.

So far, *The Star* has proven to be the leader in this new responsible journalism. Not only have they printed positive stories about the community but also provided opportunity for LGBTI organizations to place informative pieces about the community. Nevertheless, newspaper stories are few and far between. *The Daily Nation* and *the Standard* are changing how they handle the issues, but are too afraid of offending advertisers to be too supportive. This seemingly informed media reporting has only been witnessed in the past two to three years.

There has also been a more visible response from the LGBTI community to irresponsible journalism that was not evident in the past, as recent as 3 to 4 years ago. Now unacceptable stories are responded to immediately either by GALCK or its member organizations.

In 2007, a gay man appeared in a talk show to speak about his life. In the audience were other members of the gay and lesbian community. From then on, members of the LGBTI community have appeared in a few TV shows e.g. *K24's Untold Stories*, *the Patricia Show* and *The Taj Show* both on Kenya Broadcasting Corporation (KBC) the government owned station. Most of these appearances have been due to invitations from the various shows or media houses and not from deliberate engagement by the LGBTI community. There have also been a number of interviews of LGBTI individuals on various radio stations – *Radio Jambo*, *Radio Maisha*, and *KISS 100*. MWA and GKT presently produce monthly newsletters primarily distributed on their websites.

FM radio stations are another vibrant and growing segment of the media fraternity. They seem to dwell in sensationalism and at times depending on the debate come close to encouraging hate speech where the LGBTI community is concerned. As negative as this is, it is a major change from about five years ago when most radio stations would not even touch the topic or invite LGBTI representative onto the various shows.

There has been limited to no progression from TV programming. There does not seem to be a move towards programming that reflects LGBTI issues in a positive or balanced light. In the early '80's the state broadcaster dropped the *Ellen* show when she came out as a Lesbian. Today only individuals who have access to cable or satellite TV get to see any sort of programming about LGBTI issues or people.

There has certainly been more positive coverage of LGBTI related issues in 2011 than there were in 2006. The turning point for the press appears to have been the access to the GALCK tent at the World Social Forum in Nairobi in January 2007, when the tent became one of the most visited by delegates both local and foreign.

Recommendation

According to the media persons interviewed for this baseline, opportunities to change the way media reports on SOGI issues do exist. The most important is on setting up a partnership or engagement with the Editors Guild. While younger reporters and journalists are beginning to report differently, the most influential body that can make systemic changes is the Editors Guild that includes editors from both the print and broadcast media.

Religious & Faith Community

The social landscape for sexual and gender minorities in Kenya is further complicated by the role religion poses. Religious leaders both Christian and Muslim, have been among the most vocal opponents of acceptance and inclusion of sexual and gender minorities in Kenya and East Africa at large. This, coupled with their conservative approach has hampered the growth of the provision of HIV prevention services to the larger society.

In 1996, Kenya's top Roman Catholic Church Official, the late Cardinal Maurice Otunga, burned condoms and safe sex literature in a ceremony organized by a group opposed to contraception and sex education. About 250 people watched as the Cardinal and two gynaecologists prayed and sang before setting fire to several boxes of condoms and 100 copies of pamphlets promoting safe sex.

The 77 million-strong Anglican Communion has been divided since the Episcopal Church, its 2.4 million member U.S. branch, consecrated Gene Robinson as Anglicanism's first openly gay bishop in 2003. The Kenyan Anglican Fraternity has vehemently opposed the acceptance of homosexual priests and is part of the African Episcopal Church that is now consecrating American rebel bishops of the US Episcopal Order.

But perhaps the most insidious intervention of religious groups happened at Mtwapa on the Kenyan coast in February of 2010 when several gay men were dragged out of a government research compound by a frenzied mob, doused in petrol and almost set alight before the police intervened to "arrest" the suspects and by doing this thus saving them from certain death. The organizing of the attacks from Friday prayer meetings at the various mosques across the coast was a new phenomenon in Kenya and indicates a beginning of organized resistance to the LGBTI movement in the country. This had been preceded by a US-based right wing religious entity, *Project See*, who attempted to mobilize the Kenyan masses through the internet to attack and kill human rights activists working on SOGI and gender rights issues including the then head of GALCK David Kuria. While the two incidents may not have been related to each other, they did present a seemingly emerging organized resistance to the LGBTI movement in the country.

A number of LGBTI friendly faith institutions are slowly emerging and providing space for the LGBTI communities looking for spaces for spiritual nourish-

ment. Other Sheep Kenya and St. Sebastian hosted at Kisumu Initiative for Positive Empowerment (KIPE) are two such spaces.

Other Sheep Kenya has also begun a deliberate engagement with various religious orders and persons on the issues of homosexuality and the church.

Recommendation

LGBTI organizations must find ways of engaging with the faith community of Kenya. Links that are being created by Other Sheep in Kenya must be followed up with the objective of generating dialogue with religious groups in the country.

Politicians & Prominent Individuals

LGBTI issues have not occupied a prominent space under Kenya's President Kibaki's two administrations. The past government regime were very clear about their opposition to LGBTI issues.

In 1999 former President Moi stated, "*It is not right that a man should go with another man or a woman with another woman. It is against African tradition and Biblical teachings I will not shy away from warning Kenyans against the dangers of the scourge.*" (Daily Nation September 30th 1999). Unlike the previous regime, the current government has recorded very few statements or open attacks on the LGBTI community from the political class or government. This was best illustrated at the 2007 World Social (WSF) activities. Kenyan LGBTI community members conducted the first ever demonstration for their rights and were joined by hundreds of the international participants at the WSF. This is now considered the coming out event of the Kenyan LGBTI community. Media reports and interviews with openly identifying LGBTI individuals were splashed on all major newspapers as well as evening television bulletins. The reaction from the religious community was immediate and they demanded that the government arrest all the LGBTI individuals who were openly admitting their orientation which they stated contravened the laws of the land. There were real concerns from the LGBTI community that the government would make arrests of the various people now easily identifiable from the media reports. The government did not make any statement or order any arrests. This was the first clear indication of a seemingly changed governmental policy where the LGBTI community is concerned.

The Ministries concerned with HIV and healthcare have been the more prominent entities where issues

affecting a part of the LGBTI community have been discussed. The discussions have over time become more open and neutral where the lives of LGBTI members are concerned. It is important to note that these discussions have been focused on MSM communities within the MARPS strategic engagement that the government is presently focused. There has been limited discussion or understanding of the fuller needs of the LGBTI community at large.

Recently, several prominent Kenyans have come out in defence of the LGBTI community. In October 2010, The Minister of Special Programmes caused a stir when she advocated for MSM rights to health care at the first ever most at risk populations symposium hosted by the government itself. Religious leaders and conservative politicians demanded for her immediate sacking from the cabinet and threatened to organize national protests. However, in an indication of the changing times, the Minister of Justice, Hon. Mutula Kilonzo, supported her and warned those who violate the law by discriminating against the LGBTI community would face the full force of the law.

The reaction to his statement was swift outrage. GALCK and mainstream human rights organization quickly condemned the remarks and asked for clarification from the Prime Minister's office. Press conferences were held across the country by LGBTI activists including in Kisumu, the Prime Ministers ancestral home. Protest marches were held in Nairobi and there was also international condemnation.

In an unprecedented occurrence in Kenya's short public LGBTI history, the Prime Minister apologized for the statement and denied he had ever made it. He also acknowledged the existence and respect for 'gay rights' during a speech at the National Dialogue and Reconciliation Conference.

This will be a very gross violation of our Bill of Rights in the new constitution if anyone attempts to discriminate members of the minority groups.

BTM, October 11th 2010

This was the additional indication of the changing environment brought about by the promulgation of the new constitution. Another indication of the change in the environment was the response by human rights and LGBTI groups to an order by the Prime Minister of Kenya Raila Odinga that gays and lesbians be arrested. He had stated:

We will not tolerate such behaviours (sic) in the country. The constitution is very clear on this issue and men or women found engaging in homosexuality will not be spared, any man found engaging in sexual activities with another man should be arrested. Even women found engaging in sexual activities will be arrested.

Daily Nation, November 29th 2011

IV

LIVED REALITIES & A NEEDS ASSESSMENT

Arbitrary arrest and detention, harassment by security forces, blackmail and extortion, sexual abuse by police, denial of the right to association, expulsion from schools and discrimination in employment and housing are some of the violations LGBTI persons endure in their daily lives.

Despite the extent of violations against LGBTI individuals, these abuses are rarely reported due to the likelihood of stigmatization and harassment by law enforcement agents. As a result, human rights violations against the LGBTI community remain largely under-reported and undocumented.

Confronted by an un-concerned government on the one hand and surrounded by an unwelcoming society on the other, the LGBTI community continues to live and work in difficult and often dangerous circumstances.

However, significant progress has and continues to be made against great odds. There is no longer a resounding silence on the subject of sexual minorities. At great personal cost, many individuals have come out and continue to work openly to promote the cause of equality for all citizens in Kenya. It is imperative that these initiatives and efforts be supported and encouraged.⁹

A questionnaire attempting to gauge the lived realities of LGBTI members was sent out to LGBTI organizations from throughout the country (*see attached ta-*

ble: LGBTI Organizations in Kenya 2011). It attempted to assess their lived realities in the following areas:

- ✦ Legal and human rights
- ✦ Employment opportunities and security
- ✦ Access to health care
- ✦ Access to safe social spaces
- ✦ Access to education and housing
- ✦ Access to family
- ✦ Faith and spirituality

Eighteen LGBTI organizations responded. Most organizations engaged their constituents in responding to the questionnaire. There were overarching similarities in some areas and some distinct lived realities depending on where one is located in the country.

Legal & Human Rights

The most prominent reported human rights violation by the majority of groups was police harassment arrests and brutality. LGBTI members have been arrested for 'dressing as gay' or in the case of transgender members accused of impersonation for the purpose to solicit. Once arrested, there is humiliation at the police cells and in the cases of female transgender they are forced to strip and placed into the male section of the jail further placing them at risk for attacks.

In Mombasa, religious instigated homophobic attacks

⁹ People Condemned; The Human Rights Status of LGBTI Persons in East Africa 2009 – 2010. UHAI EASHRI

were the most prominent human rights violations presented by the community. The 2010 Mtwapa incident continues to reverberate in the community and informs how LGBTI members operate and survive at the Coast region.

The second major overarching human rights violation presented by organizations was around accessing health care services. While some services have become available for MSM/Gay/Bisexual men in Kenya, appropriate and competent services for women and transgender communities are few. Lesbians have been humiliated when they have attempted to access service including gynaecological care. A doctor refused to treat a patient once the patient disclosed she was lesbian and stated that it was against his personal beliefs to provide her with treatment.

There is a dearth of legal services to cater to the various human rights violations from across the country. Majority of groups refer cases to GALCK who in turn works closely with the Kenya Human Rights Commission to follow-up. Respondents from Kisumu do not have a place to refer cases to and have had to navigate the system by pulling their resources together. PEMA Kenya, based in Mombasa refers cases to GALCK has a lawyer who takes up cases on a pro-bono basis.

The case of transgender, transsexual and intersex persons is even more dire in that they are not legally recognized gender identities and thus cannot approach the justice system as such, especially when the violations complained of are related to gender identity. They also face blackmail from members of the public who threaten to report them to the police.

Employment opportunities & Security:

The majority of groups responded to the survey indicating that there were high rates of unemployment and poverty amongst their members. Low levels of education, skill sets and limited opportunities were presented as the mitigating reasons around this reality. Discrimination and harassment were also presented for those who were exposed as being LGBTI at their work places or businesses. Many members of the groups have gone into sex work as a way of earning an income.

Blackmail, extortion and attacks were the major security issues presented by all the groups. The contin-

ued criminalization of same-sex activities provides an environment where the public takes advantage of the community through blackmail and extortion. LGBTI groups in addition presented the threats of corrective rape as a major security concern. In some sections of Nairobi, attacks and beatings by militia groups were presented as a major threat to the LGBTI people who live there. Individuals have been 'arrested' by these vigilante groups and beaten for hours, robbed and asked to change their behaviour.

Access to Health Care

Avoidance is the most common tactic taken by sexual and gender minorities with regard to dealing with the health sector. This was especially true among MSM's who felt that their sexual orientation would be difficult to hide in the course of treatment and that such exposure would have negative results. Thus, *the perception* of a hostile health care system keeps many needy people away. But this view of the health care system is not simply a matter of conjecture. Many LGBTI individuals report similar experiences of stigma and discrimination, breach of privacy and confidentiality and in some cases verbal abuse by health care providers. In addition, the high cost of healthcare has led many LGBTI people to resort to self-medication, often resulting in complications and in some cases, death.¹⁰

One distinct feature from the survey was the disparity around accessing health care between MSM/Gay and WSW/LBT. As a result of the governments' engagement with MSM communities going as far back as 2005, there are some health services presently available to MSM/gay communities across the country. The services are limited in scope in that they are mainly HIV focused (testing, treatment and care) and majority of sites that provide these services are research entities – Kenya Medical Research Institute (KEMRI), Centres for Disease Control and Prevention (CDC), International Centre for Reproductive Health (ICRH), Sex Workers Outreach Program (SWOP) etc. However there is a slow move to engage non-research health care providers to provide a more comprehensive health service for MSM/gay men.

All WSW/LBT groups across the country stated that there were no friendly competent health care sites

that their members could access. MWA and AFRA have attempted to enrol individual health care providers (gynaecologists) to provide services to their members. It has been a slow process and only a small number have been enrolled to date. For the majority of WSW/LBT members simply do not have access to competent friendly health care services.

For transgender member some services are accessible e.g. counselling however other services are inaccessible because of cost and prejudice in government hospitals or are simply non-existent.

Some members of TEA have been able to access castration, hormones, anti-androgens and hormone profile services in both the government and private sector. These services are however inaccessible to the majority of members due to prohibitive cost concerns.

Access to Safe Social Spaces

The establishment of the GALCK Centre is a milestone for the LGBTI community in Kenya and Nairobi in particular. The community centre was mentioned as the main safe space by majority of groups based in Nairobi. It not only has provided space for individual groups to have an office, but also allowed for community members a space to come and meet and socialize. In Mombasa PEMA Kenya offices are playing the same role for groups based in the region. PEMA presently allows various groups to meet at their offices. Groups under the NYAWEK umbrella do not have a safe space to meet in Kisumu town. Presently they utilize space offered to them by various HIV organizations including Liverpool VCT (LVCT) and Kisumu Initiative for Positive

Empowerment (KIPE).

Spaces are slowly being created at certain bars and clubs in Nairobi and Mombasa and the community in Nairobi is presently discussing setting up its own LGBTI club/bar. Despite the slow opening opportunities around safe spaces, there is still real concern around community attacks, extortion and blackmail which are rampant even within the 'friendly' spaces that have opened up.

Access to Housing & Education:

Evictions by landlords and harassment by neighbours

once one is suspected to be LGBTI was the major issue presented by all groups from throughout the country. Some members had been attacked by their neighbours forcing them to leave their homes and houses. Homelessness is a reality for many members of groups. This was particularly acute for sex workers, transgender and intersex individuals. LGBTI individuals were also thrown out of their family homes once they were suspected or confirmed to be LGBTI leading to homelessness.

Refusal to pay school fees was the most cited impact around education for LGBTI community members. Once suspected or confirmed of being LGBTI parents and guardians refused to continue to pay for the individuals' education. This was also used as a tool to get the individual to change their behaviour.

Bullying, violence and name calling of intersex and transgender people in schools and universities is rampant. Forced stripping and hostility from teachers and lecturers was cited as a major concern for transgender and intersex students. Some education institutions deny transgender people the right to change names in academic certificates thus making it difficult for them to acquire employment.

Access to Family

Ejection by family members was the most cited response to accessing ones family. Death threats, religious and cultural interventions to change the person's behaviour and forced marriages were all presented as examples of how families have responded to learning of their children's orientation or gender identity. This included forced counselling session with medical practitioners. As stated earlier, refusal to financially support LGBTI individuals including paying of school fees was a major family response on learning they are LGBTI. Threats of being disowned and loosing family inheritance were also presented.

Failure to transition because of the fear of reprisal was a major reality for transgender community members. There is high stigma and many transgendered individuals are referred to as having mental health problems and then mislabelled as gays or lesbians. There were high levels of isolation and not getting invited for family gathering. Neglect and violence from family members was also reported as a major concern.

¹⁰ *ibid*

Organizations reported some intersex individuals having been locked up in the house, denying them normal development and growth including education and association. Many are stigmatized and neglected. There was reported violence for some intersex individuals who have undergone sex reversal surgery.

Faith and Spirituality

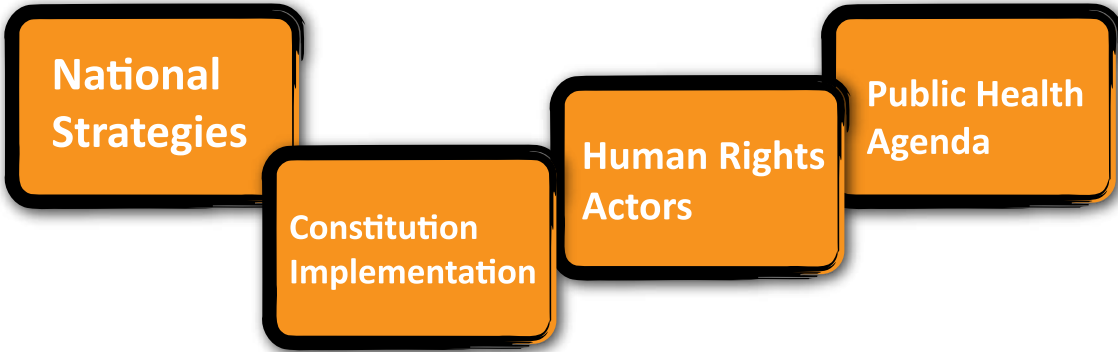
Mainstream religious institutions continue to be bastions of intolerance where the LGBTI community is concerned. From conversion therapy to outright

instigation of violence targeted at the LGBTI community, the mainstream religious groupings has not welcomed or tolerated the LGBTI community. Other Sheep Kenya was identified as the major source of faith and spiritual guidance for the LGBTI community in Nairobi while St Sebastian faith services hosted at KIFE provided similar space in Kisumu. There were no other spaces identified by surveyed organizations and this was cited as a major gap for the community at large.

V

CONCLUSIONS & FINAL RECOMMENDATIONS

Suggested Policy Intervention & Strategies



National strategies

The current government strategy is to ensure all government agencies especially key line Ministry implement the new constitution vis-a-vies each portfolio. The government has issued a Cabinet Directive¹¹ to all Ministries to device ways of ensuring a national consultative process for citizen views on how best to implement the constitution. Each ministry will apply provisions

under **Article 118** of the Constitution in ensuring a national outreach, participation and facilitation of all stakeholders at all levels of governance. The Ministry of Immigration has already invited national forum on matters of citizenship, immigration and refugees registration.¹²

Recommendation

LGBTI constituent members should engage within these forums to ensure participation and community protection of all vulnerable groups. Share memoranda with each ministry of areas of concern and by having targeted messages to build momentum for positive change. Utilise constitutional provision on equality and non-discrimination as catalysts to change even in situation of community hostility. As equal members of society LGBTI persons need to attend forums and ensure visibility of all rights protection.

Constitutional Implementation Process

The Constitutional Implementation and Oversight Committee (CIC) is holding national constitutional

11 Sourced from the Law Reform Commission offices

12 Ongoing consultation should reflect on the registration on transgender and intersex persons looking at the judgment in RM vs. the Attorney-General Case. How best to ensure refugees running away from their countries due to their sexual orientation and gender identity are registered and protected without discrimination against them by the registering official and ensuring their targeted identification and protection.

consultative meetings on key bills. Apart from reforming the judiciary by changing two judicial reforms Bills [appointment and recruitment of judicial officers] they are also scrutinising five other Bills touching on police reforms:

- a) The National Police Service Bill 2010.
- b) The National Police Service Commission Bill 2010.
- c) Independent Policing Oversight Authority Bill 2010.
- d) The Private Security Industry Regulation Bill.
- e) National Coroners Service Bill 2010.

These laws must have the input from the LGBTI community in Kenya. Most human rights violation, torture, inhuman and degrading treatment happen at the hands of state security agencies by acts of commission or omission and how these institutions are changed, must start with a legal framework that guarantee change. With good laws in place, LGBTI can use them to protect their rights.

The Kenya Law Review Commission (KLRC) and Parliamentary Departmental Committee on Legal Affairs and Administration of Justice are also working toward the implementation of key laws. All LGBTI groups must closely work with these institutions as a priority to ensure a SOGI-friendly interpretation of the constitution and the laws that emanate from these bodies for debate in parliament. The government has published these bills to ensure that members of the public read them, offer critique and provide ‘technical consultations’ with the AG’s office.

Recommendation

LGBTI constituent members and other stakeholder should conduct SOGI audit of the Constitution document and use it to advocate for legislative review. They should also work closely with the CIC, KLRC, and Parliamentary Department Committee on Legal Affairs. These committees are looking for any available technical support.

Human Rights Actors

The Kenya human rights community is vibrant but has failed to give adequate interventions towards the protection of LGBTI individuals. The re-affirmation under

the Constitution in **Article 27(1)** that every person is equal before the law and has the right to equal protection and equal benefit of the law is explicit. The provisions for non-discrimination whether directly or indirectly against any person on any ground, including belief, culture, dress, language or birth, etc, are good grounds when challenging criminal laws especially provisions under Section 162 and 165 of the penal code. This innovative exploitation of constitutional provision can be done by the LGBTI community or in collaboration with human rights actors.

Recommendations

LGBTI constituent members and other stakeholders should strategize around filing test cases or public interest litigation [provided for under **Articles 22, 23, 24** and **27** of the Constitution] through the use of judicial reasoning. Previously courts have enforced the law including determining criminal cases brought against alleged acts in violation of **Sections 162** and **163** of the Penal Code. The court quashed convictions on sodomy charges for *being unsafe* in the case of *David Njoroge Mugo versus Republic (2006)*, where the accused had been charged with the commission of unnatural acts contrary to **Section 162(a)** of the Penal Code but the case was not proved beyond reasonable doubt. Similarly in the case of *Greek Mwanysi Munyaka versus Republic (2001)*. The court observed that the investigations were riddled with so many mistakes and a conviction under Section 162(a) could not stand.

There is need to challenge such like cases to their logical conclusion. Most cases end up at the police station due to blackmail and extortion. Very few LGBTI community members are willing to take their cases to court for fear of other repercussions.

Utilising litigation tools like **Articles 22(1)** where a victim of human rights violations can lodge a claim on their own behalf, on behalf of others, as a representative of a group, or acting in public interest. **Filing fees in this case is waived.** Legal technicalities are avoided.¹³

The Constitution establishes a Supreme Court where appeals from lower courts regarding decision on the Bill of Rights can be made. This is a higher level of justice that can be engaged with.

Public Health Agenda

The HIV/AIDS pandemic has made the state realise the futility of ignoring the health needs of the most at risk populations such as MSM. The on-going government consultation and indication of a willingness to conduct a survey of the LGBT community to get a better idea of the numbers that will influence HIV/AIDS outreach so as to combat HIV more effectively has been one of the entry points for collaboration. This though driven by the need to combat HIV, is an entry point in addressing other human rights violations for LGBT persons. The information generated, though for public health use, is in line with government MDG plan to provide better health services for all, brings government focus on LGBTI.¹⁴

There has also been a spirited call by a government Minister, urging members of the public to accept those who are gay to avoid stigmatisation. This has also facilitated state security agencies to protect people who would otherwise have been subjected to mob violence due to their sexual orientation, like the case of 14th February 2010 in Mtwapa Mombasa. The Kilifi Police rescued two men from a mob instigated by faith-based organisations, set on lynching them because they were reportedly preparing to have a gay wedding. This act of offering protection was a strong message to would-be perpetrators of violence that indeed even those whose sexual orientation is different from the majority, are still citizens with rights.

Following reports of cyber space hate crimes through the infamous *Projectsee site*, the Kenya Cyber Space Crime Unit Investigations Department was able to monitor and investigate reported cases of hate crime and hate speech on LGBTI persons. Engagement with state actors is bearing fruits.

Recommendations

- ✳ LGBTI persons must put an effort into claiming their rights as people with equal rights like other citizens of Kenya. Unclaimed rights remain mere claims which do not ensure accountability. As many claims as possible must be lodged to sensitise the government on its obligations and cause public awareness.
- ✳ Legal awareness and Para-legalism are skills that every constituent member and other LGBTI persons and groups must structure as integral programmes.
- ✳ Implement outreach work on rights-awareness for all LGBTI persons in a know-your-rights campaign.

- ✳ Inculcate a culture of claiming rights for every LGBTI person in Kenya, as a drive towards people’s empowerment to assert their rights.

The Kenyan LGBTI movement has come of age. There are a number of converging events that are supporting the community to forge forward in its quest for equal treatment and acceptance by the Kenyan society. The new constitution forward thinking bill of rights and the continued expansion of health services to marginalized communities including MSM have provided a real opportunity to move the movement ahead.

The emerging LGBTI groups while diverse in size and locations continue to be structurally weak and there is need for dedicated focus on developing them to better allow them to facilitate the work that they are engaged in. The assessment pointed out various avenues open to the community to further its advocacy work. This included the need for continued and expanded reach into the civil society organizations, faith based groups, human rights players and the government itself. The Ministry of Justice and Constitutional Affairs together with the Attorney General’s offices have all embarked on reviewing all existing laws of the land to ensure they are congruent with the new constitution. This is a remarkable opportunity for the LGBTI community and they should actively participate in this process. The Attorney General offices were positive and open to such an engagement.

There has to also be a concerted engagement with health facilities in this country on issues affecting the LGBTI community. While there has been a slow recognition of the HIV issues affecting MSM in Kenya, these have been limited to research institutions and are not comprehensive on the health needs of that particular population. LBT women are in dire need for targeted holistic health care. Formal partnerships must be established with health providing institutions to better streamline the health care needs of LBT women in Kenya.

Policy issues affecting the transgender and intersex communities must also be highlighted. TEA has done an incredible job of affecting policy change on documentation but there is much more that needs to be done to ensure equal protection and rights of transgender and intersex citizens of the Republic of Kenya.

13 You do not have to frame your case like a lawyer should. Write down your complaint and file it before court. No fee will be charged when filing his case and even when you finally loose there will be no fee to pay!

14 MDG Number 9.

Attachments

LGBTI Baseline Survey Compilation from Kenyan Groups

