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## General situation of LGBTI people

Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Kenya face discrimination, stigma, and physical violence, including sexual and gender-based violence. There are high levels of homophobia and transphobia in Kenyan society, which is often incited by religious organisations and leaders publicly condemning homosexuality.

Strategic litigation has been used to try to access rights for transgender and intersex people, who particularly experience high levels of stigma, discrimination and violence. Trans-persons are not able to access gender affirming therapy, while intersex people face hostility and violence in society. Due to uncertainty about their gender, intersex people may not be issued a birth certificate and consequently can be denied Kenyan citizenship, employment and the right to vote. Countless intersex Kenyans are forced to live unrecognised as citizens.

HIV training workshops for men who have sex with men (MSM) and LGBTI people have also been attacked in Likoni, Mombasa, with the attacks reportedly organised by religious leaders. Local LGBTI groups concerned about the safety of participants have advised that they should be consulted prior to such workshops.

The Gay and Lesbian Coalition of Kenya (GALCK), an LGBTI umbrella organisation, has identified some improvements in societal attitudes, particularly signs of acceptance within media in the less-sensationalised reporting of LGBTI issues. The general public is beginning to take a 'let them be' stance, although there is still a long way to go to ensure proper understanding of LGBTI issues.

## Legal and human rights instruments

### Constitutional provisions and legal framework

The Constitution, adopted in August 2010, forbids discrimination on a number of grounds, but does not include sexual orientation or gender identity. The

Constitution specifically states that marriage has to be between a man and a woman.

Further, in Chapter 63, Sections 162, 163 and 165 of the Kenyan Penal Code, carnal knowledge "against the order of nature" is criminalised with the penalty of 5 - 14 years' imprisonment. Arrests of LGBTI people under these sections are not very common because of the burden of proof required. According to GALCK, when arrests do occur the Police usually change the charges to something that can more easily be proven in court. Although only men are explicitly mentioned, the phrase "against the order of nature" can be interpreted for use against same-sex relations between women as well. One main problem facing LGBTI persons is the continual rhetoric that same sex sexual relationships is an immoral 'un-African' practice and is against biblical teachings, which leads to their on-going harassment by Police and wider society.

Government representatives have made hostile public statements about LGBTI people. In February 2014, a group of Kenyan Members of Parliament launched a parliamentary caucus against homosexuality. They vowed to ensure the enforcement of existing laws against gay sex and strengthening of the laws, if required, and sought explanation from the Attorney General, the Director of Public Prosecutions, and the Registrar-General as to why openly gay people are not being charged with criminal offences and why they are being allowed to form lobby groups. The response from the parliament was an acknowledgement that the legislation is active and that persons are prosecuted.

In 2014, two important cases regarding trans persons were won, in the High Court. One where the High Court ordered the National NGO Council to register the trans organisation Transgender Education and Advocacy, and one where a trans person, Audrey Mbugua got the right to change name and gender on her academic certificate. Given that there are no existing legal measures to legally change names or

genders, nor protections for transgender and intersex people regarding anti-discrimination, hate crimes or asylum those were important landmark cases that could change the situation for transgender persons. There is a perception in society that transgender people are homosexuals or sex workers. GALCK reports that transgender people often are arrested, although charges may not actually be pressed.

Incremental strategic litigation has been seen as a way to address situations that discriminate against transgender and intersex people, as well as gay and lesbian people. There is an on-going case against the NGO Co-ordination Board and the Attorney General run by The Kenya Human Rights Commission and National Gay & Lesbian Human Rights Commission (NGLHRC), on the refusal to register an organisation with the words "gay and lesbian" in its name

Several organisations, including The Gay and Lesbian Coalition of Kenya (GALCK), the Kenya Human Rights Commission and National Gay & Lesbian Human Rights Commission (NGLHRC), has publicly condemned homophobia and urged the Kenyan Government and general public to support LGBTI rights, recommending the removal of certain sections of the Penal Code and the enacting of a comprehensive equality and non-discrimination law.

### **Regional and international human rights instruments**

Kenya is a member of the UN and has ratified almost all the main international human rights instruments. As such it is bound to fulfil, protect and respect the rights enshrined in these instruments. Kenyans may turn to the UN Human Rights Committee through procedure 1503, to the Special Rapporteurs for violations of specific human rights, to CEDAW for women's rights violations, and use the UNESCO procedure for human rights violations in UNESCO's fields of mandate. Kenya is also a member of the African Union and its citizens and NGOs may file complaints to the African Commission on Human and Peoples' Rights. All of these instruments could be used to hold Kenya accountable to better ensure LGBTI rights.

In May 2014, the African Commission on Human and Peoples' Rights adopted a resolution condemning violence based on sexual orientation and gender

identity. The resolution calls on "State parties to ensure that human rights defenders are able to work in an environment free from stigma, reprisals or criminal prosecution as a result of their human rights protection activities." It further urges States to recognise acts of violence and abuse by individuals and groups by enforcing appropriate laws prohibiting and punishing all forms of violence including those targeting people on the basis of their sexual identities. They must also ensure the proper investigation and diligent prosecution of perpetrators and have the necessary judicial procedures to respond to the needs of victims. This resolution is a milestone, but it has yet to be followed up at the national level.

A joint working group with representatives from Action Canada for Population and Development (ACPD) with Minority Women in Action, the Coalition of African Lesbians (CAL) and Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), submitted a shadow report to 15th Session of the Human Rights Council for the 2010 UPR on Kenya. In the report, the organisations urged the Kenyan state to take its Human Rights commitments seriously and include protection of LGBTI persons in the new Constitution.

### **Sexual and Reproductive Health and Rights, HIV/AIDS and Gender-based Violence**

The 2010 Constitution for the first time guarantees the right to healthcare, including reproductive health. However, violations of the right to sexual and reproductive health continue to be experienced throughout Kenya. As homosexuality is largely considered a taboo and repugnant in Kenyan society, high levels of stigma and discrimination towards MSM, as well as other members of LGBTI communities, deter many people from seeking the HIV services they need with over half of HIV infections still going undiagnosed. In recent years, LGBTI rights have made some headway in Kenya as organisations working with HIV/AIDS and Human Rights have begun to question the exclusion of LGBTI people in their work and instead include the group.

Kenya has the fourth-largest HIV epidemic in the world (UNAIDS 2013 notes a prevalence rate of

around 6% among adult population and 1,6 million people living with HIV/AIDS). HIV prevalence among men who have sex with men (MSM) is almost three times that among the general population (studies are rare, but UNAIDS refers to a study in 2008 that showed prevalence of 18,2% among MSM). MSM, transgender people, and sex workers of all genders are a most at risk population, with greater risk because of criminalisation of sexual behaviours. However, Kenya is one of the countries in East Africa that has included MSM as a vulnerable group in the Kenyan National HIV and AIDS Strategic Plan (KNASP III), which can serve as a valuable entry point for LGBTI issues. In June 2014, the Kenyan Ministry of Health published a report, *Kenya HIV Prevention Revolution Road Map*, aimed at dramatically strengthening HIV prevention and reducing new HIV infections to zero by 2030.

Lesbians and women who have sex with women (WSW) also often have intimate sexual relationships with men alongside their same-sex relations because of social stigma and hostility towards their sexuality and gender identity. Lesbian women, WSW, and transgender men are part of a vulnerable group when it comes to HIV/AIDS prevention. Young women are three times more likely to be exposed to sexual violence than young men and are forced into early marriage and often unable to negotiate safer sex.

Violence against LGBTI people is often based on non-conforming gender identity or sexuality. Lesbian women with a masculine gender expression and transgender people of all genders are at risk of being raped, while other people with non-conforming gender expressions risk violence due to their gender presentation. Many individuals risk coming under the scrutiny of healthcare workers who are both ignorant of, and biased against, sexuality or gender identity.

### **Civil society organisations and institutions active in LGBTI work**

Kenya has a somewhat exceptional position in the region and stands out as an East African country with a thriving LGBTI movement. Unlike most neighbour-

ing countries, there are many on-going initiatives and growing activism, despite hostile government attitudes. Since the mid-2000s, transgender and intersex activists have become increasingly active and visible within LGBTI communities.

An organised LGBTI movement began in 1997 with the forming of *Ishtar MSM*, at the forefront of advancing LGBT health rights in Kenya. Ishtar MSM was among the founders of the [Gay and Lesbian Coalition of Kenya](#) (GALCK). GALCK is an umbrella organisation currently consisting of five LGBTI member organisations: [Ishtar MSM](#), [Artists For Recognition and Acceptance](#) (AFRA), [Gay Kenya Trust](#) (GKT), [Transgender Education Advocacy](#) (TEA) and [Minority Women in Action](#).

GALCK has several close allies throughout the country, working to promote LGBTI rights, mobilising, campaigning, and defending the rights of LGBTI people, despite societal and government attitudes limiting the space for activism. Activism is slowly developing with the creation of more LGBTI organisations. GALCK in partnership with various other stakeholders has drafted a strategy, the Multi-Tier Approach Towards Equality and Non-Discrimination of LGBTI People, that targets media, society, government, religious leaders and healthcare among other aspects of an LGBTI person's life, as only addressing the law would not make a profound change to people's attitudes and a wider approach is needed.

A new organisation is the [National Gay & Lesbian Human Rights Commission](#) (NGLHRC) which aims to achieve policy and legal reforms towards equality and full inclusion of sexual and gender minorities in Kenya (web-page was bugged at the time of writing this report).

There is also the [Q-initiative](#), an organisation working for sexual diversity. It has received long term organisational development support from RFSU.

[The Kenya Human Rights Commission](#) (KHRC) is an independent, non-governmental organisation and works in partnership with GALCK to mainstream LGBTI human rights into the human rights discourse in Kenya.

HIV and SRHR organisations that have been LGBTI-inclusive or shown support for including LGBTI perspectives in HIV work are National AIDS and STIs Control Programme (NASCOP), Kenyan Sex Workers Alliance (KESWA), Kenya AIDS NGO Consortium (KANCO), and Network of People Living with HIV in Kenya (NEPHAK). RFSU has also cooperated with [Family Health Options Kenya](#), a SRHR organisation and member of IPP, to mainstream LGBTI issues.

International and regional organisations active in Kenya include:

*Coalition of African Lesbians (CAL), Pan-African ILGA (regional), African Men for Sexual Health and Rights, AMSHeR (regional), UHAI, a grant making mechanism for activist organisations (regional). Open Society Institute of East Africa (OSI-EA), Action Canada for Population and Development (ACPD), American Jewish World Service (AJWS), Humanist Institute for Cooperation with Developing Countries (HIVOS).*

## What Sweden can do? – 8 questions to discuss

Within the broader context of the Swedish results strategy for Kenya, with particular focus on strengthening of civil society capacity, respect for civil and political rights and access to social security, Sweden has a great opportunity to include issues related to the rights of LGBTI people. While addressing LGBTI perspectives in a non-supportive government context like Kenya, it is very important to consult local LGBTI organisations to make sure not to conflict with their work. Questions to discuss:

- Could Sweden do more to stay updated on the legal and security situation and the needs and priorities of the LGBTI movement? It is often important to act fast, strategically and in line with the wishes of the movement?
- Could Sweden do more to offer protection to activists and attend court cases, to contribute to the protection of organisations at risk?
- Could Sweden do more to seek strategic alliances with other development partners to enhance

the efforts in addressing discrimination against LGBTI persons? The Swedish engagement in LGBTI rights could for example be used to promote donor dialogue with the LGBTI-movement in Kenya, to support coordination of efforts in the movement and among donors and to engage in dialogue with the government, when possible and after consulting the LGBTI movement.

- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations, both nationally and regionally?
- Could Sweden do more to include LGBTI organisations in social and professional events/networks and in programmes focussing on civil society capacity development and/or human rights enhancement?
- Could Sweden do more to include LGBTI rights in private sector development, for example raising anti-discrimination, codes of conduct, and employment legislation, with the aim of reducing discrimination against people based on sexual orientation or gender identity?
- Could Sweden do more to promote inclusion of LGBTI people and the MSM group in supported social security and SRHR initiatives (including HIV/AIDS)?
- Could Sweden do more to include the LGBTI population in efforts to combat gender-based violence?

For further advice on engagement regarding LGBTI issues, download Sida's [Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) or the Ministry of Foreign Affairs [Dialogue brief](#) or the [EU tools](#) referred to in the reference list.

More specific advice and support measures, as well as contact information, can also be provided through ILGA or RFSU, should the Embassy wish for a dialogue.

## References

RFSL, *LGBT in Development - An introduction in how to include LGBT in programming in development* [http://www.rfsl.se/public/LGBT\\_in\\_development.pdf](http://www.rfsl.se/public/LGBT_in_development.pdf)

Sida's [Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) or the Ministry of Foreign Affairs [Dialogue brief](#)

EU news, tools and guidelines: [http://eeas.europa.eu/human\\_rights/lgbt/index\\_en.htm](http://eeas.europa.eu/human_rights/lgbt/index_en.htm)

The EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#)

ILGA, 2014, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* ([www.ilga.org](http://www.ilga.org))

## Organisations

The Kenya Human Rights Commission (KHRC) <http://www.khrc.or.ke/>

Family Health Options Kenya <http://www.fhok.org/>

Gay and Lesbian Coalition of Kenya (GALCK): [www.galck.org](http://www.galck.org)

Ishtar MSM: <http://www.ishtarism.org/>,

Artists for Recognition and Acceptance (AFRA): <http://www.afrakenya.org/>,

Gay Kenya Trust (G-KT): <http://www.gkenyatrust.org>

Transgender Education Advocacy (TEA): <https://www.transgenderkenya.com/>

Minority Women in Action: <http://www.minoritywomen.org/>

National Gay & Lesbian Human Rights Commission (NGLHRC) [www.nglhrckenya.com](http://www.nglhrckenya.com)

The Kenya Human Rights Commission, 2011, *The Outlawed Amongst Us, A Study of the LGBTI Community's Search for Equality and Non-discrimination in Kenya*:

[http://www.khrc.or.ke/resources/publications/doc\\_download/14-the-outlawed-amongst-us.html](http://www.khrc.or.ke/resources/publications/doc_download/14-the-outlawed-amongst-us.html)

National Aids Control Unit of Kenya, 2014, *Kenya AIDS Response Progress Report 2014 Progress towards Zero*, UNAIDS, [http://www.unaids.org/sites/default/files/en/dataanalysis/knowyourresponse/countryprogressreports/2014countries/KEN\\_narrative\\_report\\_2014.pdf](http://www.unaids.org/sites/default/files/en/dataanalysis/knowyourresponse/countryprogressreports/2014countries/KEN_narrative_report_2014.pdf)

UNAIDS, 2014 *Kenya*, retrieved 2015 01-20 <http://www.unaidsrsta.org/region/countries/kenya>

UNESCO *Claiming Human Rights*, 2010 <http://www.claiminghumanrights.org/kenya.html>

Coalition of African Lesbians <http://cal.org.za/index.php>

Pan-African ILGA (regional) <http://africa.ilga.org>

African Men for Sexual Health and Rights, AMSHeR (regional) <http://www.amsher.org/>,

UHAI, a grant making mechanism for activist organisations (regional) <http://www.uhai-eashri.org/ENG>

Open Society Institute of East Africa (OSI-EA): <http://www.soros.org/>

Action Canada for Population and Development (ACPD): <http://www.acpd.ca/>

American Jewish World Service (AJWS): <http://ajws.org/>

Humanist Institute for Cooperation with Developing Countries (HIVOS): <http://www.hivos.nl/eng>

The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, briefs have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.