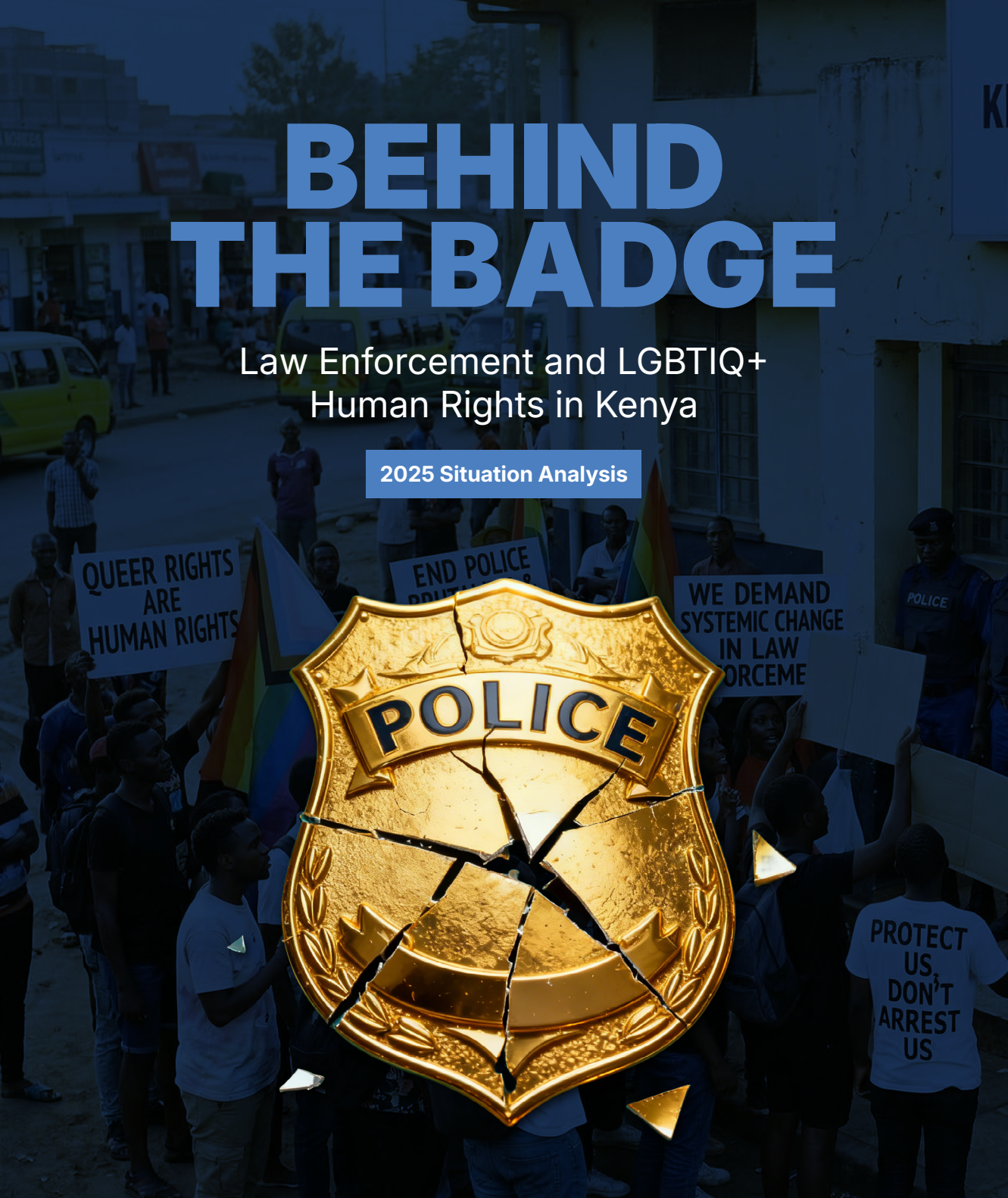


BEHIND THE BADGE

Law Enforcement and LGBTIQ+
Human Rights in Kenya

2025 Situation Analysis



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List of Abbreviations

ACHPR	African Charter on Human and People's Rights
APHRC	African Population Health Research Center
Art	Article
CAC	Cosmopolitan Affirming Community
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CoK	Constitution of Kenya
CPA	County Policing Authority
CPC	Criminal Procedure Code
galck+	Former Gay and Lesbian Coalition of Kenya (GALCK)
GBMSM	Gay, Bisexual, Men who have Sex with Men
HAPA Kenya	HIV/AIDS Peoples Alliance, Kenya
HRBA	Human Rights Based Approach
HRO	Human Rights Organisations
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRH-K	International Centre for Reproductive Health, Kenya
INEND	Initiative for Equality and Non Discrimination
IAU	Internal Affairs Unit
IPOA	Independent Police Oversight Authority
IRIC	Intersex Rights Initiative Coast Kenya
KNCHR	Kenya National Commission on Human Rights
LARWHER LBQ	Lake Region Womxn Health and Equal Rights CBO-LARWHER
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex & Queer persons.
MSM	Men who have Sex with Men
NCAJ	National Commission on Administrative Justice
NGLHRC	National Gay and Lesbian Human Rights Commission
NGOs	Non-Governmental Organisations
NPS	National Police Service
NTAN	National Transgender Advocacy Network of Kenya
OHCHR	Office of the United Nations High Commissioner for Human Rights
PEMA Kenya	Persons Marginalized and Aggrieved in Kenya
PC	Penal Code
PTSD	Post Traumatic Stress Disorder
SCOK	Supreme Court of Kenya
SEC	Section
SGM	Sexual and Gender Minority
SOGD	Sexual Orientation and Gender Diverse
SOGIE	Sexual Orientation, Gender Identity and Expression
UAFI	Upinde Advocates for Inclusion
UDHR	Universal Declaration of Human Rights
UN	United Nations
WACHA	Watu Centre for Health and Advocacy

List of Instruments and Laws

African Charter on Human and Peoples' Rights
 African Commission on Human and Peoples' Rights Resolution 275
 African Youth Charter
 Commission on Administrative Justice Act
 Computer Misuse and Cyber Crimes Act
 Constitution of Kenya, 2010
 Convention Against Torture and other Cruel, inhumane and Degrading Treatment
 Convention Eliminating all forms of Discrimination Against women (CEDAW)
 Criminal Procedure Code
 Evidence Act
 Family Protection Bill
 Independent Policing Oversight Authority (IPOA) Act
 International Covenant on Civil and Political Rights (ICCPR)
 International Covenant on Social and Economic Rights (ICESR)
 Intersex persons Bill, 2023
 Kenya National Commission on Human Rights Act
 National Gender and Equality Commission Act
 National Police Service Act
 Penal Code (Cap 63)
 Persons Deprived of Liberty Act
 Refugees Act
 Sexual Offences Act
 The prevention Against Torture Act
 Universal Declaration on Human Rights (UDHR)
 Yogyakarta principles



Glossary of Key Terms

Agender: A term used to describe people who do not identify with any gender. They may describe themselves as being gender-neutral or genderless.

Ally: This term is used for individuals who support and stand up for the human rights of LGBTIQ+ people.

Asexual: This term is used to describe individuals who experience little or no sexual or romantic attraction to others.

Bill: A draft of a proposed law presented to parliament for discussion.

Bisexual: An umbrella term describing individuals who can feel romantic, emotional, or sexual attraction to multiple genders. It is part of the broader multisexual spectrum.

Catfishing: the creation of a fictitious online persona, or fake identity (typically on social networking platforms), with the intent of deception.

Cis-heteronormative: The set of ideas, social norms, beliefs and culture that govern people whose gender identity corresponds to the one assigned at birth and people who also identify as heterosexual.

Cis-gender: This term is used to describe individuals whose gender identity aligns with the sex they were assigned at birth.

Convention: An agreement between states covering particular matters, especially one less formal than a treaty.

Gay: A term used to describe individuals who are emotionally, romantically, or sexually attracted to people of the same gender. It can be used to refer to both men and women, although it is more commonly used for men.

Gender Identity: This term refers to a person's internal sense of their own gender, whether that is male, female, intersex or Transgender. It can be the same or different from the sex assigned to them at birth.

Gender fluid: A term used to describe individuals whose gender identity varies from time to time. A gender fluid person might identify as a woman, man, agender, bigender, or any other non-binary identity.

Gender non-conforming: A person who expresses their gender in ways that do not align with traditional or societal expectations of binary gender.

Gender Queer: An umbrella term for gender identities outside conventional binary categories. Gender Queer people identify outside the exclusive gender binary of man/woman, rejecting the traditional notions of gender.

Genocide: Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups as such: killing members of the group; causing serious bodily or mental harm to the members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part; imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group.



Heteronormative: This term refers to societal norms and expectations that people should be heterosexual and gender identities and roles are strict and binary

Heterosexual: Men or women who experience multiple attractions to and seek caring, supportive and sexual relationships of men to women and women to men exclusively.

Homophobia, Biphobia, Transphobia, Interphobia: These terms refer to hatred, discomfort, or mistrust that some people may have towards those who are lesbian, gay, bisexual, transgender and intersex persons.

Intersex: This term refers to individuals who are born with sex characteristics (including genitals, gonads, and chromosome patterns) that do not fit typical binary notions of male or female bodies.

Lesbian: A person who identifies as a woman and is emotionally, romantically, or sexually attracted to other women.

LGBTIQ+: Acronym for Lesbian, Gay, Bisexual, Trans, Intersex, and Queer. The '+' represents minority gender identities and sexualities not explicitly included in the term LGBTIQ.

Non-Binary: This term is used to describe individuals who don't identify as a man or a woman. There is a range of non-binary gender identities, such as genderqueer, gender-neutral, gender fluid, and third-gendered.

Pansexual: Describes individuals who can experience attraction, regardless of gender. Like bisexuality, it falls within the multisexual spectrum.

Queer: This term is used by some people, who reject specific labels of sexual orientation and gender identity. It can be a catch-all category for anyone who is not cisgender and heterosexual.

Sex: The biological characteristics which define humans as female or male. These sets of biological characteristics are not mutually exclusive, as there are individuals who possess both, but these characteristics tend to differentiate humans as males or females.

Sexual and Gender Minorities (SGM): This term is used interchangeably with LGBTIQ+. It includes individuals whose sexual orientation or gender identity varies from the majority, such as people who identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual, Gender Queer, Gender non-conforming and non-binary.

Sexual Orientation: This refers to an individual's enduring pattern of emotional, romantic, and/or sexual attractions to men, women, both genders, or non-conformity.

Transgender: This is an umbrella term for individuals whose gender identity and/or expression differs from what is typically associated with the sex they were assigned at birth.

Torture: Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Treaty: A formally concluded and ratified agreement between states.



Acknowledgement

Initiative for Equality and Non Discrimination (INEND) would like to acknowledge and appreciate all individuals and institutions that provided information that facilitated the writing of this Report, especially the LGBTIQ+ community, whose lived realities and experiences form the foundation of this analysis. Their courage in sharing testimonies of human rights violations, despite ongoing risks to their safety and dignity, has been instrumental in documenting the systematic challenges faced by sexual and gender minorities in their interactions with law enforcement in Kenya.

We extend our profound gratitude to the human rights defenders, civil society organizations, legal practitioners, and affected individuals who contributed their time, expertise, and personal narratives to ensure this Report accurately reflects the urgent need for legal reform and accountability in the protection of LGBTIQ+ human rights. In particular, our appreciation goes to National Gay and Lesbian Human Rights Commission (NGLHRC), MUAMKO MPYA, AMKENI MALINDI, HIV & AIDs People Alliance of Kenya (HAPA Kenya), Cosmopolitan Affirming Community (CAC), Intersex Rights Initiative Coast (IRIC), International Centre for Reproductive Health (ICRH) Kenya, PEMA Kenya, Center for Minority Rights Strategic Litigation (CMRLs), Rainbow Women of Kenya (RWOK), Coast Women for Women (CWW), Upinde Advocates for Inclusion (UAFI), galck+, Watu Centre for Health and Advocacy (WACHA Health), Queer Women Human Rights Defender, Jinsiangu Kenya, Lake Region Womxn Health and Equal Rights CBO (LARWHER) and Elite LBQ for providing data/reports and information that contributed immensely to the findings contained in this report.

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Foreword

In a nation that has enshrined a progressive Bill of Rights in its Constitution, the true measure of its commitment to human rights lies not in the elegance of its legal text, but in the lived realities of all its citizens.

This review critically confronts a profound contradiction at the heart of Kenya's legal and social landscape, the enduring influence of colonial-era laws that stand in direct opposition to the nation's contemporary constitutional values. The report documents the interplay between this legal ambiguity and deep-seated societal prejudice. We explore how this volatile combination creates a climate of impunity that emboldens those tasked with protecting the public, specifically, the law enforcement, to become instruments of systemic human rights violations. This is not merely a theoretical discussion of legal statutes, but a critical examination of their devastating impact on the lives of lesbian, gay, bisexual, transgender, intersex and queer persons in Kenya.

The review lays bare the chilling patterns of law enforcement officers misconduct, including arbitrary arrests, extortion, and physical and sexual violence, which not only inflict severe trauma but also erode public trust and access to justice. On the other hand, it also highlights the resilience and determination of human rights defenders who, in the face of immense hostility, leverage the very constitutional and international frameworks often denied to them to challenge impunity and secure landmark victories in court.

Ultimately, this document is a call to action. It is an appeal to all stakeholders, from policymakers, judicial officers, law enforcement officers and the general public, to bridge the critical gap between legal promise and lived experience. The findings and recommendations presented herein offer a clear path forward towards comprehensive legal reform, institutional accountability, and a society that at last honors its commitment to the dignity and safety of every person, without exception.

Executive Director, INEND



Executive Summary

Despite Kenya's progressive human rights framework, a fundamental conflict exists between its constitutional values and the lived realities of the LGBTIQ+ community. The continued criminalization of adult consensual same-sex relations, coupled with pervasive societal stigma, empowers the law enforcement officers to perpetrate systemic discrimination and violence. This pattern fosters profound distrust, hindering LGBTIQ+ individuals' access to justice and leaving violations largely undocumented and unaddressed, thus perpetuating impunity and marginalising an already vulnerable population. To address this, there is a critical need for comprehensive research on the precise nature, prevalence, and impact of the law enforcement officers' misconduct on diverse LGBTIQ+ communities across Kenya to inform targeted interventions and advocate for reforms towards human rights-compliant policing.

This desktop review aimed to critically assess the state of equality and non-discrimination for LGBTIQ+ individuals in Kenya, focusing specifically on the behavioral attitudes and institutional practices of law enforcement officers. It explored the interplay between legal frameworks, existing gaps, and the lived realities of LGBTIQ+ Kenyans to understand the challenges in accessing justice and enjoying human rights.

The review sought to identify the current legal and policy frameworks regarding equality and non-discrimination for LGBTIQ+ individuals; document the patterns of discrimination and stigma in the hands of the Law enforcement, and determine effective advocacy actions to address these challenges.

The research was confined to Kenya, with particular attention paid to urban centers like Nairobi, Mombasa, Kwale, Kilifi, Eldoret, and Kisumu, alongside other areas with high reported incidences of law enforcement abuse against LGBTIQ+ persons. It incorporated data and information from organizations implementing LGBTIQ+ focused programs across various counties in Kenya.

The findings show that despite the robust human rights protections guaranteed by the Kenyan 2010 Constitution and the country's commitment to adhere to international human rights treaties, protocols and conventions, colonial-era laws, specifically the Penal Code Section 162 (a) (c) and 165, continue to criminalize adult consensual same-sex relations. This has led to legal ambiguity, further exacerbated by deep-seated societal prejudice, which have in consequence created a climate of impunity that emboldens law enforcement officers to perpetrate systematic human rights violations against the LGBTIQ+ community.

The findings highlight a widespread pattern of arbitrary arrests, extortion, and both physical and sexual violence coupled with failure by the law enforcement officers to protect LGBTIQ+ persons and investigate crimes committed against the community. These abuses not only inflict severe physical and psychological trauma but also foster a widespread distrust of the Law enforcement, further marginalizing the community and hindering its ability to seek justice, access essential services such as healthcare, and fully enjoy fundamental freedoms. In response to this hostile environment, the research also found that advocacy organizations and human rights defenders have emerged as a critical force, leveraging constitutional and international legal frameworks to challenge law enforcement officers' impunity and secure landmark victories in the courts.

The recommendations arising from this review call for a multi-faceted approach to close the gap between Kenya's legal frameworks and the lived realities of the LGBTIQ+ community. The primary recommendation is to urgently pursue legal reforms, including the repeal of discriminatory colonial-era laws and the explicit inclusion of sexual orientation and gender identity in constitutional anti-discrimination clauses.



This must be coupled with comprehensive institutional reforms to enforce law enforcement officers' accountability, provide mandatory human rights training for the Law enforcement officers, and establish secure accountable, survivor centered mechanisms for reporting abuse. Finally, to address the root causes of prejudice, the review recommends sustained public engagement through amongst others, community-based education, including targeted campaigns, to foster a more inclusive society.



CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

Globally, as societies continue to grapple with evolving understandings of identity and inclusion, the pursuit of human rights for marginalised groups has become a defining global endeavor. Yet, while many nations increasingly embrace these principles, the realisation of equality for the LGBTIQ+ people in Kenya remains a persistent and formidable challenge. The fundamental right to dignity often exists as a distant aspiration rather than a lived reality. This disconnect is fueled by a systemic denial of safety, driven by a complex interplay of deep-seated social stigma, discriminatory legal frameworks, and exclusionary policies. Numerous empirical studies document instances of how LGBTIQ+ persons in Kenya are excluded from essential services including acquiring safe housing, securing employment, accessing medical treatment, and education¹. Additionally, pervasive stigma and the fear of discrimination actively undermine the visibility of LGBTIQ+ persons, consequently preventing most from disclosing their sexual orientation or gender identity when seeking essential services including medical treatment or other services². These challenges are systemic and deeply rooted in historical legal frameworks and pervasive societal norms.

The African population and Health Research center (APHRC) Evidence Brief, lived experiences and public perceptions of sexual and gender minorities in Kenya (2024)³, reveals a critical situation of LGBTIQ+ individuals facing pervasive human rights violations and systemic abuse driven by criminalizing laws and deep-seated cultural prejudices. The study indicates that discrimination is highly prevalent, with most participants believing Gay (83.7%), Transgender (72.7%), and Lesbian (62.4%) persons face the most intense prejudice, which severely impacts their mental and physical health, socio-economic status, and ability to access basic services. This hostility is fueled by the dual presence of colonial-era penal sanctions and institutional stigma emanating from religious, employment, educational, and healthcare settings, creating an environment where victims are dissuaded from reporting abuse and perpetrators operate with impunity.

1.2 BACKGROUND

The contemporary challenges faced by the LGBTIQ+ community in Kenya, particularly concerning criminalization and interactions with the Law enforcement, are deeply rooted in a colonial legacy that profoundly reshaped indigenous legal and social landscapes. Prior to the imposition of British rule, various pre-colonial Kenyan societies held diverse, often multifaceted, views on sexuality and gender, some of which accommodated consensual same-sex relationships or gender non-conformity, albeit without modern Western conceptualizations of LGBTIQ+ identities⁴.

The argument presented by African Sexualities: A Reader, edited by Sylvia Tamale, rests on a foundational critique of the historical narrative surrounding sexuality in Africa⁵. The central goal

¹ Rights of LGBTIQ+ Citizens and Non-Citizens in Kenya

² Strategic adjustments: Daily experiences of lesbian, gay, bisexual, transgender, queer, and intersex persons in Nairobi

³ African Population and Health Research Center (APHRC), Lived experiences and public perceptions of sexual and gender minorities in Kenya: Evidence Brief. (Nairobi: APHRC, 2024)

⁴ Sylvia Tamale, ed., African Sexualities: A Reader (Cape Town: Pambazuka Press, 2011)

⁵ Ibid.



of the collection is *Debunking the Colonial Myth*, which propagated a rigid, “pathological,” and singular view of African sexuality, later sustained by post-colonial political and religious rhetoric. The book argues that the contemporary legal framework criminalizing same-sex relationships, such as the Kenyan Penal Code, is not an authentic reflection of traditional African culture but rather a direct, foreign legacy inherited from British colonial rule. This framework is contradicted by historical evidence presented to demonstrate historical plurality. Tamale illustrates that prior to colonial imposition, sexuality was a complex domain interwoven with culture, spirituality, and social organization across various societies. This resulted in often fluid gender and sexual roles that accommodated practices like same-sex partnerships, non-binary gender expressions, and non-procreative sexual acts, none of which strictly conformed to the rigid Western culture binary definitions later enforced by colonial powers. Ultimately, the collection frames the current repression under the heading of *The Role of Power*, asserting that colonial and patriarchal structures deliberately instrumentalized and regulated sexuality to enforce social control, thereby systematically erasing the diverse and historically fluid sexual cultures that existed before European intervention.

Thus, Tamale demonstrates that the contemporary legal and social stigmas directed at LGBTIQ+ individuals in Kenya are based on misconceptions about ‘African tradition,’ when in fact historical and anthropological evidence reveals a much more diverse and accepting pre-colonial reality.

The late 19th and early 20th Centuries marked a decisive shift with the imposition of British colonial laws. The Indian Penal Code of 1860, introduced into Kenya⁶ (then British East Africa) by virtue of the East Africa Order-in-Council of 1897, contained sections criminalizing “carnal knowledge against the order of nature.” These provisions, specifically Sections 162 (a) (c) and 165 of Kenya’s Penal Code of 1930, effectively outlawed adult consensual same-sex sexual acts⁷. This marked the formal criminalization of homosexuality, alien to many indigenous systems, and firmly embedded a framework for legal persecution.

Upon gaining independence in 1963, Kenya, like many other former British colonies, retained these colonial-era laws despite the broader move towards self-determination and the shedding of evidence of colonialism in other spheres. This retention solidified the legal vulnerability of LGBTIQ+ individuals and provided a continuous basis for societal stigma and official discrimination. Over the decades, this legal framework, coupled with the strengthening of conservative religious and cultural narratives often influenced by external fundamentalist movements,⁸ have reinforced widespread societal homophobia, biphobia, interphobia and transphobia.

The post-independence era has seen a gradual, though often precarious, emergence of LGBTIQ+ activism, driven by both domestic advocates and international human rights movements. Significant developments, while slow, include attempts by civil society organizations to challenge the constitutionality of laws that criminalize same sex relations and identities, most notably in the case of ***EG & 7 Others -vs- Attorney General; DKM & 9 Others*** 2019 eKLR (Petition 150 & 234 of 2026 (consolidated))⁹, in which the High Court of Kenya in 2019 upheld Sections 162 (a) (c) and 165 of the Penal Code as constitutional, despite arguments and evidence to the contrary. Conversely, there have been some legal victories, such as the Freedom of Association through registration of LGBTIQ+ organizations on the National Gay and Lesbian Human Rights Commission’s legal battle for registration case, affirmed by the Supreme Court of Kenya ruling on ***NGO’s Coordination Board vs Eric Gitari & 5 others [2023] (Petition 16 of 2019)***¹⁰ and ruling against forced anal examinations in the Court of Appeal, Mombasa case of ***COL & Another -vs- Resident Magistrate- Kwale***

⁶- Indian Penal Code, 1860 Introduced into British East Africa through the East Africa Order-in-Council of 1897, which applied Indian criminal law to the Protectorate. Source: The Development and Reform of the Law in Kenya (Eugene Cotran, JSTOR)

⁷ https://stichproben.univie.ac.at/fileadmin/user_upload/p_stichproben/Artikel/Nummer37/04_Swanepoel.pdf?utm

⁸ ‘If Gays Didn’t Exist’: Inside Kenya’s Dalliance with Homophobia

⁹ *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae) [2019] KEHC 11288 (KLR)*



Court & 4 Others [2016] eKLR (Civil appeal No. 56 of 2016), signaling limited, yet important, shifts in the judicial landscape.

Throughout this history, law enforcement officers’ role has been largely shaped by these legal and societal frameworks. From directly enforcing colonial-era bans to perpetuating stigmatization through discriminatory practices, the law enforcement officers have often been a primary interface through which the state’s and society’s prejudices against the LGBTIQ+ community are experienced. This historical pattern of criminalization and deepening stigma forms the essential backdrop against which the current challenging engagements with law enforcement officers must be understood.

Defining the LGBTIQ+ Community in the Kenyan Context

The acronym LGBTIQ+ serves as an umbrella term representing a diverse spectrum of sexual orientations and gender identities: Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and other non-conforming identities. While these terms broadly describe individuals whose sexual orientation or gender identity differs from heterosexual and cisgender norms, their understanding and recognition within the Kenyan context are deeply complex and often contentious.

In Kenya, discriminatory colonial-era laws and prevailing socio-cultural and religious norms converge to create an unfavorable environment where the existence and human rights of the LGBTIQ+ community are largely unrecognized and frequently challenged. The Penal Code, a remnant of colonial rule, criminalizes “carnal knowledge against the order of nature,” which is widely interpreted and applied to adult consensual same-sex relations. This legal framework not only ostracizes but also directly imperils individuals, making their identities a basis for legal persecution. Societal discourse often frames LGBTIQ+ identities as “un-African,” “immoral,” or “unnatural,” leading to widespread stigma, discrimination, and a climate of fear.

This pervasive stigma manifests in various forms, from social exclusion and family rejection to violence and harassment in public and private spheres. Consequently, many LGBTIQ+ Kenyans live in secrecy, fearing exposure and the severe repercussions visibility can bring. The lack of legal recognition and the presence of deeply ingrained prejudices create an environment where the very existence of the LGBTIQ+ community is often denied, misunderstood, or actively suppressed, profoundly shaping daily lives and interactions within society. This understanding of the LGBTIQ+ community in Kenya is crucial as it underpins the pervasive issues of criminalization, stigma, and the challenging engagements with law enforcement officers.

Human Rights and Equality

“All human beings are born free and equal in dignity and rights’, a universal principle enshrined in the Universal Declaration of Human Rights (UDHR)¹¹. This fundamental tenet asserts non-discrimination, a principle broadly understood to include sexual orientation and gender identity, as affirmed by various UN Treaty Body decisions to that effect¹². Kenya, as a UN member state, upholds these standards through ratified instruments like the International Covenant on Civil and Political Rights (ICCPR)¹³, the International Covenant on Social and Economic Rights (ICESR)¹⁴, and the African Charter on Human and Peoples’ Rights. Critically, these protections are explicitly recognized at the regional level by the African Commission on Human and Peoples’ Rights (ACHPR

¹⁰ Supreme Court Petition No.16 of 2019, *NGOS Co-ordination Board vs. Eric Gitari & 5 Others*. Judgement

¹¹ Universal Declaration of Human Rights

¹² General Comment no. 20 (2009) - Non-discrimination in Economic, Social and Cultural Rights - E/C.12/GC/20

¹³ International Covenant on Civil and Political Rights

¹⁴ General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)

¹⁵ Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014

¹⁶ *SC v Director of Public Prosecutions & 3 others; Amka Africa Justice Initiative & another (Interested Parties) (Petition 15 of 2019) [2025] KEHC 11929 (KLR) (12 August 2025) (Judgment)*



Resolution 275)¹⁵, which calls for protection against violence and other human rights violations committed on the basis of real or imputed sexual orientation or gender identity.

Further, Kenya's Constitution of 2010, particularly Article 27 as read with article 10, guarantees equal protection and freedom from discrimination for every person, with courts sometimes interpreting this to include LGBTIQ+ protections like in the Supreme Court of Kenya case of NGO's Coordination Board vs Eric Gitari & 5 others [2023] Petition 16 of 2019 and High court in Eldoret case of SC versus Director of Public Prosecution & 3 others; Amka Africa Justice Initiative & Another¹⁶ (Petition 15 of 2019) [2025] KEHC 11929 (KLR). Consequently, all state institutions, including the Law enforcement, are expected to operate within this framework of universal human rights and constitutional equality, serving and protecting all individuals without prejudice. This fundamental expectation contrasts sharply with the lived realities of the LGBTIQ+ community, where legal and social challenges often impede the promise of equality.

Legal Framework

In any organized society, legal frameworks and structures form the bedrock upon which governance, order, and the protection of rights are built. These foundational systems, encompassing constitutions, statutes, policies, and judicial precedents, define the parameters of acceptable conduct, establish institutions of authority, and ostensibly delineate the rights and responsibilities of both the state and its citizens. In Kenya, the Constitution of 2010 stands as the supreme law, providing a comprehensive Bill of Rights that underpins the nation's commitment to democratic governance and human dignity.

While designed to ensure justice, promote equality, and maintain social cohesion, legal frameworks possess an inherent duality: they can either serve as robust instruments for safeguarding human rights and fostering inclusivity, or, conversely, act as mechanisms for codifying discrimination and perpetuating the marginalization of specific communities. Understanding the interplay of Kenya's constitutional provisions, its Penal Code, and various legislative acts is therefore paramount, as their design and implementation profoundly shape the lived realities of its citizens, directly influencing their access to justice and fundamental freedoms, particularly for vulnerable populations.

The Role of the law enforcement officers in a Democratic Society

The National Police Service (NPS) in Kenya encompassing the Kenya Police Service, Administration Police Service, and Directorate of Criminal is formally established by Article 243 of the Constitution with a fundamental constitutional mandate to uphold the rule of law and protect the rights of all Kenyans¹⁷. In a democratic society, the Police agencies are fundamental guarantors of peace, order, and justice. Their core mandate is to impartially serve and protect all citizens, prevent crime, and enforce laws. Beyond mere enforcement, the law enforcement officers in a democracy are crucial for upholding human rights and fundamental freedoms as articulated in article 244 which provides the objectives and functions of the National Police service¹⁸ (NPS). It also mandates the NPS to train its staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.

The Criminal Procedure Code (CPC), Cap 75, an Act of Parliament¹⁹ makes provision for the procedure to be followed in criminal cases from lodging a complaint, investigations, arrest including warrants of arrest and search of arrested persons, arraignment in court, charge sheets and information, plea taking, bail and bond, hearing/trial for offences under the penal code and other laws, recording of evidence, judgement, sentencing, revisions, appeal etc. The Act provides

¹⁷ The Establishment of The National Police Service

¹⁸ The Objects and functions of the national Police Service

¹⁹ The Criminal Procedure Code (amendment) Bill 2020

²⁰ Evidence Act, Cap. 80, Laws of Kenya, Revised Edition 2012 [2010], which governs admissibility, relevance, burden of proof, and related evidentiary rules in civil and criminal proceedings



a framework on how LGBTIQ+ persons should be handled by law enforcement officers within the criminal justice system in a manner that upholds and protects human rights.

Further the Evidence Act. Cap 80²⁰, provides rules governing evidence, touching on issues of admissibility, relevance, admissions, confessions, expert opinions, character, burden of proof in civil and criminal cases, etc. In the context of LGBTIQ+ persons the Act is instrumental in providing safeguards on the nature, context and form of evidence that can be adduced before courts of law to ensure legal and human rights standards are applied in legal processes, including those involving LGBTIQ+ persons such as illegally obtained evidence being inadmissible before court.

Law enforcement officers are mandated to operate with professionalism, discipline, transparency, and accountability, guided by principles of legality, necessity, proportionality, and non-discrimination. The Kenyan Constitution's Bill of Rights, alongside the National Police Service Act 2011 and oversight bodies like IPOA - the Internal Affairs Unit within NPS, the Kenya National Commission on Human Rights and the National Commission on Administrative Justice (NCAJ) underscore the commitment to ensuring the law enforcement officers respect human dignity and safeguard rights.

An effective police Service thrives on community trust and cooperation, fostered through consistent, fair, and respectful engagement with all segments of society, irrespective of identity. This ideal, often promoted through community policing, positions law enforcement officers as protectors of civil liberties and facilitators of a just society. It is against this normative framework that the experiences of marginalized groups, such as the LGBTIQ+ community, must be critically examined.

Why this Research?

Despite Kenya's progressive human rights framework, a fundamental conflict exists between its constitutional values and the lived realities of the LGBTIQ+ community. This paradox is rooted in the continued criminalization of adult consensual same-sex relations under colonial-era laws and pervasive societal stigma. Rather than offering protection, law enforcement officers often act as agents of this prejudice, perpetrating systemic discrimination through arbitrary arrests, extortion, and physical and sexual violence amongst other violations. This misconduct erodes trust, significantly hinders the community's access to justice, and ensures that human rights violations go largely undocumented and unaddressed, thereby perpetuating a cycle of impunity and marginalizing an already vulnerable population.

While human rights organizations have made strides in sensitizing the law enforcement officers and shifting public perception, these efforts are often fragmented and lack institutional backing. There remains a critical gap in comprehensive, in-depth research specifically examining the nature, prevalence, and precise impacts of discriminatory law enforcement officers' practices on diverse LGBTIQ+ communities across Kenya's various regions. Without this crucial data, interventions and advocacy for meaningful reform will continue to be hampered. Therefore, this research is essential to inform targeted, evidence-based solutions that can foster a policing environment aligned with human rights standards for all.

This desktop review aimed to critically assess the state of equality and non-discrimination for LGBTIQ+ individuals in Kenya, focusing specifically on the behavioral attitudes and institutional practices of the law enforcement officers. It explored



Rather than offering protection, law enforcement officers often act as agents of this prejudice, perpetrating systemic discrimination through arbitrary arrests, extortion, and physical and sexual violence amongst other violations.

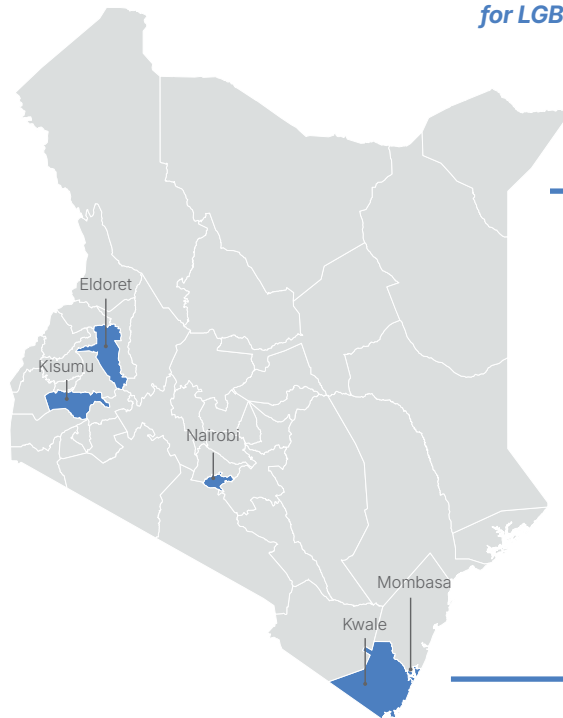


This desktop review aimed to critically assess the state of equality and non-discrimination for LGBTIQ+ individuals in Kenya, focusing specifically on the behavioral attitudes and institutional practices of the law enforcement officers.

the interplay between legal frameworks, existing gaps, and the lived realities of LGBTIQ+ Kenyans to understand the challenges they face in accessing human rights and justice.

The review was guided by these key research questions:

1. **What is the current legal and policy framework concerning equality and non-discrimination for LGBTIQ+ individuals in Kenya?**
2. **What are the prevalent patterns and instances of discrimination and stigma faced by LGBTIQ+ individuals, particularly from the Law enforcement?**
3. **What advocacy actions can effectively address police brutality and advance equality and non-discrimination for LGBTIQ+ individuals in Kenya?**



The geographical scope of this research was confined to Kenya. Special attention was accorded to major urban centers, including **Nairobi, Mombasa, Kwale, Eldoret,** and **Kisumu** as well as other towns and cities where cases of police abuse and discrimination against LGBTIQ+ persons are most frequently reported. Efforts were made to gather complementary data and informational insights from organizations actively implementing LGBTIQ+ programs across various counties within Kenya, providing a broader, albeit still desktop-based, understanding of the national landscape.

Limitations of the Research

In conducting this desktop review, the research team acknowledges the following significant limitations:

1. **Underreporting and a lack of official data** - Harassment against LGBTIQ+ individuals tends to be hidden, mainly because same-sex relationships are deemed illegal in Kenya, which creates a culture of fear around reporting such incidents. Consequently, official records, like law enforcement officers' reports or court cases detailing LGBTIQ+ harassment were often missing or incomplete. Many cases go unreported, or not classified as harassment linked to someone's sexual orientation or gender identity.



2. **Biases in available data** - Available data may not be a true representation of the facts on the ground. Victims may refrain from reporting incidents out of fear of retaliation, further harassment, or forced disclosure to their families and communities in an environment where identifying as LGBTIQ+ is criminalized. Additionally, the law enforcement officers might not accurately document or acknowledge harassment instances by their officers, sometimes even trying to suppress this information to protect their reputation. Media coverage can provide some insights, but it often skews the information, focusing on sensationalized or high-profile cases while overlooking the lived realities of the society in general.
3. **Verifying information** - Secondary sources, especially testimonials from advocacy groups or individuals shared online, might not be easily verifiable. While they provide valuable perspectives, confirming their authenticity and context without direct engagement can be problematic. This is especially true for human rights abuses, where there's often an active effort to conceal wrongdoing.
4. **Missing out on first accounts** - Relying solely on desktop reviews means missing out on individual testimonies and lived experiences. Without qualitative methods like in-depth interviews and focus group discussions, emotional nuances and deeper understanding of the survivor's experiences, coping strategies and psychological effects cannot be truly articulated.
5. **Limited context** - While academic literature and other reports lay the foundation, a desktop review may not fully cover the rich social, cultural, and political dynamics that influence LGBTIQ+ harassment by the law enforcement officers in Kenya. Further, some subgroups and more vulnerable LGBTIQ+ Individuals might experience disproportionate harassment, and this might not be captured in a desktop review.
6. **Outdated information** - due to the changing social and legal landscape around LGBTIQ+ human rights, information, including policies and public attitudes, can shift rapidly, despite prioritizing recent publications.

To tackle these challenges, triangulation was applied, which involved obtaining information from diverse secondary sources, academic writings, NGO reports, media articles and legal documents for corroboration and identification of discrepancies.

Ethical considerations

While secondary data generally minimizes risk to participants, the research team paid attention to how the original data was collected and whether the privacy of the respondents was safeguarded, including not using the real names of respondents. Additionally, when reviewing the data, the research team maintained confidentiality and sensitivity, especially when dealing with personal accounts of discrimination, and ensured accurate representation of information from original sources. Other key considerations included verification of the credibility of the sources, attribution, acknowledgement of limitations and a systematic approach in categorizing, and annotating sources using Zotero.

METHODOLOGY

2.0 METHODOLOGY

This research employed a desktop review as the primary methodology, systematically collecting, reviewing, and analyzing secondary information from LGBTIQ+ community organizations, human rights bodies, legal records, and academic sources. This method was chosen to build upon the extensive documentation already produced by community-based organizations working directly with LGBTIQ+ persons. This approach respects the expertise and knowledge production of community-based organizations while enabling comprehensive analysis across multiple data sources and geographic contexts within Kenya.

Invaluable data was sourced from organizations actively implementing programs and interventions for LGBTIQ+ communities, including an attempt at accessing law enforcement officers at police stations, to obtain practical understanding of the diverse cases. The review also extended to an examination of policy and legal documents including the Constitution of Kenya, Penal Code, various Acts of Parliament, Bills currently before Parliament, relevant international treaties and significant court judgments. Additionally, reports from reputable human rights organizations, including Human Rights Watch (HRW), National Gay and Lesbian Human Rights Commission (NGLHRC) and the Kenya National Commission on Human Rights (KNCHR) amongst others, provided crucial insights into the lived experiences documented within the LGBTIQ+ community.

Furthermore, the research team gathered information from a variety of sources including scholarly journals, books, thesis and dissertations all of which offered insights into the historical, social, legal and cultural aspects impacting LGBTIQ+ individuals.

The desktop review process was structured by a series of systematic steps. Initially, the research team focused on the identification of relevant secondary material. This involved comprehensive searches across various sources, including academic databases, strategic use of internet search engines and the application of specific keyword queries to unearth pertinent secondary sources. Following this, material selection criteria were applied to ensure the quality and relevance of the gathered data.

Materials were rigorously chosen based on their direct applicability to the Kenyan context, the established credibility of the publisher, and their currency, with a distinct preference for publications released within the last five years. Once collected, the information underwent thematic analysis, a process that categorized the data into distinct themes and sub-themes. These themes encompassed the legal framework (national and international), patterns of discrimination and human rights abuses by law, the Law enforcement itself, and advocacy strategies.

Finally, data validation and gap identification were conducted. This crucial step involved cross-referencing data from the various secondary sources to validate findings, identifying recurring patterns across disparate sources, and pinpointing existing gaps in both policy and practice concerning LGBTIQ+ lived realities in the Kenyan context, and stakeholders mapping.

ANALYSIS & FINDINGS

3.1 LEGAL FRAMEWORK

3.1.1 National Legal Framework

Kenya's legal landscape concerning human rights is a dynamic interplay of constitutional guarantees, specific legislative Acts, and evolving judicial interpretations. While the 2010 Constitution lays a robust foundation for equality, non-discrimination, and fundamental freedoms for all individuals, its application to marginalized groups, particularly the LGBTIQ+ community, remains a complex and often contested area. The courts have been increasingly called upon to navigate the complex intersection of constitutional guarantees, inherited penal codes, and evolving societal understandings concerning the rights of the LGBTIQ+ community.

This section delves into the key local legal instruments that define human rights protections and law enforcement officers' accountability in Kenya, analyzing their strengths, limitations, and how they interact to shape the lived experiences of LGBTIQ+ persons. Such documents include the Constitution of Kenya, the Penal Code, the Acts of Parliament, and the Bills that are yet to be enacted.

3.1.1.1 Protective Legal Framework for LGBTIQ+ Human Rights

The section also highlights some of the jurisprudence established by Kenyan courts, examining how judicial decisions have interpreted and applied human rights principles like equality and non-discrimination amongst others, thereby shaping the legal recognition, or lack thereof, and the protection afforded to LGBTIQ+ individuals against various forms of violations.

The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 ushered in a progressive human rights framework with a devolved government, enhanced checks and balances and a strong Bill of Rights. It is the supreme law of the land and sets laws for all persons irrespective of sex, color, race, ethnicity, gender, or religion among others. Articles 2(1) and 2(2) restate the supremacy of the constitution and its binding nature on all persons and state organs who can only exercise their authority as authorized by the constitution while emphasizing that any law that is inconsistent with it is null and void to the extent of that inconsistency.

Although LGBTIQ+ individuals in Kenya are generally understood and advocated for as a minority group, the Kenyan Constitution does not explicitly categorize or name them as such. Their rights are therefore protected in law by the Constitution's general provisions that guarantee human rights and freedoms to 'all persons.' This general protection is often insufficient in practice, given the absence of targeted legal safeguards against discrimination based on sexual orientation or gender identity.



Various articles of the Constitution of Kenya, 2010 that offer implicit protection are as follows:

1 National values and principles of governance

Article 10(2) provides that the rule of law, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized are part of our national values and principles of governance.

2. Equality and non-discrimination

Article 27 (4) guarantees the right to equality and freedom from discrimination on the basis of race, sex, pregnancy, marital status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language, birth or any other ground. Although sexual orientation and gender identity have not been expressly listed, this article can be used to champion for LGBTIQ+ human rights as demonstrated by the landmark High Court decision in the case of **SC v Director of Public Prosecution & 3 others** (Petition 15 of 2019)²¹. In this case, the High Court at Eldoret on August 12, 2025 affirmed the constitutional rights of transgender persons in Kenya. The case was brought by S.C., a transgender woman and athlete, following her arrest and subsequent human rights violations in 2019.

The core of the matter stemmed from S.C.'s arrest on a charge of "personation," with authorities claiming she was falsely representing herself by living openly as a woman. Following her arrest, S.C. was subjected to a series of humiliating and degrading acts while in State custody. These included strip searches, repeated non-consensual medical examinations, such as genital inspections and blood draws aimed at "determining her gender", and inappropriate transfers between male and female prison facilities.

Justice Reuben Nyakundi ultimately ruled that the actions taken by the Law enforcement, prison department, and the hospital constituted severe violations of S.C.'s fundamental constitutional rights. Specifically, the court found that her rights to dignity, privacy, equality, non-discrimination, and freedom from cruel, inhuman, or degrading treatment had been infringed.



Key Judicial Directives:

In a ground-breaking set of orders, the court provided both individual relief for S.C. and systemic directives for the State:

- 1. Recognition of Identity:** The court declared that S.C. is to be "notably recognized as a transgender individual," affirming the "right of transgender persons to determine their self-identified gender."
- 2. Legislative Mandate:** The Government was ordered to initiate and table a Transgender Protection Rights Bill or amend existing legislation to ensure the legal recognition and protection of transgender persons.

²¹ <https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/11929/eng@2025-08-12>

²² Supreme Court Petition No.16 Of 2019, NGOS Co-Ordination Board Vs. Eric Gitari & 5 Others. Judgement

²³ *Ibid*



- 1. Correctional Facility Reform:** The State was directed to immediately establish appropriate physical and structural facilities in police stations and prisons to accommodate transgender and intersex individuals, referring to these as "third gender" facilities.
- 2. Compensation:** S.C. was awarded KES 1 million in damages for the constitutional violations she endured.

This decision is a significant judicial step, setting a precedent that compels the Kenyan State to acknowledge and legislate protections for Transgender citizens.

Similarly, in another decision, the Supreme Court of Kenya, the nation's apex court on February 24, 2023, delivered a pivotal judgment in the case of **NGO's Coordination Board vs Eric Gitari & 5 others (Petition 16 of 2019)**²² whereby it upheld the right to association for an LGBTIQ+ organization in Kenya, bringing a decade-long legal dispute to an end. This case centered on the fundamental right to freedom of association for LGBTIQ+ Individuals in Kenya.

The legal battle originated when the NGO Co-ordination Board refused to register the proposed organization, the National Gay and Lesbian Human Rights Commission (NGLHRC), led by the former Executive Director Eric Gitari. The Board's rationale for the denial was that the use of the terms "gay" and "lesbian" in the name, claiming this offended public interest and contravened provisions of the Penal Code that criminalize adult consensual same-sex intimacy.

In a 3-2 majority decision, the Supreme Court upheld the earlier rulings of the High Court and Court of Appeal, finding the refusal to register the NGO unconstitutional.



The Court established three key principles:

- 1. Freedom of Association (Article 36):** The Court categorically affirmed that the right to freedom of association is guaranteed to 'every person' under the Constitution, irrespective of the popularity of the views they seek to promote. The denial of registration solely on the basis of the applicants' sexual orientation was therefore deemed an unconstitutional limit on this right.
- 2. Broad Interpretation of Non-Discrimination:** Crucially, the Supreme Court ruled that the constitutional prohibition against discrimination on the grounds of "sex" is not limited to biological sex but must be interpreted broadly to include sexual orientation. This established a significant legal precedent for non-discrimination protections for sexual minorities in Kenya.
- 3. Registration Mandate:** The Court distinguished between the right to form an association and the Penal Code, noting that the act of registering an NGO does not legalize same-sex acts. It consequently ordered the NGO Co-ordination Board to allow the NGLHRC to be officially registered.



This landmark ruling granted legal status to a key organization advocating for LGBTIQ+ rights, reinforcing that the constitutional guarantees of human rights extend to all persons, even without explicit decriminalization of same-sex conduct.

Even with the profound legal victories above, there has been significant complexity in the application and interpretation of article 27 as was witnessed in the case of **E.G. & 7 others vs Attorney General (2019)**²³ a petition that sought the decriminalization of sections 162 (a) (c) and 165 of the Penal Code. On 24 May 2019, three High Courts (Justices Aburili, Mwita and Mativo) gave a unanimous judgment that the law that criminalises same sex sexual conduct is not in violation of the Constitution. The Court held that there was no violation of the right to equality and freedom from discrimination. It considered that section 162 (a) (c) did not target LGBT persons but applied to “any person” and that section 165 applied to “any male person”. The law therefore was not considered to directly discriminate against people on the basis of their sexual orientation. The Court held further that the examples of social discrimination that the Petitioners described were not supported by “credible evidence”. It stated that:



“In our view, decriminalizing same-sex sex on grounds that it is consensual and is done in private between adults, would contradict the express provisions of Article 45(2). The Petitioners’ argument that they are not seeking to be allowed to enter into same sex marriage is, in our view, is immaterial given that if allowed, it will lead to same sex persons living together as couples. Such relationships, whether in private or not, formal or not would be in violation of the tenor and spirit of the Constitution. ... The Court held: Decriminalizing the impugned provisions would indirectly open the door for unions among persons of the same sex.”

The effect of the judgment is that the law remains the same and sections 162 (a) (c) and 165 of the Penal Code continue to criminalize consensual adult same-sex sexual intimacy.

3. Right to Human dignity

Article 28 of the Constitution, concerning human dignity, asserts that every person possesses inherent dignity and the right to have it respected and protected. In a society where LGBTIQ+ individuals often face stigmatization, a lack of respect and often not perceived with a high degree of dignity, this article becomes vital for asserting their right to be treated with dignity and challenging discriminatory attitudes. For instance, in **Republic v Kenya National Examinations Council & another Ex-Parte AMI [2014] KEHC 8265 (KLR) (High Court, 2014)**²⁴ The Court relied on Article 28 to compel the examinations council to change the name and remove the gender designation on the academic certificate of Audrey Mbugua, a transgender woman. The ruling established that the right to dignity mandates that State organs reflect an individual’s self-identified gender in official documents, thereby recognizing their identity. This is a clear indicator that this article can thus be used to champion for LGBTIQ+ human rights.

Another case in point on the right to human dignity is **COL & Another -vs- Resident Magistrate-Kwale Court & 4 Others** [2016] eKLR (Civil appeal No. 56 of 2016)²⁵, Court of Appeal at Mombasa.

²⁴ Republic v Kenya National Examinations Council & another; Ithibu (Ex parte) (Judicial Review 147 of 2013) [2014] KEHC 8265 (KLR) (Judicial Review) (7 October 2014) (Judgment)

²⁵ C. O. L & another v Resident Magistrate - Kwale Court & 4 others [2016] eKLR - Petition 51 of 2015



4. Freedom from cruel, inhumane and degrading treatment

Article 29, which safeguards the freedom and security of the human person, encompasses the right not to be subjected to cruel, inhuman, or degrading treatment. This provision can be invoked to protect LGBTIQ+ individuals who are frequently subjected to inhuman or degrading treatment by segments of the Kenyan population, including the Law enforcement. This article prevailed in the landmark ruling against forced medical examinations: **COL & Another -vs- Resident Magistrate- Kwale Court & 4 Others [2016] eKLR (Civil appeal No. 56 of 2016), Court of Appeal at Mombasa (Court of Appeal, 2018).**

This case established a landmark precedent by declaring that the State cannot compel individuals to undergo humiliating medical procedures to gather evidence of same-sex conduct.



The Facts: Two male petitioners, identified as J.M. and A.M., were arrested on suspicion of committing “unnatural offences” under the Penal Code. Following their apprehension, a Magistrate issued a court order mandating that they undergo forced medical examinations, specifically anal examinations and compulsory HIV testing, with the explicit intent of securing forensic evidence to prove the alleged homosexual acts. The petitioners challenged this directive, arguing that the procedures themselves constituted a violation of their constitutional rights.

The Court of Appeal delivered a judgment, holding that the State’s actions were unconstitutional. It specifically found violations of:

- i. Article 29(d):** The forced procedures constituted cruel, inhuman, and degrading treatment. The court recognized that compelling a person to submit to such invasive and humiliating procedures, regardless of the legality of the underlying criminal charge, violated their fundamental right to physical and psychological security.
- ii. Article 29(f):** This provision, which guarantees freedom from being subjected to medical or scientific experimentation without consent, was violated by the non-consensual nature of the examinations and testing. The court emphasized that a person’s body cannot be used as a tool for State-led investigation without their free and informed permission.

This judgment unequivocally declared that the practice of forced anal examinations, previously used as a tool of State-sanctioned persecution, was unlawful in Kenya. By centering the judgment on Article 29, the judiciary established that the dignity and bodily integrity of all persons, including those facing charges under the Penal Code’s anti-gay laws, must be respected. The decision set a crucial constitutional standard, ensuring that law enforcement officers and judicial officers cannot resort to these abusive methods to effect arrests or prosecutions.

Another case in point touching on intersex persons is **Baby A (Suing through the mother EA) & Another -vs- the Attorney General & 6 Others** [2014] eKLR (Petition no. 266 of 2013) High Court of Kenya at Nairobi²⁶.

²⁶ Baby 'A' (Suing through her Mother, EA) & another v Attorney General & 2 others; Kenya National Commission on Human Rights & 2 others (Interested Parties); Kenya Human Rights Commission (Amicus Curiae) (Petition 266 of 2013) [2014] KEHC 8495 (KLR) (Constitutional and Human Rights) (5 December 2014) (Judgment)



The facts of the case are that in 2019, the petitioner's mother gave birth to a baby who had both male and female genitalia. A question mark (?) was inserted in the column indicating the sex of the child on the medical forms. The petition challenged the entry (?) arguing that it offended the child's rights not to be subjected to inhuman and degrading treatment as it would be difficult to issue the child with an acknowledgement of birth and birth certificate and therefore the child could not be registered; this amounted to denying intersex children the right to legal recognition.

The High Court upheld the rights of intersex persons to non-discrimination and affirmed their right to protection from torture, cruel, inhuman and degrading treatment by holding that intersex persons are protected under Article 27 (4) of the Constitution. The Court also underscored the need for empirical data on intersex persons in Kenya to inform relevant reforms to address challenges faced by intersex persons as a marginalized group.

5. Right to Privacy

Article 31, guaranteeing the right to privacy, is fundamentally relevant to LGBTIQ+ individuals, providing a constitutional underpinning for the protection of their personal information, sexual orientation, and gender identity from unauthorized disclosure, harassment, and digital violence. While much of the substantive jurisprudence on LGBTIQ+ rights has concentrated on State action, such as preventing cruel and degrading treatment under Article 29, as discussed above, Article 31 offers a distinct legal basis for the right to secrecy and defense against unwarranted public exposure, particularly relevant in the age of widespread social media use.

In the case of **E.G. & 7 others v Attorney General (2019)**, article 31 was invoked as a defense against criminalization. The most direct and significant attempt to leverage the right to privacy for sexual and gender minorities in Kenya occurred during the constitutional challenge to the colonial-era Penal Code provisions criminalizing consensual adult same-sex acts. The petitioner argued that the very existence and enforcement of Sections 162 (a) (c) and 165 of the Penal Code violated their rights under Article 31. They posited that the criminalization of private, consensual adult sexual conduct intrinsically violated the guarantee not to have "information relating to their family or private affairs unnecessarily required or revealed." By targeting the intimate sexual expression of LGBTIQ+ persons, the law was deemed to be an unacceptable intrusion into their private lives, thereby violating the constitutional right to privacy.



The High Court's Decision and Limitation:

The High Court acknowledged that the right to privacy under Article 31 does indeed extend to and protect private consensual sexual conduct. However, the court ultimately refused to strike down the Penal Code provisions. The bench held that the right to privacy, like all fundamental rights, is not absolute and is subject to limitation under Article 24 of the Constitution.

The court reasoned that the criminalization was legitimately limited by other constitutional values, most notably Article 45(2), which defines the family and marriage as exclusively between persons of the opposite sex. Concluding that decriminalization would be contrary to the established notions of "public interest" and "public morality," the High Court effectively subordinated the individual right to privacy to a majoritarian view of social and moral values.



Despite the failure to achieve decriminalization, the ruling was critically important as it formally recognized that sexual orientation and private sexual expression fall squarely within the scope of "private affairs" protected by Article 31. This constitutional recognition provides a foundational anchor for future litigation concerning the disclosure and exploitation of private information relating to LGBTIQ+ individuals, even if the court upheld the limitation on the right in this specific instance of criminal law.

Another case in point under the right to privacy is the Eldoret case of **SC v Director of Public Prosecution & 3 others** (Petition 15 of 2019).

6. Freedom of conscience, belief, and opinion

Article 32 of the CoK, which enshrines freedom of conscience, belief, and opinion, can be interpreted to include the right of LGBTIQ+ individuals to profess their sexual orientation freely, advocating for their rights, and creating visibility. This is complemented by Article 33, granting the freedom of expression, allowing individuals to seek, receive, and impart information or ideas, thereby enabling LGBTIQ+ individuals to express their identities and advocate for their rights.

Kenyan jurisprudence has consistently affirmed that the right to freedom of expression extends to advocacy for the rights of sexual minorities. For instance, the long-running legal battle for the registration of an LGBTIQ+ organization in the case of the **NGO's Coordination Board vs Eric Gitari & 5 others [2023] Petition 16 of 2019 Supreme Court of Kenya** ("the NGO's Coordination Board case") while primarily centered on the freedom of association (Article 36), necessarily upheld the right of individuals to use that association to express their views and impart information about their community. The Ruling effect enabled NGLHRC to express itself and advocate for its community rights.

7. Freedom of association

The freedom of association, detailed in Article 36, explicitly grants every person the right to form, join, or participate in associations of any kind. This directly supports LGBTIQ+ organizations, such as NGLHRC whose right to exist and operate was affirmed by the Supreme Court in 2024 in "the NGO's Coordination Board case" cited earlier.

8. Rights of Arrested Persons

The rights of arrested persons and the right to a fair hearing, as enshrined in Articles 49 and 50 of the Kenyan Constitution, have been instrumental in protecting LGBTIQ+ individuals, especially in challenging abusive investigative practices.

The key jurisprudence focuses on the unconstitutionality of procedures that violate a person's dignity, right against self-incrimination, and the rule for excluding illegally obtained evidence.

The landmark court decision outlawing Forced Anal Examinations, **COL & Another -vs- Resident Magistrate- Kwale Court & 4 Others** [2016] eKLR (Civil appeal No. 56 of 2016), Court of Appeal at Mombasa, constitutes a vital legal victory for LGBTIQ+ individuals in Kenya, establishing a robust constitutional shield against a profoundly intrusive and degrading state practice. This jurisprudence effectively interpreted and enforced the protections under Articles 49 and 50 of the Constitution, alongside other fundamental rights.

Similarly in the case of **SC v Director of Public Prosecution & 3 others** (Petition 15 of 2019), discussed in detail under the section on equality and non-discrimination, the jurisprudence created a crucial precedent, a person cannot be forced to undergo a procedure that simultaneously



degrades their dignity, violates their bodily integrity, and forces them to provide evidence against themselves. This judicial interpretation significantly curtailed the state's power to use abusive investigative techniques targeting the LGBTIQ+ community

Equally, article 51 (1) provides that any person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the bill of rights except where such right is incompatible with the fact that the person is detained.

Other Kenyan Supportive Legal Frameworks

1. Sexual Offences Act, 2006

The Sexual Offences Act (SOA), 2006 is an Act of Parliament that makes provision for sexual offences, their definition, prevention and the protection of all persons, including LGBTIQ+ from harm, unlawful sexual acts, and for connected purposes. It defines offences like rape (sec 3), gang rape (sec 10), indecent act (sec 11A), sexual assault (sec 5), sexual harassment (sec 23), Sexual offences relating to position of authority and persons in position of trust (sec 24), amongst others.

Sexual offences and violence against LGBTIQ+ individuals in Kenya are not confined to interactions with the law enforcement officers but are also widely perpetrated by non-state actors across various social spheres. This pervasive abuse is fundamentally enabled by deep-seated homophobia, transphobia, and the continued criminalization of same-sex conduct under the Penal Code, creating a climate of impunity for offenders.²⁷

The violence often originates from individuals known to the victim, including within their private life. Reports document cases of sexual assault and abuse stemming from intimate partner violence and aggression from family members.²⁸ One of the most brutal forms of this non-state violence is "corrective rape," which is typically directed at lesbian, bisexual, and trans women with the stated aim of changing their sexual orientation or gender identity.²⁹ Relatedly, some individuals are also subjected to other abusive measures as part of so-called conversion therapy practices.³⁰

In the wider public domain, LGBTIQ+ people are vulnerable to acts of targeted communal aggression. Community residents and vigilante groups have perpetrated mob violence and physical and sexual attacks, often forcing victims to flee their homes for safety³¹. Furthermore, the threat of exposure is weaponized for exploitation: non-state actors frequently engage in blackmail and extortion by threatening to publicly "out" an individual, leveraging the extreme societal stigma to coerce them into making payments or submitting to sexual demands.³² These varied forms of violence, occurring in both domestic and public settings, underscore the profound vulnerability of the LGBTIQ+ community to abuse from actors outside the formal justice system.³³

For medical treatment purposes, the sexual offences regulations, 2012 also describes the steps to be taken by law enforcement officers in the event a case of sexual violence is reported to them. It also prescribes that the form to be filled in the event of an offence under the Sexual Offences

²⁷ The Advocates for Human Rights (TAHR), The Eagles for Life Kenya (TEFL-K), et al., Kenya Joint Stakeholder Report for the United Nations Universal Periodic Review: LGBTIQ+ Rights, 2024, p. 5.

²⁸ Country policy and information note: sexual orientation and gender identity and expression, Kenya, GOV.UK, February 2025 (Accessible), Section 3.1.2.

²⁹ TAHR, TEFL-K, et al., Kenya Joint Stakeholder Report for the United Nations Universal Periodic Review: LGBTIQ+ Rights, 2024, p. 6.

³⁰ Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report, National Gay & Lesbian Human Rights Commission (NGLHRC) and REDRESS, 2022, p. 5.

³¹ Human Rights Watch, The Issue is Violence: Attacks on LGBT People on Kenya's Coast, 2015.

³² NGLHRC and REDRESS, Submission to the Committee Against Torture Concerning Kenya's Third Periodic Report, 2022, p. 5.

³³ Ibid.



Act is the Post Rape Care (PRC) form. One of the findings by the research team is that the law enforcement officers use the PRC form as evidence to charge individuals under section 162 (a) (c) of the penal code, yet the PRC is a preserve for offences under the Sexual Offences Act.

The SOA thus provides a framework for protection and response against sexual abuse and further provides safeguards to facilitate reporting and access to services including medical and justice/prosecution of offences against LGBTIQ+ persons in the event of sexual violence.

2. Computer Misuse and Cybercrimes Act, 2018

This is an Act of Parliament to provide for offences relating to computer systems; to enable timely and effective detection, prohibition, prevention, response, investigation and prosecution of computer and cybercrimes and; to facilitate international co-operation in dealing with computer and cybercrime matters.

While the purpose of this law is to protect individuals from cybercrimes, it can equally be misapplied to target LGBTIQ+ persons for expressing their sexual orientation or gender identity online. The law enforcement officers have been known to use this as an avenue to increase harassment and violence online through technology facilitated crimes including doxxing, cyber bullying, catfishing, unauthorized sharing of intimate messages and photographs, blackmail and extortion etc. as further discussed in subsequent chapters. A more insidious tactic involves "gay-baiting" violence, where perpetrators pose as gay or bisexual men, often using dating apps or social media, to lure victims to secluded locations, only to subject them to severe violence and sexual assault.³⁴

The paradox, the law intended to criminalize cybercrimes is instead used as an "avenue to increase" digital harassment and violence, a critical point illustrating how legal frameworks are misapplied in a discriminatory context. The law does not legally authorize these harmful acts but rather becomes a weapon of surveillance, intimidation, and wrongful prosecution, which simultaneously facilitates and emboldens non-state abuse. This represents a severe limitation of the law in providing genuine protection.

This misapplication presents as a tool for State harassment. The law's broad provisions on offences often allow the law enforcement officers to use a legitimate-sounding pretext to target LGBTIQ+ individuals. Law enforcement officers may interpret any online expression of sexual orientation or gender identity, such as sharing a photo, interacting on a dating app, or sending an intimate message, as "evidence" of a cybercrime.³⁵ This ambiguity transforms the law into a tool for pretextual arrests, where the stated charge is a cybercrime, but the true motive is persecution based on identity. Furthermore, officers can use the threat of charging an individual with a severe cybercrime to extort bribes from LGBTIQ+ persons. This threat of legal action, even if unfounded, is a potent weapon that leads to both financial and psychological harm.³⁵

The misapplication of the law also compounds the vulnerability of the community to violence from non-state actors. When law enforcement officers or other hostile entities engage in digital

³⁴ Secor, C., et al., "You'll Be Chased Away": Sources, Experiences, and Effects of Violence and Stigma among Gay and Bisexual Men in Kenya, PubMed Central (PMC), 2023.

³⁵ Submission to the UN Committee Against Torture Concerning Kenya's Third Periodic Report, National Gay & Lesbian Human Rights Commission (NGLHRC) and REDRESS, 2022, paragraphs 10, 11, and 13.

³⁶ 'I'd been set up': the LGBTQ Kenyans 'catfished' for money via dating apps, The Guardian, 4 January 2022.

³⁷ Secor, C., et al., "You'll Be Chased Away": Sources, Experiences, and Effects of Violence and Stigma among Gay and Bisexual Men in Kenya, PubMed Central (PMC), 2023.

³⁸ The Issue is Violence: Attacks on LGBT People on Kenya's Coast, Human Rights Watch, 2015.



surveillance, sometimes using methods like catfishing to gather information, this activity can lead to a victim being exposed to doxxing by third parties, resulting in the public release of their private identifying details. This digital exposure directly heightens the risk of real-world violence. Crucially, the law's misuse destroys the community's trust in the justice system. An LGBTIQ+ person who is a genuine victim of cyberbullying, blackmail, or unauthorized image sharing cannot safely report the crime. They rightly fear that approaching the law enforcement officers will lead to their own arrest under the same cybercrime law or under existing laws criminalizing same-sex conduct. The law, therefore, fails in its protective role, creating an environment where cybercrime victims are forced to suffer in silence, thereby increasing their overall exposure to both digital and physical harm.

Despite the foregoing limitations of the Act, its provisions can be interpreted and applied in ways that protect LGBTIQ+ persons from online abuse and harassment hence respect for their human rights and dignity.

3. Persons Deprived of Liberty Act, 2014

Persons Deprived of Liberty Act (PDLA), 2014 is an Act of Parliament to give effect to Articles 29(f) (the right not to be treated or punished in a cruel, inhuman or degrading manner) and 51 (rights of persons detained or held in custody) of the Constitution. It provides key protections to detained persons in Kenya, including the right for persons detained to be treated humanely and with dignity and to be subjected to due process of the law amongst other safeguards. It also provides for various groups (men, women, children, older members of the society, intersex persons, refugees, asylum seekers etc.) to be held in separate cells and the right of intersex persons to decide the sex of the person by whom they are to be searched. However, the Act fails to protect transgender persons or persons of non-conforming gender.

The Act also states that an "intrusive search or search in or around a concealed body cavity" should be done in private and "with due regard to personal safety and health", and that these searches should be carried with decency and dignity. This provision is relevant to the LGBTIQ + community as there are documented reports of some of them having undergone various violations under law enforcement officers custody as further elaborated in the section on patterns of abuse of LGBTIQ by the law enforcement officers more particularly the section on detention inconsistent with gender identity, long detention whilst incommunicado and physical and sexual violence in custody.

A case in point is the Eldoret Athlete's case of **SC v Director of Public Prosecution & 3 others** (Petition 15 of 2019) that has been discussed in detail in the section on equality and discrimination above. The PDLA was applied to scrutinize the conduct of the law enforcement officers against the athlete (SC). The primary objective was to ensure the athlete's rights were upheld while in police custody, particularly the right to humane treatment and human dignity (Section 5 of the PDLA) and the right to due process (Section 7 of the PDLA).

The application was used as part of the argument that the manner of the athlete's arrest, interrogation, and subsequent decision to charge amounted to an abuse of power and a violation of constitutional rights. By invoking the PDLA, the athlete challenged the law enforcement officers' handling, arguing that the authorities failed to adhere to the statutory requirements designed to safeguard individuals from arbitrary or degrading treatment once their liberty is curtailed. The court, therefore, assessed the Law enforcement's actions against the PDLA's standards for detention and custody to determine if the proceedings against the athlete should be halted.

4. The Prevention Against Torture Act (PATA), 2017

This is an Act of Parliament to give effect to Articles 25(a) and 29(d) of the Constitution and to the



principles of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; to provide for the prevention, prohibition and punishment of acts of torture and cruel, inhuman or degrading treatment or punishment and; reparations to victims of torture and cruel, inhuman or degrading treatment or punishment.

For example, the case of **COL & Another -vs- Resident Magistrate- Kwale Court & 4 Others** [2016] eKLR (Civil appeal No. 56 of 2016), Court of Appeal at Mombasa (discussed in detail in the section on Freedom from cruel, inhuman and degrading treatment below) centered on the practice by state agents of subjecting men suspected of same-sex conduct to forced anal examinations and non-consensual medical tests, including for HIV. The Court of Appeal decisively ruled that these actions were illegal. In its determination, the court held that the invasive, humiliating, and medically unproven nature of the procedures crossed the threshold of cruel, inhuman, and degrading treatment, which amounts to torture. This judgment relied centrally on the rights guaranteed by the Constitution, but utilized the PATA as the substantive domestic law that defines, criminalizes, and seeks to prevent torture. Specifically, the ruling used the definition of torture within PATA to solidify the legal principle that state action motivated by discrimination based on perceived sexual orientation is a severe and actionable human rights violation. This application effectively outlawed the use of forced anal examinations as a form of state-sanctioned violence against LGBTIQ++ persons.

The PATA is critical to LGBTIQ++ litigation as it moves beyond general constitutional declarations to provide defined criminal offenses and a clear mandate for victim reparations. Its application in the forced anal examination case cemented the precedent that state actions targeting individuals based on perceived sexual orientation meet the legal standard of torture, making the Act indispensable in future litigation.

5. Intersex Persons Bill, 2023

The Intersex Persons Bill in Kenya 2023³⁹ is a response to the systemic issues highlighted in various studies, which reveal that intersex persons in Kenya have long been subjected to societal stigma, legal invisibility, and human rights violations. It offers significant gains for intersex individuals in promoting equality and non-discrimination and therefore addressing historical marginalization and discrimination.

If passed, the bill will promote equality and non-discrimination, ensuring legal recognition for intersex identities, which includes the crucial right to self-determination regarding legal sex without forced medical procedures, aligning Kenya with global human rights standards. The bill also aims to combat gender-based violence, prevent discrimination in sectors like education, healthcare, and employment, and ultimately improve the socio-economic status of intersex persons. This landmark legislation would be a vital step towards ensuring intersex individuals live with dignity and respect.

³⁹ [INTERSEX PERSONS BILL, 2023](#)



3.1.1.2 Discriminatory Legal Framework and Proposed Legislations Targeting Human Rights for LGBTIQ+ persons

Kenya's legal framework governing human rights for LGBTIQ+ persons is characterized by a complex web of constitutional provisions, criminal statutes, and proposed legislation that collectively criminalize and discriminate against consensual adult same-sex relationships and conduct.

1. Definition of Marriage

While many articles offer protection, Article 45, which recognizes the family as the fundamental unit of the state, presents a specific challenge. Article 45 (2) explicitly defines marriage as being between adults of the opposite sex, directly impacting same-sex couples within the LGBTIQ+ community who seek legal recognition for their relationships. For instance, in the earlier cited case of **E.G. & 7 others v Attorney General (2019)**, the High Court acknowledged that the right to privacy under Article 31 does indeed extend to and protect private consensual sexual conduct. However, the court ultimately refused to strike down the Penal Code provisions. The bench held that the right to privacy, like all fundamental rights, is not absolute and is subject to limitation under Article 24 of the Constitution. The court reasoned that the criminalization was legitimately limited by other constitutional values, most notably Article 45(2), which defines the family and marriage as exclusively between persons of the opposite sex. Concluding that decriminalization would be contrary to the established notions of "public interest" and "public morality," the High Court effectively subordinated the individual right to privacy to a majoritarian view of social and moral values.

2. Penal Code (Cap 63)

The Penal Code is the primary legal framework for offences in Kenya. It provides a comprehensive set of rules and guidelines for defining, prosecuting and punishing criminal behavior perpetrated by or committed against anyone within the jurisdiction of Kenya. The Act describes criminal offences, prescribes penalties thereto thus ensuring public order, safety and further provides general principles for criminal responsibility.

The provisions most relevant to LGBTIQ+ persons are enshrined in sections 162 (a) (c) and 165 of the Penal Code that criminalize "carnal knowledge against the order of nature" and "indecent practices between males," respectively. These have been interpreted to mean criminalization of same sex acts and are the primary provisions that have been used to justify the legal persecution of LGBTIQ+ persons and the denial of their rights as evidenced in the decided case of **EG & 7 Others -vs- Attorney General; DKM & 9 Others** (2019 eKLR (Petition 150 & 234 of 2026 (consolidated)), High Court of Kenya at Nairobi and **NGO's Coordination Board vs Eric Gitari & 5 others** [2023] Petition 16 of 2019 Supreme Court of Kenya, previously discussed.

Fundamentally, sections 162 (a) (c) and 165 of the Penal Code are vestiges of colonial legislation, reflecting moral codes rather than contemporary human rights principles. While these laws do not explicitly criminalize LGBTIQ+ identities, they directly criminalize consensual same-sex sexual conduct. The penalties, up to 14 years imprisonment for "carnal knowledge against the order of nature" and five years for "indecent practices between males," create a climate of fear and vulnerability.⁴⁰ Even though actual prosecutions under these sections might be infrequent due to

⁴⁰ [The Advocates for Human Rights, \(2025a\). Joint Stakeholder Report for the United Nations Universal Periodic Review: LGBTIQ+ Rights \(pp. 3-5\).](#)

⁴⁰ [Divon, S. A., Vestlie, A. W., & Jessen, R. S. \(2023\). Strategic adjustments: Daily experiences of lesbian, gay, bisexual, transgender, queer, and intersex persons in Nairobi. Sexualities.](#)



the burden of proof, their mere existence provides a powerful pretext for various forms of abuse.

The vagueness and existence of the Penal Code provisions create fertile ground for abuse by law enforcement officers. They frequently leverage these laws not for legitimate criminal prosecution but to arrest, harass, abuse, and blackmail members of the LGBTIQ+ community. As indicated in the provided data, incidents of arbitrary arrest, extortion, physical assault, and even sexual violence are reported, often under the guise of enforcing "unnatural offences" or "gross indecency." The absence of explicit anti-discrimination laws continues to expose the LGBTIQ+ community members leaving them vulnerable to rights violations.⁴¹

3. Proposed Family Protection Bill, 2023

The Family Protection Bill, is a private member Bill sponsored by Member of Parliament Hon. Peter Opondo Kaluma. As per its preamble it aims to provide for the protection of the family in furtherance of Article 45 of the Constitution, to prohibit homosexuality and same sex marriage, to prohibit unnatural sexual acts and related activities and to proscribe activities that seek to advance, advocate, promote or fund homosexuality and unnatural sexual acts. Such propositions, if passed into law, could be a great drawback to the human rights gains in the realm of LGBTIQ+ persons protection in Kenya.

These constitutional provisions, criminal statutes, and proposed legislations create a hostile legal environment that criminalizes same-sex conduct, denies legal recognition to same-sex relationships, and provides mechanisms for systematic discrimination against LGBTIQ++ Kenyans.



3.1.2 INTERNATIONAL LEGAL FRAMEWORK

International human rights law obligates states to protect LGBTIQ+ persons' rights, guided by universality, equality, and non-discrimination principles, as enshrined in the international covenants and treaties. Pursuant to Art. 2(5) and 2 (6) of the constitution, 2010, the general rules of international law form part of the laws of Kenya. Further, any treaty or convention ratified by Kenya is part of the laws of Kenya, some of which are highlighted below.⁴²

Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) states that all human beings are born free and equal in dignity and rights, pursuant to article 1 of the UDHR. Further, article 7 of the UDHR provides for non-discrimination and equal protection of the law to all persons. It prohibits any discrimination in violation of the UDHR and incitement to such discrimination. The Office of the United Nations High Commissioner for Human Rights has interpreted these provisions to include discrimination based on actual or perceived Sexual Orientation and Gender Identity⁴³. States are therefore obligated to ensure that their laws and practices do not discriminate against individuals based on sexual orientation, gender identity, or sex characteristics.

Based on the above interpretation, all other rights enshrined in the UDHR like the right to life, Liberty and Security of the person, equality before the law, the Right to Privacy, Freedom of Expression and the Freedom of Association, etc. all apply to LGBTIQ++ and they are entitled to them.

International Covenant on Civil and Political Rights (ICCPR)

Article 2 of the ICCPR mandates state parties to respect and ensure all rights recognized in the Covenant are enjoyed without discrimination of any kind, including on the basis of sexual orientation and gender identity, as interpreted by international human rights bodies; "Core legal obligations of states with respect to protecting the human rights of LGBTI persons".⁴⁴

The UN Human Rights Committee (HRC) has been instrumental in advancing the rights of individuals concerning their sexual orientation, gender identity, and sex characteristics (SOGIESC) through its authoritative interpretations and landmark decisions.

The HRC's jurisprudence, particularly the foundational 1994 decision in **Toonen v. Australia**, established a crucial precedent by holding that the prohibition of discrimination under the ICCPR extends to sexual orientation. The Committee ruled that laws criminalizing consensual same-sex acts violated both the right to privacy (Article 17) and the right to non-discrimination (Article 26) under the Covenant, effectively paving the way for global decriminalization efforts. This non-discrimination principle was subsequently reinforced in cases concerning social benefits, such as **Young v. Australia (2003)**, where denying a veteran's pension to a same-sex partner was deemed discriminatory. Furthermore, the HRC has directly addressed gender identity, notably in **X v. Colombia (2017)**, by affirming that the right to legal gender recognition is a necessary element of the right to privacy and non-discrimination, requiring states to establish simple and effective procedures for changing legal identity documents.

Beyond specific cases, the HRC's General Comments provide binding interpretations that solidify SOGIESC protections across multiple articles of the ICCPR. Through these authoritative texts, the Committee has clarified that the non-exhaustive grounds for discrimination in Article 26's "other status" clause include both sexual orientation and gender identity. This ensures all rights under the

⁴² Online resource on treaties, conventions and protocols that Kenya has signed or ratified are available at <https://kenyalaw.org/treaties/>

⁴³ United Nations Office of the High Commissioner for Human Rights (OHCHR). *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*. Geneva: United Nations, 2019

⁴⁴ *Ibid.*



ICCPR are guaranteed to everyone without distinction based on SOGIESC. In relation to the Right to Life (Article 6), General Comment No. 36 explicitly affirms that protection must be guaranteed without discrimination on these grounds, creating a State obligation to prevent and prosecute SOGIESC-based violence and hate crimes. Moreover, the HRC has affirmed that the Prohibition of Torture (Article 7) applies to SOGIESC issues, condemning cruel, inhuman, or degrading treatment, which includes forced medical interventions like so-called "conversion therapy" or unnecessary surgeries performed on intersex children.

International Covenant on Social, Economic and Cultural Rights (ICESER)

The ICESER takes cognizance that the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

In its General Comment No. 20, the ICESCR has expanded its definitional framework of 'non-discrimination' to recognize discrimination based on sexual orientation, gender identity, and gender stereotypes as a form of discrimination in line with Article 2 of the Convention 29 by stating that:



"Other status" as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.

Convention Eliminating all forms of Discrimination Against Women (CEDAW), 1979

CEDAW notes that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.⁴⁵ It also notes that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights.

Despite its cisheteronormative language on women's rights, CEDAW has proved to be a valuable tool for marginalized groups of women, especially LBTIQ+ women, to advocate for their rights. This is reflected across varying concluding observations which make specific mention of the rights of lesbian, bisexual, transgender women and intersex people within the lens of intersecting forms of discrimination. In recent times, the Committee has issued positive recommendations and decisions on the grounds of SOGIESC rights; examples can be seen in its concluding observations for Armenia (2022), Mongolia (2022) and its Optional Protocol decision for Sri Lanka (2018/2022).

CEDAW thus addresses LGBTIQ+/ SOGIE issues by interpreting existing articles and issues specific recommendations to parties although there is no article exclusive to SOGIE. The committee utilizes an expansive definition of discrimination and the principle of substantive equality to address discrimination, gender-based violence, and barriers to justice faced by LGBTIQ+ girls and women.

Also related to CEDAW is the Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, 1994.⁴⁶

⁴⁵ Convention on the Elimination of All Forms of Discrimination against Women

⁴⁶ Victoria Falls Declaration of Principles for The Promotion of The Human Rights of Women, 1994.



Convention Against Torture and other Cruel and Degrading Treatment (CAT), 1984

Art 4 of CAT mandates party states to ensure that all acts of torture, including attempts to commit torture and to acts which constitute complicity or participation in torture, are offences under their respective criminal laws. Art 11 further requires party states to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Pursuant to Art 12 wherever there is reasonable ground to believe that an act of torture has been committed under its jurisdiction, the State Party must ensure prompt and impartial investigation. Further, an individual who alleges to have been tortured has the right to complain to, and to have his case promptly and impartially examined by, competent authorities pursuant to Art 13 and that victims of torture must obtain redress (Art 14) and pursuant to art 15 any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. Whereas CAT does not out rightly mention sexual orientation or sexual identity, its definition of torture includes suffering intentionally inflicted for any reason based on discrimination of any kind. This inclusive language provides a framework for protecting LGBTIQ++ persons.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR, provides the global human rights framework on economic and social rights. While not explicitly listing sexual orientation or gender identity, it provides crucial protections that guarantee the rights of individuals to work, health, education, and an adequate standard of living "without discrimination of any kind" (Article 2(2)). The monitoring body, the Committee on Economic, Social and Cultural Rights (CESCR), authoritatively interpreted this obligation in General Comment No. 20 (2009). The Committee stated that the term "other status" in the non-discrimination clause encompasses both sexual orientation and gender identity. This means State Parties are obliged to ensure that LGBTIQ+ individuals are not subject to formal or substantive discrimination when accessing economic and social rights, such as healthcare, housing, and social security. The CESCR also requires States to take positive steps to address de facto discrimination by both public and private actors, preventing, for instance, harassment in schools or denial of housing based on a person's SOGIESC.

African Charter on Human and Peoples' Rights (ACHPR)

The ACHPR, while its text does not explicitly mention sexual orientation or gender identity, provides a normative basis for promoting non-discrimination and equality for LGBTIQ+ persons through its foundational principles of dignity, equality, and non-discrimination (Articles 2, 3, 4, and 5). The African Commission on Human and Peoples' Rights (ACHPR Commission) has been instrumental in clarifying these protections, utilizing its soft-law standards to address SOGIESC issues despite significant cultural and religious opposition in many African countries.

The most significant developments are embodied in two Resolutions:

1. **Resolution 275 (2014) on Protection Against Violence Based on SOGIE:** The adoption of Resolution 275 on "Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity" was a landmark moment in African human rights law.⁴⁷ The resolution unequivocally condemned all acts of violence, discrimination, and other human rights violations committed against individuals because of their SOGI. It specifically condemned acts such as 'corrective' rape, torture, and arbitrary arrest, and urged State Parties to the Charter to end these abuses, investigate and prosecute the perpetrators, and ensure that human rights defenders working on SOGI issues can operate without fear of reprisal.⁴⁸



2. **Resolution 552 (2023) on Intersex Persons:** This crucial follow-up, Resolution 552 on "The Promotion and Protection of the Rights of Intersex Persons in Africa," formally brought protections for variations in sex characteristics into the African human rights framework.⁴⁹ It explicitly calls on States to prohibit non-consensual genital "normalization" practices, such as surgical, hormonal, and sterilization procedures performed on intersex persons, recognizing these interventions can cause lifelong suffering and may constitute harmful practices similar to female genital mutilation. It also urges States to prohibit discrimination based on intersex traits or status in areas like education, health, and employment.⁵⁰ The ACHPR's jurisprudence, buttressed by these Resolutions, offers procedural possibilities for addressing discrimination. Regional progress is also visible in domestic law, with South Africa remaining a regional leader with its constitution explicitly prohibiting discrimination based on sexual orientation. However, the Charter's effectiveness ultimately depends on the political will of African States and regional bodies to interpret and apply its provisions inclusively and consistently.

Kenya's application of the African Charter is that political will is highly inconsistent, leading to a mixed human rights environment. While Kenyan courts have shown increasing judicial will to interpret the Constitution and the Charter inclusively by affirming the rights of marginalized groups, including SOGIESC minorities, to non-discrimination and association, the legislative and executive branches demonstrate a contrasting lack of will by keeping discriminatory Penal Code Section 162 (a) (c) and 165 criminalizing same-sex acts on the books. This internal contradiction limits the Charter's full effectiveness and perpetuates a climate of stigma and potential harm.

African Youth Charter, 2006

The African Youth Charter (AYC) provides in articles 2 and 4 and 5, the right to non-discrimination and freedom of expression and association. Article 7 on protection of private life provides that: "No young person (15-35) shall be subject to the arbitrary or unlawful interference with his/her privacy, residence or correspondence, or to attacks upon his/her honor or reputation".

The AYC of 2006 applies to LGBTIQ+ persons through the expansive interpretation of its non-discrimination principle and its guarantee of fundamental rights. While the Charter does not explicitly list sexual orientation or gender identity, its foundational Article 2 prohibits discrimination based on "sex" and "other status."⁵¹ African human rights bodies and advocates use this "other status" clause to argue that LGBTIQ+ youth are legally entitled to the full range of rights guaranteed in the Charter without prejudice.⁵²

In practice, this means the Charter is used to promote and protect the right of LGBTIQ+ youth to non-discrimination, freedom of association (to form groups), right to health, and protection of privacy from harassment and unlawful interference.⁵³ However, the Charter's effectiveness is often constrained because many African states still maintain colonial-era laws that criminalize same-sex acts, creating a legal contradiction that limits the practical realization of these rights for young LGBTIQ+ people.⁵⁴

The AYC is applied to LGBTIQ+ persons in Kenya indirectly through strategic court victories that uphold the right to association and non-discrimination based on the Charter's principles, despite the continued criminalization of same-sex acts in the Penal Code.

⁴⁷ ACHPR, [Resolution on Protection against Violence and other Human Rights Violations against Persons](#).

⁴⁸ [Ibid.](#)

⁴⁹ ACHPR, [Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa, ACHPR/Res.552 \(LXXIV\) 2023, 7 March 2023.](#)

⁵⁰ [Ibid.](#)

⁵¹ African Union, [African Youth Charter, 2 July 2006, Art. 2\(1\).](#)

⁵² African Commission on Human and Peoples' Rights (ACHPR), [Resolution 275: Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity, 55th Ordinary Session, 28 April – 12 May 2014. \(This is the key regional instrument used to interpret non-discrimination provisions, like the one in the AYC, to include SOGIE\)](#)



The Yogyakarta Principles

The Yogyakarta principles adopted on 10th November 2017 are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. They affirm the binding international legal standards with which all states must comply. They promise a different future where all people are born free and equal in dignity.⁵⁵

Whereas Kenya human Rights experts, including those from KNCHR were involved in the development of the Yogyakarta principles, Kenya is still not a signatory to the same. This notwithstanding the principles have influenced discussions and legal arguments surrounding human rights in Kenya and have been referenced in several court cases related to LGBTIQ+ and intersex persons' rights. For example, **the National Gay and Lesbian Human Rights Commission (NGLHRC) v. Attorney General, 2019**, eKLR (High Court, Petition Nos. 150 & 234 of 2016). This is the landmark case that challenged the constitutionality of the Penal Code Section 162 (a) (c) and 165 criminalizing same-sex acts. While the High Court ultimately upheld the law (a decision later appealed), the petitioners and many supporting amicus curiae briefs extensively cited the Yogyakarta Principles to define rights related to sexual orientation and gender identity as grounds for non-discrimination and equality under the Kenyan Constitution.

Another case in point is the **Non-Governmental Organizations Co-ordination Board v. Eric Gitari & 5 others, 2023**, eKLR (Supreme Court, Petition No. 16 of 2019). The Supreme Court affirmed the right of the NGLHRC to register. Though not the core subject, the court's reasoning on the right to association and non-discrimination is heavily influenced by international human rights standards, including the conceptual frameworks found in the YP, which were presented by the petitioners.

Likewise, the case of **RM v. Attorney General & 4 others, 2019**, eKLR (High Court, Petition No. 433 of 2018) led to a key ruling affirming the rights of intersex persons in Kenya, particularly concerning protection from discrimination and the right to bodily autonomy, relies on the broader constitutional and international definitions of "sex" and "status" that the YP (especially YP+10) have sought to clarify.

The analysis of judicial decisions, particularly the landmark 2018 ruling in COL & Another and the Supreme Court's affirmation of the right to association, proves that the legal framework to protect LGBTIQ+ rights already exists within the progressive mandate of the 2010 Constitution. The perpetuation of abuses is not a failure of law, but a profound failure of political will and institutional enforcement.

The culture of impunity within the law enforcement officers and justice sectors creates a hostile environment where victims cannot report abuse, and those who advocate on their behalf face immediate reprisal. This is a direct assault on the constitutional guarantees of dignity (Article 28), equality (Article 27), and freedom from cruel treatment (Article 29) for all citizens.

⁵² African Union, African Youth Charter, 2 July 2006, Art. 5 (Freedom of Association), Art. 7 (Protection of Private Life), and Art. 14 (Right to Health).

⁵³ ISLA (Initiative for Strategic Litigation in Africa), "Litigating SOGIE rights in the African Human Rights Mechanisms," 2024. (Illustrates the use of broad non-discrimination clauses in African instruments to advance LGBTIQ rights).

⁵⁴ Yogyakarta Principles



3.2 PATTERNS OF LGBTIQ+ ABUSE BY THE LAW ENFORCEMENT

Despite clear legal and constitutional obligations of the law enforcement officers towards its citizens, the following section demonstrates a profound and systemic failure by the National Police Service to meet its mandate with respect to the LGBTIQ+ community. Rather than acting as protectors, elements within the Service actively engage in or permit a pattern of abuse, violence, and discrimination, fundamentally violating the constitutional principles they have sworn to uphold. Reports from human rights organizations⁵⁶ and media outlets consistently highlight a pattern of abuse by the law enforcement officers against LGBTIQ+ individuals in Kenya, often fueled by the criminalization of same-sex relations and pervasive societal homophobia.

In view of the foregoing, the following are instances of abuse perpetrated by the law enforcement officers against LGBTIQ+ persons.

Arbitrary Arrests

Arbitrary arrest refers to the seizure and detention of an individual by state authorities without a legally justifiable cause, proper procedure, or due process. It means someone is taken into custody without a valid warrant, without having committed a recognizable offense, or for discriminatory reasons not supported by law. This practice undermines the rule of law and violates fundamental human rights, including the right to liberty and security of person.⁵⁷

Reports from organizations like the National Transgender Advocacy Network of Kenya (NTAN), Human Rights Watch (HRW), and the National Gay and Lesbian Human Rights Commission (NGLHRC) consistently document this concerning trend. For instance, a survey conducted by NTAN in 2020 revealed that of the 119 transgender and intersex people surveyed, nearly a third had been arbitrarily arrested and incarcerated.⁵⁸

Other organizations like the Human Rights Watch (HRW)⁵⁹ and the National Gay and Lesbian Human Rights Commission (NGLHRC)⁶⁰ have also extensively documented instances where law enforcement officers use the law, more particularly the Penal Code (sections 162 (a) (c) and 165, which criminalize "unnatural offences" and "gross indecency between males") or other vague public order laws (like "loitering," "solicitation," or "impersonation") to arbitrarily arrest LGBTIQ+ individuals.

The reports often describe law enforcement officers targeting individuals based on perceived sexual orientation or gender identity, particularly in areas known for LGBTIQ+ gatherings or among sex workers. These arrests are frequently accompanied by demands for bribes, with the threat of severe legal consequences if payment is not made.

Extortion

Extortion is the practice of obtaining something, especially money, through force or threats. In the context of law enforcement officers' misconduct against LGBTIQ+ individuals, it involves officers or other perpetrators demanding money, sexual favors, or other valuables under the threat of arrest, physical harm, public exposure (outing), or other adverse consequences.⁶¹

⁵⁶ National Gay and Lesbian Human Rights Commission (NGLHRC), Redress, 2022.

⁵⁷ Universal Declaration of Human Rights (UDHR), 1948, Article 9, "No one shall be subjected to arbitrary arrest, detention or exile."

⁵⁸ National Transgender Advocacy Network of Kenya (NTAN) (Trans*Alliance Kenya and Jinsiangu Kenya), A Report of the National Transgender Discrimination Survey: Policy Brief, 2020, p. 7

⁵⁹ Human Rights Watch. "The Issue is Violence: Attacks on LGBT People on Kenya's Coast." September 28, 2015.

⁶⁰ NGLHRC Publications & Reports: This section on their website contains reports such as their Annual Reports and Legal Aid Reports (e.g., 2022 Annual Report, 2020-2021 Legal Aid Report)



Extortion is a pervasive and deeply damaging form of abuse against LGBTIQ+ individuals in Kenya, often inextricably linked with arbitrary arrests. As noted in the March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture, arbitrary arrests with the intent to extort are disproportionately carried out against LGBTIQ+ persons in Kenya.⁶²

The scale of this issue is immense. NGLHRC has formally dealt with 679 cases of blackmail and extortion since 2014, but anecdotal evidence from local organizations suggests thousands more cases go unreported. The Asylum Resource Centre (ARC) 2023 report, citing Gateru (Executive Director of NGLHRC), indicates that "only about 10% of cases are reported" due to victims fearing retaliation. The report also highlights that extortion tactics are becoming more sophisticated and have spread beyond Nairobi.⁶³

The threats used in extortion are particularly unnerving due to the severe stigma and ostracization faced by the LGBTIQ+ community in Kenya. Reports indicate that law enforcement officers often threaten to out LGBTIQ+ persons to their families or wider community while they are in custody. This threat is highly effective, as public exposure can lead to loss of employment, housing, and social support, and even violence from community members.⁶⁴

Victims of extortion, especially those without legal representation, often face severe beatings by both law enforcement officers and members of the public, sometimes requiring hospital treatment, some almost dying. Forced anal examinations, despite being ruled unconstitutional by the Court of Appeal, also continue to be practiced as a coercive tactic.

Refugees are particularly vulnerable to extortion. A report on the rights of LGBTIQ+ citizens and non-citizens in Kenya from the Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic found instances of "LGBTIQ+ refugees being arbitrarily arrested and extorted for sexual acts and financial payments".⁶⁵

The catfishing phenomenon, where individuals use fake identities to lure LGBTIQ+ people for extortion, is a growing concern. In January 2022, A Guardian article explored the experiences of 'catfishing' by LGBTIQ+ Kenyans the previous year and documented the following story.⁶⁶

"One day after work, Tom went to a shopping centre in Nairobi to pick up groceries before heading home. He got a call from someone he had been chatting to for a week on Grindr, a social networking app for gay, bi, trans and queer people. The man had already tried ringing several times during the day while Tom was with colleagues and was keen to meet. "

⁶¹ Dwyer, A. (2011). "It's not like we're going to jump them': How transgressing heteronormativity shapes police interactions with LGBT young people." *Youth Justice*, 11(3), 203–220. DOI: 10.1177/1473225411420526.

⁶² National Gay and Lesbian Human Rights Commission (NGLHRC) and REDRESS. "Submission to the Committee Against Torture concerning Kenya's Third Periodic Report." April 2022.

⁶³ Query response on the situation and treatment of LGBTQ community, Asylum Resource Centre, 2023.

⁶⁴ *Supra* n.32.

⁶⁵ Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, Parallel Report on the Rights of LGBTIQ+ Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya (CCPR/C/KEN/4) on its compliance with the International Covenant on Civil and Political Rights, 2021, p. 18

⁶⁶ Jemimah Mwaniki, "Forced to pay bribes at every step: How trans and intersex people say they survive in Kenya," CNN, April 19, 2024, <https://edition.cnn.com/2024/04/18/africa/transgender-intersex-corruption-kenya-intl/index.html>.

⁶⁷ *Ibid.*



"Tom, 29, mentioned where he was but said that he did not want to see the man. Then, as he was heading to his car, he got another call. As he answered it, someone approached him and said they were a police officer. Seconds later, two other officers joined him and surrounded Tom. "

"One of them had this envelope," he says. "He was getting papers out of the envelope and looking at them and then at me. I saw it was a chat from Grindr and I saw my face on it. I knew I had been set up."

The law enforcement officers asked him to get in their car to help with an investigation. Tom refused and they accused him of having sex with a minor and started getting violent. **"One tried to cuff me by force. Then he punched me on the chest and bent me over the car bonnet."**

Tom agreed to go with them as long as they did not handcuff him. Once in the car, he realized they were taking a longer route to the station and started to panic.

"I felt I was going to die. A few months ago, I heard a transgender person was found dead and word went round that it was the police," he says. Tom refused to hand over his phone to the police, even though they asked, because he knew he had done nothing wrong and they had not officially arrested him. He started to call friends, one of whom got in touch with a lawyer from the National Gay and Lesbian Human Rights Commission (NGLHRC). She rang Tom and said she would meet him at the police station.



"I felt I was going to die. A few months ago, I heard a transgender person was found dead and word went round that it was the police,"

Once the law enforcement officers knew a lawyer was involved, they took Tom to the station but not before threatening him and demanding money to "make everything go away". Tom, who works in finance, was aware enough of his rights that he questioned the law enforcement officers' actions and rebuffed their efforts to extort bribes from him. Once he arrived at the station and met his lawyer, the law enforcement officers who had wanted to press charges against him were suddenly unavailable. Otieno was neither arrested nor charged.

In another story, Brian, a trans woman in Mombasa, shared her harrowing experience with CNN's "Survival Stories" (2024),⁶⁷ stating she had been arrested 10 times in two years and paid over KES 100,000 in bribes to police to avoid prosecution. This starkly illustrates how "bribing becomes the safe option," exploiting the fear of public exposure.

The ARC report further documents a report by Kelly Kigera, from the Gay and Lesbian Coalition of Kenya's emergency security response team. Kelly describes how blackmailers "storm into their homes, threatening them with prosecution under section 162 (a) (c)," and confiscate their phones to trace contacts and pursue them for extortion.

Many other members of the LGBTIQ+ community have also been victims of being catfished on social media and dating sites. Others have been raped and robbed at gunpoint. Many have been forced to empty their bank accounts and pay bribes amounting to tens of thousands of shillings to their blackmailers. Perpetrators include law enforcement officers, but also other officials and members of the public.



Detention inconsistent with gender identity

When detained, LGBTIQ+ individuals, particularly transgender persons, face severe risks due to being placed in cells inconsistent with their gender identity. This discriminatory practice leads to further exposure, ridicule, sexual harassment, and violence from other inmates as highlighted by the KNCHR.⁶⁸

While section 12 (3) (e) of the Persons Deprived of Liberty Act, 2014, provides that intersex persons ought to be detained separately, the same protection does not specifically extend to transgender persons, thereby leaving them unprotected in this regard. Consequently, despite the constitutional right to dignity and security, transgender persons can be forcibly housed with individuals of their assigned sex at birth rather than their affirmed gender, thus leaving them exposed to various violations and abuses, including sexual abuse. There have also been reports of LGBTIQ+ individuals being inappropriately transferred to psychiatric centers as optional points of detention.⁶⁹

The landmark legal victory in Kenya concerning detention inconsistent with gender identity is the case of **S.C. vs. Director of Public Prosecutions & Others**, delivered by the High Court of Kenya at Eldoret in August 2025.

This case centered on the experience of S.C., a transgender woman, whose constitutional rights were severely violated following her arrest in 2019 on a charge of "personation." The mistreatment she suffered was a direct consequence of the legal system's failure to recognize her gender identity. While in custody, S.C. was subjected to degrading and inhumane treatment, including being shuffled between male and female detention facilities, where her safety was compromised. Most egregiously, she endured non-consensual and invasive medical examinations such as strip and cavity searches and genital inspections ordered by the court to "determine her gender," which the High Court found to be a profound violation of her dignity and privacy.

The Eldoret High Court, through Justice Reuben Nyakundi, delivered a groundbreaking judgment that addressed these systemic failures. The court explicitly affirmed "the right of transgender persons to determine their self-identified gender," grounding this right in the constitutional protections of dignity, privacy, and freedom from cruel and inhuman treatment. The court declared that the actions of the police, prisons, and hospital in her case were unconstitutional and awarded S.C. KES 1 million in damages.

Beyond offering personal redress, the ruling set a monumental precedent for Kenya and the African continent by ordering the government to undertake legislative action. Justice Nyakundi directed the State to initiate the drafting of a Transgender Protection Rights Bill or amend existing laws to ensure legal recognition and protection for transgender people. Furthermore, the court mandated that the Kenya Prisons Service and law enforcement officers/institutions must reform their detention policies to include appropriate, humane, and gender-affirming facilities for transgender individuals. This decision is widely celebrated as a pivotal step toward ensuring that transgender identity is recognized and protected under Kenyan law.

Long detention whilst incommunicado

Reports indicate that LGBTIQ+ individuals are often subjected to prolonged detention without communication with the outside world, exceeding legal limits. The Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic highlighted reports of cases where individuals have been arrested and subsequently

⁶⁸ KNCHR, *The Undefended Defender: The Situation of Human Rights Defenders Working towards Addressing Violence based on Sexual Orientation, Gender Identity and Expression in Kenya: A Focus on Kisii, Garissa and Kajiado* (Nairobi: KNCHR, 2021), 47–48.

⁶⁹ REDRESS and National Gay and Lesbian Human Rights Commission (NGLHRC), "Submission to the Committee Against Torture concerning Kenya's Third Periodic Report," (May 2022), 7, 10–11.



prevented from contacting anyone outside the detention facility, and people who have been routinely held longer than the 24-hour maximum legal period enshrined in the Constitution. The report highlights this as a pattern based on case reports and general observations rather than a quantitative survey on all arrests. This practice isolates detainees, making them more vulnerable to abuse and hindering their access to legal assistance and family support.⁷⁰

Physical and Sexual Violence in Custody

Reports also show that, beyond arbitrary arrest and extortion, LGBTIQ+ individuals face direct physical and sexual violence while in police custody, often amounting to torture or cruel, inhuman, or degrading treatment or punishment. The May 2023 joint report by NGLHRC and Amnesty International details an incident from August 2021 where Isabel, a lesbian refugee, and three others were arrested.⁷¹ She recounted,

"While taking us into the cell, the police were signaling to the other detainees that they were bringing people who pretend to be ladies. When we got into the cell, the other detainees started slapping us. They threatened us with a broken mirror, saying that they wanted to 'do it' with us in the way LGBTI people do it. We were forced to 'do it' at night. It was a very long night."

These abuses are consistent among refugees. The Kenya: "Justice Like no other person" report noted that LGBTIQ+ refugees detained in relation to protests about the treatment of LGBTIQ+ people in Kakuma camp described being subjected to serious abuses in detention, including being intentionally exposed to rape and sexual violence by other detainees.⁷²

The Human Rights Watch (2015) report, "The Issue is Violence," further provides extensive qualitative data on "brutal and highly prevalent physical and sexual violence perpetrated by state actors." It notes that law enforcement officers have been found to perpetrate violence themselves or conspire with community members to commit hate crimes. A trans sex worker in Mombasa reported: "Police officers raped me in turns inside their lorry. They called it 'cleaning the town.'" The report documented systemic violence, including gang rape, by city enforcement officers ('makanjoo') against trans and gay individuals on Kenya's coast.⁷³

The 2022 USDOS Kenya report on human rights practices, published in March 2023, corroborated these findings, noting that NGOs reported law enforcement officers frequently harassed, intimidated, or physically abused LGBTIQ+ individuals in custody.⁷⁴

Use of violence to extract Confessions

Law enforcement officers in Kenya have been documented using violence to extract confessions from LGBTIQ+ individuals, particularly in relation to offences under sections 162 (a) (c) and 165 of the Penal Code. A 2021 submission to the UN Human Rights Committee by The Advocates for Human Rights with other organizations stated that police threaten LGBTIQ+ persons and use violence to extract confessions.⁷⁵

⁷⁰ Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, *Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya (CCPR/C/KEN/4) on its compliance with the International Covenant on Civil and Political Rights*, 2021, p. 18

⁷¹ The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, "Justice like any other person" – Hate crimes and discrimination against LGBTI refugees, 19 May 2023, pp. 9 and 35.

⁷² Page 9

⁷³ Human Rights Watch. (2015, September 28). *The issue is violence*. Human Rights Watch. <https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast>.

⁷⁴ US Department of State (USDOS), *2022 Country Reports on Human Rights Practices: Kenya*, 20 March 2023

⁷⁵ The Advocates for Human Rights, *The Eagles for Life, Sign Ishara, and Oasis Research, Kenya Alternative Report Relating to the Rights of LGBTI Persons*, 22 February 2021, paragraph 21.



Forced Anal Examinations

Despite the 2018 Court of Appeal judgment in **COL & Others** declaring forced anal examinations “unconstitutional, unreasonable and a violation of Article 19(2) of the Constitution,” this deeply invasive and humiliating practice persists. Law enforcement, often in conjunction with medical personnel, subject individuals suspected of same-sex conduct to these examinations, purportedly as “evidence” for offenses under Section 162 (a) (c) of the Penal Code.

The 2022 USDOS Kenya report on human rights practices noted that “NGOs reported police frequently threatened gay men while in custody with forced anal examinations, which were outlawed in 2018.⁷⁶” Furthermore, NGLHRC’s 2019/2020 Annual Legal Aid Report stated that despite the court ban, the legal team had received a few cases of forced anal examinations that are conducted by the state.⁷⁷

Evidence from police records also reveal a calculated effort by law enforcement officers to subject persons charged with offences under section 162 (a) (c) of the penal code to anal examinations illegally, by making them sign consent forms while under police custody. A sample of such a “consent” form has been appended as appendix 1. This represents a documentation tactic of evasion, where the court ban is circumvented by compelling detainees to sign consent forms, thereby attempting to legally frame the examinations as consensual despite the clear presence of duress, coercion, and undue influence.

The clandestine and coercive nature of the practice, coupled with the police’s incentive to conceal unconstitutional conduct, means that no reliable, auditable police records are publicly available. Therefore, our understanding of the cases is based entirely on the qualitative accounts shared by the victims themselves.⁷⁸ Therefore, the primary focus of most human rights reports remains on the practice being a violation of the constitutional rights to dignity, freedom from torture, and privacy, regardless of the precise number of documented incidents. While the practice is confirmed to persist, the specific numbers from police records are not public and are likely inaccessible due to the nature of the abuse.

The March 2022 submission of Redress and NGLHRC to the UN Committee Against Torture ahead of Kenya’s third periodic report noted that:



“An important step made by the State (mentioned by Kenya’s government report to this Committee) is the Persons Deprived of Liberty Act, which was enacted in 2014. The Act provides key protections to detained persons in Kenya. The Act also states that an “intrusive search or search in or around a concealed body cavity” should be done in private and “with due regard to personal safety and health,” and that these searches should be carried with decency and dignity.

Though this provides some protection against forced anal examinations, further amendments are needed to prohibit all anal examinations without explicit consent and to reflect the Court of Appeal’s findings that the practice, when forced, violates constitutional principles of dignity and security (including freedom from torture and ill treatment). Further training and implementation on the application on this provision is also needed, since reports document the continued practice.”

⁷⁶ US Department of State (USDOS), 2022 Country Reports on Human Rights Practices: Kenya, 20 March 2023

⁷⁷ The National Gay and Lesbian Human Rights Commission (NGLHRC), 2019/2020 Annual Legal Aid Report, 2020, p. 9

⁷⁸ Kisii University Human Rights Club and University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, Parallel Report on the Rights of LGBTI Citizens and Non-Citizens in Kenya to be considered in connection with the Fourth periodic report of Kenya (CCPR/C/KEN/4) on its compliance with the International Covenant on Civil and Political Rights, 2021, p. 18



Harassment of LGBTIQ+ Activists & Human Right Defenders

Further reports show that Human rights Defenders and LGBTIQ+ Activists are also targets of police harassment. The Human Rights Watch report specifically focuses on the challenges faced by Human Rights Defenders (HRDs) working on LGBTIQ+ Lived Realities. The law enforcement officers contribute to their vulnerability through harassment, intimidation, arbitrary detention, and even physical violence, effectively stifling their critical work. This creates an environment where reporting abuses is risky not only for victims but also for those advocating on their behalf, as highlighted by KNCHR.⁷⁹

According to Human Rights Watch, Police have been documented cracking down on LGBTI rights organizations, arresting staff and seizing equipment. Further, an Amnesty International Oral Statement from November 2021 noted that “LGBTIQ+ activists who have been vocal in expressing concerns from the LGBTIQ+ community have faced threats and intimidation and their lives are threatened. Some LGBTI activists have also been arbitrarily arrested and detained by the security officials in the camp.”⁸⁰

The “Justice Like No Other Person” report also confirms that “Kenyan police and other authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism.”⁸¹

Failure by the law enforcement officers to Protect LGBTIQ+ persons and Investigate Crimes

Another reported issue is the systemic failure of the Police officers to protect LGBTIQ+ individuals from violence and discrimination and to adequately investigate crimes committed against them, whether by state or non-state actors. HRW’s 2015 report highlighted that law enforcement officers often ignore cases of crimes targeting LGBTIQ+ individuals. It noted that victims of physical attacks and harassment have reported that police often take no discernible action when these incidents are brought to their attention.⁸²

Even when victims attempt to report violence, they risk further abuse, verbal harassment, or even arrest from officers. Jinsiangu, a Kenya-based NGO, noted in June 2021 that intersex, transgender, and gender non-conforming persons “are often constructed as criminals, cursed, deviant, immoral and devil worshipers,” leading to a lack of “access to protection by the Law.” Instances include “public stripping and forced stripping during arbitrary arrests by The Police.”⁸³

The Amnesty International and NGLHRC (2023) report on Kakuma Refugee Camp, “Justice like any other person,” details “systematic and pervasive inaction by law enforcement officers in Kakuma refugee camp to effectively, promptly, independently, and thoroughly investigate allegations of hate crimes” against LGBTIQ+ asylum seekers and refugees. The report concludes that “Perpetrators of violence and intimidation targeting LGBTI individuals can commit their crimes with almost total impunity, enabled by the lack of adequate responses from the police.”⁸⁴

⁷⁹ KNCHR, The Undefended Defender: The Situation of Human Rights Defenders Working towards Addressing Violence based on Sexual Orientation, Gender Identity and Expression in Kenya: A Focus on Kisii, Garissa and Kajiado, 2021

⁸⁰ Amnesty International, Oral statement on the situation of refugees in Africa at the 69th Ordinary Session of the African Commission on Human and Peoples’ Rights, 25 November 2021, p. 2

⁸¹ Page 9

⁸² Human Rights Watch (HRW) and PEMA Kenya. The Issue is Violence: Attacks on LGBT People on Kenya’s Coast. September 28, 2015.

⁸³ Jinsiangu, Int’l Day Against Homophobia Biphobia & Transphobia (IDAHOBIT) 2021, 14 June 2021 99 The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, “Justice like any other person” – Hate crimes and discrimination against LGBTI refugees, 19 May 2023, pp. 9 and 35

⁸⁴ Ibid, Page 8.



The “Justice Like No Other Person” report also confirms that “Kenyan police and other authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism.



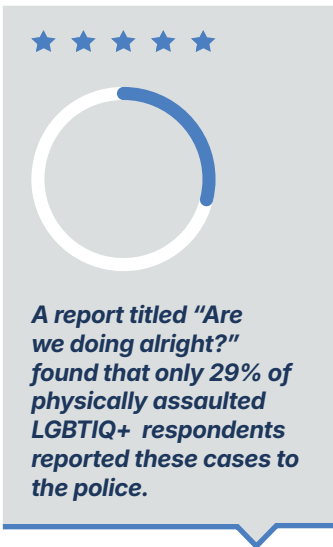
The 'Justice like no other study' report gave an account of Winnie, a lesbian woman, who had a business in the market, where LGBTI friends used to buy.⁸⁵ Winnie reported that one day in 2019 she was away from work and left one of her children to take care of the business. A group of people destroyed the stall and injured the child, saying that the LGBTI customers were affecting other businesses. When she went to report the crime, the police told her to look for the attackers and bring them to the police station to be arrested.

Likewise, the Rainbow Railroad and the Organization for Refuge, Asylum and Migration (ORAM) published a report in October 2021 on their research into the conditions facing LGBTIQ+ asylum seekers and refugees in Kakuma refugee camp in northern Kenya. An asylum seeker from Uganda recounted being called "*shoga*" (a derogatory term for gay) and chased from his allocated shelter in Kakuma. When he reported to the police, the officer stated he was "*tired of dealing with homosexuals*" and told him "*Go sort out your problems.*"⁸⁶

He narrated:



"When I arrived at the camp, I was allocated space in Block 1 and provided materials to construct my shelter. On the same day, some other refugees came to my site. I thought they were welcoming me and assisting me to put up my shelter. They spoke to me in Kiswahili but I responded in English. One of them started shouting at me, calling me "shoga". They took away my materials and chased me from the location. I went back to the reception to report my experience. I was referred to the police to record a statement. On getting to the report desk and explaining my situation, the officer manning the desk gave me a reference number and told me to go sort out my problems. He told me he is tired of dealing with homosexuals and I should consider going back to my country." (29-year-old Ugandan asylum seeker).



Reported incidents of police declining to assist or demanding bribes from asylum seekers were rampant. Most respondents reported not being able to pay the bribes.

With regards to homophobia within the police service, the ORAM report found that over 88 per cent reported having been denied services by the Law enforcement. Specific high-profile cases in the recent past further underscore this police inaction include:

1. **Sheila Lumumba Case (2022, AP News):** Family members of Sheila, a non-binary lesbian who was sexually assaulted and brutally murdered in Nyeri, stated, "*The police didn't do anything. We had to start our own investigation.*"
2. **Edwin Chiloba Case (2023, AP News):** After Edwin Chiloba, a prominent LGBTIQ+ activist, was found murdered in a metal box. It took days before police confirmed that the killing was being treated seriously, with activists fearing a cover-up. The delayed police action was seen as symbolic of the system's disregard for queer lives.

⁸⁵ Page 28

⁸⁶ Rainbow Railroad and ORAM (Organization for Refuge, Asylum and Migration), The Challenges Facing LGBTIQ+ Refugees in Kakuma Refugee Camp, Kenya, October 2021, p. 24



The pervasive negative experiences and documented abuses have led to lower levels of trust in law enforcement officers among LGBTIQ+ individuals and reluctance by victims to report incidents to the law enforcement officers due to fear of further harassment, re-victimization, or lack of action, leading to widespread impunity for perpetrators. A report titled "Are we doing alright?" found that only 29% of physically assaulted LGBTIQ+ respondents reported these cases to the police. This reduced likelihood of seeking help, even when victims of crime, signifies that many LGBTIQ+ individuals view the police more as "foe" than "friend." (LGBTIQ+ views).⁸⁷

The research on lived experiences of lesbian, bisexual and queer women in Kenya also documented that, "*Participants explained that most LBQ women have no faith in the police and were often afraid to 'out' themselves and/or increase tensions in relationship to family members.*"⁸⁸

The systematic and pervasive failure to conduct a prompt, thorough, independent and impartial investigation into allegations of hate crimes and gender-based violence against LGBTIQ+ people raise concerns of institutional homophobia and transphobia within the police and other state institutions.⁸⁹

Further, police misconduct, as evidenced by the high numbers of complaints recorded by organizations like NGLHRC, often goes unpunished or is not adequately investigated, further perpetuating a cycle of impunity. While institutions like IPOA and KNCHR are mandated to investigate human rights abuses and monitor police conduct, their effectiveness is often hampered by systemic challenges, including resistance within the police service and the inherent ambiguities in the legal framework.

3.3 STAKEHOLDERS' ANALYSIS

Stakeholder analysis is crucial and paves way for the report to move beyond a purely legal assessment to foster understanding of the complex dynamics at play. Identifying the key individuals and groups, facilitates a critical assessment not only of who is affected by the violations against the LGBTIQ community but also who holds influence and power. Key players include the vulnerable LGBTIQ+ community, the law enforcement officers who perpetrate abuse, the judiciary that interprets the law and the advocacy organizations that challenge it. Understanding these diverse interests and their potential for impact is essential to both contextualizing the abuses and developing realistic, targeted recommendations for reform.

The table below documents the LGBTIQ+ stakeholders' analysis, highlighting their role, position, importance, influence, key interests, and the potential strategic engagement.

⁸⁷ Müller, A., Daskilewicz, K. and the Southern and East African Research Collective on Health (2019). 'Are we doing alright? Realities of violence, mental health, and access to healthcare related to sexual orientation and gender identity and expression in Kenya: Research report based on a community-led study in nine countries. Amsterdam: COC Netherlands

⁸⁸ Research on the lived experiences of lesbian, bisexual and queer women in Kenya, Coalition of African Lesbians (CAL) & Gay and Lesbian Coalition of Kenya (GALCK) page 24

⁸⁹ The National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International, "Justice like any other person" – Hate crimes and discrimination against LGBTI refugees, 19 May 2023, pp. 7-9, 18-23, 25-26, 28, and 32-35



Table 1: Stakeholders' identification and analysis

Stakeholder Group	Role	Position (Stance)	Importance (to the issue/goal)	Influence (on the outcome)	Key Interests/Concerns	Potential Strategies for Engagement
LGBTIQ+ Community	Direct beneficiaries; their experiences and inputs are critical to credible findings and defining needs.	Supportive (Directly impacted, seeking rights & safety)	High	Low	Ending discrimination and violence; achieving full legal recognition and protection; access to non-discriminatory services; safety from police harassment and abuse; societal acceptance.	Empowerment & Participation: Ensure their voices are central in advocacy, research, and policy discussions; provide platforms for sharing experiences; build capacity for self-advocacy; ensure safety and support mechanisms.
LGBTIQ+ Advocacy Organizations	Trusted by the community; provide data; advocacy capacity; strong networks; influence media and public.	Strongly Supportive (Active champions)	High	High	Advancing human rights; legal reform; police accountability; public education; resource mobilization for community support; ensuring the safety and well-being of the community.	Collaboration, Monitoring and Evaluation & Data Sharing: Partner on research, policy development, and advocacy campaigns; provide technical expertise and strategic guidance; leverage their networks for broader reach; support their capacity building and; utilization of data for evidence-based interventions, monitoring, evaluation and learning.
Law enforcement Agencies (Kenya Police Service, County Askaris)	Implement approved policies; protect rights; enforce laws.	Ambivalent/Resistant (Often perpetrators/enforcers of existing bias)	High	High	Maintaining order; upholding existing laws (even discriminatory ones); avoiding public criticism; operational efficiency; some officers may have personal biases; potential fear of change or lack of training.	Sensitization & Training: Develop and deliver comprehensive human rights and LGBTIQ+ sensitivity training in line with article 244; advocate for clear non-discriminatory internal policies; build trust through dialogue and community policing initiatives; highlight benefits of fair policing (e.g., increased reporting of crime).
Policymakers and Legislators (Members of National and County Assemblies)	Critical for championing and passing laws that protect the LGBTIQ+ community.	Mixed (Some supportive, many resistant/neutral)	High	High	Political survival (public opinion, religious influence); legislative agenda; national stability; human rights obligations (for some); seeking international legitimacy; potential for personal beliefs to influence stance.	Lobbying & Advocacy: Provide evidence-based research and policy briefs; engage in direct lobbying; raise public awareness to create political will; highlight international best practices and human rights obligations; support pro-LGBTIQ+ champions within parliament.
The Judiciary (Judges and Magistrates)	Adjudicate cases; can reinforce human rights rulings; set precedents that influence legal matters affecting LGBTIQ+ people and provide redress for violations.	Progressive Potential (Bound by law, but can interpret human rights principles)	Medium	Medium	Upholding the rule of law; judicial independence; fair application of justice; protecting constitutional rights; maintaining public trust in the justice system.	Legal Advocacy & Case-Building: Institute strategic litigation; provide amicus briefs; train legal professionals on LGBTIQ+ issues and human rights law; disseminate favorable decisions/ authorities to influence lower courts.
Ministry of Interior & Coordination of National Government	Oversees security policy reforms; sets policing priorities; influences financial resource allocation towards policing activities. Receive and investigate complaints against the police under the Internal Affairs Unit, within National Police Service (NPS)	Resistant/Conservative (Often prioritizes 'order' over minority rights in sensitive areas)	Medium	High	National security; public order; resource management; government stability; political directives; maintaining good relations with international partners (while balancing domestic priorities); avoiding controversy. -Oversight on police action and integration of human rights standards in police service	Strategic Engagement, Advocacy & Pressure: Advocate for policy reviews and accountability; highlight international human rights obligations and potential diplomatic pressure; provide data on the negative impacts of discriminatory policing; demonstrate how inclusive policing aligns with national development goals.
IPOA	Civilian oversight body mandated to investigate complaints against the National Police Service (NPS). It is the key institutional mechanism for ensuring police accountability.	Supportive (Mandated to hold police accountable, aligns with human rights principles).	High (As the primary body for investigating police misconduct, its actions are central to achieving accountability and justice).	High (Has the legal authority to recommend prosecutions and internal disciplinary actions against officers).	Fulfilling its legal mandate; ensuring independence from the NPS; securing adequate resources; improving its public profile and trust, particularly among marginalized communities; dealing with institutional resistance from the NPS.	Collaboration & Information Sharing: Share research findings and refer documented cases of abuse to IPOA. Advocacy: Publicly advocate for increased funding and legal powers for IPOA. Capacity Building: Offer support for specialized training on SOGIE issues to improve IPOA's complaint handling and investigations.





Table 1: Stakeholders' identification and analysis

KNCHR	An independent constitutional commission with the mandate to promote and protect human rights for all Kenyans. It conducts investigations, offers expert advice, and monitors government compliance with human rights standards.	Supportive (Its constitutional mandate aligns directly with advocating for the rights of marginalized communities).	High (As the leading national human rights institution, its official reports and legal opinions carry significant weight and can influence both government policy and judicial rulings).	High (Has the legal authority to investigate and recommend action against human rights violations, including those committed by state actors).	Fulfilling its broad mandate to protect all citizens, upholding the Constitution, and maintaining its independence from political pressure; securing adequate resources; promoting public trust; addressing resistance to sensitive human rights issues.	Collaboration: Partner with KNCHR on joint research, advocacy, and public awareness campaigns. Information Sharing: Refer documented cases of police abuse to KNCHR for investigation. Policy Engagement: Work with the commission to draft and promote policy changes that protect LGBTIQ+ rights.
NGEC	An independent constitutional commission mandated to promote gender equality and freedom from discrimination for all persons, with a specific focus on marginalized groups.	Supportive (Its mandate to protect marginalized groups aligns with the human rights of the LGBTIQ+ community, even if its focus has historically been on other groups).	High (Has a legal and institutional platform to advocate for anti-discrimination measures and can be a key partner in legal challenges and public education).	High (As a constitutional commission, it can issue recommendations, conduct research, and provide legal opinions that influence policy and legislative outcomes).	Fulfilling its mandate to protect marginalized communities and ensuring inclusivity; securing adequate resources; navigating political and cultural sensitivities surrounding gender and sexuality.	Partnership: Form a strategic alliance to leverage NGEC's institutional platform for advocacy. Research Sharing: Provide NGEC with evidence and data on the discrimination faced by the LGBTIQ+ community to encourage their direct engagement on the issue. Capacity Building: Offer support in developing NGEC's internal capacity to handle SOGIE-related cases.
Media	Ability to shape public discourse, influence public perception and policy dialogue.	Mixed/Influential (Can be pro- or anti-LGBTIQ+ , depending on outlet/reporter)	High	High	News cycles; audience engagement; journalistic ethics; sometimes commercial interests; upholding public morality (as they perceive it); opportunity to break stories and expose abuses.	Media Engagement & Capacity Building: Cultivate relationships with journalists; provide accurate information and human-interest stories; offer training on sensitive reporting; counter misinformation; use social media for direct communication and narrative control.
Religious Leaders and Faith-Based Organizations	Potential to shape public perception; influence policy reforms due to their authority.	Strongly Resistant/Opposed (Often primary drivers of anti-LGBTIQ+ sentiment)	Low	High	Upholding religious doctrine; maintaining moral authority; community cohesion; avoiding perceived Western influence; maintaining their influence over public and political life.	Dialogue & Counter-Narratives (Difficult): Identify progressive religious voices; emphasize shared values (e.g., compassion, justice); challenge harmful interpretations of scripture; highlight the negative social consequences of discrimination; engage in interfaith dialogue where possible (often a long-term, challenging strategy).
Community structures and gatekeepers (Chiefs, Balozi, Village Elders etc.)	Local-level leaders and custodians of community norms. They are often the first point of contact for disputes and hold significant influence over local public opinion and social order.	Mixed (Their position can range from supportive to actively hostile, often reflecting traditional, cultural, and religious beliefs)	High (Their acceptance or rejection of LGBTIQ+ individuals directly impacts safety and access to justice at the grassroots level).	High (They can either facilitate conflict resolution and protection or incite violence and discrimination, directly influencing outcomes for LGBTIQ+ community members).	Maintaining social cohesion; upholding traditional values; resolving local disputes; managing community perception; dealing with "foreign" or "non-traditional" ideas.	Sensitization & Dialogue: Conduct culturally-sensitive training and dialogue sessions to challenge prejudice and promote human rights principles. Empowerment: Work with and train progressive community leaders to act as allies and champions for inclusive values. Partnership: Involve them as key partners in community-based interventions to ensure local buy-in and sustainability.
International Human Rights Organizations	Capacity to fund research; support clamor for legal reforms; leverage international pressure on governments.	Strongly Supportive (Advocates for universal human rights)	Medium	Medium	Promoting universal human rights standards; accountability for human rights violations; influencing donor policies; providing technical assistance to local partners; documenting abuses.	Collaboration & Leverage: Partner with local advocacy groups for research and joint campaigns; use their international platforms to exert diplomatic and economic pressure; provide funding and technical support; share global best practices and legal precedents.





This stakeholder analysis is essential for perceiving the intricate and often conflicting dynamics at play in addressing police brutality against LGBTIQ+ persons in Kenya. At the core are the LGBTIQ+ Community and LGBTIQ+ Advocacy Organizations, both of whom are of high importance to the issue, as their lived experiences and advocacy efforts are critical for meaningful change. While advocacy organizations wield significant influence through their data, networks, and media engagement, the directly impacted LGBTIQ+ community possesses inherently low direct influence, underscoring their vulnerability.

Conversely, powerful institutions like The Police and the Ministry of Interior & Coordination of National Government hold substantial influence over policing priorities and resource allocation. However, their position is often resistant or conservative, making them significant obstacles to reform, often prioritizing 'order' or existing biases over the protection of minority rights. Similarly, Religious Leaders and Faith-Based Organizations, despite being of lower direct importance to policy implementation, exert immense societal and political influence, frequently driving anti-LGBTIQ+ sentiment that complicates efforts for legal and social reform.

Intermediate stakeholders, such as Policymakers and Legislators, the Judiciary, and the Media, represent a more mixed landscape. While some within these groups may be supportive or open to change, many remain neutral or resistant, often swayed by public opinion or political considerations. The Judiciary offers a potential avenue for rights enforcement through legal precedents, but its impact depends on strategic litigation and the willingness of the system to uphold human rights. The Media, though powerful in shaping public discourse, can either amplify or suppress LGBTIQ+ narratives, depending on the outlet's stance and journalistic practices.

Finally, International Human Rights Organizations play a supportive, albeit indirect, role. They leverage their capacity to fund research, support local advocacy, and exert international pressure, which can sometimes influence the Kenyan government's actions, particularly concerning its global image and donor relations.

3.4 ADVOCACY APPROACHES

The research's review findings indicate that a multi-faceted approach to advocacy is necessary to effectively address the challenges and advance equality for the LGBTIQ+ community in Kenya. These findings reveal a complex landscape where a single strategy, such as litigation, while achieving landmark victories, is not sufficient to overcome deep-seated legal and societal barriers.

Accountability mechanisms

- 1. Kenya National Commission on Human Rights (KNCHR):** Article 59(4) of the Constitution of Kenya provides for the membership, powers and functions of the Kenya National Commission on Human Rights; some of its functions include to: promote respect for human rights and develop a culture of human rights in the Republic; promote the protection and observance of human rights in public and private institutions; monitor, investigate and report on the observance of human rights in all spheres of life in the Republic; receive and investigate complaints about alleged abuses of human rights, except those relating to the violation of the principle of equality and freedom from discriminations under the gender and equality commission, and take steps to secure appropriate redress where human rights have been violated and; investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State organs.



- 2. National Gender and Equality commission (NGEC):** Article 248 of the Constitution of Kenya establishes the Kenya National Human Rights and Equality Commission⁹⁰, which was subsequently constituted as the Kenya National Human Rights Commission (KNCHR) and the National Gender and Equality commission⁹¹ (NGEC), as commissions and independent offices to provide oversight and play a watchdog role on issues touching on human rights and gender.
- 3. The Independent Policing Oversight Authority (IPOA) ACT, 2011:** IPOA was formed by an act of Parliament to provide for civilian oversight of the work of the Police; to establish the Independent Policing Oversight Authority; to provide for its functions and powers. Part of its functions include: to investigate any complaints related to disciplinary or criminal offences committed by any member of the Service and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief; monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the Service in response to complaints against the law enforcement officers and keep a record of all such complaints; conduct inspections of Police premises, including detention facilities under the control of the Service and; review the patterns of Police misconduct and the functioning of the internal disciplinary process amongst some of its functions.
- 4. Internal Affairs Unit:** The Internal Affairs unit, within National Police Service (NPS) is under the Ministry of Interior & Coordination of National Government. They too like IPOA have the mandate to inter alia receive and investigate complaints against the police.

3.5 ADVOCACY STRATEGIES

The most effective advocacy actions are those that combine legal, institutional, and public advocacy, creating a synergistic effect that addresses the problem from multiple angles. This integrated approach, which leverages constitutional protections to challenge discriminatory practices while simultaneously fostering a more inclusive public environment, is essential to moving beyond fragmented efforts and achieving sustainable reform.

Table 2 below provides the proposed advocacy strategies, the issues they address and the expected outcomes.

⁹⁰ <https://www.knchr.org/About-Us/Establishment>

⁹¹ National Gender and Equality commission



Table 2: Advocacy strategies, issues and expected outcomes

Advocacy strategy	Issue	Expected Outcome
Public Interest Litigation/ Strategic litigation	Decriminalization of Same- Sex Relations	Repeal of Sections 162 (a) (c) and 165 of the Penal code that criminalize consensual same sex relations, and any other retrogressive laws. This decriminalization is seen as crucial to ending the systematic discrimination, violence and lack of protection faced by LGBTIQ+ individuals
Sensitization of judicial officers	Judicial interpretation of grey areas of the law	
Lobby for comprehensive equality legislation and policy reform	Protective Legal and policy environment.	A comprehensive anti-discrimination Law that explicitly protects individuals based on their sexual orientation and gender identity.
Sensitization & Roundtable engagements of NPS, Prosecutors and other accountability structures, e.g., IPOA, IAU, CPA)	Effective Investigation and Prosecution of Perpetrators.	Accountability for those who commit human rights violations against LGBTIQ+ individuals, whether they are state or non-state actors. This includes effective investigation of perpetrators, particularly law enforcement officers involved in the abuse.
Know your Rights Sensitization with LGBTIQ+ persons	Access to Justice.	LGBTIQ+ persons have effective access to justice and remedies for abuses they suffer. This includes the ability to file complaints against Police officers without fear of retribution.
Advocate for more funding for legal aid initiatives	Fostering Civic spaces free of stigma and reprisals.	An environment where LGBTIQ+ individuals and organizations can operate freely without fear of stigma, reprisals or criminal prosecution.
Human rights monitoring and Shadow reporting	Lack of compliance with International and Regional Human Rights obligations	Kenya's compliance with International and Regional Human Rights obligations. Accountability and Oversight
Training and sensitization for the Police on Sexual and Gender Diversities and human rights standards.	Target the underlying heteronormative assumptions within The law enforcement officer's training, policies and culture.	Deconstruct Heteronormativity within Institutions and entrench human rights-based approaches. Implementing mandatory training for the police on human rights, discrimination and respectful engagement with LGBTIQ+ community.
Capacity building for LGBTIQ+ Affirming Policing.	Discrimination and human rights abuses by law enforcers against LGBTIQ+ persons.	Development of LGBTIQ+ Affirmative Policing policies, protocols, standard practices and operating procedures for implementing laws and handling complaints by LGBTIQ+ persons.
	Equality and Non-Discrimination.	Enacting a comprehensive equality and nondiscrimination Law that enhances protection against SOGIE- related violence
Advocate for increased Resource Allocation	Limited institutional capacity	Providing adequate funding to the Kenya National Commission on Human Rights KNCHR) to enable it to fulfil its mandate and protect Human Rights Defenders. Strengthening independent oversight mechanisms for The Police (Civilian oversight bodies) to investigate and prosecute police misconduct and brutality against LGBTIQ+ individuals.
Public awareness campaigns	Limited Public Awareness and Education.	Community sensitization through Public barazas, town hall meetings and religious dialogue sessions targeting grassroots engagement with culturally sensitive content.



		School-based intervention by integrating human rights and sexual diversity into civic education curricula at all levels of education. Media and storytelling by using documentary films, radio programs and social media campaigns to humanize LGBTIQ+ experiences and counteract misinformation. Legal Empowerment - Legal Aid Clinics, partnering with the Law Society of Kenya, individual Advocates, law schools and pro bono networks to offer representation and paralegal support in LGBTIQ+ cases.
Media campaigns	Skewed reporting	Documenting and exposing abuses based on sexual orientation and gender identity worldwide.
Institutional and Policy Engagement	Fragmented Approaches	Holding Stakeholder Forums convening KNCHR, IPOA, the judiciary, NPS, NGAO and county Government for constant targeted periodic reform forums aimed at addressing and discussing challenges and reforms for LGBTIQ+ community.
	County – Level exclusion	Embedding LGBTIQ+ considerations into County Integrated Development Plans (CIDPs) and ensuring local equity committees are inclusive.
	Movement building and coalition work	Strengthening Local Network by Supporting emerging Community – Based Organizations (CBOs) through capacity- building, strategic planning and access to funding pipelines and building Regional Alliances, collaborating with the East African Advocacy Organizations to influence policy positions at the AU, EAC and UN levels using human rights charters to cajole skeptics to compliance.
Research, data collection and Documentation.	Limited data on violence, discrimination and human rights abuses against LGBTIQ+ persons by the police.	Availability of accurate data on violence, discrimination and human rights abuses against LGBTIQ+ persons by law enforcers to inform targeted interventions and advocacy.
Monitoring, Evaluation and Learning (MEL)		Designing measurable indicators to track reporting rates, legal wins, perception changes and public discourse. Using both qualitative (community scorecards, testimony collections) and quantitative (Surveys, incident tracking) tools to assess progress.

RECOMMENDATIONS

4.0 RECOMMENDATIONS

Based on the comprehensive desktop review which includes an analysis of legal instruments, judicial decisions, and reported abuse cases, the following recommendations are proposed. These recommendations are designed to address the systemic failures and institutional gaps that perpetuate human rights abuses against the LGBTIQ+ community in Kenya.

Table 3: Recommendations, actionable steps and target audience

Recommendations	Actionable Next Step	Target Audience
Challenge the Registration Barrier	Launch a targeted constitutional challenge against the Non-Governmental Organizations Co-ordination Board (NGO Board)/ Registrar of Societies to affirm the Supreme Court's ruling and compel the registration of all LGBTIQ+ organizations whose applications were previously or are currently denied solely on the basis of their advocacy.	LGBTIQ+ HROs & Civil Society Lawyers
Law reform	Launch Strategic Litigation to obtain a definitive court ruling that interprets "non-discrimination" (Article 27(4)) to explicitly include sexual orientation and gender identity (SOGIE), thereby compelling the Legislature to formalize the protection through constitutional amendment or comprehensive anti-discrimination legislation.	LGBTIQ+HROs, Civil Society Lawyers, KNCHR.
	Develop and Table a Constitutional Amendment Bill to explicitly add "sexual orientation" and "gender identity" as prohibited grounds for discrimination under Article 27(4).	Members of Parliament (MPs) & Law Reform Commission
Judicial Practice		
Mandate Constitutional Application	Issue a practice note or circular to all courts requiring judges and magistrates to consistently prioritize and apply the progressive principles of the 2010 Constitution and international human rights law over narrow, colonial-era interpretations in all cases concerning LGBTIQ+ individuals and human rights violations.	Chief Justice & Judicial Training Institute (JTI)
Policy and Operational Directives		
Establish a SOGIE/ LGBTIQ+ Focal Point Network	Designate a specialized, high-ranking officer in every county/major police station to serve as a LGBTIQ+/SOGIE Liaison/Focal Point officer. This individual will be the designated contact for LGBTIQ+ HROs, receive specialized training, and be responsible for overseeing SOGIE-related case intake and ensuring adherence to non-discrimination directives.	Inspector General of Police (IGP) & IPOA
Implement a Zero-Tolerance Policy	Issue a policy directive ensuring that all files involving alleged law enforcement officers' misconduct against LGBTIQ+ individuals are treated as priority cases and that prosecution is pursued aggressively when evidence warrants, thereby demonstrating a clear commitment to accountability.	Office of the Director of Public Prosecutions (ODPP)

Issue Binding Policy on Abusive Practices	Issue a clear, mandatory, and publicly accessible directive to all commanding officers that explicitly prohibits arbitrary arrests, forced genital examinations, and mandatory HIV testing, establishing these acts as severe disciplinary infractions.	KNCHR & LGBTIQ+ HROs
Public Engagement and Civil Society Strengthening		
Integrate Human Rights Monitors	Develop and fund a rapid-response team of community-based human rights monitors (HRMs) who can be immediately dispatched to police stations, detention centers, or hospitals following a reported LGBTIQ+ related abuse to document evidence, ensure legal counsel, and monitor police adherence to due process.	KNCHR & LGBTIQ+ HROs
Establish a Legal Defense Fund	Create a dedicated, sustainable Legal Defense Fund specifically for LGBTIQ+ victims of police abuse and arbitrary detention to ensure immediate access to pro-bono legal counsel for bail applications and defense against unconstitutional charges.	International Donors & HROs
Training and curriculum		
Integrate LGBTIQ/ SOGIE into law enforcement officers training curriculum & Civic Education	Revise and integrate a curriculum module on human rights and sexual diversity into police curriculum and civic education at all levels of schooling to promote inclusion and counteract prejudice.	Training and curriculum National Police College, Ministry of Education & Kenya Institute of Curriculum Development (KICD)
Public Awareness and Campaigns		
Develop Mass Media Counter-Narratives	Fund and disseminate culturally sensitive media campaigns (documentaries, radio programs, social media messaging) to humanize LGBTIQ+ individuals experiences and actively counteract the misinformation that fuels hostility and violence.	Government/State Agencies (e.g., KNCHR, Ministry of Information) & Civil Society
Victim Support Services		
Establish a Referral Network for Victims/ survivors	Map, vet, and formally establish a nationwide referral network of LGBTIQ+-friendly services (legal, medical, psychological support) and publicize this network so that duty-bearers (police, hospitals) can appropriately refer victims/survivors	Ministry of Health & Civil Society Organizations (CSOs/HROs)



Final Call to Action

We issue an urgent call to all key duty-bearers:

- 1. For the law enforcement officers and Justice Sector:** Immediately implement mandatory SOGIE training, establish the dedicated reporting mechanism, and ensure that IPOA, IAU and the ODPP have the resources and political independence to enforce a zero-tolerance policy against discriminatory law enforcement officers' misconduct.
- 2. For Human Rights Organizations and Lawyers:** Urged to intensify strategic litigation that advances jurisprudence for all LGBTIQ+ organizations, thereby strengthening the civil society infrastructure and ensure inclusion.
- 3. For Government and Civil Society:** Collaborate on sustained, culturally sensitive public education campaigns and integrate human rights values into civic education to dismantle the prejudice that fuels violence at the grassroots level.

Until the state prioritizes the safety and dignity of all its citizens, including the LGBTIQ+ community, the foundational promise of the Kenyan Constitution remains unfulfilled. The recommendations proposed herein are not merely suggestions, but non-negotiable steps toward achieving a truly inclusive and just society.

4.1 CONCLUSION

Kenya's human rights landscape for LGBTIQ+ individuals present a profound paradox: a progressive 2010 Constitution and adherence to international human rights treaties that are undermined by colonial-era penal codes. This scenario creates a fertile ground for law enforcement officers abuse, despite the existence of instruments that should, in theory, offer protection. Persistent challenges stemming from these outdated laws, the inherent lack of specificity in many progressive legal instruments, and the resultant vulnerability of the LGBTIQ+ community to abuse, particularly at the hands of law enforcement officers. As further discussed in the section on patterns of LGBTIQ+ abuse by the law enforcement officers below, this ambiguity is frequently exploited by the Law enforcement, leading to systemic harassment, abuse, and a pervasive sense of insecurity for LGBTIQ+ individuals, fundamentally undermining their ability to enjoy the full spectrum of their human rights.

Moreover, other legal instruments, while seemingly neutral, can be weaponized. The Computer Misuse and Cybercrimes Act, 2018, for instance, intended to combat online crime, can be misapplied to target LGBTIQ+ individuals for expressing their identities online, leading to cyberbullying, doxing, and offline violence. Similarly, the Persons Deprived of Liberty Act, 2014, while offering general protections, fails to protect transgender persons or persons of non-conforming gender by not explicitly providing for their distinct needs in detention facilities, exacerbating their vulnerability to violence and indignity.

This lack of explicit enumeration means that while "pro-LGBTIQ+ crusaders can use [Article 27] to champion for their rights," such advocacy relies on expansive interpretations by the judiciary, which are not always guaranteed as the Kenyan jurisprudence on LGBTIQ+ rights presents a landscape of both significant progress and persistent contradiction. While landmark decisions like the Supreme Court's ruling in **NGO's Coordination Board vs Eric Gitari & 5 others** affirmed the constitutional right to freedom of association for LGBTIQ+ persons, thereby securing a legal space



for advocacy, this victory remains a narrow one as some judicial interpretations have narrowly focused on the literal wording, dismissing claims of discrimination against LGBTIQ+ individuals on the grounds that the laws apply to "any person" or "any male person," rather than specifically targeting a sexual orientation. The landmark supreme court decision thus exists in stark contrast to the High Court's decision upholding the Penal Code's criminalization of same-sex conduct in **EG & 7 Others -vs- Attorney General**. This interpretive ambiguity allows for continued marginalization and denial of rights.

This situation, where organizations can exist but their members' intimate lives are criminalized, creates a precarious and often dangerous environment. Nevertheless, the courts have been a crucial barrier against some of the most deplorable abuses, as seen in the cited case of COL & Another, which declared forced anal examinations unconstitutional. These judicial decisions, while not always providing full protection, underscore the judiciary's pivotal, albeit cautious, role in navigating the tensions between constitutional principles and societal norms, and highlight the ongoing struggle to translate legal theory into lived equality for all Kenyans. This report conclusively demonstrates that the human rights of the LGBTIQ+ persons in Kenya continue to be severely undermined by a cycle of institutional failure and societal prejudice. A critical systemic gap in the complicity of the Law enforcement, through harassment, arbitrary arrests, and abusive investigation tactics, which effectively weaponizes colonial-era penal laws to stifle the fundamental constitutional rights of LGBTIQ+ persons and Human Rights Defenders (HRDs).



ANNEXES

5.0 ANNEXES

List of Cases

1. ***Baby A (Suing though the mother EA) & Another -vs- the Attorney General & 6 Others*** [2014] eKLR (Petition no. 266 of 2013) High Court of Kenya at Nairobi on 5th December 2014
2. ***COL & Another -vs- Resident Magistrate- Kwale Court & 4 Others*** [2016] eKLR (Civil appeal No. 56 of 2016), Court of Appeal at Mombasa on 22nd March 2018
3. ***EG & 7 Others -vs- Attorney General; DKM & 9 Others (interested parties); Katiba Institute and Another (Amicus Curiae)*** 2019 eKLR (Petition 150 & 234 of 2026 (consolidated), High Court of Kenya at Nairobi on 24th May 2019
4. ***NGO's Coordination Board vs Eric Gitari & 5 others*** [2023] Petition 16 of 2019 Supreme Court of Kenya
5. ***Republic v Kenya National Examinations Council & another Ex-Parte AMI [2014] KEHC 8265 (KLR) (High Court, 2014)***
6. ***the RM v. Attorney General & 4 others, 2019, eKLR (High Court, Petition No. 433 of 2018)***
7. ***SC v Director of Public Prosecution & 3 others; Amka Africa Justice Initiative & Another (Interested Parties)*** (Petition 15 of 2019) [2025] KEHC 11929 (KLR) High Court at Eldoret on 12th August 2025.



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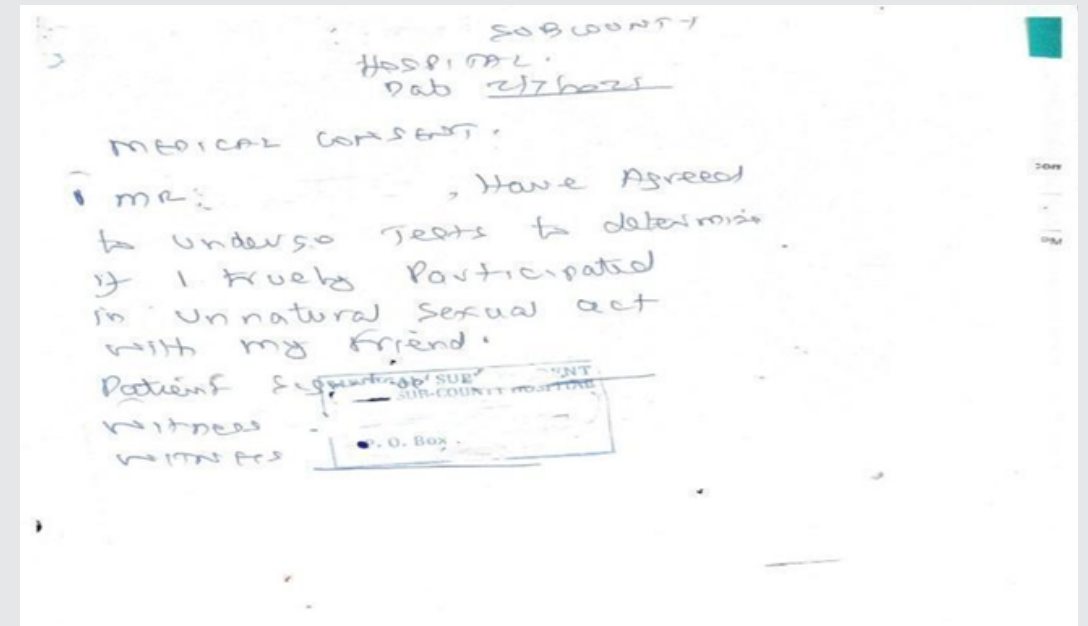
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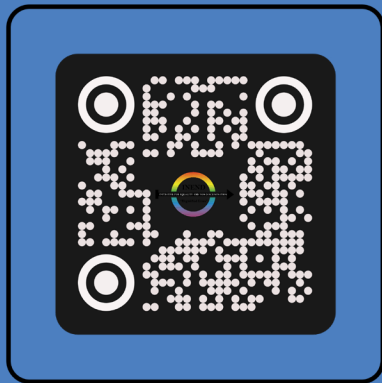


"Consent" form signed by one suspect while under police custody



ABOUT US

Initiative for Equality and Non Discrimination (INEND) is a LBQ women-led, values-driven, not-for-profit organization advancing justice, inclusion, and the protection of human rights in Kenya. Founded in 2015, INEND works at the intersection of movement building and social transformation, recognizing that achieving equality requires both strong legal protections and shifts in the social norms that shape attitudes toward gender and sexuality. INEND engages communities, civil society, and state and non-state actors to challenge stigma and foster inclusive values, while convening activists and institutional stakeholders to strengthen collective action. Through capacity support to LBQ-led initiatives, strategic communication and storytelling, and the production of research and evidence, INEND amplifies LBQ voices, informs advocacy, strengthens accountability, and contributes to a broader movement working to transform systems and build a society where LGBTQ+ persons live with dignity and participate fully in social, political, and economic life.



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