



Home Office

Country Information and Guidance

Kenya: Sexual orientation and gender identity

Version 1.0

22 March 2016

Preface

This document provides country of origin information (COI) and guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained within this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please email [the Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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Guidance

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1. Introduction

1.1 Basis of Claim

- 1.1.1 Fear of persecution by the authorities and/or non-state actors because of the person's actual or perceived sexual orientation and/or gender identity.

1.2 Other points to note

- 1.2.1 This instruction refers to lesbian, gay, bisexual and transgender (LGBT) persons collectively, although the experiences of members of each group may differ.
- 1.2.2 Decision makers should also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#); [Gender Identity Issues in Asylum Claims](#); and [Gender Recognition in Asylum Claims](#).

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2. Consideration of Issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see sections 4 and 5 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

2.2 Particular social group

- 2.2.1 LGBT persons can be said to form a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention as they share a common characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society.
- 2.2.2 Although LGBT persons form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether a particular person will face a real risk of persecution on account of their membership of such a group.

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2.3 Assessment of risk

- 2.3.1 Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as an LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting

partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation if returned, decision makers must consider why the person will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his or her own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. But if the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded. (see Section 3.2 of the Asylum Instruction on [Sexual Identity Issues in the Asylum Claim](#))

- 2.3.2 In the Court of Justice of the European Communities judgement for the joined cases of [C-199/12 to C-201/12](#), dated November 2013 ([2013] [WLR\(D\) 427](#), [2013] [EUECJ C-199/12](#)), the Court held that the criminalisation of homosexuality per se does not constitute persecution, although this is different if the law is actually applied. (Court (Fourth Chamber): paragraph 2).

State treatment

- 2.3.3 Same-sex sexual activity between men is criminalised with a penalty of up to 21 years in prison but it is not clear if there have been any convictions. Additionally, local by-laws in Mombassa add further criminal sanctions against homosexuality. The law, however, does not make specific mention of women or transgender persons. On two occasions in 2014, members of parliament proposed anti-gay bills but to date there have been no further developments. See [State treatment](#)
- 2.3.4 The government has stated that it will not decriminalise same-sex conduct, but has committed to review the penal code to align it with the constitution and to adopt an anti-discrimination law providing protection, irrespective of a person's sexual orientation or gender identity. See [State treatment](#)
- 2.3.5 Following a April 2015 high court ruling that the National Gay and Lesbian Human Rights Commission was entitled to register with the government as an NGO, the government also permitted some LGBT advocacy organisations to register and undertake activities. See [State treatment](#)
- 2.3.6 The police do not generally target and prosecute LGBT persons and there have been few, if any, convictions of same-sex activity. The police have made some arrests of LGBT persons but this is usually followed by release shortly afterwards. The police have reportedly harassed LGBT persons, or those believed to be so, and have subjected some of these individuals to blackmail and rape. Public order laws have been used by the police as a means to arrest LGBT persons, especially those working in the sex industry. There have, however, also been some occasions where the police have protected LGBT persons against mob attack. See [State treatment](#)

Societal treatment

- 2.3.7 Societal attitudes are generally intolerant, with one study revealing that 90% of Kenyans are against homosexuality. LGBT persons were vulnerable to harassment, blackmail, intimidation, and discrimination in employment -

education, housing and accessing healthcare. LGBT people have also been victims of individual acts of violence. See [Societal treatment](#)

- 2.3.8 Generally religious leaders have expressed homophobic views, however, some have welcomed LGBT persons into their congregations. There is also evidence that the media has taken an increasing interest in LGBT issues, sometimes reporting objectively, but some media also engaging in anti-LGBT opinion pieces. See [Societal treatment](#)
- 2.3.9 The size, location and openness of an LGBT 'community' in Kenya is unclear, although sources indicate that there is a LGBT community in parts of Nairobi where individuals are able to express their sexual/gender identities with some freedom. However, in general the level of discrimination and abuse faced by LGBT persons is not such that it will reach the level of being persecutory or otherwise inhuman or degrading treatment. See [Societal treatment](#)

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2.4 Effective protection

- 2.4.1 Where the person's fear is of ill-treatment/persecution by non-state actors, including rogue state actors, state protection may not always be available or effective. The police have reportedly responded to some cases of violence against LGBT individuals by refusing to take statements, or provide assistance, but there have also been incidences where the police have provided protection.
- 2.4.2 A number of LGBT NGO groups are active and may be able to assist a LGBT person in accessing protection. See [NGO activities](#) and [Police protection against violent attacks](#).
- 2.4.3 The onus is therefore on the person to demonstrate that protection is not available. See [State treatment](#), [Arrests and prosecutions for same-sex activity](#) and [Police protection against violent attacks](#)
- 2.4.4 For further information on assessing the availability or not of state protection, see section 8.1 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.5 Internal relocation

- 2.5.1 Where there is a risk of persecution or serious harm from a non-state actor, including rogue state actors, decision makers should consider each case on its individual circumstances to ascertain if the risk is local and could be removed by relocation. See [State treatment](#), [Societal treatment](#) and [Freedom of movement](#).
- 2.5.2 Decision makers must also take account that the Supreme Court in the case of [HJ \(Iran\)](#) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 2.5.3 For further guidance on internal relocation, see section 8.2 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#)

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2.6 Certification

- 2.6.1 Kenya is designated in respect of men only. Where a claim from a LGBTI person falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.6.2 For further information on certification, see the [Appeals Instruction on the Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#)

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3. Policy summary

- 3.1.1 Same-sex sexual activity is criminalised for men, however, there is no specific reference in the law to women or transgender persons.
- 3.1.2 The police have arrested and detained some LGBT persons, particular those involved in sex work, but there have been few, if any, convictions under the anti-LGBT laws. There have also been reports of police harassment, intimidation and physical abuse of LGBT persons.
- 3.1.3 LGBT persons face widespread discrimination and sometimes violence from societal actors, with those persons involved in sex work particularly vulnerable. There is no evidence of systematic persecution from state and non-state actors. Those individuals who claim to be at risk of persecution need to demonstrate that they are at real risk. Each case needs to be considered on its individual merits.
- 3.1.4 Effective protection is unlikely to be available in all cases but will depend on the facts of the individual case.
- 3.1.5 Internal relocation may be an option if the threat is localised and from a non-state actor, and depending on the person's individual circumstances.

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4. Legal rights

4.1 The penal code

4.1.1 The laws that relate to same-sex sexual activity are contained in the Kenyan Penal Code, which stated:

‘162. Any person who -

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony and is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if -

(i) the offence was committed without the consent of the person who was carnally known; or

(ii) the offence was committed with that person’s consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.

‘163. Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.

‘164. (Repealed by 3 of 2006.)

‘165. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.’¹

4.1.2 The United States State Department ‘Country Reports on Human Rights Practices for 2014’, published on 25 June 2015, stated:

‘The constitution does not explicitly protect LGBT persons from discrimination on the basis of sexual orientation or gender identity. The penal code criminalizes “carnal knowledge against the order of nature,” which is interpreted to prohibit consensual same-sex sexual activity and specifies a maximum penalty of 14 years’ imprisonment. A separate statute specifically

¹ National Council for Law Reporting, Kenyan Penal Code (revised 2009 version), [http://www.kenyalawreport.co.ke/Downloads/Acts/Penal%20Code%20Cap%2063\(%202009Final%20Final\).pdf](http://www.kenyalawreport.co.ke/Downloads/Acts/Penal%20Code%20Cap%2063(%202009Final%20Final).pdf), Date accessed: 3 December 2015

criminalizes sex between men and specifies a maximum penalty of 21 years' imprisonment.' ²

4.2 The penal code and lesbians

4.2.1 A 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated: 'Sections 162 and 165 [of] the Kenyan Penal Code, while not making explicit reference to sexual conduct between males, have consistently been interpreted as criminalising same-sex intimacy between men. These laws continue in force today.' ³

4.2.2 The ERT submission to the United Nations Human Rights Council also stated: 'Moreover, while same-sex conduct between women is not interpreted as prohibited under the Penal Code, lesbians – like gay men – face considerable prejudice and discrimination, in part because of stigma associated with the criminalisation of same-sex relationships.' ⁴

4.3 Legal right of LGBT NGOs to register with the government

4.3.1 A 'Guardian' article, 'Homophobia in Kenya: is a change going to come?', dated 29 June 2015, noted:

'Since 2012, the National Gay and Lesbian Human Rights Commission has applied five times to register under the nation's Non-Governmental Organisations Co-ordination Act. Up until now, it has always been rejected on grounds that Kenya's penal code criminalises gay and lesbian associations. But on 24 April [2015] this year, Kenya's high court ruled in favour of the gay community, arguing that refusing to register the organisation was an infringement of the constitutional rights of association for the LGBT community. In the highly anticipated ruling the judges said that the law cannot be interpreted with a bias towards religion or the perceived moral standing of society.' ⁵

See also [Government recognition of LGBT NGOs](#)

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² United States State Department 'Country Reports on Human Rights Practices for 2014', Kenya section, 25 June 2015, (section 6),

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370>,

Date accessed: 13 August 2015

³ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, para 15,

<http://www.refworld.org/country,...KEN,,54c0f1444,0.html>, Date accessed: 30 September 2015

⁴ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, para 15,

<http://www.refworld.org/country,...KEN,,54c0f1444,0.html>, Date accessed: 25 September 2015

⁵ 'The Guardian', 'Homophobia in Kenya: is a change going to come?', 29 June 2015,

<http://www.theguardian.com/global-development-professionals-network/2015/jun/29/homophobia-in-kenya-nairobi-prejudice-acceptance>, Date accessed: 20 August 2015

5. State treatment

5.1 Government position

5.1.1 A 'Guardian' article, 'Homophobia in Kenya: is a change going to come?', dated 29 June 2015, quoted what Kenya's deputy president William Ruto stated in a speech at a church service in Nairobi: "We would stand with religious leaders to defend our faith and our beliefs. We would not allow homosexuality in our nation, as it violates our religious and cultural beliefs". The deputy president's views may seem outlandish, but sadly reflect the felling [sic] of a large percentage of the population.'⁶

5.1.2 A Gay Star News report, 'Kenya president dismisses US calls for gay rights', dated 25 July 2015, stated:

'President Uhuru Kenyatta and Barack Obama agree on many things. However, they are miles apart on LGBTI rights... Today, 25 July, he held a joint press conference with Kenya's chief executive. While the two politicians focused on areas of agreement, including fighting terrorism and the US President's Emergency Plan for AIDS Relief (PEPFAR), there remains no common ground on gay equality.

'After the two presidents made opening remarks, a reporter asked Obama to comment on Kenya's policies toward its LGBTI citizens.

"...As an African-American in the United States, I am painfully aware of the history of what happens when people are treated differently, under the law,' Obama said, according to a transcript released by the White House... If somebody is a law-abiding citizen who is going about their business, and working in a job, an obeying the traffic signs — (laughter) — and doing all the other things that good citizens are supposed to do, and not harming anybody — the idea that they are going to be treated differently or abused because of who they love is wrong. Full stop."

'Kenyatta countered his country does not have the same vision about its LGBTI citizens.

"...There are some things that we must admit we don't share — our culture, our societies don't accept. It is very difficult for us to be able to impose on people that which they themselves do not accept,' Kenyatta said, according to the transcript.

"This is why I repeatedly say that for Kenyans today, the issue of gay rights is really a non-issue," he continued. "We want to focus on other areas that are day-to-day living for our people: The health issues that we have discussed with President Obama. These are critical. Issues of ensuring inclusivity of women, a huge section of society that is normally left out of the mainstream of economic development. What we can do in terms of infrastructure; what we can do in terms of education; in terms of our roads; in

⁶ 'The Guardian', 'Homophobia in Kenya: is a change going to come?', 29 June 2015, <http://www.theguardian.com/global-development-professionals-network/2015/jun/29/homophobia-in-kenya-nairobi-prejudice-acceptance>, Date accessed: 20 August 2015

terms of giving our people power, encouraging entrepreneurship. These are the key focuses.”

‘Before Obama’s trip, Kenyan Deputy President William Ruto, criticized the president for supporting LGBTI rights. A number of Kenyan politicians and religious leaders warned Obama not to bring up LGBTI issues while in Kenya, where gay sex is punishable by up to 14 years in prison and 90% of the country believe homosexuality is wrong.’⁷

5.1.3 The Human Rights Watch report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, published in September 2015, stated:

‘Unlike leaders elsewhere in Africa that have deployed homophobia in bids for political capital, Kenyan President Uhuru Kenyatta, like his predecessor, Mwai Kibaki, has largely maintained silence in public debates around LGBT rights. Only in July 2015 did Kenyatta first publicly comment on LGBT rights in the context of a visit from US President Barack Obama, calling gay rights a “non-issue,” in an apparent effort to avoid heated debate...Deputy President William Ruto has repeatedly, both before and after being elected to his current position, expressed views that amount to homophobia. Before assuming the vice presidency, Ruto, as a member of parliament, led the campaign opposing Kenya’s progressive new constitution in 2010, claiming that the constitution’s equality provisions would legalize same-sex marriage. During a 2013 vice-presidential debate, Ruto compared homosexuals to “dogs.” Following the court judgment compelling the NGO Board to register the National Gay and Lesbian Human Rights Commission, Ruto stated during a church service in May 2015 that, “There is no room for gays and those others in Kenya.” When the US Supreme Court ruled in favor of marriage equality in June 2015, Ruto condemned the ruling at another church service, saying, “We hear that America has legalized homosexuality and other dirty things.”

‘On two occasions in 2014, members of parliament proposed harsh anti-gay bills. To date, nothing has come of their proposals.

‘In Kwale County, Governor Salim Mvurya made homophobic remarks following the arrests of the two men on charges of same-sex conduct. According to media reports, he referred to homosexuality as “un-African.”’⁸

5.1.4 The United States State Department ‘Country Reports on Human Rights Practices for 2014’, published on 25 June 2015, stated:

‘During the year an “antigay” caucus was formed in parliament, although its only action was to inquire why the government had not taken stronger action against LGBT individuals and organizations. The National Assembly majority

⁷ Gay Star News, ‘Kenya president dismisses US calls for gay rights’, 25 July 2015, <http://www.gaystarnews.com/article/kenya-president-dismisses-us-calls-for-gay-rights/>
Date accessed: 6 January 2016

⁸ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, Background pages 12-13, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf,
Date accessed: 6 January 2016

leader stated that homosexuality was as serious an issue as terrorism but resisted calls for new anti-LGBT legislation.’⁹

5.1.5 The Human Rights Watch (HRW) report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, further stated:

‘The Kenyan government has adopted a nuanced position on LGBT rights. As noted in Section I, the colonial-era Penal Code prohibits same-sex conduct, but successive parliaments have declined to follow in the footsteps of neighboring countries that have enacted new, even harsher legislation. The law on “unnatural offenses” is rarely applied, though the February 2015 arrests in Kwale constitute a worrying exception. Senior government officials, with the exception of the deputy president, rarely make openly homophobic or transphobic statements. But they have also shown little leadership in guiding the Kenyan public toward greater understanding and respect for LGBT people. Police respond to some acts of violence, but turn a blind eye to others; at times, police and county law enforcement officials exploit LGBT people’s vulnerability to commit crimes against them, including rape. While statements such as President Uhuru Kenyatta’s claim that LGBT rights is a “non-issue” could be interpreted as a rejection of fellow politicians’ efforts to legislate homophobia, they may also be construed as indifference toward ongoing violence and discrimination on the grounds of gender identity or sexual orientation.

‘During the January 2015 Universal Periodic Review process at the UN Human Rights Council in Geneva, the Kenyan government rejected a series of recommendations to decriminalize same-sex conduct. However, it accepted two recommendations that could go a long way toward improving respect for the human rights of LGBT people. These included: to “review its Penal Code to align it with the constitution,” and to “adopt a comprehensive antidiscrimination law affording protection to all individuals, irrespective of their sexual orientation or gender identity.” Because Kenya’s constitution upholds the right to privacy and the right to non-discrimination, a proper review of the Penal Code would likely find that sections 162, 163, and 165, which prohibit consensual same-sex conduct between adults, are out of step with the constitution.’¹⁰

5.1.6 The same report noted:

‘The Kenya National Commission on Human Rights, a governmental body, took a bold step in recommending the decriminalization of same-sex conduct. Other government bodies with mandates related to equality and the implementation of the constitution, including the National Gender and

⁹ United States State Department ‘Country Reports on Human Rights Practices for 2014’, Kenya section, 25 June 2015, (section 6),

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370>,

Date accessed: 13 August 2015

¹⁰ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p57, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf,

Date accessed: 12 January 2016

Equality Commission and the Attorney General's Office, should adopt similar positions.' ¹¹

5.1.7 The report continued:

'The Kenyan government has generally respected LGBT activists' right to freedom of expression, but there have been some efforts to stifle them... The Ministry of Health, in particular through NACC and NASCOP, has carved out a position in which it is perceived as an ally to the LGBT community. In February 2014, when anti-gay legislators called on the government to arrest gays, civil society activists asked health minister James Macharia to make a statement in support of LGBT rights. Macharia did so, pointing out that criminalization of same-sex conduct inhibits access to health services, stressing the government's responsibility to provide health services to all, and calling for a more sober debate. KEMRI, itself a government body, stressed in an interview with Human Rights Watch that Kenya is making rapid strides on addressing HIV among MSM, and that the simple fact that the government does not interfere in its work with MSM is already a positive starting point. A Patients' Rights Charter, published by the Ministry of Health in 2013, states that all patients have the "right to be treated with respect and dignity," although it is not uniformly upheld.

'Through their participation in trainings offered by civil society organizations and health agencies such as NASCOP, and ongoing dialogue with organizations such as PEMA Kenya, the police have taken initial steps toward improving their respect for LGBT rights. However, in an interview with Human Rights Watch in September 2014, a high-ranking Mombasa police official denied allegations of police abuse of male sex workers.' ¹²

5.1.8 The United States State Department 'Country Reports on Human Rights Practices for 2014', published on 25 June 2015, stated:

'During the year an "antigay" caucus was formed in parliament, although its only action was to inquire why the government had not taken stronger action against LGBT individuals and organizations. The National Assembly majority leader stated that homosexuality was as serious an issue as terrorism but resisted calls for new anti-LGBT legislation.' ¹³

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¹¹ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, p 58, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

¹² Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, pages 58-59, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 6 January 2016

¹³ United States State Department 'Country Reports on Human Rights Practices for 2014', Kenya section, 25 June 2015, (section 6), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370>, Date accessed 5 February 2016

5.2 Arrests and prosecutions for same-sex activity, police violence and harassment

5.2.1 The United States State Department 'Country Reports on Human Rights Practices for 2014', stated:

'Police detained persons under these laws [that relate to same-sex activities], particularly suspected sex workers, but released them shortly afterward. Statistics presented in the National Assembly in March [2014] indicated police had opened files on 595 "unnatural offenses" cases since 2010, including 49 in 2014. According to a 2014 report issued by the Gay and Lesbian Coalition of Kenya and the National Gay and Lesbian Human Rights Commission, between 2012 and 2014 there were eight prosecutions of gay men on indecency charges...LGBT organizations reported police more frequently used public order laws (e.g., disturbing the peace) than same-sex legislation to arrest LGBT individuals. Police frequently harassed, intimidated, or physically abused LGBT individuals in custody...Violence and discrimination against LGBT individuals was widespread. According to a report by journalist Denis Nzioka during the year, LGBT individuals were especially vulnerable to blackmail and rape by police officers and individuals who used LGBT websites to locate victims...There were reports of forced "medical examination" of LGBT individuals by the police and of forced medical treatment or exorcism to "treat" LGBT individuals.'

¹⁴

5.2.2 The Human Rights Watch report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', published in September 2015, stated:

'On February 18, 2015, police arrested two men in Kenya's coastal Kwale County and charged them with "unnatural offenses" and trafficking in "obscene material."...The police threatened the two men with violence to try to extract confessions, and doctors conducted forced anal examinations with the purported aim of proving whether the men had engaged in homosexual conduct. At the time of writing, the case against them was ongoing.

'It is unclear whether anyone has ever been convicted for consensual adult same-sex relations in Kenya. According to a list produced by former Inspector General of Police David Kimaiyo in 2014, over 500 people were convicted of "unnatural offenses" between 2010 and 2014. The National Gay and Lesbian Human Rights Commission (NGLHRC) conducted an initial analysis of the list and found that it conflated cases of bestiality and rape with cases allegedly involving consensual sex, all of which are categorized under the "unnatural offenses" provisions in the Penal Code. At the time of writing, NGLHRC had not yet determined whether there were in fact any convictions on the record based on consensual same-sex conduct.

'Human rights organizations report occasional cases in which LGBT people are arrested, often due to complaints from neighbors, or on the initiative of

¹⁴ United States State Department 'Country Reports on Human Rights Practices for 2014', Kenya, (section 6), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370#wrapper>, Date accessed: 12 August 2015

law enforcement officials seeking bribes. In most cases, they are released within a matter of days...Charges against gay men and transgender women on the grounds of sex work are more common.’¹⁵

5.2.3 An Institute for War and Peace Reporting (IWPR) article, ‘Kenya Seen as Refuge From Uganda’s Anti-Gay Hostility’, dated 2 August 2014, stated:

‘But despite an apparent reluctance within government to follow the hard-line example set by Uganda, there are still serious concerns about individual attacks and general discrimination.

‘Some say the Kenyan police, in particular, have a more aggressive stance on homosexuality in recent months as a result of the legal change in Uganda.

‘On July 6 [2014], police arrested more than 60 people at a gay-friendly nightspot in Nairobi.

‘According to a local advocacy group, a number of them were released on bail after being charged with being drunk and disorderly. Activists say this is a tactic the police sometimes employ since they find it hard to get evidence for formal charges under the law on homosexuality. This approach was confirmed by a police officer who spoke anonymously to IWPR.

‘LGBT activists fear the police are now more likely to target their community...Human rights advocates say that such fears are valid, and that police are unlikely to be sympathetic when LGBT people report threats or even attacks.’¹⁶

5.2.4 The United States State Department ‘Country Reports on Human Rights Practices for 2014’, stated:

‘Police frequently harassed, intimidated, or physically abused LGBT individuals in custody...According to a report by journalist Denis Nzioka during the year, LGBT individuals were especially vulnerable to blackmail and rape by police officers and individuals who used LGBT websites to locate victims...There were reports of forced “medical examination” of LGBT individuals by the police and of forced medical treatment or exorcism to “treat” LGBT individuals.’¹⁷

5.2.5 The 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated: ‘Though there have been few prosecutions under any of these Penal Code provisions in recent years, 18 gay men

¹⁵ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, page 17-18, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 8 October 2015

¹⁶ Institute for War and Peace Reporting, ‘Kenya Seen as Refuge From Uganda’s Anti-Gay Hostility’, ACR Issue 394, 2 August 2014, <http://www.refworld.org/country,...KEN,,53e0e3754,0.html>, Date accessed: 30 September 2015

¹⁷ United States State Department ‘Country Reports on Human Rights Practices for 2014’, Kenya, (section 6), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370#wrapper>, Date accessed: 12 August 2015

interviewed by ERT reported being harassed by police seeking to blackmail or extort money from them.’¹⁸

- 5.2.6 A ‘Voice of America’ report, ‘Kenyan Gays Battle Prejudice’, dated 1 February 2011, cited prominent gay rights activists, Denis Nzioka:

“‘Kenyans found guilty of sodomy, he explains, are usually fined and not imprisoned...As in some other African countries, lesbianism is legal in Kenya...But in the recent past Kenyan police have arrested some lesbians for “public indecency” or “gross misconduct” – a strategy, says Nzioka, for the police to collect bribes...He says most of these women, “fearing public shame,” pay the bribes. “The cop will say, ‘You know what, there is no need of taking this to the court. Just give me 5,000 or 10,000 (Kenya Shillings) and we’ll sort this out.’”¹⁹

- 5.2.7 The Human Rights Watch report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, stated:

‘LGBT people, too—particularly those who are engaged in sex work—face abuses at the hands of the police...Like female sex workers, male and trans sex workers are subjected to sexual abuse and extortion at the hands of police officers and county government law enforcement officials, known in Kiswahili slang as makanjoo (singular—kanjoo). Among the 39 interviewees who sometimes engaged in sex work, 15 reported cases in which police officers or makanjoo threatened to arrest them if they refused sex...County government law enforcement officials—a separate entity from the police—also rape and abuse male sex workers.’²⁰

5.3 Police protection against violent attacks

- 5.3.1 The Human Rights Watch (HRW) report, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, published in September 2015, stated:

‘Police play an ambiguous role. In some cases, they have protected LGBT people from mob violence—a role that is recognized and appreciated by LGBT activists on the coast—but they have not brought the perpetrators of violence to book. In other cases, they have outright failed in their responsibility to protect: refusing assistance to victims because of their presumed gender identity or sexual orientation, conducting arbitrary arrests, or even perpetrating violence themselves...Many LGBT victims of violence

¹⁸ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, (paragraph 15)

<http://www.refworld.org/country,...KEN,,54c0f1444,0.html>,

Date accessed: 30 September 2015

¹⁹ ‘Voice of America’, ‘Kenyan Gays Battle Prejudice’, 1 February 2011,

<http://www.voanews.com/content/kenyan-gays-battle-homophobia---115113734/157376.html>,

Date accessed: 18 August 2015

²⁰ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, II. Failure to Protect: Mob Attacks and Individual Acts of Violence on the Coast pages 32-33, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf,

Date accessed: 8 October 2015

believe they have no recourse, and that the police are just as likely to persecute them as to protect them.’²¹

5.3.2 The HRW report ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, also stated:

‘Police and other law enforcement officials have an obligation to provide assistance to LGBT people who are victims of crime, but do not always act accordingly. LGBT people are not unique in being denied adequate protection by the Kenyan police. Human Rights Watch has documented inadequate police protection in the case of terrorist attacks, interethnic violence, and other cases of serious violence. In some ways, LGBT people fare better with the police than other vulnerable groups...Too often, however, police on the coast have responded to cases of violence against LGBT individuals by treating the victims with stigma and discrimination, refusing to take statements or to provide assistance...Most LGBT people we interviewed reported being afraid of the police, and were unwilling to even attempt to file complaints.’²²

5.3.3 The same HRW report further stated:

‘On June 21, 2013, during what the Gay and Lesbian Coalition of Kenya (GALCK) later highlighted as a surge in apparent anti-LGBT violence, a gay man in Mombasa was slashed with a machete in his neck and throat by an unknown assailant. The victim survived the attack and received medical treatment. Jo, a lesbian friend of the victim, took him to Mombasa’s Central Police Station to file a report. But police refused to receive the case, said Jo: “They took the case lightly. They said ‘These gay men are thieves’ and said they could not handle the case. They did not take a report.”...The case of Bettina, the transgender woman whose food kiosk in Mombasa was ransacked by a mob in October 2014...,when she went to report the crime, police refused even to provide her with a case number, instead pressing her on whether she was male or female...In some cases, such as those documented above, police are clearly discriminating on the grounds of sexual orientation or gender identity, while in other cases they may simply be lax and unmotivated.’²³

5.3.4 A ‘Voice of America’ report, ‘LGBT Activist: Kenya More Tolerant, but Still Not Safe’, dated 8 May 2015, cited Kenyan lawyer Eric Gitari of the National Gay and Lesbian Human Rights Commission as stating that “that although rare, outbreaks of violence against homosexuals do still occur.”

²¹ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, pages 2-3, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 6 January 2016

²² Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, pages 30-31, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 8 October 2015

²³ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p 34,36,38, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

“One of our clients was stabbed with a bottle in his chest. And despite being stabbed with a bottle the police still arrested him instead of saving him, and charged him with sodomy,” he said.’²⁴

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5.4 Government recognition of LGBT NGOs

5.4.1 The United States State Department ‘Country Reports on Human Rights Practices for 2014’, stated: ‘Authorities permitted LGBT advocacy organizations to register and conduct activities. There were reports, however, that some organizations registered under modified platforms to avoid being denied registration by the government.’²⁵

5.4.2 A Human Rights Watch report, ‘Kenya: High Court Orders LGBT Group Registration’, dated 28 April 2015, stated:

‘The High Court of Kenya, in a groundbreaking decision, ruled on April 24, 2015, that members of a lesbian, gay, bisexual, and transgender (LGBT) rights group could formally register their organization, Human Rights Watch said today.

‘The High Court decision was issued in response to a petition filed by the National Gay and Lesbian Human Rights Commission (NGLHRC) to register under the Non-Governmental Organizations Coordination Board Act. The Non-Governmental Organizations Coordination Board, a government body, rejected the group’s request to register in March 2013. In denying the application, the board said that the name of the organization was “unacceptable,” and that it could not register it because Kenya’s penal code “criminalizes gay and lesbian liaisons.”

“The court decision is a significant victory for the LGBT community, not only in Kenya, but elsewhere in Africa where LGBT groups have faced similar obstacles to registration,” said Graeme Reid, LGBT rights director at Human Rights Watch...The court has granted the Kenya Christian Professional Forum, which had been enjoined to the case as an interested party and had made a submission opposing NGLHRC’s registration bid, leave to appeal the judgment to the Court of Appeal.’²⁶

5.4.3 A ‘Voice of America’ report, ‘LGBT Activist: Kenya More Tolerant, but Still Not Safe’, dated 8 May 2015, noted:

‘The Kenyan High Court — ignoring objections from a number of politicians and cultural leaders — has ruled that a gay and lesbian organization should

²⁴ ‘Voice of America’, ‘LGBT Activist: Kenya More Tolerant, but Still Not Safe’, 8 May 2015, <http://www.voanews.com/content/kenya-more-tolerant-but-still-not-safe/2760019.html>, Date accessed: 28 September 2015

²⁵ United States State Department ‘Country Reports on Human Rights Practices for 2014’, Kenya, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370#wrapper>, Date accessed: 12 August 2015

²⁶ Human Rights Watch, ‘Kenya: High Court Orders LGBT Group Registration’, 28 April 2015, <https://www.hrw.org/news/2015/04/28/kenya-high-court-orders-lgbt-group-registration>, Date accessed: 17 August 2015

be allowed to officially register. Things might be improving for the LGBT community in Kenya, but plenty of challenges still remain.

‘When Kenyan lawyer Eric Gitari went to register his legal aid organization, the National Gay and Lesbian Human Rights Commission, he was refused and told to find a less explicit name.

‘Instead, Gitari took the matter to court — and to the surprise of some Africa-watchers — he won. On April 25 the Kenyan High Court ruled that the NGLHRC should be allowed to officially register.’²⁷

See also [Legal right of LGBT NGOs to register with the government](#)

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5.5 Healthcare

5.5.1 The HRW report of September 2015 observed:

‘Health specialists concur that discrimination, violence, and criminal laws against LGBT people constitute a barrier to the effective prevention and treatment of HIV and AIDS...On Kenya’s coast, violence and discrimination against LGBT people have had a clear impact on HIV programming. In three of the mob attacks described above, violence or threats of violence from residents and local religious leaders caused health providers serving MSM to temporarily or permanently close their doors or shut down workshops. Even when the targets of attacks are individuals and not institutions, HIV prevention programming and adherence to treatment for HIV-positive people are adversely affected...Laws prohibiting same-sex conduct may also serve as a deterrent to health providers who might otherwise become engaged in HIV prevention efforts among key populations.’²⁸

5.5.2 The same report also noted that:

‘Kenya’s Ministry of Health is generally considered an ally in the struggle for LGBT equality. It has collaborated with civil society organizations to train healthcare providers on understanding and being sensitive to LGBT health issues. The National AIDS & STI Control Programme (NASCOP) under the Ministry of Health, in particular, takes violence and discrimination against LGBT people seriously and integrates rights initiatives into its programming. Most of the training programs have been implemented in Mombasa and Kilifi counties. The recent anti-gay violence and arbitrary arrests in Kwale signal the need to expand such programming to that county.NGO training of government officials.’²⁹

²⁷ ‘Voice of America’, ‘LGBT Activist: Kenya More Tolerant, but Still Not Safe’, 8 May 2015, <http://www.voanews.com/content/kenya-more-tolerant-but-still-not-safe/2760019.html>, Date accessed: 28 September 2015

²⁸ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p 39, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

²⁹ Human Rights Watch, ‘The Issue is Violence - Attacks on LGBT People on Kenya’s Coast’, September 2015, p 41, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf,

5.6 Transgender persons

5.6.1 The courts have made a significant judgment regarding the rights of transgender persons, as noted in a BBC News report, 'Kenya court victory for transgender activist Audrey Mbugua,' dated 7 October 2014:

'Kenya's high court has ordered the country's education authorities to amend the name on a school certificate of a woman who was born male.

'The name should be changed from Andrew Mbugua to Audrey Mbugua, it ruled.

'Audrey Mbugua has been battling to get recognition to live as a woman, says the BBC's Robert Kiptoo in Nairobi.

'This is a significant ruling for the transgender community in Kenya, a country with conservative views towards sexuality, he adds... The court gave the National Examinations Council 45 days to comply with the order to to [sic] change the name on her high school exam certificate, without marking her gender.

'Judge Weldon Korir said the council had failed to demonstrate why it could not make the changes she desired.

'The transgender activist had stunned many Kenyans with her decision to be recognised as a woman, our correspondent says.'³⁰

5.6.2 A Thomson Reuters Foundation report, 'Kenya's transgender warrior: from suicide bid to celebrity', dated 7 April 2015, provided more information about Audrey Mbugua and transgender persons in Kenya:

'Audrey Mbugua will not say whether it was a razor blade, pills or carbon monoxide that she used to try to kill herself.

'Born a male in Kenya and given the name Andrew, she felt trapped in the wrong body and started dressing in women's clothes while at university, attracting ridicule and rejection... Since a test case in 2013 to compel Kenya's examinations council to change the name on her school leaving certificate from Andrew to Audrey, Mbugua has become an unlikely celebrity, using interviews to promote transgender rights... After Mbugua's 2008 suicide attempt, doctors diagnosed her with gender identity disorder and arranged for surgery to change her sex.

'But Kenya's minister of medical services canceled the operation at the last minute without explanation - an example of the confusion that has marred her quest to fully become a woman.

'Facing one hurdle after another, Mbugua decided she had to take up the mantle of campaigning for transgender rights to combat the ignorance and stigma blighting her life... Despite a degree in biotechnology, Mbugua has

Date accessed: 12 January 2016

³⁰ BBC News, 'Kenya court victory for transgender activist Audrey Mbugua', 7 October 2014, <http://www.bbc.co.uk/news/world-africa-29519881>, Date accessed: 3 December 2015

been unable to find work. She has had a dozen job interviews, but the interviewers made "nasty comments" and threatened to take her academic certificates to the police, accusing her of fraud. Mbugua changed her name through deed poll in 2012, using this to replace Andrew with Audrey on her passport.

'But she has been unable to change the name on her identity card, birth certificate or academic papers. An application to change her identity card has been pending since 2012...Kenyan authorities say medical proof of transition - a sex change - is required to change the gender mark on Mbugua's passport and identity card. But sex change surgery is virtually impossible to get in Kenya because the procedure is so unusual... In February, the High Court ruled against ordering the government to set medical guidelines for treatment of gender identity disorder, which must be in place before Mbugua can undergo surgery.'³¹

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6. Societal treatment

6.1 Societal attitudes

6.1.1 A 'Guardian' article, 'Homophobia in Kenya: is a change going to come?', dated 29 June 2015, cited a 2013 survey on Global Attitudes and Trends by the Pew Research Center which revealed that 90% of Kenyans were against homosexuality.³²

6.1.2 A 'Voice of America' report, 'Kenyan Gays Battle Prejudice', dated 1 February 2011, noted the societal prejudice towards gay people:

'Denis Nzioka lives in Nairobi and is one of East Africa's most prominent gay rights activists. He works for a variety of NGOs, including the Gay and Lesbian Coalition of Kenya and the Gay Activists Alliance of Africa... "We have had (recent) cases of police beating up gay people. We have had gay parties being raided by police, or any effeminate guy – maybe in a club – being thrown out by bouncers or the police being called to arrest this person," Nzioka says. "We also have cases of gay people being blackmailed. I know of one well-known Kenyan who has paid blackmailers 200,000 Shillings (about US\$ 2,500) to prevent him being exposed as a homosexual."...He says homophobia is very prevalent in Kenya's schools. "We often hear of cases of gay students being discriminated against by fellow pupils and even teachers," he says...Nzioka says Kenya's gays and lesbians are a tight community, finding "solidarity" with one another while many are ostracized by their families.

³¹ Thomson Reuters Foundation, 'Kenya's transgender warrior: from suicide bid to celebrity', 7 April 2015,

<http://news.yahoo.com/kenyas-transgender-warrior-suicide-bid-celebrity-000341125.html>,

Date accessed: 3 December 2015

³² 'The Guardian', 'Homophobia in Kenya: is a change going to come?', 29 June 2015, <http://www.theguardian.com/global-development-professionals-network/2015/jun/29/homophobia-in-kenya-nairobi-prejudice-acceptance>, Date accessed: 20 August 2015

'He says Kenyan street gangs often target gays. "Some of these youths maybe throw stones at you (and) write (discriminatory) things on your (home's) wall. If you're staying with your parents and you come out gay, your parents also suffer, your family suffers."

'But Nzioka also says families are the "main [source of] discrimination" against Kenya's homosexuals. "Many Kenyans are exposed as gays and then their families, on who they mostly depend for their material needs, reject them, leaving them destitute," he says, adding that because of "isolation and loneliness," many gay Kenyans abuse drugs and commit suicide...He tells how some Kenyan religious leaders have blamed the country's gays for natural disasters, saying events like drought are God's punishment for Kenyans having same-sex relationships. Some Kenyan religious leaders have also organized public protests against gays... Last year, police arrested an evangelical preacher with some grenades in his possession. The suspect told police he intended to bomb the Gay and Lesbian Coalition's office in Nairobi.'

- 6.1.3 A 'Guardian' article, 'Homophobia in Kenya: is a change going to come?', dated 29 June 2015, noted that societal attitudes towards gay people are slowly changing:

'In 2010, rights group Human Rights Watch wrote a letter to the then Kenyan president Mwai Kibaki, condemning a string of attacks against individuals suspected of being homosexuals and the health workers who worked among them.

'A year later, a gay club in downtown Nairobi was the scene of a grenade attack that led to the death of one patron. However, it is not clear whether the grenade attack was an act of terror or prejudice against the LGBTI community since the authorities blamed the attack on terror group al-Shabaab.

'Last year, the popular night club Club Envy, which is perceived as friendly by the gay community, was raided by local police leading to the arrest of more than 40 patrons. During the same period a prominent politician Adan Duale, while speaking in parliament said homosexuality is a crime as serious as terrorism in modern day Kenya...Now, however, there are finally signs of change...It is no longer unheard of to meet a same sex couple at both high- and low-end Nairobi night clubs, or for public figures to come out and speak up on gay rights...LGBTI activists can now be seen on prime-time TV advocating for their rights. Mainstream newspapers are dedicating space to the LGBTI debate. In some parts of the capital, there is commendable co-existence between heterosexuals and homosexuals.'

³³ 'Voice of America', 'Kenyan Gays Battle Prejudice', 1 February 2011, <http://www.voanews.com/content/kenyan-gays-battle-homophobia---115113734/157376.html>, Date accessed: 18 August 2015

³⁴ 'The Guardian', 'Homophobia in Kenya: is a change going to come?', 29 June 2015, <http://www.theguardian.com/global-development-professionals-network/2015/jun/29/homophobia-in-kenya-nairobi-prejudice-acceptance>, Date accessed: 20 August 2015

6.1.4 The United States State Department 'Country Reports on Human Rights Practices for 2014', published on 25 June 2015, stated:

'LGBT individuals were especially vulnerable to harassment, intimidation, and discrimination in employment, occupation, education, and housing. Human rights and LGBT rights organizations noted that victims were extremely reluctant to report abuse or seek redress. According to a 2011 study, *The Outlawed Amongst Us*, by the Kenya Human Rights Commission, 89 percent of LGBT individuals who revealed their sexual orientation were disowned by family and friends...Several NGOs conducted anti-LGBT political campaigns, including one that announced a drive to collect one million signatures on a petition against homosexuality. While these campaigns resulted in scattered demonstrations, they did not attract widespread support.'

³⁵

6.1.5 A 2015 submission to the United Nations Human Rights Council by the Equal Rights Trust (ERT), stated:

'Moreover, while same-sex conduct between women is not interpreted as prohibited under the Penal Code, lesbians – like gay men – face considerable prejudice and discrimination, in part because of stigma associated with the criminalisation of same-sex relationships. In addition, testimony gathered by ERT indicated that the LGBTI community experience discrimination in accessing healthcare, education and employment, with the continued existence of these laws again being a key causal factor.'

³⁶

6.1.6 The Human Rights Watch report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', published in September 2015, stated:

'Much of the virulent homophobic discourse in Kenya comes from religious leaders. Not all religious leaders express homophobic views; some have welcomed LGBT individuals into their congregations and spoken out on their behalf. But the number of incidents of homophobic rhetoric and acts seems to greatly outweigh the number of LGBT friendly acts from religious leaders.

'Leaders from both the Council of Imams and Preachers of Kenya (CIPK, a Muslim organization headquartered in Mombasa) and the National Council of Churches of Kenya (NCCK) incited violence against LGBT people in Mtwapa in 2010 (as discussed further in Section II below), spreading rumors of a "gay wedding" and pledging to "flush out gays." The same year, Christian leaders overwhelmingly opposed the new constitution on the grounds that it purportedly legalized homosexuality and abortion. In 2012, religious leaders

³⁵ United States State Department 'Country Reports on Human Rights Practices for 2014', Kenya, (section 6),

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370#wrapper>,

Date accessed: 12 August 2015

³⁶ Equal Rights Trust, submission to the United Nations Human Rights Council for a universal periodic review (21st session) of Kenya, 2015, <http://www.refworld.org/country,...KEN,,54c0f1444,0.html>,

Date accessed: 25 September 2015

condemned the Kenya National Commission on Human Rights for its stance in support of the decriminalization of same-sex conduct.

'The Kenya Muslim National Advisory Council (KEMNAC), chaired by Sheikh Juma Ngao of Mombasa, has called for the resignation of, and apologies from, the few government officials who have publicly supported the rights of LGBT people. In 2014, KEMNAC reportedly accused gay rights activists of "propagating evil," while Ngao described LGBT people as "sick." Following the passage of the Anti-Homosexuality Act in Uganda in 2014, Sheikh Mohamed Khalifa of the Council of Imams and Preachers of Kenya (CIPK) urged President Kenyatta to "be supportive of [Ugandan President] Yoweri Museveni and support enactment of laws to prevent spread of homosexuality." Religious leaders have a particularly strong influence on the coast; as documented in Section II below, they have played a significant role in inciting violence against LGBT people. One imam in Mombasa advised Human Rights Watch not to underestimate the power of religious leaders to sway the masses: "If we say kill, they kill."

'Religious leaders have opposed recent advances by LGBT civil society groups. The Kenya Christian Professionals Forum (KCPF)—a group founded in opposition to Kenya's 2010 constitution, and in favor of "a legal and social environment that is supportive of Biblical values"—made submissions as an interested party opposing the National Gay and Lesbian Human Rights Commission's High Court petition on the right to register with the NGO Board. The National Council of Churches of Kenya described the ruling in favor of NGLHRC as being "in bad taste," and expressed support for KCPF's appeal of the ruling.'³⁷

6.2 Influence of the media

6.2.1 The Human Rights Watch report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', published in September 2015, stated:

'Attitudes toward LGBT people in Kenya are also influenced by the media. A health worker who conducts outreach to MSM in Mombasa told Human Rights Watch: "The media at some point is always the center point of stigma." A gay man in Mombasa agreed: "The media has been the biggest hurdle. What we do in our bedrooms should never be a part of anyone's media report."

'While some national media outlets address LGBT issues objectively, others resort to sensationalist tactics and scandal-mongering. In May 2015, the Weekly Citizen, a gossip tabloid, posted an article claiming to unveil Kenya's "Top Gays." Although a number of those listed were openly gay activists, others were private individuals for whom the Weekly Citizen piece constituted a grave violation of their right to privacy, regardless of whether or not they are actually gay.

³⁷ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, pages 13-15, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 7 January 2016

'The Standard, one of Kenya's largest dailies, claimed in 2014 that Kenyan human rights groups "[fear] losing Western aid if they support anti-homosexuality legislation," denying the agency of these groups in supporting human rights for LGBT people. In February 2015, the Standard filed a sensational piece preposterously claiming that gays were attacked at a funeral in Watamu (Malindi County) because they were engaged in "gay rituals" during the burial, including attempting to have sex at the deceased's graveside. (According to a rights activist from Kilifi, funeral attendees threatened to attack the group simply for being gender non-conforming.) The piece was subsequently removed from the Standard's website, but only after the damage, in shaping readers' perceptions of gay "deviance," had already been done.'

³⁸

6.3 Societal violence

6.3.1 The Human Rights Watch (HRW) report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', published in September 2015, stated:

'On the coast, a series of homophobic and transphobic attacks, fueled by the rhetoric of extremist religious leaders, has created an ongoing undercurrent of insecurity. In at least six instances between 2008 and 2015, groups have attacked or threatened to attack LGBT people or health workers serving the LGBT community. Few government officials have condemned the attacks, and police—while in some cases protecting victims from the immediate threat of violence—have not arrested anyone for participating in or inciting these attacks.

'LGBT people are also victims of individual acts of violence, including assault and rape. Most victims whom we interviewed said they simply do not report crimes to the police, believing that the police will not help them or, worse, might arrest them.'

³⁹

6.3.2 The HRW report 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', provided detailed accounts of several incidents of violent attacks against LGBT persons, including details of any police protection provided:

'In February 2015, a series of photos and videos depicting men engaged in same-sex conduct were disseminated on social media, resulting in a public uproar and vigilante-style hunts for gay men in Diani and Ukunda, two neighboring towns in Kwale County. Rather than taking steps to ensure the safety of LGBT residents, police committed serious human rights violations, arbitrarily arresting two allegedly gay men and submitting them to illegal and degrading anal exams. The county governor made homophobic statements, fueling feelings of insecurity among LGBT residents.

³⁸ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, pages 15-16, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 7 January 2016

³⁹ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, page 19, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 8 October 2015

'In early February [2015], Adam, a 30-year-old Diani resident, was walking home in the evening when a group of men whom he recognized from the neighborhood attacked him... "They came toward me in a bullying way, saying 'You gays are spoiling men's respect. How can you sleep with men?' One of them stepped back and collected a bottle that was just dropped there. I saw him smash it down, and then raise it. I tried to push back, but he slashed me with the bottle on the neck and collarbone, [leaving a gash] going down to my chest."

'Adam fell down and lost consciousness. A motorcycle taxi driver who observed the attack rushed to inform a friend of Adam's, who carried him to the hospital. Adam said, "If my friend hadn't come so quickly, I could have died." He spent three days in the hospital and received stitches. When he was released, Adam contemplated filing a police report, but was concerned: "What was I going to tell the police about why I was attacked?"

'Around February 11 [2015], Tony, a gay man, was hit over the head with a bottle in the street in Ukunda. "They had recognized me," said Tony, referring to the photos. He sought hospital treatment as a result of the attack, and then went into hiding in Nairobi. He said, "I just left, I didn't even bother to go to the police or anything because I knew they wouldn't help me..." Tony, who was attacked with a bottle, returned to Ukunda, but he told Human Rights Watch in March 2015:

"All of us had to go into hiding. I am still in hiding. I don't go out, I don't do anything.

"The newspapers are publishing our information; when these pictures leaked out, we were approached by the media. The police are really hunting for [us]. The Kenyan Police want to show the public they are working. The community leaders - Muslim and Christian - put pressure on the police."

'Charles, the Ukunda-based activist, said that about 50 men fled in the wake of the attacks and arrests. In May, three months after the incident, he reported:

"Some of those who fled have come back, those who were employed. The ones who were living with their parents cannot go back. They now have to find their own jobs. They were chased away by their families and villages." One of those who fled, Francis, said threats from his neighbors compelled him to leave. "I don't have any nude photos, [but] they were saying 'You are promoting pornography.' They were not even taking the time to know what was going on."

'After receiving death threats by telephone, Francis fled to Nairobi, convinced that he couldn't count on the police to protect him... In February 2015, when a man in Watamu (Kilifi County) died of an illness, his friends—comprising a number of LGBT people—organized a funeral. According to Douglas Masinde, an activist in Kilifi, local residents "started to react" to the presence of gender nonconforming mourners, threatening to attack them. Someone called the police, who came to the assistance of the LGBT mourners.

'Masinde, who has organized trainings for Kilifi police on LGBT human rights, said the incident pointed to the need to sensitize the public as well:

"No one was beaten up, but if it was not acted on, a number of them would have been beaten up...What the police did was the right thing. But there is a need to sensitize the general community on understanding our human sexuality. If the police weren't there, then what?"...In October 2014, residents of Kisauni, a Mombasa neighborhood, attacked and threatened LGBT residents after a pornographic video, allegedly featuring gay residents, was circulated on social media.

'Samir, a gay man who lives in Kisauni, said that a spontaneously organized group of residents beat up a young man who allegedly participated in the video. According to Samir:

"It was hectic. They said they wanted to beat all the gay people around the area. [The victim] didn't go to the police. I don't know if he went to the hospital because I also ran for refuge—to a friend's place in Kilifi. I stayed there for two weeks. A lot of people ran away at that time."

'Samir noted the ambivalent position of the police in responding to homophobic violence:

"The community wanted to protest and go door to door and look for gays. The police intervened and stopped them. But they didn't arrest the guys who beat [the victim]."

'Bettina, a trans woman, said that the uproar around the video served as a pretext for transphobic residents to attack the kiosk where she sold food. "They had been looking for an excuse to attack me but they didn't have any evidence," said Bettina...Bettina went to the police. But police refused to provide her with a case number, which crime victims must be given in order to follow up on their cases, seemingly because of her gender identity...In February 2012, the Kenya AIDS NGO Consortium (KANCO) held a four-day HIV/AIDS peer education training for men who have sex with men at a community center in Likoni, a town just south of Mombasa.

'On February 23, the final day of the workshop, town residents became aware that the center was hosting a workshop for MSM. According to a news report, "about 100 youth led by religious leaders and village elders forced their [way] into the venue."

'Esther Adhiambo of PEMA Kenya described receiving "numerous calls of distress from participants who said they had managed to escape through the ceiling of the training hall and jumped out through the back fence, and they had left some people in the training hall." KANCO and other organizations involved in the training reported that the crowd "stormed the premises with a bid to 'flush out the gays.'"

'KANCO organized a matatu (public minibus) to evacuate some participants. A PEMA Kenya lawyer contacted the Likoni police, who arrived at the venue and escorted remaining participants to safety. However, the mob followed the police when they dropped one of the men off at home. He was forced to relocate the following day due to threats. Another gay man, whose image was shown on television, was evicted by his landlord three days later.

'The police did not arrest any of the perpetrators of the attack, nor did they arrest religious leaders who incited it. These included a Muslim leader who, according to a media report, "threatened to mobilise the community to cane the gays if they organised such a meeting again."...In February 2010, local Christian and Muslim religious leaders in Mombasa spread rumors that a "gay wedding" was to take place in Mtwapa. On February 11, they held a press conference stating they were preparing to stop the alleged wedding by any means necessary, and to shut down the local offices of the Kenya Medical Research Institute (KEMRI), a parastatal entity that provides HIV services to MSM, which they accused of counseling "criminals."

'On February 12, a crowd of up to 200 people besieged KEMRI. They attacked several gay and bisexual men and trans women who served as peer educators there.

'Kalisa, one of the peer educators who was attacked, said he was beaten by a mob that numbered around 100 people.

"They burned me with lighters and cigarettes. I tried to run away, but I have asthma, and fell down...I was beaten until I fainted. Someone called the police, and the police came. I was protected and taken by the police."

'Richard, a gay man who was at KEMRI at the time, recalled, "The people were yelling, 'We want to burn this. KEMRI is promoting homosexuality.' The crowd was very rowdy and led by religious figures."

'Police dispersed the crowd and took Kalisa and several other gay men and trans women who had gathered at KEMRI to the police station for their safety. The attackers, including several religious leaders, followed, threatening to burn down the police station if police did not hand Kalisa over. Kalisa recalled an imam saying he wanted to "finish all the gays in Kenya... According to Kenya Human Rights Commission, police made no effort to investigate and bring to justice those responsible for inciting violence in Mtwapa, including religious leaders...In addition to the attacks by and against groups described above, attacks against individual LGBT people also take place on the coast. At least two known gay men have been murdered on the coast in the last three years. Sixteen of the people we interviewed had experienced physical violence by civilians, either strangers or acquaintances, in attacks that they believed to be based on their gender identity or sexual orientation. Gender non-conforming people, including men who are perceived as "effeminate," are among those most often targeted for abuses.'

For more details about reported homophobic attacks, see the Human Rights Watch 2015 report, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', pages 19-38:

https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf,

⁴⁰ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, pages 19-31, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 5 January 2016

- 6.3.3 A Thomson Reuters Foundation report, 'Kenya: Homophobic Mobs Attack LGBT People in Kenya With Impunity - Report', dated 28 September 2015, stated:

'Homophobic mobs have repeatedly attacked lesbian, gay, bisexual and transgender (LGBT) people in Kenya but police are unwilling to even attempt to bring the perpetrators to justice, rights groups said on Monday... Violence against LGBT people is common in the east African nation, but victims fear reporting hate crimes to the police who, in turn, often refuse to pursue their cases...' "Religious leaders have often been at the forefront of inciting violence against LGBT people," Neela Ghoshal, a researcher with HRW, told the Thomson Reuters Foundation, referring to both Christians and Muslims.'

⁴¹

- 6.3.4 The organisation Erasing 76 Crimes stated in a December 2015 article that: 'In the wake of several preachers' anti-homosexuality sermons earlier this year in west Kenya, four men attacked a gay street vendor, raped him, and set his home on fire... Wasike did not report the rape to police for fear that, if he did so, he would face further stigma and possible arrest for being gay.'

⁴²

6.4 NGO activities

- 6.4.1 The HRW report of September 2015 also stated that:

'Activists say the attack on KEMRI and its peer educators in Mtwapa in 2010 was a defining moment that spurred them into action. PEMA Kenya and Tamba Pwani have both developed training programs aimed at sensitizing religious leaders, police, and health workers on issues related to sexual orientation and gender identity, and PEMA Kenya has also trained members of the judiciary and media professionals. Organizations are also exploring the possibility of providing training for motorcycle taxi drivers, an influential constituency within urban street culture. Most of the training programs have been implemented in Mombasa and Kilifi counties. The recent anti-gay violence and arbitrary arrests in Kwale signal the need to expand such programming to that county.'

⁴³

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7. Freedom of movement

- 7.1.1 The Kenyan Constitution of 2010 (section 39) provides for the freedom of movement:

'39. (1) Every person has the right to freedom of movement.

⁴¹ Thomson Reuters Foundation, 'Kenya: Homophobic Mobs Attack LGBT People in Kenya With Impunity - Report', 28 September 2015, <http://allafrica.com/stories/201509280135.html>, Date accessed: 3 December 2015

⁴² Erasing 76 Crimes, 'After Kenyan anti-gay sermons, anti-gay rape and arson', 11 December 2015 <http://76crimes.com/2015/12/11/after-kenyan-anti-gay-sermons-anti-gay-rape-and-arson/>, Date accessed: 5 February 2016

⁴³ Human Rights Watch, 'The Issue is Violence - Attacks on LGBT People on Kenya's Coast', September 2015, p 43, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf, Date accessed: 12 January 2016

(2) Every person has the right to leave Kenya.

(3) Every citizen has the right to enter, remain in and reside anywhere in Kenya.’⁴⁴

7.1.2 The United States State Department ‘Country Reports on Human Rights Practices for 2014’, stated:

‘The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights but increasingly enforced restrictions on refugees’ movements.

‘The government’s appeal of a 2013 High Court ruling that blocked a plan to relocate all urban refugees to camps was pending before the courts...In March, moreover, the government issued another directive relocating all urban refugees to camps and closing all refugee registration centers in urban areas...Police routinely stopped individuals and vehicles throughout the country ostensibly to enforce the directive, particularly in urban areas, and often solicited bribes.’⁴⁵

7.1.3 The Freedom House ‘Freedom in the World 2015’ report, published in 2015, stated: ‘Citizens generally enjoy freedom of travel, residence, employment, and education, and have the right to establish private businesses. However, the prevalence of petty corruption inhibits these freedoms, as do discrimination based on gender and ethnicity and banditry in rural areas.’⁴⁶

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Version Control and Contacts

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the [Country Policy and Information Team](#).

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the [Guidance, Rules and Forms Team](#).

Clearance

⁴⁴ The Constitution of Kenya 2010, published by the National Council for Law Reporting in 2010, http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/transitions/Kenya_19_2010_Constitution.pdf, Date accessed: 22 March 2016

⁴⁵ United States State Department ‘Country Reports on Human Rights Practices for 2014’, Kenya, (section 2d), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370#wrapper>, Date accessed: 22 March 2016

⁴⁶ Freedom House, ‘Freedom in the World 2015’, Kenya section, 2015, <https://freedomhouse.org/report/freedom-world/2015/kenya>, Date accessed: 22 March 2016

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Changes from last version of this guidance

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