

KENYA SOGIESC MINORITIES 4TH CYCLE UNIVERSAL PERIODIC REVIEW (UPR) SHADOW REPORT 2024

Principal Submitting Organization: Kenya Human Rights Platform (KHRP).

Other Submitting Organizations: Trans*Alliance Kenya (TAK), Western Kenya LBQT Feminist Forum (WKLFF), Next Generation Lawyers - Kenya (NEXTGEN Lawyers), Youth For Change Network (YCN), Health Options For Young Men (HOYMAS), East African Centre for Human Rights (EACHRIGHTS), POP-COC Netherlands, Uhai-Eashri, Trans Human Project, Kenya Ethical Legal Network (KELIN), GALCK+, Kenya Network of People Who Use Drugs (KENPUD), Bar Hostess Empowerment and Support Programme (BHESP), Kenya Sex Workers Alliance (KESWA), Women in Response to AIDS and Drug Addiction (WRADA), Lake Region Womxn Health and Equal Rights (LARWHER), the National Gay and Lesbian Human Rights Commission (NGLHRC), Jinsiangu Kenya, the Key Populations Consortium of Kenya (KPC), the Caucus on Harm Reduction and Drug Policy Reforms in Kenya (CHRDPR), Western Kenya Situation Room Consortium (WKSRC), World Post Changes Network (WPCN), PEMA Kenya, RFSL, Trans Human Project, Coast Trans Network (CTN), MPEG, KYDESSA, the National Transgender Advocacy Network of Kenya (NTAN), the Global Holistic Partnership Network (GHPN), Western Kenya LBQ Organizations Collective (WKLOC), Elite LBQ, Mission for Advisory and Young Generation Organization (MAAYGO), Talanta Africa, Trans Support Organization (TSO), OutStar Initiative, ISHTAR-MSM, and Kenya Human Rights Commission (KHRC).



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INTRODUCTION

The Kenya Human Rights Platform (KHRP) works to strengthen Local, National, Regional, and Global human rights protection systems for SOGIESC minorities in Kenya through Capacity building, Networks and Partnership Building, and Developing Tools and Analyses advancing Knowledge, Data, and Insight on frontier governance issues in local, national, regional, and global policymaking. KHRP provides a neutral and dynamic forum of interaction and participation of key local, national, regional, and global stakeholders to deliberate on SOGIESC human rights issues (civil, cultural, economic, political, and social rights) and challenges related to the functioning of national, regional, and global based human rights system. This joint submission by 38 organizations of Key Populations and SOGIESC minorities in Kenya covers the period from 2019-2024 and discusses progress as well as gaps that perpetuate inequality and discrimination against individuals based on their gender identity, sexual orientation, and sex characteristics.

This report is based on consultations among various SOGIESC and KP Civil Society Organizations and stakeholders under the guidance of the Steering Committee of the Kenya CSO Coalition on the UPR. The 499 Cycle 3 (2017-2021) recommendations were clustered by the Government of Kenya into 4 major clusters namely Legal and Institutional Reforms; Civil and Political Rights; Economic, Social, and Cultural Rights; and Group Rights under the Government of Kenya Universal Periodic Review Implementation Matrix 2021-2025 developed in November 2021. Each recommendation or set of recommendations was assigned a specific action that the government needed to undertake; indicators to monitor implementation; government body responsible; potential partners and timeframe to ensure implementation. Consequently, this analysis is based on the 517 SOGIESC recommendations to Kenya that the Government of Kenya (GoK) both noted and key SOGIESC indicators that the Government assigned to the said Accepted recommendations including other cross-cutting human rights commitments that directly or indirectly affect SOGIESC minorities in Kenya.

HUMAN RIGHTS CONCERNS AND RECOMMENDATIONS

ISSUE 1:

Suboptimal access to comprehensive integrated HIV and SRH services for Key Populations and SOGIESC minorities in Kenya.

In the 3rd Cycle of UPR sessions, the Government of Kenya (GoK) committed to protecting and promoting the right to health for all, through strengthening Universal Health Coverage, reviewing all legal, policy, and structural barriers that impede the provision of sexual and reproductive health services, in particular against members of key populations more vulnerable to HIV and implement comprehensive human rights-based programs, and taking concrete measures to eliminate all forms of stigma and discrimination in healthcare settings including providing adequate human rights training to health personnel. The GoK has partially implemented these commitments. Related to this, we highlight six (6) related sub-issues that continue to substantially affect the health of KPs and SOGIESC minorities.

1. Key populations (KPs) ¹and SOGIESC² persons in Kenya face a disproportionately high burden of HIV, yet access to essential prevention, treatment, and care services remains severely suboptimal. This is caused by an erratic supply of prevention commodities like condoms, lubricants, and medical health products, fragmented approaches in the implementation of the HIV interventions by different development partners, outdated policy guidelines, and discrepancies between implementing partners' programmatic data and government Key population size estimates³. Additionally, bio-behavioral surveillance poorly defines the epidemic among KPs and there is a lack of a standard unit cost for the KP program to inform sufficient resources and ensure sustainable funding.⁴
2. Laws that criminalize HIV risk behaviors targeted at Key populations (including, sex work, homosexuality, and drug use), limit the ability of local implementers to effectively deliver biomedical prevention tools. The effects of this are; suboptimal uptake of PrEP interventions, HIV testing, and other behavioral and structural, low coverage of HIV services for PWIDs (82%) and TG persons (83%), high rates of HIV among

specific key populations; Female sex workers (29%), MSM (18%; with 12.2% among MSM and 26.3% among male sex workers), PWIDs (19%), TG persons (39.9%).⁵ Outdated guidelines and lack of standardized approaches further undermine the quality and scale-up of HIV programs.⁶ Compared to the general population, where the HIV prevalence rate stands at 5.6%, key populations in Kenya experience significantly higher rates of infection. Female sex workers (FSW) have an HIV prevalence of 29%, over five times higher than the general population. Among men who have sex with men (MSM), the rate is 18%, more than three times higher, with male sex workers facing an even steeper prevalence at 26.3%. People who inject drugs (PWID) experience an HIV prevalence of 19%, and transgender individuals (TG) face the highest rate at 39.9%, nearly seven times that of the general population. While the national program has achieved high coverage rates of 115% for FSW and 151% for MSM, there are still gaps in coverage for PWID at 75% and TG persons at 86%, suggesting that further efforts are needed to address the needs of these vulnerable populations⁷ fully.

3. Access to Sexual and Reproductive Health (SRH) services for KPs and SOGIESC minorities in Kenya remains severely restricted as criminalization prevents individuals from these groups from seeking necessary SRH services.⁸ There are limited interventions targeted to the needs of same-sex couples, transgender and intersex persons, further excluding them from accessing gender-affirming care and other essential services⁹. Evidence from reports, including Human Rights Watch (2023), shows that fear of legal repercussions and discriminatory attitudes within healthcare settings leads to a lack of access to appropriate care, exacerbating health disparities^{10 11}. While Kenya has made strides in expanding healthcare services, including the development of policies aimed at improving UHC, significant gaps remain in addressing the specific needs of KPs and SOGIESC minorities^{12 13}. Progress is hindered by the absence of comprehensive training for healthcare providers, financial barriers^{14 15}, and the exclusion of SRH services such as hormone therapy and other gender-affirming treatments from healthcare packages^{16 17}.
4. Structural and Legal barriers resulting from the Criminalization of KPs' identities and behaviors worsen health disparities for these groups. Criminalization laws such as Kenya's Penal Code Sections 153, 154, 155, 162, 163, and 165, target sex between men, sex work, and gender expression,¹⁸ and the Narcotics Drug and Psychotropic Substance Act (2022), criminalizes drug possession and use.¹⁹ These laws fuel stigmatization, discrimination, and harassment from healthcare providers and law enforcement, discouraging KPs from seeking care.²⁰ Societal antipathy, displacement, homelessness, and police abuses such as extortion, arbitrary arrests, and gender-based violence exacerbate these issues.²¹ In 2020, the UN noted practices like conversion therapy, "corrective" rapes, and other abuses against SOGIE-SC persons in Kenya.^{22 23} GBMSM²⁴ groups have faced disruptions in services due to nationwide protests, attacks on clinics, and an attempt to introduce a family protection bill that targets gender identity and expression; creating fear and preventing GBMSM-led organizations from operating their drop-in centers. In the years Kenya has continued to note recommendations on decriminalization but the situation keeps getting worse.
5. The proposed Universal Health Coverage (UHC) in Kenya presents significant barriers for SOGIESC minorities, primarily due to discrimination, stigma, and the lack of legal recognition of gender-diverse identities. These barriers complicate access to healthcare, particularly for transgender and intersex individuals, who face challenges with documentation requirements for UHC enrollment. The criminalization of behaviors associated with key populations (KPs), such as homosexuality and drug use, further prevents SOGIESC minorities from seeking care due to fear of legal repercussions. Gender-affirming care, including hormone therapy and surgeries, is notably absent from UHC, leaving transgender individuals without critical health services. Financial obstacles, such as co-payments, and insufficient sensitization of healthcare providers on SOGIESC-specific needs exacerbate the exclusion of these populations. Weak data privacy systems also deter KPs from enrolling, contributing to a lack of comprehensive data on the coverage of SOGIESC minorities. Additionally, contradictions in legal and systemic frameworks, such as criminalization laws and restrictions on certain medical interventions, impede progress toward equitable UHC. While Kenya's UHC efforts have expanded, gaps remain in legal recognition, provider training, service inclusivity, and financial protection, especially as development partner funding declines. These challenges underscore the need for a more inclusive UHC framework to ensure equitable healthcare access for SOGIESC minorities.
6. Kenya's national HIV response is heavily reliant on external donor funding, which accounted for over 70% of HIV expenditures in recent fiscal years, while the government's contribution remains low at 30%, and county-level spending is insignificant, averaging 3.8%.²⁵ This dependency poses a significant risk as donor funding is expected to decline with Kenya's transition to a lower-middle-income country.²⁶ Efforts to increase domestic resources for HIV programs have been hampered by inefficiencies in health system governance and budget planning, undermining the quality of service delivery.²⁷ Funding for key populations (KPs) is especially limited, with an estimated budget of USD 2.8 million for KP programming, of which the government contributes a third.²⁸ This underfunding exacerbates existing barriers faced by KPs in

accessing quality HIV services and threatens the sustainability and reach of HIV programs, highlighting the urgent need for greater domestic financing and more efficient resource allocation.

7. In Kenya, the Medical Practitioners and Dentists Act (Cap 253) and the Code of Ethics for medical practitioners significantly limit medically necessary gender-affirming health services, medication, and procedures for transgender and non-binary people. The Act lacks specific provisions for gender-affirming care, leaving a legal gap that fails to support these treatments. These regulatory barriers create an environment where transitioning services are not supported, exacerbating the challenges faced by transgender and intersex persons in accessing essential healthcare. This is per the Kenya Medical Practitioners and Dentists Board Code of Professional Conduct and Discipline prohibits gender reassignment on demand.²⁹

Issue 1 Recommendations

- The Government of Kenya (GoK) should remove discriminatory barriers preventing Access to Health by those who are vulnerable or in vulnerable situations including SOGIESC minorities, and to put in place decentralized and community-driven sexual and reproductive health (SRH) legal and policy frameworks including sustainable budgetary allocations, financial oversight mechanisms and robust compliance and monitoring systems that align with National and County priorities in the health sector to progressively realize the right to Health for All with linkages and broader reach to other national health outcomes ensuring health equity.
- The Government of Kenya should improve accessibility and implement measures within the existing universal health coverage framework in Kenya to ensure universal access to high-quality health services, comprehensive packages of essential health benefits, that the most vulnerable and disadvantaged populations including SOGIESC minorities have access to and use without financial or procedural hardship including enhancing data privacy protections to foster trust and greater enrollment.

ISSUE 2:

The specific needs and capacities of KPs and SOGIESC minorities in Kenya have all but been ignored in broader crisis response management strategies. The concept of gender has not been fully expanded to include KPs and SOGIESC minorities.

In the 3rd Cycle UPR sessions, the Government of Kenya committed to continue comprehensively, to implement climate change adaptation measures, natural disaster response measures, and health crisis management, such as for COVID-19, by prioritizing the protection of the most vulnerable sectors of the population and to continue collecting and analyzing disaggregated data on gender diverse issues in combating discrimination based on religion, ethnic background, age, health, disability and sexual orientation. These commitments have been implemented in a biased way. Related to this, we highlight three (3) sub-issues that significantly affect our communities.

8. Kenya's Disaster Risk Management (DRM) policies and frameworks fail to adequately acknowledge the unique vulnerability of KPs and SOGIESC minorities. This exclusion extends beyond DRM into national policies and practices, affecting access to sustainable development, food security, health, and safety, climate change and variability, environmental management, and disaster risk reduction agendas at all levels. This was evidenced during the implementation of the COVID-19 response as the State failed to implement urgent measures to provide food, shelter, or COVID-19 testing for the SOGIESC community, and enforcement of measures left homeless PWUDs experiencing raids and sex workers experiencing arbitrary arrests due to curfews and closures, while people living with HIV struggled to access clinics for essential medications and treatment.³⁰
9. The absence of inclusive representation or the underrepresentation of marginalized communities in government decision-making processes within DRM institutions contributes to policies that do not account for the vulnerabilities and needs of these groups, and inadequately address crucial needs that would culminate in holistic disaster risk management leading to ineffective disaster preparedness and response.³¹ The Existence of non-inclusive DRM policies that do not account for the vulnerabilities of SOGIESC minorities and other key populations, keeps perpetuating inequality hence fueling the societal

stigma and discrimination based on sexual orientation and gender identity which further creates barriers to accessing critical services during crises³². The absence of inclusive participatory approaches results in ineffective preparedness measures for marginalized groups. This includes lack of access to services; for instance, SOGIESC minorities would often lack access to critical infrastructure such as safe houses and healthcare facilities during disasters; consequently increasing vulnerability due to a lack of targeted risk reduction measures, which ultimately exacerbates marginalization.³³ Despite the State's obligation to undertake human rights impact assessments and align policies with international frameworks like the Sendai Framework,³⁴ there is a clear lack of integration of these principles into national practices. Additionally, Kenya's National Risk Disaster Management Policy 2017³⁵ needs to be aligned with the human rights-based approach (HRBA) to ensure holistic DRM as well as strengthen the government's due diligence obligation to conduct human rights impact assessments. The National Disaster Risk Management Bill³⁶ has yet to include sections on vulnerable groups to ensure an inclusive DRM environment.

The exclusion of communities from decision-making processes has led to inadequate preparedness, response, and recovery measures, disproportionately affecting safety, health, and livelihoods during the crisis for SOGIESC minorities and KPs. Legal reforms are necessary to explicitly include these groups within Disaster Risk Management (DRM) frameworks, ensuring their full participation in decision-making processes and the creation of protective measures tailored to their unique needs.

10. The lack of equitable Pandemic Preparedness Strategies was evident during the impact of the COVID-19 pandemic. This contributed to a worsening of life circumstances for SOGIESC minorities in Kenya including physical health, mental health, financial stability, meeting basic needs, and feelings of social disconnectedness, among the SOGIESC community.³⁷ Discrimination, scapegoating, and lack of access to essential services such as healthcare, housing, and social protection disproportionately affected the community during the pandemic. The mis- and disinformation about the pandemic led to increased scapegoating of SOGIESC minorities, with religious and political leaders falsely blaming them for the spread of the virus hence fueling social discrimination at the peak of the pandemic³⁸. The increased targeting negatively impacted the physical and mental health of SOGIESC minorities. This coupled with the restrictions of movement created a risk of abuse during street controls, with reports of selective arrests; hate crimes such as harmful exposure on social media; arbitrary detentions, and a general increase in mistreatment in the public sphere.³⁹ Contexts of criminalization have always created significant barriers for people of diverse sexual orientations and gender identities. The IE SOGI report to the UN General Assembly highlighted that 23% of participants living with HIV had lost access to HIV care providers as a result of COVID-19 social isolation measures⁴⁰. People living with HIV, including LGBT people, struggled to access their medication as governments designated their typical points of medication distribution and medical attention as COVID-19 centers, meaning immuno-compromised people would be taking extra risks to go there to retrieve medication or deprioritize the respective services.
11. KP and SOGIESC minorities are invisible in discussions concerning climate crisis vulnerability and impact in Kenya. Research shows that 20 to 45 percent of homeless youth identify as having diverse SOGIESC, which is at least two to four times higher than the estimated percentage of SOGIESC youth in the general population.⁴¹ Individuals in Kenya often experience higher rates of poverty, homelessness, and limited access to healthcare and education based on their SOGIESC. These socio-economic disadvantages increase their vulnerability during disasters. Transgender and intersex individuals face even greater challenges in accessing shelter due to pervasive discrimination in these spaces, leaving many unsheltered and more exposed to the impacts of climate change. The absence of inclusive climate adaptation policies leaves marginalized communities particularly vulnerable to the negative effects of climate change.
12. For many, climate change jeopardizes food security, traditional livelihoods, cultural practices, and their effective right to self-determination. The climate crisis also threatens food security and traditional livelihoods, particularly in rural areas where climate change diminishes the land's capacity to produce food, leading to food scarcity for local communities. These factors contributed to poorer health outcomes, particularly for individuals who face additional challenges, such as transgender men and intersex persons who practice chest binding, which can worsen respiratory issues⁴². Studies, such as the Women Deliver report,⁴³ emphasize the connection between climate change and sexual and reproductive health and rights (SRHR), amplifying the challenges faced by these communities. Additionally, the impact of climate change on mental health is a growing concern, particularly for those facing multiple vulnerabilities. Research from the Red Cross Red Crescent Climate Centre highlights the mental health implications of climate change, especially for individuals with diverse identities.⁴⁴ Despite these findings, Kenya's current climate

adaptation policies and mental health support services lack inclusivity, failing to adequately address the mental health needs of SOGIESC minorities affected by climate change.

13. Kenya has established several laws and policies, such as the National Adaptation Plan 2015-2030 and the 5th Climate Action Plan 2023-2027, aiming to address climate change.^{45 46} However, these policies fall short of recognizing and including the specific needs of SOGIESC minorities. While some progress has been made, such as ensuring 40% female representation in peace committees and disaster management platforms,⁴⁷ there remains a lack of representation for gender-diverse minority groups. Additionally, efforts to enhance livelihoods and economic engagement through skills-building have largely excluded youth who identify as gender minorities. Notably, in 2021, the Ministry of Health acknowledged the vaccination of 277 intersex and 27 trans persons against COVID-19, indicating some level of progress in addressing the needs of these communities.⁴⁸ However, this remains an isolated effort, and the systemic exclusion of SOGIESC minorities in broader climate adaptation and disaster risk management policies persists. Comprehensive measures are urgently needed to integrate SOGIESC-inclusive approaches into Kenya's climate and disaster management frameworks to mitigate the disproportionate impact on these communities.

Issue 2 Recommendation

1. The Government of Kenya should Adopt gender-transformative and inclusive climate adaptation plans and policies that align work on adaption, loss and damage, disaster risk reduction, humanitarian responses, and recovery to ensure the full ecosystem of factors is effectively equipped for and committed to the adaptation of evidence-informed vulnerability assessments that shall inform climate adaptation, loss and damage initiatives that involve and commit resources to KPs and SOGIESC minorities for climate action, research, and planning.

ISSUE 3:

Societal Exclusion, institutionalized discrimination, and escalating violence of Key Populations and SOGIESC minorities as well as lack of inclusive development and functional accountability policies within existing governance systems in Kenya.

In the 3rd cycle, GoK committed to developing and adopting appropriate legislative, administrative, and elimination measures to combat discrimination, violence, and harassment against women, KPs, and SOGIESC minorities based on religion, ethnicity, age, health, disability, sex, gender identity and sexual orientation as well as in the workplace while continuing to collect and analyze disaggregated data on the same. These commitments are partially implemented. We address Five (5) sub-issues that are critical to our communities.

14. The challenge of the civil registration system and the lack of legal gender recognition in Kenya limits the legal identity of SOGIESC minorities. The legal and administrative framework of Kenya's Civil registration system fails to accommodate the diverse needs of SOGIESC minorities. Under the Registration of Persons Act,⁴⁹ the details of a person in the principal register of persons must include sex. Although "Sex" had been previously defined as either male or female by the High Court in 2007, the Birth and Deaths Registrations Act,⁵⁰ as amended in 2022, now requires the inclusion of intersex children and intersex persons. Jinsiangu has over the years led efforts of Transgender people to advocate for name change via a deed poll.⁵¹ However, steep legal costs and lengthy administrative processes deter many from officially pursuing a name change. Although APAI-CRVS⁵³ supports the development and strengthening of civil registration systems in Africa that aim to include all individuals, there exists no process that would legally allow individuals to change gender markers for identification documents that match their identity.⁵⁴
15. Stigma and discrimination against SOGIESC minorities in Kenya remain deeply entrenched, despite Constitutional provisions that theoretically guarantee equality and protection.⁵⁵ In 2015, the High Court of Kenya ruled that these rights are held by everyone, including LGBTQ+ people.⁵⁶ However, the lack of comprehensive anti-discriminatory laws explicitly protecting individuals based on sexual orientation, gender identity, and expression contributes to the systemic marginalization of KPs and SOGIESC minorities. A 2023 Kenya Human Rights Report⁵⁷ documented the abuse of 32 girls by secondary school authorities in Mathira Constituency for allegedly being lesbians and prohibited them from taking their end-term

exams. Also reported was an order from the government removing a group of 76 LGBTI refugees from their temporary quarters in Nairobi back to Kakuma camp, where they had left after being subjected to homophobic attacks and death threats.

16. A 2019 OHCHR report highlighted the urgency for comprehensive anti-discrimination legislation, particularly for women, lesbian, bisexual, and transgender individuals.⁵⁸ No such legislation has been adopted. The Supreme Court of Kenya in Petition No. 16 of 2019 found that an interpretation of Article 27 which excludes people based on their sexual orientation would conflict with the principles of human dignity, inclusiveness, equality, human rights, and non-discrimination. The ruling has not translated into substantive protections for SOGIESC individuals, and abuses continue. Most recently, the Global Fund Breaking Down Barriers Initiative, 2022 mid-term assessment for Kenya revealed ongoing stigma and discrimination, particularly in the education, labor, and health sectors. The assessment also documented harassment, extortion, and abuse by law enforcement and county officials, including denial of healthcare access in custody.⁵⁹
17. Kenya's current legal framework, significantly impacts SOGIESC minorities and KPs, leading to systemic discrimination, violence, and lack of access to essential services. Sections 162, 163, and 165, of the Penal Code, criminalize consensual same-sex conduct. A 2015 submission to the UN Human Rights Council by the Equal Rights Trust (ERT), observed that '...while same-sex conduct between women is not interpreted as prohibited under the Penal Code, lesbians, and gay men face considerable prejudice and discrimination, in part because of the stigma associated with the criminalization of same-sex relationships'...⁶⁰
18. Sex workers likewise face indirect criminalization through laws targeting third parties associated with sex work. The provisions in the Penal Code Section 151-153 and 156 that criminalize "living on the earnings of prostitution", "soliciting for immoral purposes" and "running of a brothel" expose sex workers to extortion, police harassment, and violence. Counties, whose functions include legislation on issues of morality, regulation of entertainment, and control of drugs within the county, enforce archaic provisions that are utilized by council officers, resulting in extortion, demand for sexual favors, rape, and sexual assault of sex workers while in police custody, as well as gang rape arbitrary killings, violent assaults and illegal detention perpetrated by police officers and the sex workers clients.^{61 62 63}
19. Similarly, the Narcotic Drugs and Psychotropic Control Act exposes drug users; when not found in possession of drugs, to trumped-up charges for "illegal" dumping and touting. These are the two most common informal activities that male users in recovery turn to as a source of lawful income.⁶⁴ While harm reduction practices like providing clean syringes are encouraged, human rights violations continue, including forced drug treatment and rehabilitation, excessive use of detention and incarceration for simple possession, and inadequate services for women who use drugs.
20. Progressive Judicial decisions have been vital in advancing SOGIESC rights and shaping legal reforms in Kenya. In 2018, a Mombasa Court of Appeal ruling declared forced anal examinations unconstitutional.⁶⁵ A historic Supreme Court decision in 2023 affirmed the right to association by allowing the registration of the NGLHRC as an NGO, marking a significant step towards recognizing LGBTQ+ organizations.⁶⁶ Building on this progress, the High Court in Mombasa⁶⁷ issued a crucial interim ruling in response to a petition by the CMRSL.⁶⁸ This order restrains anti-gay groups and individuals from inciting violence against LGBTQ+ people in Kenya, providing vital protection for the community.⁶⁹ These judicial interventions demonstrate the courts' commitment to upholding constitutional rights and combating discrimination, despite facing backlash from conservative elements of society.
21. Historically, intersex individuals have faced discrimination and stigma, as highlighted in the 2015 High Court judgment in Petition No. 266 of 2013. Kenya became the first country in the region to include an "intersex" category in the National census in 2019, identifying 1,524 individuals.⁷⁰ The Children Act, 2022 in Kenya marks significant progress in protecting and recognizing the rights of intersex children, ensuring they are afforded the same dignity and opportunities as other children. It prohibits unnecessary cosmetic surgeries on intersex children and establishes specific facilities for intersex persons within the criminal justice system.
22. The progress of legislative reforms in Kenya, particularly those concerning SOGIESC rights and KPs, is often impeded by deeply entrenched societal norms and religious beliefs, resulting in a slow and challenging process of legal reform that leaves marginalized communities vulnerable to continued discrimination and human rights violations. It took four years to amend the Narcotic Drugs and Psychotropic Substances Act which resulted in the decriminalization of possession of paraphernalia, legal distinction between trafficking

and simple possession of narcotic drugs, recognition of treatment in addition to voluntary rehabilitation, and a reduction in prison time for simple possession. Legislative efforts, however still fall short of fully decriminalizing consensual same-sex conduct, sex work, drug use, and personal possession leaving many individuals at risk of continued rights violations. A Bill, Penal Code (Amendment) Bill, 2023, presented by Chief Justice Martha Koome to Parliament, proposes the deletion of Sections 153, 154, and 155, that penalize “prostitution”.⁷¹ However, according to CJ Koome, “prostitution” will remain an offense, to which alternatives to imprisonment will be employed.⁷²

23. Periodic eruptions of anti-gender and anti-rights movements were experienced throughout 2023, threatening a human rights crisis in Kenya. Violent protests and major incidences of homophobic and transphobic attacks were experienced across the major cities of Mombasa and Nairobi. During these demonstrations, speakers invoked religious doctrine to condemn LGBTQ+ individuals inciting violence against the suspected individuals. Fortunately, High Court orders in Mombasa protected individuals with diverse SOGIESC identities and KP organizations.⁷³ SOGIESC minorities continue to live in fear amidst the volatile environment in Kenya.
24. Killings and other violent offenses against SOGIESC minorities and KPs have been on the rise. The brutal murders of Sheila Adhiambo Lumumba,⁷⁴ a non-binary person, and Rose Mbesa, an intersex individual, in 2022 highlight the severe risks faced by gender and sexual minorities.⁷⁵ The killing of LGBTQ activist Edwin Chiloba in 2023 and the public backlash that followed, as well as police reluctance to investigate, further underscores the ongoing threat to the safety and security of SOGIESC minorities. Additionally, a joint report by the National Gay and Lesbian Human Rights Commission and Amnesty International reveals a dire situation for lesbian, gay, bisexual, transgender, and intersex (LGBTI) asylum seekers and refugees in Kenya, particularly those residing in Kakuma refugee camp from 2018 to February 2023. Key issues highlighted include discriminatory practices during registration, delays in refugee status determination, harassment, violent attacks, and limited prospects for local integration or resettlement.⁷⁶
25. Data from Kenya Health Information Systems (KHIS) indicates a total of 17,369 KPs experiencing violence with only 14,370 KPs receiving violence response support limited to physical and mental health services, social support services, and legal/justice services. 83% of these cases have been supported with a defined package of gender-based violence services.⁷⁷ In 2024, the Kenya Sex Workers Alliance staged nationwide protests to compel the government to offer sex workers security after the brutal murder of Stacy Njoki, a paralegal working with the Kiambu Sex Workers Alliance.⁷⁸ Efforts to sensitize police officers on applying rights-based and public health approaches to key population (KP) issues by institutionalizing a comprehensive training manual for both pre-service and in-service training is yet to be completed.
26. Impressively, paralegal programs designed to support human rights and address legal violations have demonstrated significant progress in advocating for human rights and addressing legal issues.⁷⁹ ⁸⁰ Community paralegal programs in HIV have historically prioritized KPs due to their high vulnerability to discrimination and violence and significant barriers to accessing health services. A 2022 report by the National Gay and Lesbian Human Rights Commission (NGLHRC) reported a total of 901 cases between January and December 2022, compared to 560 cases in 2021. Requests for redress from 41 out of 47 Counties in Kenya, as well as eight African countries where NGLHRC has no jurisdiction show the widespread nature of violations against LGBTIQ+ persons within Kenya and the region. Consequently, SOGIESC minorities may not benefit equally from community-led access to justice interventions, highlighting the need for more inclusive approaches.
27. The shrinking civic space in Kenya, characterized by evidence of severe human rights abuses and government restrictions, exacerbates the marginalization and vulnerability of SOGIESC minorities, impeding their safety and ability to participate in societal development. This environment of oppression and exclusion not only undermines their inclusion but also stifles their engagement in critical areas such as legal protection, public policy, and community support.⁸¹
28. Open, inclusive, and diverse societies are better for business and better for economic growth. The economic implications of exclusion are significant; with SOGIESC discrimination adversely affecting productivity, health, and tourism; costing the Kenyan economy approximately Sh. 130 billion to Sh18 billion averaging 0.2% to 1.7% of GDP; Poor health outcomes costing Kenya Sh. 105 billion to Sh. 8 billion per year; Reduced tourism costing Sh. 14 billion to 7 billion lost per year; and lower productivity Sh. 11 billion to 7 billion per year.⁸² Kenya’s performance on the Global Competitiveness Report published by the World Economic Forum dropped to 95 from its previously held rank of 93 in 2018 of 140 Countries.⁸³ Kenya’s Foreign Direct

Investments (FDI) inflows have generally improved since 2010. A growing level of investment has brought FDI to 16% of total GDP in 2017. However, Kenya lags behind other countries with similar economies and levels of development when it comes to foreign investment. Kenya needs to attract FDI from global companies to accelerate this transition. Many of the largest global companies look to open and inclusive locations to invest and expand.⁸⁴

Issue 3 Recommendations

1. The Government of Kenya to develop and adopt evidence-based Equality and Non-discrimination legislation, policies, and integrated social protection strategies that explicitly prohibit discrimination against all persons in all settings with a specific focus on individuals facing systemic discrimination ensuring protection and equal access to justice for all, implementing legal Constitutional safeguards to protect the rights and dignity of all individuals, and to expand civic space to strengthen the rule of law and promote economic growth and potential.
1. The Government of Kenya shall take all measures necessary to prevent, investigate and punish acts of violence and discrimination including hate speech, disinformation, incitement, and intimidation in all spheres (public or private) based on sexual orientation or gender identity perpetrated by state and non-state actors and provide reparations to victims of the said violence and discrimination including in humanitarian, extra-judicial, and enforced disappearances settings to remedy systemic injustices targeting specific communities and groups.
1. The Government of Kenya should take urgent action to reap the data dividend, with a focus on the most vulnerable groups, by working toward collecting and securing disaggregated data including civil registration, vital statistics, and identity management data systems that will revolutionize evidence-based planning, monitoring, and data accountability sharing mechanisms at all levels.

Endnotes

- 1 Key Populations in Kenya include: Female sex workers (FSW), male sex workers (MSW), men who have sex with men (MSM), transgender (TG), and people who inject drugs (PWID).
- 2 Sexual Orientation, gender identity, and sex characteristics (SOGIE)
- 3 <https://www.icop.or.ke/wp-content/uploads/2016/10/KP-National-Guidelines-2014-NASCOP.pdf>
- 4 KHIS Data MoH 26.08.2024
- 5 Bridging the gaps. Reaching key populations and improving their access to HIV services in Kenya. 2015. [cited 2020 Mar 2]. Available from: <http://fileserv.idpc.net/library/.pdf> Research-report-Reaching-key-populations-and-improving-their-access-to-HIV-services-in-Kenya-
- 6 Hakim AJ, MacDonald V, Hladik W, Zhao J, Burnett J, Sabin K, et al. Gaps and opportunities: measuring the key population cascade through surveys and services to guide the HIV response. *J Int AIDS Soc.* 2018 ;21: e25119. [PMC free article] [PubMed] [Google Scholar]
- 7 KHIS Data MoH 26.08.2024
- 8 <https://www.who.int/news/item/19-07-2022-universal-access-to-sexual-and-reproductive-health>
- 9 Ibid
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