

Data Collection and Reporting on Violence Perpetrated Against LGBTQI Persons in Botswana, Kenya, Malawi, South Africa and Uganda

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Acronyms

ACHPR	African Commission on Human and Peoples' Rights
AIDS	Acquired Immune Deficiency Syndrome
AMShER	African Men for Sexual Health and Rights
ARASA	AIDS & Rights Alliance of Southern Africa
BONELA	Botswana Network on Ethics, Law and HIV/AIDS
CAL	Coalition of African Lesbians
CBO	Community Based Organisation
CEDEP	Centre for the Development of People
CHeRA	Community Health Rights Advocacy
CHREAA	Centre for Human Rights Education, Advice and Assistance
CHRR	Centre for Human Rights and Rehabilitation
CSO	Civil society organisation
FEW	Forum for the Empowerment of Women
GALA	Gay and Lesbian Memory in Action
DBE	Department of Basic Education
DoJ	Department of Justice and Constitutional Development
GALCK	Gay and Lesbian Coalition of Kenya
GBH	Gender Based Harm
HIV	Human Immunodeficiency Virus
HRRC	Human Rights Consultative Committee
HCWG	Hate Crimes Working Group
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
KP-Reach	Key Populations Representation, Evidence and Advocacy for Change in Health
KHRC	Kenya Human Rights Commission
LEGABIBO	The Lesbians, Gays & Bisexuals of Botswana
LGBTI	Lesbian, gay, bisexual, transgender and intersex persons
LITE	Lesbian, Intersex, Transgender and Other
MANERELA	Malawi Network of Religious Leaders Affected or Living with HIV/AIDS
MHRC	Malawi Human Rights Commission
MSM	Men who have sex with men
MWA	Minority Women in Action
NGLHRC	National Gay and Lesbian Human Rights Commission
NGO	Non-Governmental Organisation
NTT	Task Team
NYARWEK	Nyanza, Rift Valley, Western Kenya

PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PEPFAR	President's Emergency Plan for AIDS Relief
RIA	Rainbow Identity Association
RTT	Regional Task team
SALC	Southern African Litigation Centre
SAPS	South African Police Service
SOGI	Sexual orientation and gender identity
STI	Sexually transmitted infection
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV and AIDS
UNDP	United Nations Development Programme
UNHRC	United Nations Human Rights Committee
UPR	Universal Periodic Review
WSW	Women who have sex with women

Executive Summary

Violence against LGBQTI+ persons is a critical area of concern for the African continent. Whilst there has been an increase in the number of civil society organisations, NGOs advocating for the seizure of violence against LGBTQI persons and immense legislative strides made with regards to the affordance of LGBTQI human rights, violence continues to proliferate and mars the experiences of many an LGBTQ person.

LGBTQI persons living in Botswana, Kenya, Malawi, South Africa and Uganda all face significant threats to their wellbeing and safety. The right to safety is central to the affordance of dignity, integrity and the recognition of LGBTQI peoples' citizenship as full citizenship.

It is therefore imperative to review the extent to which LGBTQI persons in the aforementioned countries experience violence based on their gender expression and sexual identities. It is important to explore the mechanisms placed by the various states in an attempt to mitigate the violence faced by the LGBTQI community. Part of ensuring the rights to safety and advocating for legislative and policy reforms necessitates appropriate data capturing systems and mechanisms that provide sound and accurate depictions of LGBTQI peoples' experiences of violence.

The extent of the violence and discrimination faced by LGBTQI persons in each country has been gauged using a combination of qualitative and quantitative data. In each of the five countries, organisations, activists and community networks are working to prevent, document, and respond to violence against LGBTQI persons. Both Kenya and South Africa have robust and visible LGBTQI movements, with networks of grassroots activists, and formal and community-based organisations. Uganda has an established LGBTQI movement that grew stronger in the period of advocacy against the anti-homosexuality bill. This movement has however faced severe repression from the Ugandan state and right-wing sentiments in the country. In all three of these countries there have been both informal and more formal data collection efforts. Although none of the three - Kenya, South Africa and Uganda - have successfully produced national level data on the total number of violations, they have all produced useful quantitative data as well as rich ethnographic accounts and qualitative analyses that give insight into the experiences of LGBTQI persons.

Malawi has a relatively broad network of human rights organisations working for the rights of LGBTQI persons, however the intense legal, political and social repression means that the movement is much less visible than in the other countries. In this context existing NGOs have been reasonably

successful in collecting data that confirms the vulnerability of LGBTQI persons in Malawi. Finally, Botswana has a small but growing network of LGBTQI organisations and activists. These organisations have successfully partnered with government and international organisations to produce data on violations related to healthcare access, however the data outside of this scope is largely qualitative.

The burden of data collection has, for the most part, fallen onto NGOs. Again, with the exception of South Africa, governments collect little data on violence perpetrated against LGBTQI persons. The only data that has consistently been collected by governments is collected through KP projects as part of wider HIV/AIDS strategies. In all five countries, studies on KP have, to some extent, included data on violations of LGBTI persons. The use of this data however has varied widely, in Kenya the government's HIV/AIDS program included various KP focused projects, including sensitizations of healthcare workers and police officers, and efforts to curb broader discrimination. Botswana on the other hand, despite collecting a small amount of data on the violation of MSM and transgender persons through KP studies, does not address any specific programs to these groups. In fact, MSM and transgender persons are largely excluded from Botswana's KP work. Despite having the most appropriate infrastructure to collect such data, the criminal justice systems in Botswana, Kenya, Uganda and Malawi do not collect data on violence perpetrated against members of the LGBTQI community. This may be explained in part by the fact that in these four countries government officials are essentially perpetrators as much as, and usually more than they are protectors. For this reason, there are very low levels of reporting to police, for fear of further violation.

It is not surprising then that there is almost no government response to these violations in Botswana, Kenya, Malawi and Uganda. There have been an insignificant number of arrests and prosecutions in those few cases that are reported. Despite South Africa's progressive legislative framework and government interventions, this has failed to penetrate the workings of the criminal justice system in ways which are beneficial to LGBTQI persons. While a small number of cases have led to arrests and even prosecution, this represents only a fraction of violations, and is the result of sustained advocacy and campaigning. The relatively low number of arrests and convictions should however be understood in the context of a generally ineffective justice system in which only those with economic power can reasonably expect to access state justice.

Across all five countries, and every organisation, there was agreement on the importance of data collection as a tool and strategy for making LGBTQI persons safer. Accurate data enables organisations to target their interventions, adjust their strategies and evaluate their impact. It has also become fundamental to effective resource mobilization and advocacy, particularly at the state level. Data collection tools have also doubled as tools for emergency response, with real time violation reporting making documentation the first step in the process of response.

A note on Terminology

When reporting on the lives and experiences of LGBTQI persons, finding appropriate, accurate and inclusive terminology is of the utmost importance.

The use of the umbrella term LGBTQI is inadequate for representing the full range of gender variance and sexual orientation. Furthermore, are many differences that are often obscured by umbrella terms, and it is the experiences of those most marginalized that tend to be concealed. It is worth noting that the “LGBTQI” acronym has been criticised by civil society and activist due to the shared sentiment that it groups together persons who may face significantly different human rights violations. There are many differences that are often obscured by this umbrella term and it is the experiences of those most marginalized that tend to be concealed.

There is a tendency to label organisations LGBTQI even when the majority or entirety of their focus is aimed at only some of those groups. The needs of transgender and intersex persons have most often been side-lined and their inclusion is often a tokenization. Hence, some intersex activists have opposed the association of intersex people with LGBT groups and causes, citing that this linkage may erase the unique issues intersex persons face. We have tended to follow the lead of the organisations themselves in terms of terminology, except in cases where it creates a clear inaccuracy.

The report uses some terminology that is common in public health research including MSM “men who have sex with men” and “key populations”. The term MSM covers all men who have sex with men, including those who do not identify as gay or bisexual. While MSM work often includes transgender women, we find this use of the term inappropriate and problematic, unfortunately we recognize that in using the existing data this categorization will inevitably be reproduced without our prior knowledge.

Finally, it is worth noting that one of the main consequences of the stigmatization of transgender identities is the assumption that all transgender persons are ‘gay’. In many instances of transphobia, the perpetrator may understand their motivation through the lens of sexual orientation. The same is true of homophobic public discourses. While the majority of the statements that circulate in the mainstream refer to “gays and homosexuals” this should not be interpreted to mean that transgender or intersex persons suffer less stigma. In fact, this is a marker of the structural invisibilization and marginalization of transgender and intersex persons.

However, the term is instructive in that it does capture the many overlaps in the kinds of violations each of these groups face, the systems of power and oppression that motivate them, and the organising that attempts to address these vulnerabilities.

For this report, every effort to respect the gender identities, gender expressions, and sexual orientations of all the individuals and groups represented in this report.

Introduction

Gender-based violence is the umbrella term that describes violence that occurs as a result of the unequal power relationships and the normative role expectations associated with each gender in a specific society.

It is largely understood that whilst violence against LGBTQI persons occurs within this broader understanding of gender-based violence, there is a need to specifically define the violence suffered by LGBTQI persons in a way that underscores the nuances of LGBTQI experiences of violence. Thus, this report relies on the concept of violence based on prejudice as this better encapsulates the underlying cultural and political motivations of violence against LGBTQI persons.

There are multiple forms of lethal and non-lethal violence perpetrated against LGBTQI persons including violation of the rights to life, safety, dignity and freedom. Violence against LGBTQI persons is endemic in all five countries and stems from a heteropatriarchal socio-cultural norms that consider homosexuality and gender-non-conforming gender binary expressions of as deviating from gender deviant from the social norm.

LGBTQI persons often suffer physical violence foremost from their families and members of their communities'. Sexual violence has been identified as a common threat to LGBTQI persons, as it is used to "punish" persons who defy traditional gender norms because of their sexual orientation, gender identity or expression. Lesbian-, Queer-, Bisexual-, and transgender women have been identified as a group particularly vulnerable to violence. This violence occurs within a context where womxn are considered inherently less valuable than men. It has been revealed that Lesbian-, Queer-, Bisexual-, and transgender womxn are prone to violence as it is believed that their sexual orientation and gender expressions are a threat to dominant masculinities.

The problem of violence against LGBTQI persons is further compounded by the fact that there is a lack of regional consensus on the status of LGBTQI persons. Of the countries analysed within this study only two of them (Botswana and South Africa) have decriminalised homosexuality. Whilst this decriminalisation has not necessarily had positive implications for the rates of violence against LGBTQI persons, it has afforded LGBTQI persons who have experienced violence have recourse to the legal framework.

This report analyses violence perpetrated against LGBTQI persons in five countries. It explores the historical and socio-political context in which violence occurs. Through observation of existing data provided by NGOs, civil society organisations and LGBTQI activist it seeks to provide an overview of the violence against LGBTQI persons.

Key recommendations

1. Linking violence against LGBTQI persons to broader systemic violence:

- Efforts to support data collection on the violence against LGBTI persons should enable and encourage a comprehensive and systemic definition and understanding of violence.
- Physical violence is a very serious threat to LGBTQI persons and must continue to be closely monitored. This must include intimate partner violence, which was identified across the board as a serious problem.
- There are many other less visible threats LGBTQI persons and must continue to be closely monitored. This must include intimate partner violence, which was identified across the board as a serious problem.

2. Sustainable Documentation and Data Collection Projects:

- The collection, disaggregation and analysis of data on violations requires considerable labour on the part of activists, staff and volunteers, in terms of time, commitment, and skills development. While the collection of any data is valuable, it becomes most useful when collected over time so as to reveal changing patterns. This requires sustainable data collection projects that are able to retain skilled staff or volunteers.
- Long term funding commitments, careful long-term planning, and the development of institutional memory are thus all essential.
- The Lack of resources and capacity in relation to skills, compromises the quality and consistency of data collection. There ought to be a sustained effort in equipping NGOs and CBOs to build analytical research skills which allows for in house data collection and data analysis. In the absence of developing in-house/local based research skills, there will inevitably be insufficient data sets which allow for the tracking of key changes, key developments, and existing patterns.
- Finally, careful attention needs to be paid to the emotional and physical toll that data collection can take on both the victim and those working with data of this nature. This requires additional resources in dealing with and managing the mental health implications involved in this type of work.

3. Engaging the State:

- The state is in a unique position to collect data on the violence meted out against LGBTQI persons. With extensive existing infrastructure for collecting data on the population, the state is potentially

a key partner in these efforts. With careful attention to the particular contexts and the position of each government agencies that have data collection capacities. In most cases this will mean focusing on the existing commitments to collect data on HIV/AIDS and key populations, and the potentially expanding such programs. Engaging law enforcement is a much more challenging task, however existing relationships should be considered as potential openings for collaborative data collection projects.

4. Holding the State Accountable:

- The existing data shows that government officials perpetuate violence and discrimination towards LGBTQI persons at alarming rates. There is a serious need to address the impunity afforded to state actors, in the healthcare sector, and particularly in law enforcement. This requires investment in the existing advocacy efforts of the LGBTI movement. The organisations reviewed and engaged for this report were targeting the state at every level, in the hopes that a multi-tiered approach can change both political will and everyday implementation of the policies that should protect LGBTQI persons. There is also a need to collaborate with other movements that work to curb the impunity of the state and state actors, and push for meaningful access, services and accountability from the state. This should include consistent evaluation of current programs and training methodologies in order to ascertain the efficiency and efficacy of such state directed programs and training.

5. Gaps in Data Collection:

- While this report covers violence perpetrated against LGBTQI persons, there are major disparities in the extent to which each constituency is considered. The extent to which reporting mechanisms put in place in the various countries effectively record violence perpetrated against LGBTQI persons differs. Where it is captured, data is often aggregated, completely obscuring gender expression and sexual orientation. There exist geographical and age-related disparities within the collection of data pertaining to violence.
- Persons of school going age: it is particularly challenging to collect data on young people in contexts where there is a perception that LGBTQI people attempt to convert or recruit the youth. However, because young people in particular are vulnerable to violence and have fewer resources to respond, it is critical to reach this group. Where organisations have been able to collect such data, they have found that young people experience violence at school, in their homes and their communities.
- LGBTQI persons living in rural and peri-urban areas: the data currently available focuses overwhelmingly on the experiences of LGBTI persons living in urban centres, reflecting the placement of the majority of NGOs. However, creating systems that can document, and respond to the violence perpetrated against LGBTQI persons in rural areas is even more crucial because access to NGO networks

and resources is more challenging. Platforms that enable reporting through various mediums, including cell phones without internet access, go a long way to bridge this gap. However, in order for these platforms to be effective people need to know about them, preferably before they are violated. Organisations working in rural areas need to be engaged and included in data collection projects in order to fill this gap.

- Transgender and intersex persons face a unique set of risks that are relatively neglected in data collection processes. Both transgender and intersex persons are made vulnerable to state violence, including arrest, due to a general failure to provide identity documents actively reflecting the person's identity. Identity documents are critical for the everyday accessing of basic services and without an accurate identity document transgender and intersex persons face discrimination and are potentially made vulnerable to violence. Both groups are also particularly vulnerable to violations by medical professionals, who pathologize and often refuse necessary medical care. Intersex persons in particular have faced incredible harm at the hands of medical professionals who perform unnecessary and harmful surgeries at the expense of the wellbeing of the person.
- LBQ women and WSW: primarily because these groups are not included in most definitions of KP, there is relatively little data collected on the violation of LBQ women and WSW. Considering that women are generally more vulnerable to economic precarity, as well as various forms of discrimination and violence, including from family members, it is important to bridge this gap. Organisations pointed in particular to the lack of data on IPV in same-sex relationships between women, which they identified as a serious and neglected issue.

6. Coordinated and Networked Data Collection:

- In many cases the accuracy and full analytical scope of data sets is comprised by a lack of coordination between organisations at the national and regional levels. Encouraging a networked and cooperative approach to data collection can potentially enable a much more powerful evidence-based work.
- A single case will most often go undocumented but can also be documented by a number of organisations with no mechanism to monitor multiple reporting of a single case. This makes the collation of data collected by different organisations particularly challenging. A coordinated data collection effort would enable more reliable data at the provincial or national scale. This coordination would ideally include efforts in disaggregating, analysing and publishing data.
- The production of reliable data at a provincial and national scale has the potential to reveal important patterns that can influence advocacy strategies. Closely monitoring fluctuation over time, and difference across regions can provide important information on what factors increase the vulnerability of LGBTQI persons and what advocacy strategies are most effective in curbing that vulnerability.

Methodology

The researchers employed different methodologies based on their different experiences but collaborated in outlining the fundamental scope and theories guiding the work.

The report is organized around six key indicators each of which addresses a different aspect of documenting and/or responding to the violence perpetrated against LGBTQI persons. Taken together the six indicators provide a snapshot, in each country, of the currently available data, the extent of data collection and the potential interventions enabled by data collection. The report is sectioned by country and for each of the five countries there is an introductory section broadly covering the social and political contexts relevant to the safety of LGBTQI persons. This is followed by a discussion of the findings pertaining to each of the key indicators. The six indicators are as follows:

- Existence and identification of NGOs and/or alliances that are currently addressing anti-LGBTQI violence in each of the above five countries and the extent to which they are collecting, disaggregating and analysing data;
- The extent to which government authorities in each of the five countries are collecting data on anti-LGBTQI based incidents of violence;
- Existing data in each country on the number of incidents of anti-LGBTQI violence reported to (a) government authorities, (b) human rights bodies, or (c) NGOs;
- The extent to which criminal justice and other officials in each country have received training on any LGBTQI-related issues;
- Existing data and information in each country on the extent to which anti-LGBTQI violence is being addressed by government authorities or other entities (e.g., arrests, prosecutions);
- Existing data in each country on the number of incidents of anti-LGBTI violence perpetrated by criminal justice or other public officials (including false arrests and charges, unlawful detention).

The findings of this research report reflect an extensive desk review and supplementary interviews. The desk review surveyed existing research and organisational reports, publications by international organisations at the UN and AU level, policy documents and academic literature. The desk review focused on literature pertaining to data on the violence faced by LGBTQI persons, data collection efforts by both state and non-state bodies, and efforts to prevent and remedy this violence.

Between November 2018 and January 2019, the researchers conducted eight telephonic and in

person interviews with eleven staff and volunteer members of LGBTQI and mainstream organisations. The interviews were based on structured open-ended interview questions which were tailored to each organisation based on the findings of the desk review. The questions were both quantitative and qualitative in nature. The interviews were, with permission, recorded and transcribed.

In their respective capacities, the researchers did not attempt to gather primary data on the prevalence or nature of anti-LGBTQI violence in the five countries. However, where possible, existing data was collated and/or disaggregated where necessary.

Limitations of the report: The report does not purport to be exhaustive in its claims. It should not be considered a comprehensive literature review. The researchers chose to focus their interviews on representatives of organisations identified to be either undertaking large scale data collection or collecting otherwise unique and unrepresented data.

A note on violence: There is little uniformity in the definition of violence used in the literature or interviews upon which this study is based. This report has taken a wide view of violence and did not limit the study to physical acts of violence. We included in our understanding of violence structural conditions of discrimination, exclusion and economic precarity that are both harmful in themselves and make victims more vulnerable to other harms including physical violence and mental health issues.

Botswana

Botswana has a growing LGBTI movement and in recent years the capacity of civil society organisations has improved significantly. This is due, in part, to the successful litigation on the right to register by the main LGB organisation LEGABIBO.

The movement's most significant victory to date is their success in petitioning the courts to decriminalize same-sex sexual acts. This makes Botswana the most recent country on the continent to repeal colonial era penal codes. The major organisations working on LGBTI rights in Botswana are increasingly investing in data collection and documentation around violence and discrimination faced by LGBTI people. The majority of existing data has been collected through targeted research programs - rather than real time self-reporting mechanisms. While this data is critical for advocacy programs there are some limitations to its application. This report reveals the scarcity of up to date data on the actual numbers of incidents experienced over a specified time period. This limits, for example, the ability to monitor the shifts in the prevalence of violence over time. Globally the majority of government and civil society data on anti-LGBTI violence is collected through HIV/AIDS prevention work targeting KP. The same is true of Botswana and as such the violation of MSM is disproportionately better documented than any other group. However, the government of Botswana has repeatedly failed to include MSM and transgender persons in their KP programs. This means that in relation to LGBTI persons and their protection from violence, the government of Botswana has produced significantly less data, and implemented significantly less programs, than many of their fellow African countries. Considering the generally low levels of data collection and training related to LGBTI violations across the continent this is particularly troubling.

Background

LGBTI people in Botswana face discrimination and violations of their basic rights as a part of their daily lives. This hostility is experienced in both the private and public parts of their lives and in daily interactions with state, educational and religious institutions. These violations include both extreme physical violence and microaggressions that cumulatively constitute violence. In a recent case a video of a transgender woman being severely beaten circulated on social media - the beating itself and the reaction to the clip are prime examples of both the direct threat to the physical safety of transgender people and the long-term exclusion and bullying that enable such violence. LGBTI people are also often denied basic services, including access to adequate and affirming healthcare and a safe educational environment. This hostile environment is a result of a number of intersecting factors including

criminalization and social stigma fuelled by political and religious leaders.

In all three of Botswana's universal periodic reviews the need to combat discrimination and violence faced by the LGBTI community was identified in submissions by both member states and civil society. Botswana has in all three cases rejected these recommendations.

The Commonwealth Human Right Initiative's (CHRI) 2013 submission focused on the criminalization of same-sex relations as well as the climate of stigma created by statements from both political and religious figures. In the joint 2013 and 2017 submissions from Botswana civil society organisations, including LEGABIBO and Rainbow Identity Botswana, it was pointed out that transgender persons have difficulty obtaining identity documents that accurately reflect their gender identities - this despite the legalization of name changes.

It was noted in the country's most recent review (2017) that the country had failed to implement any of the recommended changes and in their response, Botswana noted but did not agree to the reiterated recommendations that same sex relations be decriminalized and the discrimination against the LGBTI community in all forms be combated.

Formal legal status

In a landmark ruling on the 11th of June 2019 a full bench of the High Court ruled to decriminalize same-sex relations. The case challenged the constitutionality of sections 164(a) and (c), 165 and 167 of the colonial era Penal Code. Article 164 of Botswana's penal code criminalized any person who has "carnal knowledge" of another which is "against the order of nature". Article 167 criminalized gross indecency in public or private, which, in a 2003 court ruling was found to effectively prohibit same-sex relations including lesbian sexual activity. Only sixteen years earlier, in the 2003 judgement Botswana's court of appeal upheld the colonial era legislation.

The 2019 judgement was the culmination of tireless lobbying and organizing on the part of the LGBTI community, led by LEGABIBO with legal support from the South African Litigation Centre. The applicant in the case - a twenty-four-year-old man who identifies as homosexual, opened up his personal life to a high level of scrutiny and offered his own experiences as an example of the kinds of violations that criminalization enables. The judgement cited LEGABIBO's submissions on the impact of criminalization on the basic human rights of homosexual persons, in particular on access to medical treatment. This is an example of the role that data on violations can play in enabling organisations to effectively intervene at the legal and policy level.

The extent to which decriminalization will benefit transgender and/or intersex persons is unclear. While in some cases transgender and intersex persons face discrimination on the basis of perceived sexual orientation, there are also many specific and structural vulnerabilities faced by transgender and intersex persons that need specific attention. There are no specific laws criminalizing transgender or intersex people; nonetheless both groups have been vulnerable to prosecution under

other mainstream laws. Despite a landmark 2017 court ruling (discussed below) transgender and intersex persons have had no legal means to have their identity documents brought into line with their gender identity. This lack of recognition at the most basic level increases the vulnerability of transgender and intersex persons to discrimination and violations. In particular because of the many contexts in which identity documents are required to access basic services and employment.

Civil society has expressed optimism that the ruling will enable LGBTQI persons to more readily access their rights as guaranteed by the constitution. Botswana's constitution includes a Bill of Rights guaranteeing fundamental human rights and freedoms to all persons in Botswana. It guarantees equal protection before the law and protection from discrimination on any basis whatsoever. Botswana has also ratified international human rights treaties that include provisions that directly or indirectly guarantee protection from discrimination based on sexual orientation and gender identity. These include the Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the International Convention on Civil and Political Rights and the Yogyakarta Principles.

The 2010 Employment Amendment Act explicitly protects LGBTI persons from wrongful dismissal on the basis of their sexual orientation and gender identity. And in June of 2014 Botswana supported a call from the African Union to protect the human rights of LGBTI persons.

Important cases

Kanane v The State 2003(2): In 1994 a Motswana man was arrested under Botswana's sodomy laws. This remains the country's most high-profile case after receiving attention both in the country and globally. The case reached the Botswana Court of Appeal in 2003 and it ruled that Botswana society was not ready to accept homosexuality. This significant defeat was a serious blow to the efforts to protect the rights of LGBTI persons in Botswana but also drew a great deal of attention to the issue.

Attorney General v Rammoge and 19 Others (LEGABIBO registration): While criminal laws have not been directly applied since the Kanane case there have been references to criminalization in other legal matters. The extended refusal to register LEGABIBO as an independent organisation is an example of the widespread impact of criminalization. LEGABIBO first attempted to register in 2007 and, following multiple unsuccessful attempts, including a rejection in March of 2012, the organisation was forced to resort to litigation. The explanation given for the rejections was the lack of recognition of homosexuals in the Botswana constitution and the idea that the organisation would essentially be promoting unlawful practices. In 2014 LEGABIBO was granted the right to formally register as an independent organisation after the High Court's Justice Rannowane ruled that the organisation's application to register was about the right to advocate for legislative change rather than the right to engage in same-sex sexual relations.

ND v Attorney General of Botswana: In a 2017 ruling, the High Court of Botswana ordered the government to change the gender marker on the identity document of a transgender individual. The

court ruled that "... the State has a duty to uphold the fundamental human rights of every person and to promote tolerance, acceptance and diversity within our constitutional democracy. This includes taking all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity documents which indicate a person's gender/sex reflect the person's self-defined gender identity." The government has agreed to abide by these decisions and civil society are closely monitoring their implementation which, if successful, would majorly improve the human rights protection afforded to transgender persons in Botswana. However, without meaningful sensitivity training, hostility on the part of many state officials towards transgender persons can mean that in practice there is no practical access to a name or gender marker change. This has been the case in part because the court requires applicants to submit medical reports concerning their sexual identity - reports that are often very difficult to obtain.

Motshidiemang v Attorney General 2019: In this case, heard before a full bench of the High Court of Botswana, sections 164(a) and (c), 165 and 167 of Botswana's Penal Code were found unconstitutional. Letsweletse Motshidiemang was the applicant in the case with LEGABIBO accepted as Amicus Curiae - or friend of the court.

Social Context

Public Discourse

A 2017 Afrobarometer report noted that while Botswana is an increasingly tolerant nation, attitudes towards freedom of sexual orientation continue to be negative. For example, 56% of those surveyed indicated that they disliked or somewhat disliked the idea of living next to a neighbour who is homosexual. While there is little data on attitudes towards transgender and gender non-conforming persons the high levels of violence levelled against these groups suggests at least equal and more likely higher levels of antagonism.

These attitudes are only fuelled by the positions of various prominent figures in society including political and religious leaders who have made numerous discriminatory statements and the media's often derogatory and sensationalist reporting. These public expressions can be understood as fuelling an environment of hostility towards LGBTI people.

Political Leaders

Various political figures have been responsible for hate speech against the LGBTI community, speech that, considering their prominence, directly contributes to a hostile and violent environment. In their 2013 needs assessment LEGABIBO highlighted the prevalence of anti-LGBTI statements and comments among prominent leaders and in the mainstream media. For example, the Deputy Speaker of the National Assembly, Pono Moatlhodi publicly described homosexuals as "demonic and evil" and when questioned about this suggested that homosexuality goes against the Botswana culture.

There have also been some important voices in support of LGBTI people's human rights from

prominent political figures. Most notably, Former President Festus Mogae who very vocally called for decriminalization and efforts to curb social stigma around sexual orientation and gender identity. Another example is the assistant Minister of Local Government and Rural Development, Bothhogile Tshireletso. Tshireletso openly supported LEGABIBO in their attempts to formally register and committed to lobby other political leaders on the issue.

Religious Leaders

The majority of Botswana's religious leaders and institutions have made no public comment on LGBTI persons and their rights. However, a small but significant number of churches have made concerted efforts to vilify the LGBTI community using a variety of harmful narratives including references to criminality and perversion. The Evangelical Fellowship of Botswana (EFB) has led these campaigns and condemned LGBTI rights organisations and those organisations working with key populations in the fight against HIV/AIDS. The country has reportedly seen an increase in churches that are openly intolerant of LGBTI persons and religious leaders have frequently made equally discriminatory comments and often call on the country to ensure the "[it] does not degenerate any further into ungodliness." Such calls for action on the part of citizens can only further contribute to stigmatization and persecution of the LGBTI community.

A much smaller number of churches have, to varying degrees, attempted to promote the rights of LGBTI persons. Mostly taking an "active but silent role" in supporting the struggle for full access to rights. Civil society organisations have targeted religious leaders as an important potential ally and have had some important successes in engaging religious leaders in community dialogues.

HIV/AIDS

Botswana is one of the countries most affected by HIV in the world, with the latest UNAIDS data estimating prevalence among adults (ages 15-49) at 22.8%. While prevalence has dropped from over 25% in the early 2000s, with an overall prevalence of 21.9% Botswana still has the third highest prevalence in the world.

Botswana was the first country in the world to provide universal free access to ARTs and the program has managed to reach more than 90% of those eligible for treatment. In August of 2018 the country announced the Third Botswana National Strategic Framework (NSF) for HIV/AIDS 2018 -2023. It is not clear if this NSF will maintain the same definition of key populations as found in the second NSF (2010 -2016): sex workers, truck drivers, seasonal farm workers and construction workers. No LGBTI people, including MSM and transgender women, were included in this strategy.

The Government of Botswana has come under heavy criticism for failing to include MSM, transgender persons (as well as people who inject drugs) as key populations for targeted services. In fact, the government reported that the MSM population was too small to warrant such programs and suggested the MSM have adequate access to healthcare - this despite a lack of government research into the question and directly contradictory findings from civil society-based research. MSM and

transgender persons have occasionally been acknowledged in other government programs as key populations for the HIV/AIDS prevention strategy, including the 2014 Global AIDS Response Program Reporting (GARPR).

Findings

Indicator one: Existence and identification of NGOs and/or alliances that are currently addressing anti-LGBTI violence and the extent to which they are collecting, disaggregating and analysing data;

Botswana has a small but growing LGBTI movement, with a cohort of LGBTI focused and mainstream organisations addressing LGBTI rights issues. The five organisations identified work in partnership with one another and very often collaborate in the collection of data as well as responding to reported violations.

Ditshwanelo - The Botswana Centre for Human Rights is a mainstream human rights organisation formed by a group of lawyers in 1993. The organisation's focus is ensuring equality before the law for all Batswana. Ditshwanelo initially formed LEGABIBO in 1998 as a support group for lesbian, gay and bisexual people, with the aim of introducing LGB rights into the broader human rights conversation in Botswana. Due to funding constraints the project was not implemented and only later re-emerged under BONELA. Ditshwanelo continued to work on issues of LGB human rights, including taking the lead in legal efforts to decriminalize same-sex sexual conduct.

Lesbians, Gays, and Bisexuals of Botswana (LEGABIBO) remerged under BONELA in the early 2000s and gradually solidified into a fully independent organisation. LEGABIBO aims to promote the recognition, acceptance and equal protection of the LGBTI community in Botswana. They do this through advocacy, the creation of safe space and access to services as well as strategic litigation. LEGABIBO's fight to gain formal registration has been lauded as a model example of strategic litigation that has far reaching impact.

LEGABIBO currently leads and participates in both informal and formal data collection on the violations of LGBTI persons in Botswana. Through the REAct system LEGABIBO has collected data using the Martus software program, which enables organisations to document violations as they are reported. They have also collaborated with the Ministry of Health on their 'Behavioural and Biological Surveillance Survey of HIV/STI among Select Key Populations in Botswana.' In 2015 the organisation partnered on a COC Netherlands funded project, led by Professor Alex Müller, which aims to document the mental health needs of LGBTI persons. This study includes documentation of instances of violence experienced by LGBTI persons.

In an interview with LEGABIBO staff and volunteers a number of barriers to data collection were mentioned. LEGABIBO is currently working to extend its national reach, however the majority of data collected comes from Gaborone, the country's capital, and Francistown, the major urban centre in the North of the country. Reaching rural communities has been a challenge in every part

of the organisation's work, including documentation and data collection. One of the peer educators working with LEGABIBO, and regularly documenting violations, indicated that the safety of community advocates was also a factor preventing the collection of data. Finally, they suggested that because many victims only report cases that require emergency response, or that they feel are adequately serious, many of the everyday violations that LGBTI persons face go undocumented and unaddressed.

The Botswana Network on Ethics, Law and HIV/AIDS (BONELA) is an organisation that works on integrating ethical, legal and human rights approaches into Botswana's response to the HIV/AIDS epidemic. BONELA was registered in 2002 and began to function independently after initially being developed in 1995 as a component of another project. BONELA's work has included training and advocacy around sexual minorities and human rights.

The Rainbow Identity Association (RIA) advocates for the rights of transgender and intersex persons. The organisation, which legally registered in 2010, was established in 2008 in response to the need for a more specific and targeted approach to advocating for transgender and intersex persons in Botswana. They currently focus their work on Gaborone and its surrounding areas but hope to be able to increase their geographical reach. RIA has three core focus areas, advocacy; research and documentation; and, sports and recreation. The group also oversees a parents WhatsApp support group and other direct support interventions.

RIA identified a gap in the documentation of issues faced by transgender and intersex persons in Botswana, compared to the already sparse data on LGB exposure to violence. The organisation's founder identified research and documentation as their most underfunded focus area. As such the organisation has not been able to independently conduct the kind of data collection and analysis that is so necessary for guiding advocacy work. The organisation was also forced to terminate its paralegal project due to a lack of funding. The project documented any cases reported to their office, including cases of intimate partner violence, discrimination in the workplace and expulsion from families. RIA partnered on the COC Netherlands funded project, documenting the mental health needs of LGBTI persons. The organisation has been given access to the preliminary data and are currently undertaking their own analysis.

Health Empowerment Rights (H.E.R) is a CBO that works to create a space in which marginalized women can amplify their voices and work together to address their specific needs. The organisation is based in Gaborone and has a membership of twenty women including women who identify as feminist, lesbian, bisexual, WSW, HIV positive and trans. The organisation is focused on training, education and advocacy. Their work is enabled by a team of four volunteers and the annual membership fees of P120. The organisation does not undertake significant data collection work and focuses more on campaigns, with their most notable being the 'Have a Heart' campaigns that focus on improving education access for underprivileged children.

Indicator two: The extent to which government authorities in Botswana are collecting data on anti-LGBTI based incidents of violence;

The Botswana government is collecting very little data on anti-LGBTI incidents of violence. The criminal justice system, which does not recognize SOGI motivated hate crimes, has no mechanism for documenting anti-LGBTI violence when reported.

The only data that has been collected on the violations of LGBTI people has been in the context of HIV/AIDS and key populations research. The Ministry of Health has undertaken two major studies, one in 2012 and one in 2017. While these reports do include MSM and transgender persons, there has generally been a failure to include these groups in Botswana's KP work and therefore there is far less data on their experiences than those of other KP for example FSW, truck drivers etc. The inclusion of MSM and transgender persons in these studies is an important development, however, the government limits its focus to HIV/AIDS KP and therefore collects little to no data on the violations of LGBTI persons who do not fall into these population categories.

Findings in: HIV/STI study on 'Select High Risk Sub-Populations' - conducted in 2012

In 2012 the Ministry of Health undertook a large-scale HIV/STI study on "select high risk sub-populations" in Botswana. The report included little mention of violence and violations as relevant to the prevalence levels among MSM. However, the supplementary data, included as an appendix in the report, indicates that respondents were asked a single question about exposure to violence. It is worth noting that in the same report female sex workers were asked about police violence, while the same was not asked of MSM. The data collected shows that of the 450 MSM surveyed 11.6% indicated that they had experienced some form of physical violence in the past six months. With 5.9% indicating that they had been forced into sex in the past six months.

Findings in: HIV/STI study on 'Select High Risk Sub-Populations' - conducted in 2017

The 2017 report also gave priority to violence, including police brutality, when discussing FSW, but not MSM and transgender persons. While these questions were included in the survey, they received little attention in the analysis of the report. This suggests that the violence faced by MSM and transgender persons are mistakenly ignored as key factors in the vulnerability of MSM and transgender persons to HIV/AIDS.

The table below, extracted from the draft 2017 report, indicates the percentage of MSM and transgender persons that reported having experienced a violation. The report provides the original tabulated data for MSM, but only analysis on the transgender data which is therefore partial.

Table 1: Percentage of MSM and transgender persons that experienced violations 2017

	MSM	Transgender persons
Forced sex first sex	4.8%	*
Forced sex past 6 months	5.2%	5%
Physical violence past 6 months	3.9%	10%
Forced not to use condom	8.3%	*
Stigma and discrimination		
Healthcare setting	5.2%	28%
Housing	2.1%	*
Job	1.9%	*
School	11%	28%
GBV	6.8%	*
Law Enforcement	1%	*

Indicator three: Existing data in each country on the number of incidents of anti-LGBTI violence reported to (a) government authorities, (b) human rights bodies, or (c) NGOs;

Only the state has the real capacity to accurately capture the number of incidents of LGBTI violations at a national level, however as will be discussed in reference to indicator five, the state has developed neither the capacity nor the will to do so.

Based on both existing data and the interviews conducted for this study, it seems that the majority of LGBTI persons only report violations when approached by organisations and researchers actively documenting cases. While LGBTI and human rights organisations will receive immediate reports of some cases, they have not had the capacity to develop a robust mechanism that encourages or enables reporting in real time. This is confirmed by the fact that the majority of organisations consider research reports their most reliable source of data on the number of incidents of anti-LGBTI violations. This means that very little reliable data is available on the number of self-reported incidents. Nonetheless there have been a number of in-depth research and documentation programs that have produced useful data on the prevalence of violations among LGBTI persons. This section will outline the key studies and their findings.

In May 2018 the United Nations Development Program (UNDP), the Southern African Litigation Centre (SALC) and LEGABIBO produced a report based on a joint study on the impact of laws criminalizing same-sex relationships. This study produced useful qualitative data on various incidents of violence.

The report considers various violations indexed into six categories; verbal harassment and abuse, physical harassment and abuse (including murder), sexual abuse (including rape), discrimination in healthcare, discrimination in the workplace, and harassment and abuse from law enforcers. The report, which includes many personal accounts, confirms that LGBTI persons in Botswana experience considerable violations in all of the above outlined categories. The report gives special mention to the fear of sexual violence among LBQ women - a largely under documented issue.

A small number of studies have produced some quantitative data on the prevalence of violations experienced by LGBTI persons. As is consistent with research patterns across the globe, the majority of these studies are defined around health and access to medical care, with a particular focus on HIV/AIDS. This means that there is far more data on the experiences of MSM.

The only data available based on real time reporting comes from the REAct system implemented as part of the KP REACH program. Across Southern Africa, including in Botswana, the KP REACH program and REAct system have been coordinated and implemented by Positive Vibes Trust. The local partners in Botswana are BONELA, LEGABIBO and HER, all of whom host reactors - persons trained to document violations using the Martus software program. In 2017 these partners documented a total of 61 cases, affecting 60 persons: 23 lesbians, 20 sex workers, 11 transgender people and, 9 gay men. More data on the nature of the violations was not published.

Pilot findings from a 2018 LGBT health study undertaken by Müller found that LGBT persons experienced higher levels of violence than that reported for the general population. The study found that 42% of the LGBT respondents had experienced physical violence in their lifetime and 25% had experienced physical violence in the past year. Müller also found that 41% of LGBT persons reported experiencing sexual violence in their lifetime, and 22% in the past year.

A study by Baral et al. on HIV and human rights amongst gay men and MSM in various Southern African countries, including Botswana, found that 11.6% of MSM in Botswana reported being raped by another man in their lifetime.

Finally, a 2016 study, housed in the Johns Hopkins Bloomberg School of Public Health, and funded by the Sexual Health and Rights Project, the Open Society Institute (OSI), and the Open Society Initiative for Southern Africa (OSISA) produced the data outlined in the table below. The study suggested that MSM face considerable risk of violations with 58.62% reporting experiencing a human rights violation over their lifetime. Also, notably high is the prevalence of blackmail at 26.5% and the fear of accessing healthcare and simply walking in public both in excess of 20%.

Table 2: Prevalence of human rights abuses reported by MSM in Botswana

Human Rights Violation	% (n/N)
Denied housing	5.17 (6/116)
Denied healthcare	0.85 (1/117)

Blackmailed	26.50 (31/117)
Beaten by the police or a government official	1.71 (2/117)
Raped	7.69 (9/117)
Ever experienced any human rights abuse	58.62 (68/116)
Afraid to seek healthcare services	20.51 (24/117)
Afraid to walk in community	29.06 (34/117)

There is a clear gap in the documentation of transgender persons experiences of violence, with no specific data available. The same is true of intersex persons. The founder of RIA confirmed the need for more targeted studies that address the specific experiences of transgender and intersex persons. RIA partnered in the 2018 Müller study and while the data analysis is still ongoing, they are hopeful that it will produce much needed data on the violations of transgender and intersex persons in Botswana.

Indicator four: The extent to which criminal justice and other officials in Botswana have received training on any LGBTI-related issues;

In the majority of countries on the continent the government's only attempts at sensitization of public officials are through key population HIV/AIDS strategies. Considering the earlier outlined failure of the Botswana government to include MSM and transgender persons in their KP strategies, even this avenue for sensitization has not been utilized. As such the government failed to implement or support the training of public officials on the needs of LGBTI persons as part of their KP strategies.

This has meant that all training implemented as part of KP strategies - which constitutes a majority of all sensitization work across the continent - is undertaken by civil society organisations. In 2012 a training program for healthcare workers delivering KP friendly services convened by the National AIDS Coordinating Agency "ended as a result of a lack of support" from the government.

Departments of Health and Home Affairs

One of LEGABIBO's three priority program areas is access to HIV/AIDS and SRHR services for LGBTI/MSM/WSW. Their work in this area has included sensitization among service providers with a focus on healthcare workers.

A 2017 study commissioned by The Other Foundation identified a need to begin sensitization of healthcare workers at the very start of their medical careers. There is no literature or training in medical schools on transgender health services, and this perpetuates the pathologization of transgender persons. The same is true for the specific medical needs of intersex persons.

The department of Home Affairs is a key stakeholder for advancing the rights of transgender and intersex persons. Unfortunately, RIA's attempts to approach the department have been unsuccessful. After a relatively cooperative Minister was moved to another department, the developing relationship has disintegrated. The department, under new leadership, has responded that they have no need for sensitivity trainings and have suggested that should the need arise they will contact RIA.

Law Enforcement

As part of their work on the Domestic Violence Act BONELA have partnered with LEGABIBO and RIA to provide sensitivity training to law enforcement and other criminal justice officials. This has included sensitizing recruits attending the police training college in Botswana. LEGABIBO staff indicated that because police receive no sensitization in their training with the Ministry of Défense it then becomes necessary to implement separate sensitizations, essentially as a corrective. These trainings have focused on highlighting the responsibility of law enforcement to respect and uphold the human rights of all persons reporting to them. Having community members present who can share their experience, was identified as an effective way to humanize the issue and make a more meaningful impact.

In their interview LEGABIBO staff indicated that trainings work best when accompanied by personal relationship development. In particular they focus on identifying sensitive police officers, in order to be able to approach them directly when cases arise.

Despite these efforts, very few people who reported violations to LEGABIBO were willing to report these cases to the police. Of the approximately fifty reports they received in 2018 only one person forwarded their case to the police.

RIA have found that engaging police officers in their personal capacity is an effective way to establish rapport that they can then later translate into an official working relationship. Although these officers will often ask for the relationships, they develop to be kept confidential, the organisation has been able to access important "insider information" about the workings of the system.

Religious and Traditional Leaders

Botswana's LGBTI organisations have identified religious and traditional leaders as important constituencies to engage and cooperate with.

RIA has been able to successfully engage religious leaders over a number of years. For example, the Botswana Council of Churches participated in family dialogues of transgender and intersex persons as well as dialogues in churches on sexuality and mental health.

LEGABIBO have taken engagement with traditional leaders as one of their key approaches to reducing stigma and violations against LGBT persons in Botswana. Their engagements have been part of a broader focus on community advocacy, with attempts to reach as many pockets of the community as possible.

Indicator five: Existing data and information on the extent to which anti-LGBTI violence is being addressed by government authorities or other entities (e.g., arrests, prosecutions)

Government authorities in Botswana do not provide adequate access to redress and justice for LGBTI persons who face violations. In a context of criminalization and discrimination LGBTI persons are often reluctant or entirely unable to pursue legal redress.

The criminal justice system

LGBTI persons in Botswana have reported being unable to report to the police, offering as reasons: apathy on the part of police, fear of confidentiality breaches, family reprisals, arrest, further victimization and Inranti, and a general lack of information and knowledge of their rights.

In research on the Southern African region ARASA (2016) found that those who do report violations often exclude their sexual orientation from the reporting out of fear of their own criminalization. This means that even if the state wanted to, it could not accurately document cases in which homophobic or transphobic hatred motivated these violations.

This is particularly true of intimate partner violence, which people indicated being particularly reluctant to report. In LEGABIBO's 2013 needs assessment 23.8% of the respondents disclosed that they had experienced physical violence in relationships. Of those, 53.8% indicated that they had reported these incidents to the police but had not been taken seriously. In their interview LEGABIBO staff indicated that the high levels of IPV remain a serious problem and that victims remain reluctant to report.

Anti-discrimination instruments

There have been some important steps on the part of government to combat discrimination.

In January of 2018 the government, in its submission to the Human Rights Council, committed to engage in a review of national laws that would address discrimination of marginalised groups including LGBTI persons. This follows a gradual move towards addressing discrimination against LGBTI people. In 2010 the government passed the Employment (Amendment) Act 10 which inserted sexual orientation as one of the grounds on which someone may not be dismissed. In the country's second national strategic framework for HIV and AIDS 2010 - 2017/2018 the country included sexual orientation among the identities that should not hinder access to health and social support services.

This has not extended to more robust measures to prevent and address violence and violations of LGBTI persons. As such these policy developments have not translated into instruments of meaningful redress.

State Engagement with Civil Society

The government's official engagement with civil society is primarily through the Botswana Council of Non-Governmental Organisations (BOCONGO). While LGBTI NGOs are members of BOCONGO, their

priorities and voices have not always been given adequate consideration. LEGABIBO indicated that this side-lining meant that the government is able to claim that it has consulted with civil society on issues that may impact LGBTI persons when in fact the actual organisations serving LGBTI persons have not been engaged.

Indicator six: Existing data in Botswana on the number of incidents of anti-LGBTI violence perpetrated by criminal justice or other public officials (including false arrests and charges, unlawful detention).

Health Care Providers

It has been consistently reported that health care workers in Botswana reinforce societal stigma and either directly refuse to provide adequate healthcare or create an environment of fear that discourages access. "Discrimination in health care ranges from instances of abusive and derogatory language, breaches of confidentiality, providing inferior / substandard care and conditional access to health care services, to outright denial of health care and threats of police reports. "As such healthcare providers both directly and indirectly violate the rights of LGBTI persons to access adequate healthcare and their human rights in general.

Once again, the majority of data available on access to healthcare and experiences of violations within the healthcare system focus on MSM, and to a lesser extent transgender woman under the banner of 'key populations.'

The 2009 study by Baral et al. found that 5.1% of respondents across Botswana, Malawi and Namibia had been denied health care because of their sexual orientation. LEGABIBO's 2013 needs assessment found a much higher prevalence of 14%. The needs assessment also reported that only 25% of those interviewed had reported their sexual orientation to health care workers.

The most recent study, by Müller (2018), found that 28% of respondents reported being denied healthcare because of their sexual orientation and/or gender identity. Müller's pilot study also found that 56% of LGBTI respondents reported being treated with less respect because of their sexual orientation or gender identity and 39% reported having been called names or insulted in a healthcare facility. This high prevalence should not be understood to reflect an increased environment of hostility, while this may be a factor, it is also likely that the intentional inclusion of gender identity and other factors may have influenced the data.

RIA reported that many transgender and intersex persons are reluctant to access healthcare in fear that they will be exposed to violations including verbal and physical abuse. An RIA staff member reported a case in which a transgender woman had the police called on her when she attempted to access much needed medical assistance. One of the administrators at the healthcare facility demanded her id and assumed upon seeing the document claimed that she was falsely impersonating someone. There is inadequate data on the specific healthcare needs and experiences of intersex persons in Botswana. Because the state keeps no record of the births of babies with intersex characteristics there is only scant data on forced surgeries and other violations that intersex persons face in the healthcare system.

Law Enforcement

Law enforcement officers are reported to both perpetrate violations and withhold protection against violations for LGBTI persons in Botswana. There is little up to date data available, however the interviews conducted for this study confirmed a continued pattern of abuse by law enforcement. RIA reported the arbitrary arrest of transgender and intersex individuals accused of impersonation or fraud based on inaccurate government issued identity documents. This has been a problem particularly at border posts where passports are required for exit or entry into the country. Those who have been detained reported a reluctance to explain these discrepancies in fear of further humiliation and violence.

The Baral et al. study in 2009 found that 10.5% of MSM in Botswana, Namibia and 3indicator had been beaten by police at least once. Unfortunately, the Ministry of Health data on violations explicitly excluded police violence from its survey of MSM and transgender persons despite including this in their FSW survey. However, LEGABIBO's 2013 needs assessment found that LGBTI persons regularly face arrest, illegal detention and criminal charges. This reinforces the findings of numerous studies showing that arbitrary arrest and detention are commonly experienced by LGBTI people in Africa.

Kenya

There is a great deal of qualitative data demonstrating and analysing the prevalence of anti-LGBTI violence in Kenya.

The organized and outspoken LGBTI movement have worked hard to give visibility to the kinds of violations faced by their community. They do this using diverse approaches including research and formal reporting, and community advocacy. Far less quantitative data exists, with no national scale comprehensive data available. Furthermore, due to both challenges with data collection in certain regions, and a lack of coordination between those organisations that do collect data, it is not possible to compile a reliable estimated national figure based on the existing data. The only data collected by the state is gathered through their healthcare system, which recognizes sexual and gender identity through the lens of 'key populations.' This limited but significant recognition is due to tireless HIV/AIDS organizing on the part of the LGBTI community for the last two decades. The criminal justice system produces no figures on these violations. There is widespread fear of reporting and those cases that are reported and documented will not include any reference to sexual orientation or gender identity as a motivating factor. While the state has made some important policy shifts over the last decade, overall the state acts more as perpetrator than protector in Kenya. Despite evidence of significant efforts to train public officials on LGBTI rights, including those in the criminal justice and health sectors, very few LGBTI people report having access to adequate services in either of these systems. Furthermore, there are widespread reports of verbal, physical and sexual abuse perpetrated by public officials in Kenya. Despite this rich qualitative data, most of those interviewed indicated a need for a more comprehensive data collection systems, and in particular, an effort to coordinate documentation processes in such a way that more reliable data might be collated from the disparate documentation efforts.

Background

Kenya's LGBTI community faces a significant climate of violence and social hostility with little protection provided by the state. While there is a strong culture of organizing and an embedded social safety network among the LGBTI community, anti-LGBTI violence is perpetuated through an interconnected web of criminalization, social stigma and exclusion. There have been some major victories in achieving policy protections for LGBTI people, however overall this protection is limited and those protections that are legally mandated are seldom adequately implemented. In fact, overall, the state's stance towards the LGBTI community, both formal and informal, exacerbates the vulnerability of LGBTI people. Government officials and civil servants often turn a blind eye to violations of LGBTI people and even directly perpetrate acts of violence.

In Kenya's most recent Universal Periodic Review (2015) the country's failure to protect the LGBTI

community appeared as a principal matter of concern and the Human Rights Committee reiterated its 2011 recommendation that Kenya decriminalize sexual relations between consenting adults of the same sex and put an end to the social stigmatization of homosexuality. This recommendation is a reiteration of previously rejected recommendations from the country's first review in 2011. SOGI also appeared as one of the most frequently noted issues in recommendations received by Kenya from other nations. While the country has noted the recommendation in its UPR implementation plan, the specific actions suggested are non-committal and do not indicate any meaningful shift in the country's commitment to LGBTI rights and protection.

A number of submissions provided by stakeholders - from both international and Kenyan organisations - are of particular importance for this study. The focus of these submissions was, the decriminalization of same-sex relations between consenting adults, the state's obligation to provide protection to LGBTI persons and act against violence, hate speech and hateful sentiments against LGBTI persons.

Formal legal status

- The Kenyan Penal Code criminalizes all same-sex relations including consensual and private sexual conduct between adults. In March of 2019 the Kenyan High Court ruled against a petition to decriminalize homosexuality, upholding the existing penal code violations. These laws are rarely enforced but create an environment of fear and stigmatization. In 2015 case two men were charged under Section 162 (a) and (c) of the penal code in Kwale County on the coast of Kenya. During the investigation the men underwent forced anal examinations, and HIV and Hepatitis B tests. The Kenyan High Court later went on to rule that forced examinations were an acceptable means of evidence gathering in Section 162 cases.
- Article 27(4) of the Constitution of Kenya (2010) is a comprehensive anti-discrimination clause preventing the state from discriminating against protected groups. It reads:

"The State shall not discriminate directly or indirectly against any person on any ground including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."

- While sexual orientation is not explicitly recognized, case law has interpreted Article 27 (4) as including sexual orientation.
- Trans, intersex and gender diverse persons face significant challenges gaining legal recognition of their gender identities. While there have been a number of key legal victories (and some significant losses) in challenging discrimination on the basis of gender identity there remains a massive gap in designing and implementing policies that give transgender, intersex and GNC persons access to

documentation, legal status and appropriate and affirming healthcare. Without clear policies relating to lack of discrimination based on gender identity, transgender, intersex and gender non-conforming persons have no consistent and protected access to key services from the state. Identity documents are critical to engagement in public life, and even avoiding arrest, and with gender markers required on all official government identification and legal name changes seldom granted, gender diverse people face significant barriers to accessing basic services.

- The Kenya Health Policy outlines the principles of inclusiveness and non-discrimination in the provision of health services. However, LGBTI people are seldom afforded this kind of care. In fact, many members of the LGBTI community are denied access to adequate and affirming healthcare. Transgender, intersex and gender non-conforming people face a particularly hostile healthcare system. When seeking healthcare aimed at affirming their gender identities transgender persons are often either denied services or become targets of violence. There are no clear policies or guidelines on healthcare standards for intersex persons and many intersex people are subjected to inappropriate and invasive procedures that amount to torture and inhumane treatment. Stigmatization has significantly impacted the rights of HIV positive persons to access healthcare, and civil society organisations have put significant energy and resources into combatting this discrimination.

Social Context

Anti-LGBTI Public Discourse

The “homosexuality debate” has emerged as an important political battleground in Kenya. Politicians, religious leaders, and the media regularly use sensationalist homophobic and transphobic rallying calls in the hope of gaining popular support from the public. The stigma against diverse sexual orientations and gender identities is rooted in a number of factors, including the notions that these go against African and religious values.

For decades politicians and religious leaders have spouted homophobic and transphobic sentiments to garner popular support. In 1999 then president Daniel Moi denounced homosexuality as opposed to both religious and African values. This public statement has been followed up by many such statements by leaders of prominence in the country. The country's current president Uhuru Kenyatta has chosen to stay relatively silent on the issue. However, in an interview related to the visit of the US President Barack Obama, Uhuru, when asked, called gay rights a “non-issue.” Uhuru's deputy, William Ruto has, on the other hand, made many directly homophobic statements, including comparing homosexuals to dogs and stating, “there is no room for gays and those others in Kenya.” These kinds of sentiments have been echoed by various politicians at every level of Kenyan political life.

Religious leaders have also been identified by the LGBTI community as one of the main sources of an anti-LGBTI discourse. Many LGBTI organisations consider engaging with religious leaders as one of the key ways to shift social attitudes at a significant scale. Religious leaders, including those holding positions of significant power in Kenyan society, have spoken virulently against LGBTI persons, often to the extent of inciting violence. In 2010 there was a case in which leaders from both the Council of

Imams and Preachers of Kenya (CIPK) and the National Council of Churches of Kenya (NCCK) incited violence against LGBTI people in Mtwapa, a town on Kenya's coast. Responding to rumours of a "gay wedding" set to take place in Mtwapa, the religious leaders held a press conference in which they called for gays to be "flushed out." The result of this call was a mob attack of 200 people on the Kenyan Medical Research Institute, a parastatal that offered vital HIV services to MSM. Several trans women and gay and bisexual men who served as peer educators there were attacked.

The media has also been identified as one of the main sources of contempt towards the LGBTI community. Many media outlets put out sensationalist reports, often untrue, that essentially designate the LGBTI community as scandalous. This includes media reports unveiling Kenya's "top gays" and reports that reference Western aid for LGBTI rights work in a way that reinforces the 'un-African' discourse. Along with the legal context, it is this social milieu that makes LGBTI persons particularly vulnerable to violations.

Stigma and discrimination continue to be the major problems faced by LGBTI persons in Kenya. An atmosphere of widespread social rejection both encourages the violation of LGBTI persons and enables such violations to go unchallenged communally.

The data on violations of LGBTI persons suggests that exclusion and discrimination make up the everyday experience of violation. Verbal harassment, rejection by family, the denial of services, exclusion from learning institutions and evictions from housing are all examples of LGBTI people's exclusion from the everyday means of life and social fabric.

Structural Violence

It is critical to understand the violations of LGBTI persons in Kenya within the context of the overall vulnerability of all persons to violence. Very often the same factors that make any person more vulnerable to violence, increase the vulnerability of LGBTI persons, who may then also be targeted specifically because of their sexual orientation and/or gender identity. The data on the violations of LGBTI persons can only be accurately interpreted when understood alongside the overall context of violence in Kenya.

State violence

In order to understand the vulnerability of LGBTI people in Kenya to state perpetrated violence one needs to examine the overall context of impunity on the part of the state. Kenya's police force is globally recognized as an especially lethal one. The overall culture of regular and casual violence by police and military officers is the context within which LGBTI persons face violations. This is critical to note in order to understand the barriers that LGBTI organisations face in holding the police force accountable.

Communal and Interpersonal Violence

In 2017 Kenya experienced a wave of civil unrest around the election period. In a context of widespread communal violence, LGBTI people were targeted in attacks that cannot be understood

through the commonly cited “ethnic tension” explanation Organisations responding to examples of this violence have suggested that an environment of impunity enables those with existing hostility towards LGBTI persons in their communities to act on this contempt.

Kenya, like the majority of countries in the world, has high levels of gender based and intimate partner violence. In order to understand the vulnerability of LGBTI persons one needs to take these patterns into account.

Socio-economic precarity

Kenya has universally high levels of poverty and as such LGBTI persons are, at least equally, and often far more vulnerable to economic precarity. One of the major factors in LGBTI person's vulnerability to violence is housing insecurity. However, housing insecurity, which is closely linked to job insecurity needs to be understood in a context of widespread unemployment and housing insecurity in Kenya as a whole. Another example of this dynamic is access to safe transportation, many of the violations that LGBTI persons are victim to occur when those people have no access to a safe means to travel to and from work and particularly recreation. Across all the research included in this report it was clear that the precarity faced by LGBTI persons correlated directly to the level of economic insecurity they suffered.

Findings

Indicator one: Existence and identification of NGOs and/or alliances that are currently addressing anti-LGBTI violence and the extent to which they are collecting, disaggregating and analysing data;

The formation of Ishtar-MSM in 1997 is generally acknowledged as the emergence of an organized LGBTI movement in Kenya. Ishtar-MSM was at the forefront of advancing the MSM health rights and continues to lobby for LGBTI rights to adequate and affirming healthcare. Ishtar-MSM along with Minority Women in Action (MWA), Gay Kenya and The Other Men in Kenya (TOMIK) founded the Gay and Lesbian Coalition of Kenya (GALCK) in 2006. GALCK is an umbrella organisation that has grown from the initial four member organisations into a coalition of sixteen organisations that cover the three main regions in Kenya. In the wake of this early organising a robust network of NGOs, CBOs and human rights bodies have been working for the physical and social safety of the LGBTI community. For a more extensive list of Kenyan organisations devoted to LGBTI rights, see appendix item two.

Many of these organisations engage in some form of data collection - including informal reporting mechanisms to enable emergency response and formal web-based databases.

Key organisations collecting, disaggregating and analysing data.

Kenya Human Rights Commission (KHRC) is a national NGO with a focus on a broad spectrum of human rights issues. KHRC has four key programmes, with their Political Pluralism and Diversity programme including a significant focus on “expanded public spaces to combat stigma against LGBTI persons.”

In 2011 the Kenya Human Rights Commission produced a report titled “The Outlawed Amongst Us: A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya.” This study is by far the most comprehensive analysis of anti-LGBTI violations in Kenya and was commissioned in response to a lack of tabulated and analysed data on violations despite regular reports received by NGOs. Although much has changed in the seven years since the report’s publication much of the analysis remains relevant. The relevance of this analysis is suggested both by its continued and widespread use and citation as well as the echoing of the main issues in interviews conducted for this study.

The main finding of that study was that “human rights violations against LGBTI persons in Kenya [were] systematic, highly prevalent and generally not redressed by the state when called to.” The report highlights the state’s role as both a perpetrator of violations and a failed source of justice.

They found that state officials regularly harassed LGBTI persons, for example by extorting them for bribes or sexual favours, making arbitrary arrests and more occasionally physically and sexually assaulting LGBTI persons. Furthermore, the report suggests that the state's failure to address anti LGBTI violence is not coincidental but deliberate. The study also covers various other violations including denial of access to services, blackmail and extortion, evictions and expulsion from learning institutions.

KHRC continues to conduct some data collection and analysis but have largely moved towards partnering and supporting LGBTI lead organisations who have taken the lead in this work.

National Gay and Lesbian Human Rights Commission (NGLHRC) is an independent human rights institution that advocates for legal and policy reforms in service of equality and the full inclusion of sexual and gender minorities in Kenya. The organisation was founded in 2012, with its first initiative being a nine-month study assessing the needs and priorities of the LGBTI community in Kenya. The study concluded that the criminalization and legal exclusion of LGBTI persons was a major barrier to equality and as such NGLHRC's strategy focuses primarily on a legal aid mechanism. Previously unable to formally register, in April 2015 the National Gay and Lesbian Human Rights Commission (NGLHRC) successfully sued the NGO Board, winning the right to register as an NGO. The NGO Board had rejected the organisation's name as "unacceptable," and said that it could not register NGLHRC because Kenya's penal code "criminalizes gay and lesbian liaisons." The High Court, citing a South African case that led to the decriminalization of same-sex conduct, ruled that morality could not serve as a justification to limit fundamental rights.

NGLHRC runs a legal aid clinic providing legal assistance to any LGBTI person across the country who has encountered any form of violation or discrimination. According to their 2017 report NGLHRC's legal aid clinic had dealt with over 1500 cases in the time since its 2014 inception.

Gay and Lesbian Coalition of Kenya (GALCK) is a national SOGIE umbrella body established in 2006 with an initial membership of four organisations. GALCK coordinates the efforts of its sixteen member organisations through three regional clusters. This model was a response to the need to decentralize operations from Nairobi and develop operational models relevant to specific contexts and needs in each region. The large number of organisations means that GALCK has a varied and extensive number of priority areas and constituencies covered by its members.

GALCK operates as an important data repository with many of its member organisations reporting any violations, they document to GALCK, particularly if they lack the capacity to respond directly. GALCK also directly receives reports of cases. One of the mechanisms that GALCK uses for data collection is the online ICOP platform.

Nyanza, Rift Valley and Western Kenya (NYARWEK) is a network formed in 2009 as an LGBTI coalition with its headquarters in Nyanza. NYARWEK is officially registered as LET GOOD BE TOLD IN US in 2010 - a name that references the acronym LGBTI. NYARWEK's focus is lobbying and advocacy for the rights of LGBTI persons and giving visibility and voice to LGBTI persons in rural,

peri-urban and urban areas in Kenya's Western province. One of their main strategies is the training of stakeholders including public officials such as police and healthcare workers.

NYARWEK along with Ishtar MSM initiated the HIVOS funded UTUNZI platform. UTUNZI is a platform that receives violation reports and requests for assistance from LGBTIQ persons at risk in Kenya. The platform can receive a report in five different ways - SMS, email, twitter, Facebook, and direct entry on the website. This makes the platform particularly accessible to those with internet access or any mobile phone. The key information recorded includes the date, location and nature of the incident as well as the gender and/or sexual orientation of the person reporting. The platform's website keeps a rolling record of the most recent reports available at <https://utunzi.com/reports.php>. This is an incredibly innovative tool that has enabled the organisation to collate detailed data on the violations of LGBTI persons across the country.

PEMA-Kenya is an individual membership LGBTI rights organisation formed in 2008 and based in Mombasa. The organisation was formed after the death of a gay man who had been shunned by his family and initially served only the MSM and gay community. After more widespread demand their focus shifted to the LGBTI community more broadly. Previously working as a CBO, in 2017 the organisation registered as a charitable trust in order to be able to work outside of Mombasa county. The organisation's core objective is advocacy and their main strategy is the engagement of police, religious leaders and healthcare providers.

PEMA Kenya engages in two levels of data collection. As part of their violence response and prevention program they have documented many cases of violations against LGBTI persons. They also collect data as part of their partnerships with other organisations. In 2016 PEMA Kenya partnered with Human Rights Watch to produce a report on the violation of LGBTI persons in Kenya's coastal region. The report titled "The Issue is Violence" gives a detailed review of the levels and nature of violence experienced by LGBTI persons in the region.

Informal data collection by CBOs

Many CBOs funnel information about any cases reported to them up to regional or national level NGOs. This reflects both formal reporting mechanisms and an informal reliance of smaller organisations on the response and documentation capacities of larger organisations.

The organisations that fall under the Gay and Lesbian Coalition of Kenya reported passing on any reported cases to GALCK. A member of the Kisumu Feminist Forum also indicated that any cases reported in their community forum were funnelled back to NYARWEK (the regional body).

Notable Gaps and Challenges in Data Collection Capacities

Under reporting: LGBTI people are reluctant or unable to report violations for a number of complex and related reasons. Reporting to government agencies is perceived as risky and many people are unsure about the process and level of exposure involved in reporting to civil society organisations, if they are

aware of this option at all. Furthermore, the reluctance to report a violation should be understood in a context of stigma that imposes a great deal of personal shame.

Cross reporting: A collaborative organisational network means that a single case is often documented and handled by numerous organisations. It is necessary to devise a system in which cross reporting can be monitored while still respecting the privacy of the person reporting the violation.

These two factors combined make it nearly impossible to aggregate existing data accurately. Meaning even with multiple data collection efforts at a regional or local level it is impossible to collate accurate national level data.

Neglected Constituencies: Overall only violations against the MSM community have been reasonably well documented. The violence experienced by transgender and intersex persons is particularly under-reported and documented. In terms of geographical reach rural areas have historically been almost wholly ignored and are now slowly receiving more, but still inadequate, attention. The director of Tamba Pwani, an organisation based in Kenya's rural coastal region, noted in an interview how a lack of documentation further marginalizes LGBTI persons in rural areas. This is because documented evidence of human rights abuses has become central to both solidarity and resource mobilization. Finally, one of the hardest groups to report on are LGBTI persons of school going age. This is in part because efforts to engage children of this age are, in a context of stigma, interpreted as attempts at recruitment. Finally, while many of the organisations engaged in some form of data collection, disaggregation and analysing of collected data or maintenance of a database was often neglected. This means that only a fraction of the data that is initially collected can be made publicly available.

Insecure funding patterns create gaps in data (for example a documentation tool will be implemented and funded for an initial period and then when that funding runs out it is difficult to maintain the data collection process).

The importance of data collection: a case from Kisumu

In 2014 the Kisumu Feminist Forum was established to provide a safe space for LBQ women who identified as feminist. The forum focuses on intimate partner violence in same-sex/ queer relationships. The forum chose to focus on this based on reports it had received from the regional network NYARWEK about an increase in cases of intimate partner violence reported by LBQ women. This suggests some of the ways in which consistent data collection can enable communities and organisations to respond with flexibility to the changing issues in their communities.

Indicator two: The extent to which government authorities in Kenya are collecting data on anti-LGBTI based incidents of violence;

Government authorities do not explicitly collect any data on anti-LGBTI incidents of violence in Kenya. The Department of Health collects the most comprehensive data on such violations through its HIV/AIDS programming. This data is generally limited to MSM, transwomen (often erroneously included in MSM data) and sex workers who may or may not be identified as LGBTI. To the extent that some cases of anti-LGBTI violence are reported to the police, the state technically does engage in some form of documentation. However, these reports rarely acknowledge that sexual orientation or gender identity were motivating factors and as such are of little practical use. Furthermore, there is a general reluctance to report to the police, in part because LGBTI victims have repeatedly been turned away when attempting to report, and often suffer secondary victimization at the hands of the police.

National AIDS and STI Control Program (NAS COP)

NASCOP was established in 1987 to lead the government's response to the HIV/AIDS crisis in Kenya. Housed as a unit in the Ministry of Health, NASCOP is responsible for the coordination of HIV and AIDS programmes in Kenya and the implementation of the Kenya AIDS Strategic Framework (KASF) 2014 -2019.

NASCOP's key populations program started in the mid-2000s with an explicit focus on minimizing the impact of criminalization on vulnerability to infection. NASCOP also identified discrimination, stigma and negative public perception as factors that make key populations more vulnerable to infection. In 2013 NASCOP recommitted to a focus on key populations after undertaking a mapping which found that Kenya's key populations were significant in size, including 13 019 MSM living with HIV/AIDS.

As part of its core programming NASCOP collects data on violence experienced by members of KP and implements sensitization aimed at minimizing such violations.

Indicator three: Existing data in each country on the number of incidents of anti-LGBTI violence reported to (a) government authorities, (b) human rights bodies, or (c) NGOs;

Government Authorities

NASCOP produced its most comprehensive data on the prevalence of violations of MSM persons based on its 2014 "National Behavioural Assessment of Key Populations in Kenya: Polling Booth Survey Report."

In that report NASCOP found 17% of MSM, had been subjected to sexual violence, including rape, during the preceding six months. 57% of MSM reported experiencing an unsafe work environment. The report also found that police and county government askaris had arrested or beaten 24% of MSM in the same period. The table below, extracted from the report, puts these statistics in the context of other criminalized and stigmatized populations.

Table 3: NASCOP data on “Proportion of KPs Who Reported Being Arrested or Beaten by Law Enforcement Officers in 2014 and 2015”

Polling-booth survey question	FSWs		MSM		PWID	
	2014	2015	2014	2015	2014	2015
In the past 6 months, were you ever arrested or beaten up by police or city Askaris when you were injecting drugs / doing sex work / cruising?	44%	49%	24%	27%	57%	43%

Civil Society

The only recent and available data that covers the national scale is from NGLHRC. However, they have indicated that this data covers only a small fraction of the actual violations.

In 2017 NGLHRC received a total of 433 reports of violations through its legal aid clinic. The organisation categorizes the incidents into twelve categories, and while only one of those categories is titled violence, many more would fit the broader definition of violence being used in this report. The categories are; blackmail and extortion, violence, murder, suicide/attempted suicide, cyber bullying, social exclusion, eviction from rental property, dismissal from employment, expulsion from school, targeted criminal prosecutions, forced migration and forced internal relocation. The below table represents these reports categorized by the nature of the violation.

Table 4: NGLHRC data on violations reported to legal aid clinic in 2017

Category of Violation	Nature of Violation	Number of incidents
	Blackmail and extortion	72
	Threat to kidnap	3
Violence	Physical assault	36
	Intimate Partner Violence	15
	Verbal assault & Harassment	7
	Sexual violence	25

	Gang Rape	1
	Threats of violence	45
Other	Cyber bullying	47
	Murder	3
	Suicide/ Attempts	1
	Eviction from rental property	64
	Dismissal from employment	3

In their 2017 report, based on the data collected through their legal aid clinic, NGLHRC noted some important trends in the data. Overall there is a reluctance from those reporting to seek legal redress for the reported violations, and very few of those reporting has or intend to report the case to the police. Across the years far more reports have come from male gay/bisexual identifying people than from other sexual or gender identifying persons. And while there is an increase in reporting from LBQ clients this group is the least likely to pursue legal redress. In 2016 there was an increase in reported violations against transgender and gender non-conforming persons. In none of these cases does the report speculate on the meaning of the increased reporting - which may reflect an increase in violations or increased access to non-state reporting mechanisms.

The overwhelming majority of the reported cases fit into the 'violence' category (violence in an institution, sexual assault, physical assault, verbal abuse and threats of violence). The organisation also notes a significant increase in incidences of blackmail and extortion. In 2017 there was a marked increase of blackmail which occurred particularly through online dating applications. The election period introduced increased vulnerability for all LGBTI people but particularly refugees.

NGLHRC despite receiving a significant number of cases emphasize the low level of reporting and the under-representation of LGBTI people who do come forward with violations.

Indicator four: The extent to which criminal justice and other officials in Kenya have received training on any LGBTI-related issues;

Both national NGOs and CBOs run training programs with law enforcement officials, other members of the criminal justice system and healthcare providers. These organisations have also engaged officials outside of the state system including religious leaders and media professionals.

Training Law Enforcement and Criminal Justice Officials

LGBTI organisations have focused the majority of their efforts on training law enforcement officers, including officers from the national police force and city council law enforcement. This focus is a response to the fact that law enforcement officials are key enablers and perpetrators of the violation of LGBTI persons (indicator six addresses this in detail). All of the organisations surveyed

had engaged law enforcement to some degree. Based on the interviews and existing literature it was established that police sensitivity trainings have been initiated in all of Kenya's major cities (Nairobi, Mombasa, Kisumu and Nakuru) and in many smaller towns. NYARWEK, for example, reports having trained over 400 police officers as well as many members of the judiciary.

The two most common approaches, often used simultaneously, are sensitivity trainings and the development of relationships with specific officers. Organisations identify officers that are, to some degree, sensitive to the needs and rights of LGBTI persons, and rely on these relationships to access protection and other police services when required. The same is true of other members of the criminal justice system and judiciary. While individual relationships are a key tactic, efforts to change the culture of abuse among law enforcement poses much more of a challenge. The importance of engaging officers at every level of the strict law enforcement hierarchy was highlighted in three of the interviews conducted for this study. Those interviewed cautioned against training only low-level officers explaining that sensitivity and political will need to be cultivated at the level of decision making and implementation.

Government health agencies have also collaborated in training law enforcement with a focus on the ways in which criminalization leaves key populations more vulnerable to HIV/AIDS. NASCOP's key populations program includes the training of law enforcement as one of its key pillars. In collaboration with the National Aids Control Council (NACC) they have produced "a manual for training trainers to sensitize police on their role in a right based approach to HIV prevention among key populations."

NASCOP, working with ICRH-Kenya and the University of Manitoba, established an HIV/AIDS "learning site" in Mombasa, which was intended to establish best practices in relation to serving key populations. Their activities included training law enforcement officials on key populations and the impact of police violence on HIV/AIDS transmission levels.

Those interviewed for this report expressed varying degrees of faith in the success of such efforts. On the one hand many of those had positive experiences in trainings with police officers reporting a change in their thinking and understanding of LGBTI persons and their rights. On the other hand, the levels of violence at the hands of law enforcement remain unacceptably high. Without reliable long-term data collection, it is almost impossible to determine the real long impact of these efforts.

Training Health Care Providers

Civil society organisations have had far more cooperation from the state with regards to the training of healthcare providers, with government health agencies often taking the lead in such initiatives. As well as the training of law enforcement discussed above, NASCOP has also engaged in healthcare provider trainings as part of their key population's strategy.

LGBTI organisations have also lead trainings of healthcare providers, which include and extend beyond a focus on HIV/AIDS. These include sensitization of healthcare providers to the needs and rights of intersex and trans persons who face a particularly high level of exclusion and abuse in the healthcare system.

Engaging religious leaders: the case of PEMA Kenya

PEMA Kenya have had notable success providing sensitivity training to religious leaders in Kenya's coastal region. Following the Mtwapa attacks in 2010 the organisation identified the importance of engaging religious leaders who had been a major factor in motivating the anti-LGBTI violence. In the years that have followed they have run multiple workshops in Kenya and consulted with international religious and LGBTI organisations. Their model uses peer-to-peer education and they were even able to recruit two prominent figures in the incitement of the 2010 violence as peer educators in their program. Their training manual has been widely circulated as a model for such interventions and they have trained over five hundred religious' leaders in Kenya to date.

Indicator five: Existing data and information in each country on the extent to which anti-LGBTI violence is being addressed by government authorities or other entities (e.g., arrests, prosecutions);

The Kenyan state at a national and policy level has taken an ambivalent approach to LGBTI rights when compared to its neighbours on the continent. The state has neither fiercely protected the LGBTI community, nor has it followed in the footsteps of neighbouring countries that have harshly persecuted LGBTI persons. Despite the hard-won victories at the policy level, the state has failed to take any leadership in holding those who violate LGBTI persons accountable.

Comprehensive quantitative data on the extent to which government authorities are addressing LGBTI violence was not found. However, based on the reports of organisations and researchers it is clear that the state is doing little to hold those who violate LGBTI persons accountable.

In its 2015 report "The Issue is Violence" Human Rights Watch described the state's failure to protect LGBTI persons living in Kenya's coastal region. The report explored "an ongoing undercurrent of insecurity" in the coastal region, fuelled by a series of homophobic and transphobic attacks in the region. The report found that the government had failed to provide any meaningful protection for the LGBTI community. Government officials did not come out and condemn the spate of attacks that started in 2008, and while the police had provided immediate protection in certain instances, there was no long-term interest in prevention or prosecution. The cases investigated in the Human Rights Watch report demonstrate the inconsistent response of police to violent attacks - in some cases providing emergency protection and in others making arbitrary arrests of those accused of being homosexual.

Of the 433 cases handled by the NGLHRC legal aid clinic in 2017 only six were classified as under investigation, only four arrests had been made, one case ongoing in court, and no convictions had been recorded. NGLHRC have taken a number of cases to the criminal justice system over the five

years of running the legal aid clinic. NGLHRC have noted that even those reported cases have very little chance of ending in prosecution. In most cases those who have been violated choose not to report to the criminal justice system and where these cases are reported the likelihood of completing investigation, arrest and arraignment are slim. The organisation notes the interference by both state and non-state actors often leading to the withdrawal of a case and the general lack of goodwill on the part of various actors in the criminal justice system.

Indicator six: Existing data in Kenya on the number of incidents of anti-LGBTI violence perpetrated by criminal justice or other public officials (including false arrests and charges, unlawful detention).

The state, both structurally and through the actions of public officials, occupies an ambiguous position in relation to LGBTI people in Kenya. The actions of police officers are a particularly stark example of this. The police have at times offered protection to LGBTI persons at threat and even, on occasion, investigated violations against them. However, overwhelmingly the police fail to assist victims of violence and are themselves the perpetrators of violence. These patterns of abuse on the part of public officials, while not officially sanctioned by the state, are effectively endorsed both by the criminalization of LGBTI people and the failure to censure offending police officers. Overwhelmingly LGBTI people believe that the police are not a viable option for seeking protection and justice. In the interviews undertaken for this report the main reason given for the scant amount of data was victims' reluctance to report incidents that involve state officials, in fear of retaliation and hopelessness at potential redress.

In their 2011 report KHRC identified harassment by state officials as one of the key human rights issues for LGBTI persons. Police regularly threatened LGBTI persons with arrest, remanded them illegally, with the most common trumped up charges being the possession of narcotics, drunk and disorderly conduct and prostitution. LGBTI sex workers are particularly vulnerable to such arrests and extortion due to the criminalization and harassment of sex workers. A 2015 HRW report confirmed this after identifying those who engage in sex work as particularly vulnerable to abuse by law enforcement including being physically or sexually assaulted once taken into custody.

Although no up-to-date data of the same scope is available, in interviews with organisations similar examples of harassment were reported including the arrests of individuals and the raiding of offices. NGLHRC have identified police as significant perpetrators of blackmail and extortion - working either alone or as part of cartels. They also reference the intentional delaying of the granting of refugee status to LGBTI persons making it impossible to attain employment and often basic livelihood.

Malawi

Background

Religious fundamentalism and conservative cultural norms around gender and sexuality make Malawi a difficult terrain for most LGBTI people.

“The public debate on homosexuality has been complex, unpredictable and contested, and provides a snapshot of the difficulties LGBTI people face. Anti-homosexuality discourse has largely been driven by religious and cultural chauvinism.” This is further exacerbated by a legislative framework which not only, does not protect, but also criminalizes LGBTI persons. Under President Mutharika, Malawi, rather than dismantling, reinforced the criminalization of LGBTI persons. Including, for example, in 2010 amending the penal code to specifically include same sex relations between females. And while president Joyce Banda indicated a personal interest in decriminalization, she showed little actual political will, citing a lack of readiness in the country. While there are no laws explicitly criminalizing transgender or intersex persons, gender non-conforming people are effectively criminalized, and often most harshly sanctioned, due to both perceived sexual orientation and a lack of access to basic services.

Legal Status of Lesbian, Gay, Bisexual, Transgender, and Intersex persons in Malawi

Same sex sexual relations for men and women are illegal under Section 153, 154 and 156 of the Penal Code and are punishable by up to 5 years for women and up to 14 years for men in prison

- Section 153. Unnatural offences ‘Anyone who – has carnal knowledge of any person against the order of nature; or has carnal knowledge of any animal; or permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.
- Section 154. Attempt to commit unnatural offences -Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.
- Section 156 Indecent practices between males: 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, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.

In 2010, The Penal Code was amended by the President to “include Section 137A on “Indecent practices between females.” The bill was signed into law in January 2011, making it illegal for any female person to commit acts of “gross indecency” with another female, punishable by a prison term of five years.” This move ensured that all perceived and real same-sex activity is prohibited by law. In 2014 the state exercised its anti-same sex activity code in the arrest of two women, who were suspected of engaging in same-sex relations. While these laws do not criminalize people’s sexual or gender identities, in criminalizing specific sexual activities these identities are effectively punishable by law and socially taboo.

Same sex unions are prohibited by the Marriage, Divorce, and Family Relations Act 2015 which explicitly defines marriage as a union between a man and a woman (opposite sex). Explicit reference is made to ‘sex at birth’ indicating a dismissal of transgender identity. There are currently no specific laws which speak to transgender people. However, as sex is explicitly defined as the sex one is assigned at birth, The Marriage Act, denies equal rights to form a family to the majority of transgender people. The same provision denies the right to marriage to some intersex people – those born with both male and female sex characteristics – whose sex is often assigned arbitrarily at birth. This insistence on the assignment of sex at birth has a rollover effect on the Intersex community who may very well identify differently from their assigned sex.

The Development of LGBTI Rights and Legal Recognition

“The question of decriminalization of homosexuality in Malawi has been debated since former President Joyce Banda took office in 2012. She called for a repeal of the Penal Code but later told international reporters that the country might not be prepared for such a change. The proposed suspension of the anti-LGBT law has been opposed by some religious figures arguing that homosexuality is alien to the Malawian culture.” There have been moves to investigate the constitutional validity of the penal codes and Unnatural Offences Articles. Even so, in 2015 two men were arrested (filed under ‘sodomy’) indicating continued enforcement of the laws despite public debate. With strengthening advocacy from within the country, and increasing external solidarity, there are ever more calls for Malawi to bring its legislation in line with its international law commitments.

Various state authorities have expressed the need for increased protection of the LGBTI community and called for a process of constitutional review. However, these efforts are often stalled by citing the commitment to making such amendments in “consultation with the people of Malawi as prescribed by the Constitution.” A consultative process, which considers the cultural, social, traditional, and religious mores of the Malawian people, should not be used as the arbiter in cases where the basic rights and dignities of LGBTI persons are at stake.

The United Nations Human Rights Committee, in 2014, reviewed Malawi’s human rights record and made explicit recommendations to the Malawian government in relation to LGBTI rights and the existing Penal Code.

UN Human Rights Committee Recommendations to the Government of Malawi, August 2014:

- Review its legislation to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination and repeal the provisions that criminalize homosexuality and other consensual sexual activities among adults.
- Introduce a mechanism to monitor cases of violence against lesbian, gay, bisexual, transgender and intersex persons and undertake all necessary measures to prevent those cases, prosecute the perpetrators and compensate the victims;
- Ensure that public officials refrain from using language that may encourage violence and raise awareness to eliminate stereotyping and discrimination; and
- Guarantee effective access to health services, including HIV/AIDS treatment, for lesbian, gay, bisexual, transgender and intersex persons.

Despite the above recommendations, in the intervening years, there has been no substantive move towards legislative reform.

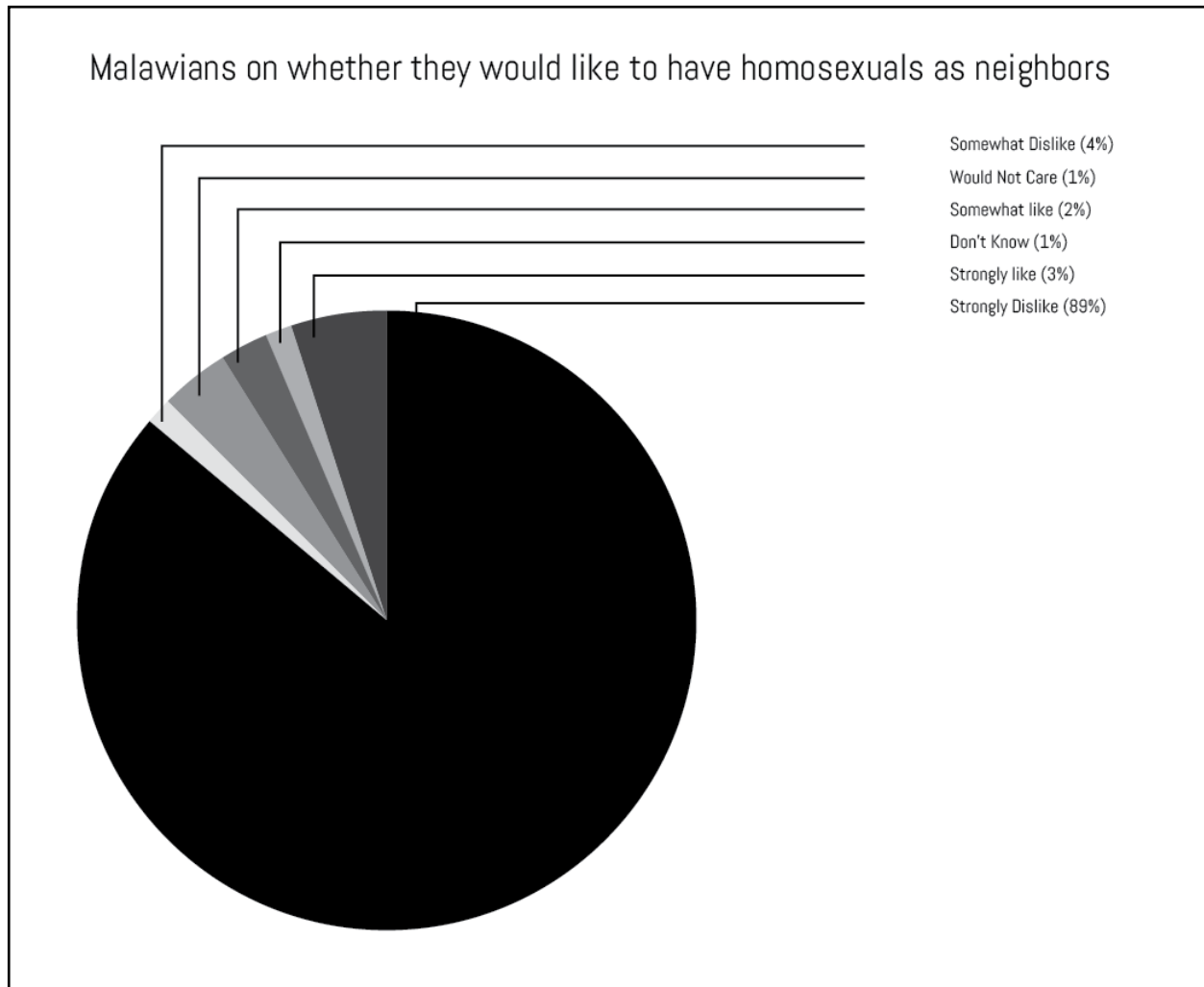
Social Context

Social Norms and Attitudes Towards LGBTI Persons in Malawi

Social stigma is at the heart of violence against the LGBTI community in Malawi. This stigma is justified using the language of safeguarding “Malawian culture and not introducing things from elsewhere” into the Malawian national identity. This has resulted in sustained violence targeted at the LGBTI community, including LGBTI sex workers and school going women accused of ‘Lesbianism acts.’

Social stigma is also fuelled by anti- LGBTI narratives in the mainstream media. Mainstream media does not exist in a vacuum, it is often a reflection of the state and the society within which it exists. Afrobarometer-Malawi (see graph below), in 2014, found that the social attitudes towards the LGBTI community were overwhelmingly negative. As shown in the graph below, the general sense is that there is a strong dislike and intolerance for the LGBTI community in Malawi.

Table 5: Malawians on whether they would like to have homosexuals as neighbours



The graph based on a 2014 Afrobarometer survey indicates that 93% of respondents indicated they would not like to have a homosexual as a neighbour.

Findings

Indicator One: Existence and identification of NGOs and/or alliances that are currently addressing anti-LGBTI violence and the extent to which they are collecting, disaggregating and analysing data

Political, legal, and social contexts play a crucial role in the workings, formations, and longevity of human rights organisations in Malawi. In the presence of a state which increasingly clamps down on the rights and freedoms of minority groups, it is difficult for LGBTI organisations to operate openly. “The LGBTI movement straddles challenging socio-political divides that meet at the intersections of local and international politics; public religion; relationships with donors, human rights activists and NGOs; the Malawian government, and broader society”. These challenges make it difficult to trace the terrain of less formal community-based organizing and assess the extent and reach of such organisations and engagements.

With the current legal status, there are few organisations which work openly and directly under and LGBTI mandate. “Those who do engage, [do so] from a rights-based perspective; developing a solid reputation for advocating for the rights of marginalized groups as part of consolidating democracy and human rights”. The two most visible human rights-based organisations in Malawi addressing LGBTI issues are: The Centre for the Development of People (CEDEP) and the Centre for Human Rights and Rehabilitation (CHRR). These organisations have been crucial in tracking, responding to, and challenging state corruption, holding the state accountable for failing to comply with constitutional mandates and obligations of regional and international human rights treaties.

In 2017, “twelve human rights organisations accused the Malawi Human Rights Commission (MHRC) of trying to perpetuate violence against lesbians, gays, bisexual, transgender and intersex (LGBTI) people.” This followed the call for a public and consultative process which considered the views of ordinary Malawian citizens. This was highly contested by several human rights and LGBTI allied and specific organisations, who argued that the reliance on individual perceptions, religious and cultural perspectives, and personal opinions should not be the arbiter on human rights recognition for LGBTI people in Malawi. The organisations argued that “human rights should never be put to a referendum or any other process that will result in some findings based on numbers or statistics. “Human rights are inalienable and cannot be bestowed or removed by the decision of the majority.”

The LGBTI movement in Malawi consists mostly of human rights organisations which have shown alliance to the LGBTI movement and the recognition of their rights, with the exception of a few LGBTI specific organisations.

Organisations in Support of LGBTI Rights in Malawi

- Centre for the Development of People (CEDEP)
- Human Rights Consultative Committee (HRCC)
- Centre for Human Rights Education, Advice and Assistance (CHREAA)
- Centre for Human Rights and Rehabilitation (CHRR)
- Malawi Network of Religious Leaders Affected or Living with HIV/Aids (Manerela)
- Art and Global Health Centre Africa
- Ivy Foundation (Intersex specific)
- Nyale Institute,
- Mango Network,
- Lesbian, Intersex Transgender and other Extensions (Lite) Association
- Community Health Rights Advocacy (CHeRA).

These organisations have, on a coordinated and individual level, raised awareness about LGBTI human rights violations and called for legislative reform. These organisations address violations and discrimination in a range of contexts, such as; healthcare, education, human rights violations by public officials, anti-LGBTI utterances by state officials, religious circles condemning violations.

Indicator Two: The extent to which government authorities in Malawi are collecting data on anti-LGBTI based incidents of violence

The state does not recognize the violations of LGBTI persons and has therefore made no effort to collect data on such incidents. This means that overall the burden of data collection falls onto NGOs and LGBTI communities. However, these organisations do not have a capacity anywhere near that of the state and this means that there is very little reliable data available.

The moratorium on arrests suggests that even if the government is not formally collecting data on such violations there is an acknowledgement and awareness that LGBTI persons are targeted for arrest.

In its most recent National Strategic Plan for HIV and AIDS, the National AIDS Council does acknowledge that MSM, as a key population, are vulnerable to various violations. However, this is based on external research including statistics from other countries. Even in the area of public health, where other countries might make an exception to their generally hostile stance, Malawi has not made any concerted efforts to collect data on violations.

Furthermore, even if the state did attempt to collect such data, the hostility of the state makes it difficult and risky for LGBTI persons to report or offer information to the state.

Indicator Three: Existing data in each country on the number of incidents of anti-LGBTI violence reported to (a) government authorities, (b) human rights bodies, or (c) NGOs;

There is no current or comprehensive quantitative data on the number of violations of LGBTI persons in Malawi, with the most recent data coming from 2014. There have been various efforts to collect data since then, but none of this data has been aggregated into national statistics. There has been some collection of useful qualitative data confirming that LGBTI persons in Malawi do face significant harm.

The most up-to-date and in-depth data currently available comes from a 2018 report by Human Rights Watch titled *Let Posterity Judge: Violence and Discrimination against LGBT people in Malawi*. The report found that despite existing alliances in and outside of Malawi:

“[LGBTI people] live in constant fear of abuse because of their real or perceived sexual orientation and gender identity. The abuse takes many forms, including intimidation, beatings by members of the public and some police officers, arbitrary arrests and detention, lack of access to justice, and discrimination in healthcare settings”.

In addition to this, the study found that:

“people are often victims of mob attacks, physical assault, arbitrary arrest and detention simply because of their presumed sexual orientation, and discrimination in access to health care on the grounds of sexual orientation or gender identity. Several human rights activists told Human Rights Watch that the combination of the anti-homosexuality laws and the religiously and socially conservative Malawian context contributes to the commission of these abuses and deters many LGBT victims of violence from seeking redress, thereby contributing to a culture of impunity.”

Based on the efforts of Human Rights Watch it appears that there is greater trust within civil society organisations and international research bodies in speaking on issues of violence and discrimination. This increases the possibility of collecting and aggregating data through collaborative work.

CDEP and CHRR play a significant role in highlighting and challenging LGBTI violations. These organisations operate within the framework of basic human rights and dignity for all and this approach has allowed them to maintain their presence in mainstream human rights lobbying in Malawi whilst remaining strong alliance organisations for LGBTI persons.

In 2014, CDEP in collaboration with CHRR reported that between June 2013- March 2014, 76 instances of human rights violations related to LGBTI persons occurred.

“Of that total, 16 violations took place in Mzuzu, a district in the country’s north, where many abuses were perpetrated by family members and community members. In some cases, men who were alleged to be gay were beaten or paraded by the police; in other cases, blackmail and extortion were used by authorities who agreed not to publicize the case in return for money or favours. In the commercial capital of Blantyre and neighbouring districts, 12 cases were documented involving harassment, beating, denial of health services and arbitrary arrest. In Lilongwe and neighbouring districts, 22 cases were documented, ranging from arbitrary arrest to forced eviction to physical violence. In Mangochi, where the environment for the LGBTI community was found to be very volatile, the total number of violations documented was 26.”

This report represents the most rigorous data collection efforts, but due to the challenges outlined above should not be thought of as representing a picture of the full extent of LGBTI violations.

The 2009 Baral study, which also covered Botswana and Namibia, although a decade old, offers some useful data on violations faced by MSM. See below for his tabulated data.

Characteristic	Malawi
Denied housing other than not being able to pay	6.5% (13/200)
Denied health care based on sexuality	4.02% (8/199)
Afraid to seek health services	17.59% (35/199)
Afraid to walk in community	15.5% (31/200)
Blackmailed because of sexuality	18.00% (36/200)
Yes to any of the above related to sexuality	34.34% (68/198)
Beat up by government or police official	8.08% (16/198)

Table 6: The prevalence of human rights abuses among MSM in Malawi

The media inadvertently plays a significant role in the archiving of human rights violations. The reporting of these violations, despite the sensationalism and state informed reporting, still remains an important part of documenting that can be used by NGOs in their own work. Publications such as Nyasa Times, Maravi, and The Nation, report on a number of violations and issues related to LGBTI people, even if the reports themselves often amount to a violation in and of themselves. The

media plays a significant role in shaping the national consciousness of any nation, and unfortunately in Malawi, this has fuelled already existing tensions and negative perceptions about the LGBTI community. Even so, there is an opportunity, through media monitoring, for organisations to follow up on such cases, and address violations committed by the media itself.

Indicator Four: The extent to which criminal justice and other officials in Malawi have received training on any LGBTI-related issues

The 2015-2020 Malawi National Strategic Plan for HIV and Aids, which is a response to the HIV/Aids crisis, noted that men who sleep with men (MSM) are a key demographic. The Strategic Plan notes

“MSM are criminalized in Malawi and FSW remain marginalized and subject to significant legal penalties under existing regulations. In consultations with both groups, it was evident that these groups feel stigmatized and discriminated against by the general public as well as by healthcare and social service providers. Stigmatizing attitudes and discriminatory behaviours serve as a significant disincentive to access necessary services for the prevention, care and treatment of HIV.”

In compiling the report, the National Aids Council did not collect any of its own data, but rather relied on comparable data from other countries about the risks MSM face.

The Strategic Plan notes that MSM and other key population groups are vulnerable to discrimination within the health care sector and thus not able to receive adequate health care services or treatment. The plan makes a number of recommendations which include “clinical care providers should include appropriate content for working with male GBV survivors, and promotional activities and materials will include targeted messages for men and boys to inform them of available services (including timely provision of HIV post-exposure prophylaxis),” training and educating of healthcare providers, clinicians, and the health ministry at large on key population groups. Although there is a recognition of how MSM “face additional barriers to accessing medical and social services as well as legal redress due to cultural constructs of masculinity as well as the current criminalization of MSM behaviour in Malawi”, details on the nature of such trainings is thin. The National AIDS Council has not reported on any such trainings and it is unclear if this recommendation was taken up.

Indicator Five: Existing data and information on the extent to which anti-LGBTI violence is being addressed by government authorities or other entities (e.g., arrests, prosecutions)

Malawi is a signatory to various international human rights treaties and agreements which commit to the protection of human rights and key population groups. Speaking specifically to the International Covenant on Civil and Political Rights (ICCPR), its Human Rights Committee “ruled that

the criminalization of consensual same-sex conduct violates the Covenant's provisions on privacy and non-discrimination. Malawi is in violation of several rights of its citizens accorded in the ICCPR because of their sexual orientation or gender identity and expression." International outcry and condemnation of the existing laws and arrests prior to and in the early stages of the moratorium, compelled the state to ensure the enforcement of the suspension of arrests and violations. However, in 2015,

"members of a Community Policing Forum in Lilongwe's Area 25 apprehended two men. The community police physically assaulted one of the men, illegally entered the other's home, and allowed local residents to ransack the premises, a lawyer for the two men said. Community Policing Forums are empowered to organize neighbourhood watch groups and to report information to the Malawi Police Service but are not to carry out arrests."

Then Justice Minister, Samuel Tembenu affirmed the moratorium in his statement by saying:

"Malawi as a member of the international community is also committed to adhere to universally accepted human rights standards. The Government therefore acknowledges the view expressed by international human rights bodies that the inclusion of offenses prohibiting homosexuality in our statute books/within our legislation may be at variance with the views held by such bodies. Consequently, the Government has committed itself to review the penal laws on homosexuality under the Penal Code, but this has to be done in consultation with the people of Malawi as prescribed by the Constitution."

The moratorium on arbitrary arrests is the most significant effort by the government to address the violations of LGBTI persons. The moratorium signalled a possible shift in the current laws and the possible decriminalisation of LGBT identities. However there has been little monitoring or oversight to ensure that the moratorium is in fact respected and translates into less police harassment for LGBTI persons. As reported in the 2017 Human Rights Watch study, "both Malawian and international organisations have supported the moratorium as an intermediate measure to end arbitrary arrests of LGBT people, but also maintain that it does not go far enough, and that Malawi must follow through on its commitment to repeal the discriminatory laws."

Indicator Six: Existing data in Malawi on the number of incidents of anti-LGBTI violence perpetrated by criminal justice or other public officials (including false arrests and charges, unlawful detention)

There is no aggregated data which presents accurate quantitative data on the violations perpetrated by criminal justice or public officials. However, through the use of qualitative data and narrative

analysis, research suggests that LGBTI people, globally, experience victimisation and violence on various levels, from the hands of public officials, mostly in the education, health, criminal justice, and housing sectors. This is consistent with Baral's 2009 findings and several narratives found in the 2018 Human Rights Watch study. That study found that "despite the moratorium on arrests and prosecutions for consensual same-sex conduct, they [participants] had experienced police abuse, arbitrary arrest and detention." One participant of the study shared:

"I was walking home with my trans man friend and his cisgender girlfriend. We passed through a school where people were writing exams. There were three police officers in uniform at the gate working as security guards, and as we walked by, they started calling out to my friend's girlfriend to join them and not walk with "lesbians". We ignored them, but they started following us and one of the officers was throwing stones. When they caught up with us one of the officers said: "Don't do anything to the lady, we have to deal with these two lesbians." They beat us for about an hour – punching and slapping us, but the worst part was when they bashed our heads against a wall. We were rescued by our soccer coach who was also walking home through the same alley. They agreed to let us go on the condition that we crawl the rest of the alley on our knees and hands above our heads."

There are similar documented narratives in the study which show that despite the moratorium, LGBTI people still remain vulnerable to state violence. This 2018 study shows that there has been no significant shift since the 2014 CEDEP and CHRR report which found that "sexual minorities are subject to arbitrary arrest and detention by police officers who appear to have an uncertain grasp of the law and little regard for due process rights. Victims were in many cases held without charge."

Healthcare

These same reports found that LGBTI people experience discrimination and human rights violations in the healthcare sector. Transgender and intersex persons are most severely affected by this discrimination. Either being denied basic health services or being subjected to forced and unnecessary tests and examinations. This has an adverse effect on their access to adequate healthcare services as, even if not turned away, many trans and intersex persons choose to remain untreated rather than risk a hostile healthcare environment.

"The combination of stigma and discrimination based on sexual orientation and gender identity in a criminalized context creates an environment in which these groups of people are deterred from or fearful of seeking prevention, testing, and treatment services. Those whose sexually transmitted infections (STIs) go untreated are at increased risk not only of developing complications, but also of contracting HIV; and those who face barriers accessing HIV testing and treatment due to stigma and discrimination are more likely to die of AIDS."

A 2017 Deutsche Welle article reported on a gay man who had faced discrimination whilst attempting to access medical care. The interviewee recalls the encounter below:

“I had a sexual health issue that required medical attention. I was disappointed with the way the nurse at the health facility handled the situation. After the routine diagnosis, she asked me if I was homosexual. I said ‘yes’ because I wanted help. She told me that I was evil, and my future was doomed because God does not allow that. She then called her colleagues to come and see me. They took turns pouring insults on me. One of them openly said I did not deserve medical attention. Instead, I should be arrested for indulging in homosexuality, which is an offence. I was totally upset, and I left the clinic for a drug store so I could treat myself.”

Considering that Malawi is a high-risk region for HIV/AIDS, as found by the United Nations Programme on HIV/AIDS, a lack of access to affirming health services leaves MSM, gay men and transgender women particularly vulnerable. Although there has been a significant decrease in new HIV infections and AIDS-related deaths in Malawi, in 2017 “the HIV prevalence among gay men was 17.3 percent, compared to adult heterosexual women at 12.8 percent and heterosexual men at 8.2 percent.”

South Africa

Background

Even with its progressive constitution, and significant legal protections for LGBTI persons, the impact of South Africa's colonial and apartheid histories can still be seen in prevailing moral codes around sex and sexuality.

Analyses on the impact and legacies of colonialism have tended to focus on race relations and to a lesser extent gender. However, more current work has begun to interrogate the ways in which this history has shaped understandings of morality in relation to sex and sexuality in South Africa. The Immorality Act of 1927 criminalized interracial sexual relations between white South Africans and other races in South Africa. Under the apartheid government the Immorality Act of 1927 was amended to include the prohibition of "unnatural sexual interactions." Some anti-apartheid and Lesbian, Gay, Bisexual (LGB) activists in South Africa have historically articulated the link between racism, sexism, and the government's intrusion on sex and sexuality. However, a combination of racism in the LGBTI community and homophobia in the broader society made it near impossible for a strategic and unified movement which challenged the apartheid government at multiple levels to emerge.

The demise of the apartheid regime and the implementation of a constitutional democracy significantly altered South Africa's legislative frameworks. The constitutional, in its early stages of conception, envisioned a South Africa based on the rights and protections of all South Africans, regardless of race, class, gender, and sexual orientation. This signalled a significant shift in South Africa's political and legal landscape as discriminatory laws would have to conform to the dictates of The Constitution of the Republic of South Africa.

The Constitution alongside the Bill of Rights "guarantees the right to equality and non-discrimination to all people and includes a specific prohibition against discrimination on the basis of sexual orientation." Various sections of the Constitution and the Bill of Rights speak to equality; with the equality clause legislating these protections at length. Section 9 of the Constitution of The Republic of South Africa, 1996 reads as follows;

- 9(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- 9(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

- 9(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience belief, culture, language and birth.
- 9(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- 9(5) Discrimination on one or more grounds listed in subsection (3) is unfair unless it is established that it is fair.

Racially discriminatory laws were swiftly repealed in this era, however constitutional jurisprudence pertaining to sexuality and gender identity was much slower to develop. In the early years of democracy, the development of jurisprudence interrogating the validity of discriminatory laws directed at the LGBTI community began to take shape. These seminal judgments include;

- *S v Kampher*, where the court held that the common law crime of sodomy was in contravention of the Constitution.
- *National Coalition for Gay and Lesbian Equality v Minister of Justice*, a ground-breaking case which significantly tested the scope and reach of the judiciary in relation to LGBT rights. The court ruled that the common-law crimes of sodomy and “commission of an unnatural sexual act” was unconstitutional

A 2006 ruling, following an application made to the court for the legal right to marry as a same sex couple. Parliament later voted in favour of the legal recognition of same sex couples’ marriages through the amendment of the Civil Union Act.

Alongside these seminal cases, legislation in South Africa continued to develop in ways which gave precedent to the constitutional imperatives of dignity, freedom of expression, freedom of association, and the general democratic ideal of anti-discrimination. This development in jurisprudence was coupled with the development of legislation reflective of the spirit of a Constitutional Democracy.

These include;

- Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA or the Equality Act, Act No. 4 of 2000) as amended in 2005, supplements the South African Constitution by providing for measures to address unfair discrimination on a number of prohibited grounds, including gender, sex and sexual orientation. In 2005, the definition of “sex” in this law was amended to state explicitly that “sex includes intersex” people.
- The Alteration of Sex Description and Sex Status Act, 2003 an act of Parliament which allows a person to change, under certain conditions, their sex as recorded in the population registry
- Children’s Act, 2005, which allows adoption by spouses and by “partners in a permanent domestic life-partnership” regardless of sexual orientation

These progressive and comprehensive laws give recognition and protection to the rights of LGBTI persons in South Africa and stand as a potentially powerful precedent on the continent. However, there has been a considerable lag between the law and the lived experiences of LGBTI persons in South Africa. LGBTI persons in South Africa remain a vulnerable group susceptible to high levels of violence and stigma based on their gender expression, gender identity and sexual orientation.

Conservative attitudes, and cultural, religious, and traditional moral codes disproportionately affect young lesbian and transgender women and leave them particularly vulnerable to violence. Peri-urban and rural areas, with high unemployment rates, poor implementation of legislation, low levels of education, and inadequate resources for organising are considered hotspots for hate crimes and human rights violations. As will be shown below, various Non-Governmental Organisations, Government departments, research institutions, and other alliances, have, through collaborative and multi-sectoral approaches, created structures to attempt to deal with, and remedy the violence targeted at LGBTI persons in South Africa.

Findings

Indicator One: Existence and identification of NGOs and/or alliances that are currently addressing anti-LGBTI violence and the extent to which they are collecting, disaggregating and analysing data.

South Africa has a vast and vibrant civil society, which plays a critical role in challenging state and non-state enacted human rights violations. Areas of focus include violations and discrimination in the criminal justice and healthcare systems, social development, access to adequate public services such as education, housing, safety and security. Within the LGBTI sector, various organisations exist to address the myriad needs within the LGBTI community. These include stand-alone organisations as well as bodies attached to institutions of higher learning, such as research institutes with an LGBTI research focus. This enables collaborative approaches to addressing violence and hate crimes targeted at LGBTI people. Below is a list of LGBTI focused and allied organisations.

While there are a vast number of LGBTI organisations in South Africa, only a handful collect or aggregate data on violations perpetrated within or outside of state structures. A majority of LGBTI organisations and alliances focus their efforts on responding to LGBTI violations as opposed to gathering data on violations. Below is a partial list of some of the larger LGBTI organisations and alliances identified as actively responding to and/or documenting violations:

Durban Lesbian & Gay Community & Health Centre: a project of the KZN Coalition for Gay & Lesbian Equality) offers a safe and secure space for the lesbian, gay, bisexual, transgender and intersex communities of Durban and KwaZulu-Natal. The mission is to empower the lesbian, gay, bisexual and transgender communities by providing services, support and training to enable them to claim their rights to equality, dignity and freedom within the context of transformation.

Gay and Lesbian Memory in Action (GALA): a centre for lesbian, gay, bisexual, transgender, and intersex (LGBTI) culture and education in Africa. Our mission is, first and foremost, to act as a catalyst for the production, preservation and dissemination of knowledge on the history, culture and contemporary experiences of LGBTI people.

Gender Dynamix: undertakes to advance, promote and defend the rights of trans and gender nonconforming persons in South Africa, Africa and globally. The organisation focuses on the multiple systems of discrimination and marginalisation that impact trans and gender non-conforming people. Community mobilisation, media engagement, public education, research and training form the core of their strategy.

Global Interfaith Network for People of All Sexes, Sexual Orientations, Gender Identity and Expression (GIN-SSOGIE): aims to provide a safe space to convene, document best practices,

develop resources and together create local, regional, and international strategies for the decriminalization of LGBTI identities. GIN works to be legitimate and relevant to all faiths and all local contexts where religion is used as a justification for discrimination against the LGBTI community and beyond.

Iranti: is a queer human rights visual media organisation based in Johannesburg, South Africa. Iranti works within a human rights framework as its foundational platform for raising issues on Gender, Identities and Sexuality. Through the use of various visual mediums such as videos, photography, audio recording, among others sets itself as an archive of Queer memory in ways that destabilize numerous modes of discrimination based on gender, sexuality and sexual orientation.

Limpopo LGBTI: is a community-based, non-profit organisation, focused on advocacy, dialogues and workshops. Limpopo LGBTI also conducts door-to-door visits and works with the Department of Health and the Department of Justice.

Out Wellbeing: started in 1994 and has been active in legal reform for Lesbian, Gay, Bisexual, Transgender (LGBT) equality in South Africa (such as working on same-sex marriage rights and hate crimes). OUT provides health services to LGBT people, including a clinic, HIV prevention work, and provides psycho-social support, conducts research and trains mainstream service providers to adequately meet the needs of LGBT clients.

The Gay and Lesbian Network: aims to create a non-discriminatory, supportive and accepting society in Pietermaritzburg and the Midlands region, where everyone feels free to be themselves. They offer many services to the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community.

The Triangle Project: is a non-profit organisation working towards a vision of a society that is free of social discrimination, prejudice and inequality. The organisation's core objective is the promotion of human rights, with particular regard to the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons.

Southern Africa Litigation Centre (SALC): promotes and advances human rights and the rule of law in southern Africa, primarily through strategic litigation support and capacity building. SALC provides technical and monetary support to local and regional lawyers and organisations in litigating human rights and rule of law cases in the region. SALC also provides training in human rights and rule of law issues and facilitates networks of human rights lawyers and organisations throughout southern Africa.

Indicator Two: The extent to which government authorities in South Africa are collecting data on anti-LGBTI based incidents of violence;

In 2011, the Department of Justice and Constitutional Development "mandated the establishment of a National Task Team (NTT) to develop a National Intervention Strategy that would address

“corrective rape” and violence against LGBTI persons more broadly. The NTT is the government’s most coordinated attempt at data collection on the violation of LGBTI persons in South Africa. Responding to sustained pressure from civil society, the department-initiated engagements with key government departments and institutions to develop the National Task Team. The NTT is constituted by government departments, chapter nine institutions and civil society organisations that specialise in issues related to LGBTI persons. The work of the NTT is guided by the South African Constitution, which guarantees equality and prohibits discrimination on many grounds, including gender, sex and sexual orientation.

The NTT was largely dormant in its initial years of existence. In 2013 the NTT was eventually reconvened to settle disputes about its terms of reference, before being officially launched in April of 2014. The NTT’s mandate is to coordinate the different departments which address violence against LGBTI people and to monitor cases moving through the justice system. It has had some success in terms of public engagement, including a television advert which highlighted violence against LGBTI people. Despite this achievement, and despite political will show by the lead department, the NTT has remained a largely rudderless institution which struggles to meet some of its core deliverables. While the NTT provides a space to centralise cases of violence against LGBTI people, these mechanisms do not exist at the level where LGBTI people interact with service providers and authorities and the processes of the NTT are often opaque and intangible.

In addition to this, on the 5th of July 2013, the Working Group of the NTT established a Rapid Response Team comprised of representatives of the Department of Justice and Constitutional Development, National Prosecuting Authority, South African Police Service and civil society organisations. The purpose of the Rapid Response Team is to urgently attend to the pending cases in the criminal justice system where crimes have been committed against LGBTI persons. As a mandate of the Department of Justice, the NTT comprises of Provincial Task teams which operate and function at local levels, whilst still making crucial and critical interventions at key stakeholder engagements and governmental level.

Indicator Three: Existing data on the number of incidents of anti-LGBTI violence reported to (a) government authorities, (b) human rights bodies, or (c) NGOs;

Below is an unpublished presentation from the National Task Team (July 2018) which shows the number of documented cases reported within each province and the nature of the cases reported till July 2018. These would be the most accurate and updated records as the Department of Justice has full access to the database of the South African Police Service. In addition to this, the NTT and RTT consists of NGOs and other alliances who oftentimes report and document on hates crimes faced by their constituencies within the LGBTI community. It is safe to deduce that these figures are a combination of documentation processes from various NGOs, government institutions, and alliances,

however they cannot be taken as an accurate overall figure due to the limitations of the mechanism described above.

Table 7: National Task Team Unpublished Data

Breakdown of cases per Province (number of cases per province and charges)		
Gauteng Province	Murder	8
	Rape	2
	Assault GBH	1
Western Cape Province	Murder	3
	Rape	4
Limpopo Province	Attempted Murder	1
Free State Province	Murder	2
North West Province	Murder	4
	Rape	4
	Sexuals Assault	1
KwaZulu Natal Province	Rape	1
	Assault GBH	2
Eastern Cape Province	Rape	1
	Assault GBH	1
Mpumalanga	Rape	2

Indicator Four: The extent to which criminal justice and other officials in South Africa have received training on any LGBTI-related issues

There are efforts among state and non-state entities to provide training to officials working within the state system. While there is no existing aggregated data on these efforts, a number of organisations report doing this kind of work and through the NTT some internal state efforts have also been documented.

The Department of Justice's 2014/2015 Annual Report made mention of the training of various sectors of the justice system to improve officials' knowledge of the justice system, including the criminal

justice system, and their response to victims. "There appears to be great emphasis on the number of officials trained, and the number of training sessions conducted. However, very little information is available on the content, quality and impact of such training on officials themselves, and on the experience of victims as they move through the criminal justice system." Unfortunately, the 2016/2017 South African Police Service Annual Report makes little mention of the development of these trainings or the impact these trainings have had on access to adequate services related to the criminal justice system. There are still high levels of distrust between survivors of LGBTI-related violence and the SAPS who are normally the first point of interaction when one has been violated. Due to subjective moral codes and beliefs, LGBTI persons attempting to report cases experience secondary victimisation due to stigma. This has a significant effect on the number of cases reported. In response to this, the Department of Justice in consultation with LGBTI NGOs and alliances, has drafted a 'Standard Operating Procedure to Respect, Promote, and Protect the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons' for the South African Police Service. The draft is aimed at "assisting all SAPS members, especially those SAPS members delivering front-line services, to ensure that LGBTI+ persons are not discriminated against and are treated with dignity and respect at all police stations and by all police personnel the victims of crime or alleged perpetrators of crime comes in contact with."

Furthermore, the Standard Operating Procedure aims to:

- 2.1 ensure that SAPS members at all levels are well informed about what is expected from them when dealing with LGBTI+ persons, regardless of whether such person is a victim of crime or an alleged perpetrator of crime.
- 2.2 To ensure that SAPS members at all levels provide a service that is professional, non-marginalising and non-judgmental to LGBTI+ persons, their families, friends and support networks.
- 2.3 To ensure the protection of LGBTI+ persons who are victims of crime and the prevention of secondary victimisation.

Although in its draft form, the Standard Operating Procedure neglects detailed implementation plans. For example, the training required to enable police officers to adhere to it, or the potential consequences of a failure to comply with the guidelines. Policy interventions without adequate training required to ensure enforceability, offer little to no remedy for LGBTI persons who are at the interface of secondary victimisation and the criminal justice system.

Indicator Five: Existing data and information on the extent to which anti-LGBTI violence is being addressed by government authorities or other entities (e.g., arrests, prosecutions);

The below table outlines the number of cases being handled officially by the criminal justice system as of July 2018. These numbers are minimal compared to the earlier tabulated data of actual

violations. This should be understood in the context of an overall low prosecution rate in South Africa, however data on the levels of prosecution and arrest in these cases compared to the overall rates would be valuable in assessing, comparatively, the extent to which LGBTI persons are able to access justice.

Table 7: National Task Team Unpublished Data: Summary of LGBTI Cases July 2018x

On court roll	20
Filed with conviction	00
SSP for decision	---
To inquest court	05
Struck from roll pending investigation	02
Investigation cases	09

Indicator Six: Existing data in South Africa on the number of incidents of anti-LGBTI violence perpetrated by criminal justice or other public officials (including false arrests and charges, unlawful detention).

There is little aggregated data on incidents and violations committed by public officials in South Africa. In a forthcoming study conducted by Dr Müller, data shows that “participants frequently mentioned negative experiences, including those that involve societal homophobia and transphobia, or the fear thereof, as a reason for not reporting crimes.” Furthermore, the study shows that “participants indicated that LGBT people tend to avoid government services and service providers that are not explicitly LGBT-focused, and that these are important entry points into the criminal justice system for survivors, such as SAPS, clinics, hospitals and TCCs. In fact, this was the most widely cited factor for low reporting among LGBT people.”

These attitudes shown by public officials within various arms of the state, particularly in sectors of healthcare, education, and justice, mean that members of the LGBTI community find it difficult to receive access to basic service. Although numerical data on the number of incidents of violations with public officials is limited, it is commonly acknowledged, including by the state, that LGBTI persons in South Africa face considerable violation within the healthcare, education, and criminal justice system.

Case Study - Discrimination in Schools

In 2014, a learner in Limpopo had been facing discrimination and harassment in school due to her gender identity and gender expression. "The case was taken to the Seshego Equality Court by Iranti, as Nare faced severe discrimination for her gender identity from her school principal, who Nare claimed had instructed other students to provoke her, particularly in the school's restrooms." This was a seminal case in that it challenged the ways in which the schooling system, and by extension the Department of Education, neglects gender diverse learners. The Equality Court held that the Limpopo Department of Education compensate the learner R60 000 in damages. In 2017, the Department of Education, in consultation with LGBTI organisations and alliance, launched a Social Inclusion Working Group which aims to address a number of issues within the education sector. An important aspect of this campaign is to deal with the implicit and explicit biases within the education sector which unfairly discriminate LGBTI and gender diverse learners. This ranges from uniform codes, curriculum biases, sensitivity training for frontline educators, just to name a few.

Uganda

The LGBTI community in Uganda faces a particularly hostile society and state and have suffered many extreme violations of their human rights.

While the LGBTI community have fought fiercely against attempts to further criminalize LGBTI persons, including the proposed Anti-Homosexuality Acts, there is widespread state sanctioned hostility towards LGBTI persons. In Uganda the state is a particularly heinous perpetrator of violations against LGBTI persons and, but for a few exceptions, enables and sanctions the violation of LGBTI persons. In October of 2019, the legislation colloquially known as the “Kill the Gays Bill” re-entered public conversation after government indicated its intention to reintroduce the death penalty for homosexuality. This hostility has in fact lead to many LGBTI Ugandans fleeing their homes and country to seek refuge in neighbouring countries or further afield. In organizing around the series of proposed Anti-homosexuality Acts the LGBTI movement in Uganda galvanized and effectively garnered allyship across the continent. One of the effects of this was the establishment of networks that could effectively coordinate advocacy and data collection efforts. “The Consortium” is one of these noteworthy efforts that enabled the LGBTI community in Uganda to produce significant data on the violations of LGBTI persons. The consortium data is derived in part from data collected through the REAct system, a system piloted in Uganda and successfully used to streamline data collection capacities. While there are still many gaps in the currently available data and data collection capacities, these programmes offer some important insights into the potential use of data in shaping advocacy strategies.

Formal Legal Status

The legal status of LGBTI persons in Uganda came into the spotlight in 2013 when Parliament adopted the Anti-Homosexuality Act. The act attempted to extend the criminalization of LGBTI persons beyond the reach of the existing penal codes. According to the act same-sex sexual relations would be punished with life imprisonment or the death penalty, and same-sex marriage and “homosexual propaganda” were also prohibited. Due to tremendous organizing by the LGBTI community in Uganda, and support from allies across the continent and internationally the act was annulled by the constitutional court in August of 2014.

Since the annulment there have been several attempts to resurrect similar Acts. On October 29, 2014, a new bill entitled “The Prohibition of Promotion of Unnatural Sexual Practices Bill” was circulated by the ruling party. Once again, through organizing on the part of LGBTI organisations in Uganda, led by HRAPF, the new bill was quashed before its enactment. Most recently, in October of 2019, the government announced intentions to resurrect the bill, in an effort to curb “unnatural sex.”

Without these Acts in place the previous 1950 Penal code still criminalizes same sex sexual relations but with a more limited scope. Sections 145 and 146 of the Penal Code criminalize “unnatural offences” including “carnal knowledge ... against the order of nature.” Section 148 of the code criminalizes “indecent practices” including “gross indecency.” The penal code is widely used to harass, arrest and prosecute LGBTI persons in Uganda.

Social Context

In 2016 Afrobarometer released results on the public opinions and perceptions of LGBTI persons across the African continent. The aim of the survey was to gauge the levels of tolerance Africans had, within their specific contexts, for LGBTI people. The survey found that a majority of African citizens showed drastically low levels of tolerance for LGBTI people. Uganda had a 5 percent tolerance score, making it one of the most hostile societies for LGBTI people on the continent.

The legal context in Uganda sets the tone for the ways in which citizens respond to, and interact with, LGBTI people. An assessment conducted in the United States found that the social environment for LGBTI people in Uganda is wildly hostile, as:

“Openly LGBT Ugandans confront stigma, discrimination, legal restrictions, harassment, intimidation, violence and death threats. They are often denied access to healthcare and HIV services. Prominent political leaders and influential Christian and Muslim religious leaders publicly denounce LGBT people. LGBT people also encounter restrictions on their freedom of speech, movement and actions. Ugandan families have been known to discriminate against and disown LGBT family members whose sexual orientation or gender identities (SOGI) are exposed.”

A similar survey was conducted in 2016 by The International Lesbian and Gay Association. The survey aimed to find the global attitudes towards LGBTI persons in “65 countries, including Uganda. The survey size in each country was between 700 and 3,200 people.” The survey results for Uganda are outlined in the table below:

Table 8: Global Attitudes Survey: Uganda Results

	Strongly Agree	Somewhat Agree	Neither	Somewhat Disagree	Strongly Disagree
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	47%	10%	15%	5%	26%
Same-sex desire is a Western phenomenon	42%	12%	19%	5%	23%

	No Concerns	Somewhat Uncomfortable	Very Uncomfortable
How would you feel if your neighbour is gay or lesbian?	40%	15%	45%

In a narrative study by Sexual Minorities Uganda (SMUG) in 2016, the narratives showed how:

“time and time again we see sexual and gender minorities persecuted by the state for their identities, and consequently face extreme social exclusion. This includes physical threats, violent attacks, torture, arrest, blackmail, non-physical threats, press intrusion, state prosecution, termination of employment, loss of physical property, harassment, eviction, mob justice, and family banishment — often leaving LGBTI individuals without jobs, homes, resources, and support.”

All three of these studies outline the social discomfort with LGBTI persons, and the resonance at a legal and political level, despite the data suggesting that being neighbours with the LGBTI people is of little discomfort.

This context alongside religious fundamentalism has shaped the ways in which LGBTI persons are positioned in society. This is not limited to the interpersonal relations of citizens but permeates various sectors of society. The narrative study shows how LGBTI persons have a low level of trust for the criminal justice system, healthcare services, and the education sector. Primary state institutions are in fact the main contributors to stigma, varied forms of violence, and human rights violations.

Findings

Indicator one: Existence and identification of NGOs and/or alliances that are currently addressing anti-LGBTI violence and the extent to which they are collecting, disaggregating and analysing data;

Despite the widespread hostility faced by LGBTI people in Uganda, there is an established LGBTI movement, including LGBTI aligned networks, which works to uphold the values of human rights, dignity, and freedom. These networks have been active in documenting violations, challenging the state on LGBTI issues, and garnering support from within and beyond the country.

The Consortium on Monitoring Violations based on Sexual Orientation and Gender Identity (The Consortium) is a loose network of organisations that document violations based on gender identity and sexual orientation in Uganda. Established in 2014 The Consortium is coordinated by HRAPF and has as its other members FARUG, SMUG, IBU and the Uganda National LGBTI Security Committee. The Consortium aims to produce regular and accurate data on such violations in order to enable evidence-based strategies among LGBTI organisations. The Consortium also invests in capacity building among community-based organisations to enable quality documentation of human rights violations at the community level.

The Consortium uses Martus software, developed by Benetech, to collate and aggregate the collected data. The organisation produces annual reports that reflect the data collected through the voluntary contributions of CBOs and NGOs.

Human Rights Awareness and Promotion Forum (HRAPF) is a human rights advocacy and legal aid service provision organisation. Founded in 2008 by a group of lawyers, the organisation focuses on access to justice for the most at-risk populations and marginalized groups in Uganda. HRAPF operates the only specialised legal aid clinic for LGBTI persons in Uganda and was key among the organisations that successfully challenged and the Anti-Homosexuality Act of 2014.

HRAPF does extensive documentation work, primarily through its role as coordinator of The Consortium - profiled above.

Sexual Minorities Uganda (SMUG) was founded in 2004 as an umbrella organisation to bring together the wide network of LGBTI organisations in Uganda. The umbrella body has eighteen member organisations and plays a coordinating and support role. Along with this role, the organisation has four key programs; Advocacy and Policy Change, Research and Documentation, Capacity Development, and Safety and Protection.

SMUG has collected extensive data on the violations of LGBTI persons in Uganda and used this data as a central part of its advocacy work. Using the REAct system, profiled below as case study one,

the organisation has produced various evidence-based reports and policy briefs. SMUG is also a member of The Consortium.

Freedom and Roam Uganda (FARUG) is an LBT organisation founded in 2003 by a group of lesbian women who wanted to respond to the increasing threats to LBT women. The organisation describes its work as lobbying, dialogue, visibility and voice. The organisation has six focus areas: freedom from violence, rights to healthcare, socio-economic rights, institutional development, movement building and, research and documentation.

Ice Breakers Uganda (IBU) is an LGBTI care and support organisation with a focus on HIV/AIDS and health and wellbeing from LGBT persons in Uganda. Formed in 2004, the organisation's programs include education, advocacy and research. In 2012 the organisation founded Uganda's first LGBTI clinic. Through this work they have been able to gather both qualitative and quantitative data on human rights violations of LGBTI persons both in and outside of the healthcare system.

The Uganda National LGBTI Security Committee was established in 2008 by a coalition of LGBTI activists working in Uganda. The organisation became active following the murder of activist David Kato in 2010. The committee has seven members, each representing a different LGBTI organisation. The committee provides emergency support to those identified as most at risk due to their actual or perceived sexual orientation or gender identity.

FEM Alliance Uganda (FEMA) is a WSW/LBT organisations established in 2011 by a group of lesbian women. The organisation was founded in response to growing concerns about the constant harassment that LBT women were facing, and the under-representation of WSW/LBT needs in the broader minority organizing in Uganda. The organisation focuses on education, personal development and advocacy.

Indicator Two: The extent to which government authorities in Uganda are collecting data on anti-LGBTI based incidents of violence

Considering the state's role in promoting an anti-LGBTI culture, it is not surprising that there is no political will or investment in collecting data on human rights violations perpetrated against LGBTI people. These acts are not acknowledged or framed by the state as violence or as incidents which violate the constitutional ideals of freedom and freedom of expression. Political leaders and various government officials have, in different instances, fuelled tensions and environments which place LGBTI people in precarious and vulnerable positions.

Despite an antagonistic and repressive state, the healthcare sector appears to collect some data through HIV response work and has implemented an MSM National Strategic Plan. The National HIV and AIDS Strategic Plan projected for 2015-2016 and 2019-2020, placed MSM as a key population in the country's HIV/AIDS strategic plan, with 13% of MSM being affected by HIV/AIDS. The National Plan reported that "reaching key and vulnerable populations with services is still a challenge due to structural and environmental barriers." Even so the country's KP strategies have included little focus on monitoring the violations of MSM.

Indicator Three: Existing data on the number of incidents of anti-LGBTI violence reported to (a) government authorities, (b) human rights bodies, or (c) NGOs

The most recent and comprehensive data comes from The Consortium's 2016 report which covers the 2015 calendar year. In 2015 the Consortium documented 171 violations identified from 91 verified cases. Of the 171 violations 99 were recorded by the HRAPF legal aid clinic, a significant majority. Also, worth noting is that HRAPF documented the majority of state perpetrated violations, whereas the majority of community perpetrated violations were documented by other contributing organisations - reflecting the different mandates of the organisations.

The documented cases of violations perpetrated by state actors are considered in detail in the section titled indicator six. Non-state actors were responsible for 93 of the 171 violations.

The HRAPF report categorised all the violations perpetrated by non-state actors based on the perpetrators: property owners, the media, family members, community members and places of work. The following table extrapolated from the report indicates the number of violations perpetrated by each group in 2015.

Table 9: number of verified violations committed in the year 2015 categorized by perpetrator

Perpetrator	Total number of verified violations
Property owners	40
Media houses	8
Family members	7
Employers	4
Community members	30

As the table indicates the majority of these violations were evictions of suspected LGBTI persons from their homes. These were both outright evictions and relocation due to threats and attacks. This data indicates the extent of housing insecurity and homelessness experienced by LGBTI persons in Uganda. It is important to understand that these evictions often occur in the context of an existing violation by a state actor. For example, the arrest of a suspected LGBTI person often instigates a series of other violations including eviction. Property owners were responsible for the majority of evictions, with a total of forty verified cases documented in the year 2015.

The media is a major perpetrator of the violation to privacy and these violations are particularly worrying because they often result in further violations due to exposure. In 2015 six media houses were identified as having perpetrated a total of eight violations, after publishing or broadcasting damaging stories about people presumed to be LGBTI.

Of the seven cases in which family members violated their LGBTI relatives, three cases involved

reporting their relative to the police, three involved evictions, and one involved a family disowning their relative after they had been arrested. Again, we see here the imbrication of violations by non-state and state actors. This is also true in two of the four cases of dismissal by employers. In the four cases tabulated above employers dismissed gay men because of their perceived sexual orientation. In two of these cases this followed the arrest of the men and public parades in which the police intentionally outed and humiliated the men.

Finally, the thirty cases under the community member category include nineteen physical attacks, eight threats of violence, three cases of blackmail, two cases of banishment from villages, one case of gang rape and one eviction case. The physical attacks were perpetrated by both known and unknown assailants, including mobs. From the cases discussed in the report it is clear that transgender women are the most targeted group and suffer a particularly high level of physical insecurity.

In their 2016 report *“And That’s how I Survived Being Killed”* SMUG documents 264 cases of human rights abuses over a period of twenty months from May 2014 - December 2015. These cases are based on 115 interviews with self-identifying sexual and gender minorities, compiled and recorded using the REAct system. Below is a breakdown of the cases extracted from the report

Table 10: Breakdown of Human Rights Violations in Uganda May - December 2016

Human Rights Abuse	Total	(%)
Violence	71	27%
Arrest	23	9%
Physical Threat	16	6%
Violent Attack (mob justice, etc.)	19	7%
Torture	13	5%
Intimidation	61	23%
Blackmail	9	3%
Non-Physical Threat / Verbal Threats	26	10%
Press Intrusion / Press “Outing”	11	4%
State Prosecution	11	4%
House Intrusion	4	2%
Loss of Property	73	28%

Loss of Physical Property	15	6%
Loss of Income or Employment	24	9%
Eviction or Removal from Home	34	13%
Social Exclusion	59	22%
Community Discrimination / Harassment	27	10%
Family Banishment or Discrimination	25	9%
Deportation	2	1%
Discrimination when Accessing Healthcare	5	2%

Case Study: REAct - Rights Evidence Action

“The beauty of REAct is that it is a package. At its heart is the individual – documenting what has happened to them and identifying an immediate and specific response. But, with the evidence it produces, REAct also provides a means to mitigate issues that are coming up – putting in place the actions needed to ensure that such situations don't happen again. It gives hope to both our organisation and our community.” -- Richard Lusimbo, research and documentation manager, SMUG

REAct is a community based human rights monitoring system developed by the International HIV/AIDS Alliance in partnership with Benetech and LGBT organisations in Uganda. The system was initially intended to enable monitoring of and responding to human-rights related barriers in accessing HIV and health services. The system can and has been used to monitor human-rights violations far beyond this scope, including violations of LGBTI persons not traditionally understood as key populations.

The system relies on Martus, open source software developed by Benetech and used globally as an information management tool for monitoring human rights violations. * Users input information gathered from direct interviews - based on a guiding questionnaire - into the information management tool.

In May 2014 the system was field tested in collaboration with SMUG, Icebreakers Uganda and Spectrum Uganda. It has since been rolled out in nineteen countries and is freely available to any organisations wishing to implement the system. The program is operational in four of the five countries surveyed in this report: Botswana, Malawi, South Africa and Uganda, and in all of these countries is used, at least in part, to collect data on anti-LGBTI violations.

The REAct program, and the wider use of Martus, enabled Uganda to develop a far more robust system of data collection than most other countries on the continent. The data collected by SMUG using REAct has informed various research reports and policy briefs, including information referenced for this report. A notable example is the report “And That’s How I Survived Being Killed, based on 264 violations of LGBT persons documented through REAct during May 2014 to December 2015. The report includes testimonies of torture, arrest, blackmail, media intrusion, termination of employment, harassment, eviction, mob attack and family banishment, leaving individuals without homes, jobs, resources or access to services, including for HIV and SRHR. Most importantly the report, and others like it, have strengthened the advocacy capabilities of LGBT organisations, who are now armed with irrefutable evidence that can be used to hold government to account.

In May 2018 Benetech announced that it will no longer be updating the Martus system, which has already surpassed the expected lifespan of a software program. While the software will continue to work for those already running it, without patches it will inevitably become necessary for a new software program to fill this gap.

Indicator four the extent to which criminal justice and other officials in Uganda have received training on any LGBTI-related issues

Unsurprisingly the state has committed no resources for training public officials on issues related to LGBTI sensitivity. Even in the area of HIV/AIDS prevention the acknowledgement of MSM as a key population has not translated into increased awareness among public health officials.

Various studies and reports, both governmental and non- governmental have consistently made the point that public officials in Uganda do not follow best practice methods when interacting with LGBTI persons who seek assistance from various state sectors. The most prevalent of these being the criminal justice and healthcare sectors. In the narrative report published by SMUG in 2016, one of the

participants expressed how in the process of reporting hate crimes and violation perpetrated by civilians against LGBTI people, the police offer little to no assistance. A 2015 report entitled Status of LGBTI People in Cameroon, Gambia, Ghana, and Uganda, found that LGBTI people experience disproportionate discrimination in the criminal justice system and this impact the rates at which LGBTI persons report their cases and receive justice.

In the National HIV/AIDS Strategic Plan for Uganda, the report explicitly notes how levels of stigma, victimisation, and discrimination are critical in creating and sustaining barriers to access for MSM and key population groups. This places key population groups in a vulnerable position without access to the required treatment, information, or adequate medical care.

Civil servants do not have the necessary skills to deal with and assist LGBTI people when they seek remedy. In addition to this, best care practices are often cancelled out by personal convictions, often with no repercussions. These values and personal convictions which are endorsed by the state, and thus are not seen as violations against LGBTI people.

Indicator five Existing data and information on the extent to which anti-LGBTI violence is being addressed by government authorities or other entities (e.g., arrests, prosecutions);

As will be discussed in the section covering indicator six, state actors are responsible for a significant portion of anti-LGBTI violations in Uganda. Nonetheless there are documented cases in which government authorities intervene or address such violations.

In the 2016 Consortium report it was acknowledged that there was increased cooperation between leadership in law enforcement and the LGBTI community. There was willingness on the part of leadership within the police force to respond to violations perpetrated by police officers, and there were a number of cases in which the officers involved were held accountable. There have also been cases in which the police have intervened to prevent the violation of LGBTI persons. However, it is often the case that the need for protection is a direct result of police action - including arrests. In two instances the police protected LGBTI persons from mob violence after their arrests resulted in angry mobs gathering outside the police station. In another case the police assisted a gay man who was attempting to access his property following an eviction.

There were also two incidents recorded in 2015 in which local government authorities were instrumental in providing protection for LGBTI persons at risk. In one case, following the arrest of nine men accused of homosexuality, the local area chairperson requested the transfer of these men because their safety had been compromised. In this case the local chairperson, who also refused to share details with the media, mitigated the potential further fallout of the arrests. In a second incident local council authorities attempted to protect a suspected gay man from arrest through mediation. The offer of mediation was not accepted but has been identified as commendable practice by LGBTI organisations.

Despite this important progress in forming personal relationships this has not translated into any formal recourse through the justice system.

Indicator six Existing data in Uganda on the number of incidents of anti-LGBTI violence perpetrated by criminal justice or other public officials (including false arrests and charges, unlawful detention).

In Uganda, like the majority of the countries covered in this report, state actors occupy a contradictory role in relation to the violations of LGBTI persons. The Ugandan police force for example has been commended for increased cooperation with LGBTI organisations while at the same time continuing to be the single highest perpetrator of violations. While there are a handful of cases in which law enforcement has acted to protect LGBTI persons at risk, as in the examples above, these are far outweighed by cases of arbitrary arrest, unlawful detention and assault while in custody.

The Consortium reports highlight the extensive pattern of abuse among state actors in Uganda. In their 2014 and 2015 reports state actors perpetrated more than half of the reported violations. And while the 2016 report saw a shift, with state actors perpetrating 45.6% of the reported violations, police were still the top individual perpetrator of violations against LGBTI persons in Uganda. While these reports are extensive, they do not cover violations experienced in the healthcare system, which impacts their calculations of the proportion of violations perpetrated by state and non-state actors.

Considering that homosexuality itself is not a registered criminal offence in Uganda, arrests on the basis of sexual orientation or gender identity are essentially always arbitrary. The report included documentation of six verified cases of arbitrary arrest, four cases of arrests for cross-dressing, which is not actually criminalized in Uganda. One of the four cases resulted in a conviction after the person was officially charged with being a public nuisance. More common are illegal detentions in which LGBTI persons are held unofficially in police custody, denied access to lawyers or contact with family members.

The report also covers cases of torture and inhumane or degrading treatment or punishment. Five verified cases of forced anal examinations were recorded for the year 2015. And while the findings of these exams have been ruled to have no evidentiary value the practice continues as a form of humiliation and torture. There were also two cases in which police performed exams on the penises of suspects under the guise of collecting evidence. The police have also been responsible for publicly outing suspected LGBTI persons in the media, with eight cases verified in 2015. These outings include public parades which intentionally cause humiliation and increased vulnerability to further violations. Finally, the report details the use of excessive force, often amounting to assault, during the conducting of arrests.

Other than the police other state actors have also been responsible for perpetrating various violations against LGBTI persons, although this has been less well documented. Local government authorities have been responsible for evictions and banishments from villages on the basis of perceived sexual orientation. The Uganda Registration Services Bureau in 2015 denied the right to incorporate to three

LGBTI organisations on the basis that their names were undesirable.

Table 11: Consortium Data on the Percentage of anti- LGBTI Violations in Uganda Perpetrated by State Actors 2014-2015

Year	Total Number of Violations	Total Number of Violations Perpetrated by State Actors	Percentage of Total Violations Perpetrated by State Actors
2014	89	47	52%
2015	171	78	45.6%

In the 2016 SMUG report, which covers a similar period and has considerable data overlap, the violations documented were not explicitly differentiated by perpetrator into state and non-state actors. However, based on the data from the report, tabulated above as item one, at least four of the categories are necessarily acts perpetrated by the state - arrest, state prosecution, deportation and torture. When combined these constitute 18.5% of the total violations. However, the discrepancy between this number and the much higher numbers recorded above can be attributed to the various state perpetrated offences that have not been differentiated in the data. The report contains various categories in which the violations have been perpetrated by both state and non-state actors.

Discrimination in the Healthcare Sector

In June of 2018 SMUG published a report on healthcare discrimination against Uganda's sexual and gender minorities. The report found that LGBTI persons face serious violations of their rights when attempting to access healthcare, and that the culture of discrimination is embedded in every level of the healthcare system, from political will on the part of the minister to everyday violations at points of access.

The SMUG report notes that discrimination in the healthcare system goes largely unreported, this they suggest is due to the widespread normalization of anti-LGBTI violations, meaning that only the most serious physical violations are reported. Following a 2016 report documenting 264 cases of human rights abuses towards gender and sexual minorities in Uganda, SMUG chose to focus their next report on discrimination in the healthcare system because of the lack of documentation.

While the report is not focused on quantitative data, the findings of the qualitative analysis suggest the extent to which government provided health services are both inaccessible and potentially risky for LGBTI persons. The report outlined the major kinds of violations that were experienced in the healthcare system.

- Outing: the most common violation documented in the report was an infringement on the right to privacy. It was reported that healthcare workers would frequently share confidential information, including the sexual orientation or gender identity of a patient with colleagues, other patients or the community at large. This can often put the patient at increased risk of further violation.

- Denial of services: LGBTI persons are frequently denied services, with particularly high levels of discrimination against those perceived to be gender non-conforming.
- Verbal harassment: This kind of harassment is very common and includes the use of slurs to attempts to cure or convert patients.
- Threats and violent attacks: although less frequent, there is a real and justified fear of physical violence among Uganda's LGBTI community. These attacks are frequently the result of a breach of confidence which can result in arrests by police or mob violence.
- Forced anal examinations: healthcare workers are generally commissioned by arresting officers to undertake anal examinations in cases of suspected homosexuality. This is a case of collusion between to separate arms of the state in violation of the human rights of LGBTI persons.

The cumulative impact of this environment is that LGBTI persons are reluctant to access healthcare services and are therefore at increased risk for serious health issues including mental health problems and HIV/AIDS complications.

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APPENDIX ITEM ONE: INTERVIEW SCHEDULE - SEMI STRUCTURED GUIDING QUESTIONS

INTERVIEW SCHEDULE - guiding questions

- Basic information about the organisation
- Is your organisation collecting, disaggregating and analyzing data on the violation of LGBTI persons? (formally and informally)
- Do you publish the data you collect? (internal or public)
- Do you report violations to any government structures? Do you know of any collection of data by the state?
- Can you give a sense of the frequency of report and what kinds of violations are reported to you?
- Do you pass on reports to any other bodies? Do you share your data in a coalitions/umbrella?
- Does your organisation organize or participate in any trainings of criminal justice and other officials on any LGBTI-related issues? Do you know of any other training efforts?
- Have/are any of the cases your organisation has handled being addressed by government authorities or other entities (e.g., arrests, prosecutions); Do you know of any cases that led to arrest or prosecution?
- Existing data in each country on the number of incidents of anti-LGBTI violence perpetrated by criminal justice or other public officials (including false arrests and charges, unlawful detention).

APPENDIX ITEM TWO: LGBTI ORGANISATIONS IN KENYA

Name of Organisation	Est.	Constituency	Focus
National Gay and Lesbian Human Rights Commission (NGLHRC)	2012	National - LGBTI	Legal and policy reforms
Gay and Lesbian Coalition of Kenya (GALCK)	2006	National - LGBQ	Litigation; Advocacy
Gay Kenya Trust (GKT)	2006	National- LGBQ	Human rights and media advocacy and training
Artists for Recognition and Acceptance (AFRA)	2008	Nairobi/ National - LBQ women	Advocacy through Arts, healing,
Kenya Youth Development and Education Support Association (KYDESA)	2009	Nakuru county - LGB	MSM, health, education
Q-Initiative Eldoret	2010	Eldoret - LGB students and youth	safe space, education, health
Health Options for Young Men on HIV/AIDS/STI (HOYMAS)	2009	National - male sex workers & MSM	safe sex education, health and economic empowerment
Ishtar MSM	1999	National - MSM	MSM health and education, advocacy
Kenya Campus Lasses Association (K-CLA)	2014	Nairobi - LBQ women & GNC students	Community and safe space
Minority Persons Empowerment Group (MPEG)	2010	Central Province - MSM	MSM health service and psychosocial support
Minority Women in Action (MWA)	2006	National- LBQ women	LBQ women - protection of legal rights and self determination

Amkeni Malindi	2009	Malindi - LGBTIQ	community strengthening, health, advocacy, economic empowerment
HIV & AIDS People's Alliance of Kenya (HAPA Kenya)	2011	Mombasa county - HIV+ MSM/MSW	Health, education and advocacy on HIV/AIDS
Persons Marginalized and Aggrieved (PEMA) Kenya	2009	Mombasa county - MSM focus / GSM	Policy advocacy, health, economic & social empowerment
Rainbow Women of Kenya (RWOK)	2012	Mombasa - LBITQ women	Sexual & reproductive health, legal rights, advocacy
Tamba Pwani	2010	Kilifi county GBT men & male sex workers	health and human rights - training, awareness, media advocacy
Usawa Kwa Wote Initiative (UKWELI) Mombasa	2010	South Coast & Kwale county - LGBTI & Male sex workers	safe space, HIV health and support, legal support, economic empowerment
Jinsiangu	2012	National - ITGNC	safe spaces, advocacy, research, information, health services
NYARWEK (Nyanza, Rift Valley, and Western Kenya Coalition)	2009	Regional coalition: Western, Rift Valley, Nyanza - LGBTI	safety, legal concerns, advocacy
Women Working with Women (3W)	*	Kisumu - lesbian	
Men Against AIDS Youth Group (MAAYGO)	*	Kisumu - MSM	service provider
Kisumu Initiative for Positive Empowerment (KIPE)	2002	Western - MSM SW	advocacy against stigma
Keeping Alive Societies Hope (KASH)	2003	Western - sex workers	advocacy with law enforcement
Nyanza Reproductive Health Society (NRHS)	2002	Nyanza - MSM	MSM health - research and

Organisations that partner
with/ partly serve LGBTI
community

Kenya Human Rights
Commission (KHRC)

Kenya Commission on Human
Rights (KCHR)

National Coalition of Human
Rights Defenders (NCHRD)



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