

DEFENDING OUR RIGHTS AND TRUTHS BOLDLY

A SURVEY ON THE SITUATION OF SOGIE
HUMAN RIGHTS DEFENDERS IN KENYA



DEFENDERS
COALITION

“ Every person is equal before the law and has the right to equal protection and equal benefit of the law” and “Equality includes the full and equal enjoyment of all rights and fundamental freedoms.”

Article 27 (1) and (2), Constitution of Kenya.



Acknowledgement

Queer and gender minorities to include SOGIE HRDs continue to face significant risks and challenges as they advocate for the human rights and fundamental freedoms of queer persons. Defenders Coalition takes the opportunity to extend utmost gratitude to all the persons who made this survey success. We acknowledge the invaluable support of the Executive Director Kamau Ngugi, Gloria Madegwa, Esban Muthoni and Obino Nyambane who offered strategic directives and insightful comments and input, that contributed to the successful completion of the survey. The commissioning of this survey was true testament of Defenders Coalition commitment to securing SOGIE HRDs and the protection of the human rights and fundamental freedoms of queer and gender minorities as guaranteed in the Constitution and International laws.

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List of Abbreviations

AHA	Anti-Homosexuality Act
ACHPR	African Commission on Human and Peoples' Rights
AIDS	Acquired Immune Deficiency Syndrome
CSOs	Civil Society Organisations
CHESA	Community Health Education Services & Advocacy
COVID-19	Coronavirus disease 2019
HIV	Human Immunodeficiency Virus
HRDs	Human Rights Defenders
KNCHR	Kenya National Commission on Human Rights
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, and queer plus
NGLHRC	National Gay and Lesbian Human Rights Commission
NGO	Non-governmental organisation
SOGIE	Sexual orientation, gender identity, and expression
SOGIESC	Sexual orientation, gender identity and expression, and sex characteristics
SRHR	Sexual and Reproductive Health Rights
UN	United Nations



Glossary

Bisexual	A person who is sexually and romantically attracted to both women and men, or to more than one sex or gender.
Boda boda	A slang term for motorcycles used for ferrying goods and passengers.
Gay	Synonym for homosexual; used here to refer to the sexual orientation of a man whose sexual and romantic attraction is towards men.
Gender	Social and cultural codes used to distinguish between "masculine" and "feminine."
Gender expression	The expression of gender identity through dress, make-up, speech, mannerisms or medical treatment.
Gender Identity	A person's internal, deeply felt sense of their gender, which may not correspond to the biological sex assigned at birth.
Gender Non-Conforming	Behaviour and appearance that do not conform to social expectations of one's sex assigned at birth.
Homophobia	Fear, contempt, prejudice or discrimination against homosexuals or homosexuality.
Homosexual	A person who is romantically or sexually attracted to people of their own sex or gender.
Intersex	A term used to refer to people with primary and/ or secondary sex characteristics that do not conform to the biological definition of "male" or "female."
Lesbian	A woman whose primary sexual and romantic attraction is toward women.
Non-binary	Embodiment of a gender identity that does not conform to binary beliefs (i.e. that all individuals are exclusively either male or female).
Queer	A reclaimed term denoting sexual orientation,



gender identity and expression that does not conform to established ideas of sexuality and gender.¹

Sexual and Gender Minorities People whose sexual orientation and gender identity and expression does not conform to societal assumptions.

Sexual orientation A person's identity in relation to the gender or genders to which they are sexually and romantically attracted.

Sex work The exchange of sexual services between consenting adults for material compensation, pejoratively referred to as “prostitution.”

Trans (also, “transgender”) A person whose gender identity does not correspond with the sex they were assigned at birth.

Transphobia Fear, contempt, prejudice or discrimination against trans, non-binary, or gender non-conforming persons.

¹ Erin J. Rand, *Reclaiming Queer: Activist and Academic Rhetoric's of Resistance*, 2014, <https://experts.syr.edu/en/publications/reclaiming-queer-activist-and-academic-rhetorics-of-resistance>.



Note on the Terminology

Previous research on the rights of LGBTIQ+ people in Kenya has noted challenges in selecting appropriate, accurate, and inclusive terminology for this community.² The term “LGBTIQ+” is a fractious one within Kenyan LGBTIQ+ activist circles with some arguing that efforts towards protection from violations on grounds of sexual orientation be delinked from efforts aimed at addressing violations on the grounds of gender identity, expression, and sex characteristics. To highlight similarities and apply an intersectional approach to the analysis, the term LGBTIQ+ was used, thereby exhaustively discussing the challenges facing HRDs working to address violations against all sexual and gender minorities. When citing the findings of research that used acronyms other than LGBTIQ+, their use of the acronym was adopted.

²Human Rights Watch, “*The Issue Is Violence: Attacks on LGBT People on Kenya’s Coast*” (Human Rights Watch, 2015), 14, accessed August 29, 2023, https://www.hrw.org/sites/default/files/report_pdf/kenya0915_4upr.pdf.



Summary

Over the past decade, the LGBTIQ+ community has faced an unprecedented increase in visibility, vulnerability, and violence. This increase in violations has been compounded by the rampant growth of online misinformation, disinformation, and harassment. As such, LGBTIQ+ HRDs are presently at risk of not only attacks on themselves and their loved ones, but strains on already limited resources aimed at protecting the larger LGBTIQ+ community. Despite this concerning trend, there presently exists no data on LGBTIQ+ HRDs operating in this environment. This survey aims to fill that gap in research, by documenting the experiences of LGBTIQ+ HRDs, and the impact this trend has on their work and lives.

The findings of the survey indicate that LGBTIQ+ HRDs have experienced an increase in a myriad of violations over the past decade, including threats, violence, harassment, forced evictions and discrimination. LGBTIQ+ HRDs are in a position of greater risk of harm than the larger LGBTIQ+ population, given their visibility and frequency of interaction with perpetrators of violations. Violations against LGBTIQ+ HRDs are perpetrated by a wide range of actors in the society, indicating the presence of Kenyan cultures and norms that are inherently homophobic and transphobic.

The effects of this increase of violations are wide-ranging, creating limitations for LGBTIQ+ HRDs on social, economic, and psychological levels. It is therefore necessary for mitigation efforts to be equally wide-ranging, offering protection for HRDs in different areas of their work and personal lives. These mitigation efforts require medium and long-term strategies to address some of the recurrent and persistent violations faced by HRDs.

Finally, the need for collaboration with other stakeholders cannot be overstated. Lasting changes to the situation of LGBTIQ+ HRDs requires the input of not only CSOs, but the public, law enforcement officials, judicial officers, and legislators. The experiences of LGBTIQ+ HRDs also mirror those of HRDs in other thematic fields, indicating room for collaboration on areas of intersection.

Context/Background

The UN Declaration on Human Rights Defenders emphasises the responsibility of all individuals in promoting and protecting human rights.³ In 2011, the United Nations General Assembly passed its first sexual orientation and gender identity (SOGI) resolution, affirming that protections guaranteed by the Universal Declaration of Human Rights apply to LGBTIQ+ individuals.⁴ Under Resolution 275, states in particular, bear the primary responsibility to "ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities."⁵

These standards have been reaffirmed in Africa with the passage of at least ten HRD-related resolutions. In a landmark resolution on violence and other human rights violations against persons based on their real or imputed sexual orientation and gender identity, the African Commission on Human and Peoples' Rights (ACHPR) urged African states to end these violations, regardless of whether they are committed by state or non-state actors.⁶

It is clear that despite regional and international resolutions, broader acceptance of LGBTIQ+ people remains challenging.⁷ Defenders of LGBTIQ+ people are among the most targeted groups globally, often facing severe danger, particularly in regions such as Europe, Central Asia, and

³United Nations General Assembly, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," March 8, 1999.

⁴United Nations General Assembly, "17/19 Human Rights, Sexual Orientation and Gender Identity" (United Nations, July 14, 2011).

⁵UN Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (Office of the High Commissioner for Human Rights, July 2011), accessed September 3, 2023, <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

⁶Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014 – available at <https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations> (accessed 11 July 2024)

⁷Shannon Greenwood, "Views of Homosexuality around the World | Pew Research Center," Pew Research Center's Global Attitudes Project, October 27, 2020, <https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/>.



Sub-Saharan Africa.⁸ Threats to LGBTIQ+ people, and LGBTIQ+ human rights defenders in particular, are part of a global decline in human rights, democracy and the rule of law. There now appears to be a standoff between far-right-leaning ideologies and the push for open, democratic, and inclusive societies.

The Kenyan LGBTIQ+ community has witnessed overt politicization, use of AI tools to generate online propaganda, state and non-state infringement of constitutional rights, and inappropriate funding models for HRDs. This survey aims to provide an analysis of these developments, focusing on their impact on LGBTIQ+ HRDs and the effectiveness of existing programs designed to support and protect them.

Regional Developments in LGBTIQ+ Rights Advocacy

Over the past few years, LGBTIQ+ individuals in Africa have experienced increased visibility and attacks. While the broader trend affects all segments of this community, LGBTIQ+ defenders, due to their identifiable roles, bear the brunt of these violations. This is compounded by the fact that LGBTIQ+ HRDs face similar challenges to other human rights defenders including violence and reprisals by state and non-state actors, misinformation and disinformation, trivialisation, marginalisation, and hostility from their families, friends, and communities.⁹

In Uganda, two prominent LGBTIQ+ HRDs, namely David Kato Kasule in 2011¹⁰ and Brian Wasswa in 2019¹¹ were murdered. To date, no perpetrator has been brought to justice for the killings. In both instances, politicians, senior government officials and religious leaders took the opportunity to platform discussions on stricter anti-LGBTIQ+ laws, which led to the passing of the Anti-Homosexuality Act (2014, later repealed) and the Anti-Homosexuality Act of 2023.¹² A government crackdown on LGBTIQ+ CSOs prefaced the passing of the AHA (2023), after the Ugandan NGO

⁸*Special Rapporteur on Human Rights Defenders, “Final Warning: Death Threats and Killings of Human Rights Defenders.”*

⁹OHCHR, “Defenders of the Human Rights of LGBT Persons Constantly at Risk, Warn UN Experts.”

¹⁰Xan Rice, “Ugandan Gay Rights Activist David Kato Found Murdered,” *The Guardian*, November 26, 2017, <https://www.theguardian.com/world/2011/jan/27/ugandan-gay-rights-activist-murdered>.

¹¹Civil Rights Defenders, “Ugandan LGBTI+ Activist Brutally Murdered in His Home,” *Civil Rights Defenders*, April 22, 2022, <https://crd.org/2019/10/10/ugandan-lgbti-activist-brutally-murdered-in-his-home/>.

¹²“Amid ‘Kill the Gays’ Bill Uproar, Ugandan LGBTQ Activist Is Killed,” *NBC News*, October 16, 2019, <https://www.nbcnews.com/feature/nbc-out/>

Coordination Board released a report accusing them of “promoting” homosexuality.¹³ Sexual Minorities Uganda (SMUG), a high-profile organisation for LGBTIQ+ causes, was shut down for allegedly failing to register as an NGO.¹⁴ Further, there have been anti-CSO raids, mob attacks, forced evictions and the barring of LGBTIQ+ people from accessing essential services.¹⁵ Stricter anti-LGBTIQ+ laws tend to receive broad support from traditionally non-partisan institutions and organisations¹⁶ with LGBTIQ+ HRDs being forced to flee to neighbouring countries for safety.¹⁷

In 2016, the Tanzanian government prohibited the importation and distribution of condoms and lubricants, citing these goods as contributing to the “promotion of homosexuality” in the country.¹⁸ Tanzanian authorities subsequently cracked down on health facilities offering HIV-related services to men who have sex with men, sex workers and injecting drug users, with vigilante groups often participating in these crackdowns.¹⁹ According to James Wandera Ouma, a Tanzanian LGBTIQ+ HRD, the crackdown in 2017 was part of a systematic attempt to kill the LGBTIQ+ community, especially considering the high rates of HIV infection among men who have sex with men in the country.²⁰ In October that year, the Tanzanian government arrested and detained 13 HRDs who had convened to discuss litigation strategies countering the closure of HIV health facilities

amid-kill-gays-bill-uproar-ugandan-lgbtq-activist-killed-n1067336.

¹³Khatondi Soita Wepukhulu and Dicta Asiimwe, “Ugandan Charity Regulator Accused of Targeting LGBTIQ Groups to Avoid Austerity,” *OpenDemocracy*, March 1, 2023, <https://www.opendemocracy.net/en/5050/uganda-lgbt-austerity-ngo-bureau-investigations-leaked-report-charity-regulator/>.

¹⁴Leo Sands, “Uganda LGBT Rights: Government Shuts down Key Advocacy Group,” *BBC News*, August 7, 2022, accessed September 3, 2023, <https://www.bbc.com/news/world-africa-62453344>.

¹⁵Isaac Kaledzi, “East Africa’s LGBTQ Community under Siege,” *Dw.Com*, March 23, 2023, <https://www.dw.com/en/east-africas-lgbtq-community-under-siege/a-65068984>.

¹⁶Kevin Tschierse and Ines Eisele, “Why Is Homophobia so Strong in Uganda?,” *Dw.Com*, May 17, 2023, <https://www.dw.com/en/why-is-homophobia-so-strong-in-uganda/a-65393277>.

¹⁷Abdi Latif Dahir, “‘We Will Hunt You’: Ugandans Flee Ahead of Harsh Anti-Gay Law,” *The New York Times*, April 20, 2023, <https://www.nytimes.com/2023/04/20/world/africa/uganda-anti-gay-bill-lgbtq.html>.

¹⁸Charlotte England, “Tanzania Bans Lubricant in Bid to ‘curb Homosexuality,’” *The Independent*, July 25, 2016, <https://www.independent.co.uk/news/tanzania-lubricant-ban-to-curb-homosexuality-lgbt-rights-east-africa-a7152656.html>.

¹⁹Human Rights Watch, “‘If We Don’t Get Services, We Will Die’: Tanzania’s Anti-LGBT Crackdown and the Right to Health” (Human Rights Watch, 2020), accessed September 3, 2023, https://www.hrw.org/sites/default/files/report_pdf/tanzania0220_web_0.pdf.

²⁰Roberto Igual, “‘They Are Killing the LGBT Community’ Says Tanzanian Activist - MambaOnline - Gay South Africa Online,” *MambaOnline - Gay South Africa Online*, February 27, 2017, <https://www.mambaonline.com/2017/02/27/killing-lgbt-community-says-tanzanian-activist/>.

by Tanzanian authorities.²¹ In 2018, Tanzania's NGO Coordination Board revoked the licences of LGBTIQ+ human rights and community organisations, including the leading rights group CHESA, for "promoting unethical acts in the society" in contravention of "Tanzanian law, ethics and culture."²²

Anti-LGBTIQ+ rights campaigns in Tanzania have also resulted in the killings of LGBTIQ+ HRDs. Maurice Mjomba was found brutally murdered in 2012, with his body showing signs of torture.²³ No perpetrator of this heinous crime has yet been brought to justice. Anti-LGBTIQ+ statements by politicians and government officials in Tanzania are emblematic of the role prominent persons play in inciting attacks against LGBTIQ+ HRDs. For instance, Paul Makonda, a regional law enforcement official in Dar es Salaam, created a task force to hunt down LGBTIQ+ individuals, urging the public to expose them. This led to members of this community going into hiding.²⁴



²¹Bibi Van Der Zee, "Tanzania Illegally Detains Human Rights Lawyers for 'Promoting Homosexuality,'" *The Guardian*, October 19, 2022, <https://www.theguardian.com/global-development/2017/oct/26/tanzania-illegally-detains-human-rights-lawyers-for-promoting-homosexuality>.

²²"Tanzania: Board Revokes Six NGOs' License," *The Citizen*, April 9, 2021, <https://www.thecitizen.co.tz/tanzania/news/national/tanzania-board-revokes-six-ngos-license-2677906>.

²³Stephen Gray and Stephen Gray, "Tanzania: Gay Rights Activist Found Dead," *PinkNews | Latest Lesbian, Gay, Bi and Trans News | LGBTIQ+ News*, June 16, 2021, <https://www.thepinknews.com/2012/07/30/tanzania-gay-rights-activist-found-dead/>.

²⁴Jen Kirby, "Tanzania's Anti-Gay Crackdown Is Sending People into Hiding," *Vox*, November 9, 2018, <https://www.vox.com/2018/11/5/18057112/tanzania-anti-gay-crackdown-makonda-lgbt-arrest-dar-es-salaam>.

In Ghana, an LGBTIQ+ rights workshop was raided, and activists arrested in May 2021.²⁵ This incident was prefaced by the closure of a centre in Accra serving LGBTIQ+ individuals.²⁶ Also in 2021, an anti-LGBTIQ+ law was tabled in the Ghanaian Parliament.²⁷

In Tunisia, LGBTIQ+ human rights defenders have faced police harassment, arbitrary arrests without access to counsel, threats, doxing, and raids on their homes.²⁸ Their experiences mirror those in other North African countries, particularly Egypt, where activists are at heightened risk of arrests under the country's strict CSO and anti-homosexuality laws.²⁹

The COVID-19 pandemic disproportionately affected LGBTIQ+ HRDs by restricting movement and access to key stakeholders and decision-makers. This period also saw increased online violations, increased militarization of law enforcement, as well as social crises and economic shocks.³⁰ According to the Observatory for the Protection of Human Rights Defenders, LGBTIQ+ activists were placed at higher risk of violence and discrimination at the start of and during the COVID-19 pandemic.³¹ These findings were similar to those of a 2020 report by Front Line Defenders, documenting the sharp increase in violations against LGBTIQ+ human rights defenders.³²

In Kenya, the COVID-19 pandemic worsened the situation for LGBTIQ+ HRDs who were still reeling from a loss in 2019, when the High Court

²⁵ "Ghana: LGBT Activists Face Hardships after Detention," Human Rights Watch, September 20, 2021, <https://www.hrw.org/news/2021/09/20/ghana-lgbt-activists-face-hardships-after-detention>.

²⁶ Nimi Princewill, "Founder of LGBTQI Center Shut down in Ghana Says He Fears for His Safety," CNN, February 25, 2021, <https://www.cnn.com/2021/02/25/africa/lgbt-ghana-of-fice-raids-intl/index.html>.

²⁷ Michael Mfum, "Gay Rights Activists Fear for Their Safety as Ghana Readies Harsh Anti-LGBTQ Bill," RFI, August 26, 2023, accessed September 3, 2023, <https://www.rfi.fr/en/africa/20230826-gay-rights-activists-fear-for-their-safety-as-ghana-readies-harsh-anti-lgbtq-bill>.

²⁸ "Joint Letter to UN Experts and EU States Re: Police Violence Targeting LGBT Activists in Tunisia," Human Rights Watch, February 23, 2021, <https://www.hrw.org/news/2021/02/23/joint-letter-un-experts-and-eu-states-re-police-violence-targeting-lgbt-activists>.

²⁹ "Egypt: Security Forces Abuse, Torture LGBT People," Human Rights Watch, September 28, 2022, <https://www.hrw.org/news/2020/10/01/egypt-security-forces-abuse-torture-lgbt-people>.

³⁰ Observatory for the Protection of Human Rights Defenders, "Human Rights Defenders and Covid-19: The Impact of the Pandemic on Human Rights Defenders and Their Work" (International Federation for Human Rights (FIDH), July 2022), accessed September 3, 2023, <https://www.fidh.org/IMG/pdf/ob-covid-19-report-en-2.pdf>.

³¹ Observatory for the Protection of Human Rights Defenders, "Human Rights Defenders and Covid-19: The Impact of the Pandemic on Human Rights Defenders and Their Work."

³² Front Line Defenders, "LGBTIQ+ and Sex Worker Rights Defenders at Risk during Covid-19" (Front Line Defenders, December 2020), accessed September 3, 2023, https://www.frontlinedefenders.org/sites/default/files/front_line_defenders_covid-19.pdf.



rejected a petition challenging the constitutionality of Sections 162 (a) and (c) and 165 of the Penal Code. According to a 2020 report by Defenders Coalition, LGBTIQ+ HRDs witnessed an increase in violations such as evictions, disownment by family members, online attacks, and doxing.³³ These attacks led to a decline in the mental health and quality of life of LGBTIQ+ HRDs, especially those whose SOGIE status was maliciously disclosed to their families.³⁴

Contextualizing LGBTIQ+ Rights Advocacy in Kenya

Kenya's LGBTIQ+ rights movement is said to have “come out” during the 2007 World Social Forum conference in Nairobi.³⁵ Since then, the LGBTIQ+ rights movement has grown to be a vibrant contributor to Kenya's civil society, advocating for the implementation of the constitution, social justice, good governance, equality, and social inclusion. Today, many LGBTIQ+ human rights defenders and organisations work closely with other defenders and organisations on related rights issues such as women's rights, sexual health and reproductive rights (SRHR), youth affairs, governance, and law reforms.³⁶ Additionally, LGBTIQ+ organisations have worked closely with government bodies on areas such as health access (especially around the National HIV/AIDs response), accountability to regional and international human rights mechanisms, intersex rights, and documentation of cases of violence and discrimination against LGBTIQ+ individuals.³⁷

Kenya's discriminatory laws against persons on the grounds of sexual orientation, gender identity, and expression (SOGIE) form the basis of discrimination and violence against LGBTIQ+ individuals. A 2011 report by the Kenya Human Rights Commission titled *The Outlawed Amongst Us: A Study of the LGBTI Community's Search for Equality and Non-Discrimina-*

³³Defenders Coalition, “Defending in a Pandemic: Status of Human Rights Defenders in Kenya During the COVID-19 Pandemic,” *Elibrary.Defenderscoalition.Org* (Defenders Coalition, 2019), 13, accessed October 27, 2023, <https://elibrary.defenderscoalition.org/reports/STATUS%20-%20DEFENDING%20IN%20A%20PANDEMIC.pdf>.

³⁴Defenders Coalition, “Defending in a Pandemic: Status of Human Rights Defenders in Kenya During the COVID-19 Pandemic,” 13.

³⁵“Briefings.” 2007. *Review of African Political Economy* 34 (111): 177–206. <https://doi.org/10.1080/03056240701340530>.

³⁶UNDP and Kenya National Commission on Human Rights, “Inclusive Governance Initiative: Kenya Baseline Report,” 22–25.

³⁷UNDP and Kenya National Commission on Human Rights, “Inclusive Governance Initiative: Kenya Baseline Report,” 25–27.

tion in Kenya found that the criminalisation of same-sex conduct provided a basis and justification for criminal acts against LGBTIQ+ people including physical violence, verbal harassment, blackmail, and extortion by law enforcement personnel.³⁸ The report also found that these acts were carried out against LGBTIQ+ persons with impunity, with the perpetrators confident that they would not be held accountable for their actions.³⁹



³⁸Kenya Human Rights Commission, “The Outlawed Amongst Us: A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya” (Kenya Human Rights Commission, 2011), accessed August 29, 2023, <https://www.khrc.or.ke/index.php/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file>.

³⁹Kenya Human Rights Commission, “The Outlawed Amongst Us: A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya,” 44.



Rationale for the Survey

Defenders Coalition recognizes the urgency of enhancing its programming to effectively address the evolving needs and challenges of LGBTIQ+ HRDs. The increasing demand for the organisation's support in recent years serves as a poignant indicator of the pressing issues at hand.

This survey seeks to provide a comprehensive understanding of the current situation of LGBTIQ+ HRDs in Kenya. By identifying key perpetrators, the sources of violations, and the root causes for said violations, it will explore the experiences of LGBTIQ+ HRDs, and analyse how emerging trends have impacted their landscape.

This survey will also address the effectiveness of Defenders Coalition's existing programs and protection mechanisms designed to support LGBTIQ+ HRDs. It will examine the strengths, weaknesses, gaps, and limitations of these interventions compared to interventions in other contexts, considering their relevance and appropriateness in addressing the unique challenges faced by LGBTIQ+ HRDs.

Based on the findings, this survey will offer recommendations to Defenders Coalition and other stakeholders on strategies to enhance the safety, protection, and well-being of LGBTIQ+ HRDs in Kenya.



Methodology

Quantitative component

A survey was conducted with 21 LGBTIQ+ human rights defenders, lawyers and civil society representatives. The probability sampling technique was employed for selecting participants of this survey.

Qualitative component

Semi-structured interviews were conducted with 21 LGBTIQ+ human rights defenders, lawyers and civil society representatives. The interviews were conducted through virtual calls and physical meetings with the interviewees. The probability sampling technique was employed for selecting participants of this survey.

Two focus group discussions were conducted, with a diverse group of persons to include distinct from the key informant interviewees. The purpose was to provide a platform for participants to share diverse perspectives, exchange ideas, and collectively identify challenges and potential solutions. All study participants have been anonymised to preserve their safety, security and well-being.

A trauma-informed approach was employed, recognizing the potential of retraumatization during discussions. Where requested, participants were referred to mental health services as well as access to specific HRD protection programs offered by Defenders Coalition.

Validation of the findings was conducted through a consultative process with representatives drawn from civil society, academia and the study participants.

A review of select literature was conducted on the legal, social, cultural, and political background of LGBTIQ+ rights advocacy in Kenya. Findings are presented in pie charts, graphs and prose.

Given the small sample size, statistical conclusions may not be drawn from the survey.

Findings

Overall trend in violations

Of the 21 LGBTIQ+ defenders interviewed for this study, 90% (n=19) observed that anti-LGBTIQ+ violations had increased over the past three years (**Figure 1**).

Over the past three years, anti-LGBTIQ+ violations have:

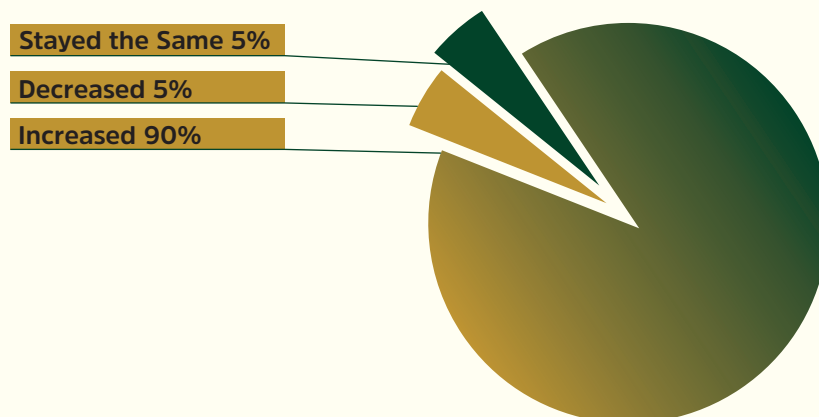


Figure 1: Pie chart showing distribution of statements on change in LGBTIQ+ violations over the past three years.

In the past three years, 86% (n=18) of the respondents had experienced some form of violence or discrimination while 14% (n=3) had not (Figure 2). The latter attributed this to taking safety and security measures, citing skills gained from security management training provided by Defenders Coalition, their own organisations, or other organisations working on the protection of LGBTIQ+ HRDs.

Have you experienced any violence or discrimination in the past 5 years?

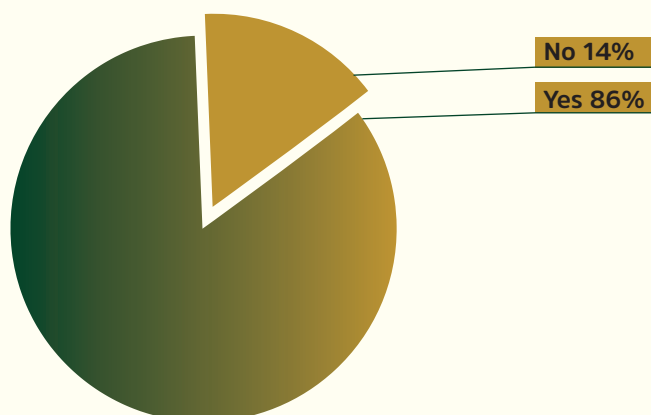


Figure 2: Pie chart showing experiences of violence by LGBTIQ+ HRDs over the past five years.

Data from the National Gay and Lesbian Human Rights Commission (NGLHRC) Legal Aid Clinic showed an increase in reported violations against LGBTIQ+ people in Kenya between 2014 and 2021 (Figure 3) indicating a proportionately increased workload and level of vulnerability experienced by LGBTIQ+ HRDs.

Anti-LGBTIQ+ Violations Reported (2014-2021)

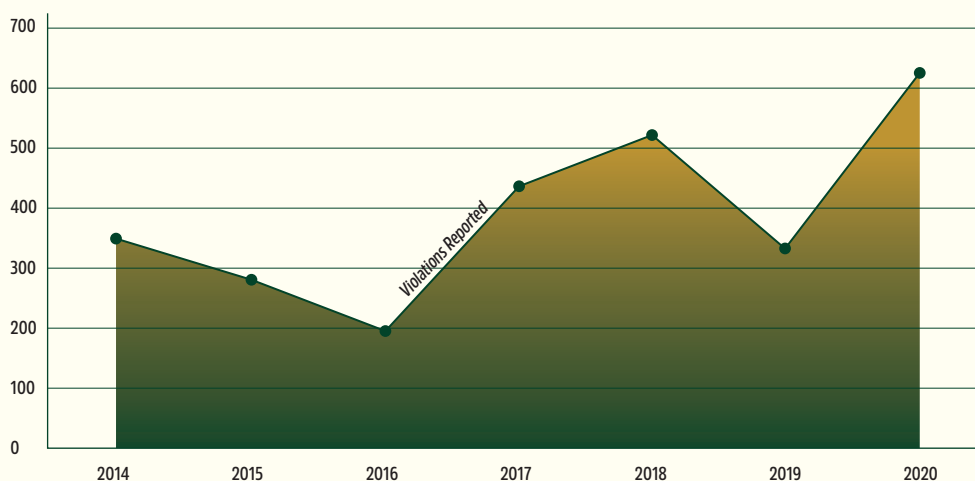


Figure 3: Line chart showing increasing trend in violations reported to the NGLHRC Legal Aid Clinic between 2014 and 2021.

In a joint report on the Kakuma refugee camp, Amnesty International and NGLHRC found that LGBTIQ+ refugees and asylum seekers required temporary relocation in the wake of increased attacks between 2018 and 2023.⁴¹ Concerning HRDs specifically, the same report documented serious violations against LGBTIQ+ HRDs advocating for the rights of these refugees and asylum seekers including arson attacks, threats from police and immigration enforcement agents, and the revocation of their refugee status.⁴² Police and immigration enforcement agents were cited as the primary violators, subjecting the HRDs to beatings, detention, and incitement to violence (including sexual violence) against those detained.⁴³ One respondent who lived in Kakuma Refugee Camp Block 13 at the time when it became a flashpoint for violations, narrated their experience as follows:

⁴¹Amnesty International and National Gay and Lesbian Human Rights Commission, “Kenya: ‘Just Like Any Other Person,’” *Hate Crimes and Discrimination Against LGBTI Refugees* (Amnesty International, 2023), accessed August 29, 2023, <https://www.amnesty.org/en/documents/a-fr32/6578/2023/en/>.

⁴²Amnesty International and National Gay and Lesbian Human Rights Commission, “Kenya: ‘Just Like Any Other Person,’” 34.

⁴³Amnesty International and National Gay and Lesbian Human Rights Commission, “Kenya: ‘Just Like Any Other Person,’” 34, 35.



“ In 2020, several queer HRDs spoke against the violence and discrimination faced by LGBTIQ+ refugees in the camps. This led to the start of the Free Block 13 campaign, a collective effort where we used social media to shed light on our experiences at the camp. We also used social media to raise funds from well-wishers. The money was used to buy food and other materials needed for survival in the camp and enable members of the LGBTIQ+ community in Kakuma to access healthcare. Conditions in the camp were deplorable with limited shelters and inadequate amenities such as healthcare services and sanitation facilities. These conditions were getting worse as more LGBTIQ+ refugees were brought to the Kakuma camp from safehouses in Nairobi. As the number of LGBTIQ+ refugees in the camps increased, so did threats and intimidation towards both HRDs and LGBTIQ+ refugees, including LGBTIQ+ refugees who were vocal about anti-LGBTIQ+ violations at the camp. The surrounding communities as well as refugees in the camp did not support our presence there. Threats were made to us through targeted calls and surveillance on social media platforms. Some LGBTIQ+ defenders also experienced attacks with machetes from other refugees in Kakuma who did not support the presence of LGBTIQ+ refugees. I am a non-binary person and while I lived in Kakuma, I used to be randomly slapped by strangers while out in public at the camp and one time I was undressed in public by other camp residents to humiliate me because of how I was dressed. When LGBTIQ+ refugees were attacked, the police did not do much to assist.”

Factors exacerbating violations

A major risk factor reported by LGBTIQ+ HRDs was their visibility and open advocacy for LGBTIQ+ rights. Additionally, LGBTIQ+ human rights defenders interact with would-be perpetrators of anti-LGBTIQ+ violence in their day-to-day work. Respondents reported being attacked for coming to the defence of LGBTIQ+ persons whose rights were being violated. Other risk factors reported were the COVID-19 pandemic and politicization by elected officials (Figure 4).

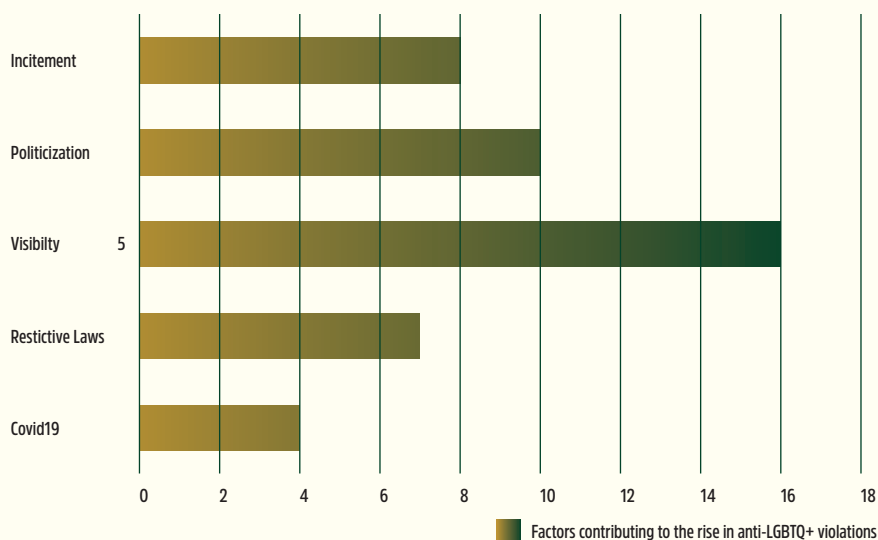


Figure 4: Bar graph showing reported risk factors for violations against LGBTIQ+ HRDs

In the NGLHRC Legal Aid Clinic 2021 report, the devastating effects of the COVID-19 pandemic were borne out by the data. The organisation noted a rise in attacks against LGBTIQ+ human rights defenders during this period. Additionally, the data also showed an increase in blackmail and extortion in which police officers were said to play a role, intimate partner violence, attacks against LGBTIQ+ refugees and asylum seekers in refugee camps, police raids of refugee and asylum-seeker safe houses, as well as an increase in threats of violence and murder.⁴⁴

The socio-economic impact of the pandemic on LGBTIQ+ persons was also borne out by the data. For instance, the NGLHRC Legal Aid Clinic noted an increase in unemployment, loss of livelihoods, and requests for psychosocial and financial assistance. It was also noted that the capacity of LGBTIQ+ organisations to respond to this need was limited due to reduced funding for human rights and social sector organisations during the pandemic.⁴⁵

National elections in Kenya are a difficult period for the LGBTIQ+ community, as this period is marked by fear of being scapegoated by politicians and political parties.⁴⁶ Data from the NGLHRC Legal Aid Clinic

⁴⁴National Gay and Lesbian Human Rights Commission, “2020/2021 Annual Legal Aid Report.” https://nglhrc.com/wp-content/uploads/2022/05/2020_2021ANNUALLEGALAIDREPORT.pdf

⁴⁵Ibid

⁴⁶“Election Campaign Season: A Season of Scapegoating,” Gay And Lesbian Coalition of Kenya, February 15, 2022, accessed August 29, 2023, <https://www.galck.org/election-campaign-season-a-season-of-scapegoating/>.

showed that physical assaults and threats against LGBTIQ+ refugees increased during the 2017 election period on account of political tensions in the country.⁴⁷ The 2022 elections were marked by cases of disinformation, where politicians accused each other of having links with LGBTIQ+ activists and receiving support from the LGBTIQ+ community.⁴⁸

According to data from the NGLHRC Legal Aid Clinic, cases of LGBTIQ+ rights violations have increased significantly since 2022. In total, they documented 1030 complaints between January and July 2023, approximately 40% higher than the total number of complaints received in 2022. Of note, the number of complaints escalated around key politicized events as illustrated in the line graph below (**Figure 5**).⁴⁹ These events include the August 2022 General Election, the murder of Edwin Chiloba in January 2023^{50,51,52}, and the publication of the Supreme Court decision in *NGOs Co-ordination Board v Eric Gitari*, affirming the right of LGBTIQ+ people to freedom of association in February 2023.^{53,54,55}

⁴⁷National Gay and Lesbian Human Rights Commission, “Legal Aid Report (January - December 2017).”

⁴⁸Makinia, “LGBTQ Community Thanks Kenyan President William Ruto? No, Newspaper Front Page Fake,” *Africa Check*, March 17, 2023, <https://africacheck.org/fact-checks/meta-programme-fact-checks/lgbtq-community-thanks-kenyan-president-william-ruto-no>.

⁴⁹This data is sourced from monthly newsletters dispatched by the National Gay and Lesbian Human Rights Commission (NGLHRC) to its subscribers on August 2, 2022; August 31, 2022; October 4, 2022; November 2, 2022; December 25, 2022; February 2, 2023; February 28, 2023; March 14, 2023; March 31, 2023; May 6, 2023; June 5, 2023; July 6, 2023; and August 1, 2023.

⁵⁰Damian Zane, “Edwin Chiloba: LGBTQ Activist Found Dead in Kenya,” *BBC News*, January 6, 2023, accessed August 29, 2023, <https://www.bbc.com/news/world-africa-64184372>.

⁵¹Sian Norris, “The Death of Edwin Chiloba Has Sent Shockwaves Across Kenya’s LGBTIQ+ Community,” *Byline Times*, January 13, 2023, <https://bylinetimes.com/2023/01/12/the-death-of-edwin-chiloba-has-sent-shockwaves-across-kenyas-lgbtq-community/>.

⁵²Brian Oruta, “Kenyans React to MP’s Remarks on Gay Rights,” *The Star*, January 12, 2023, <https://www.the-star.co.ke/news/2023-01-12-kenyans-react-to-mps-remarks-on-gay-rights/>.

⁵³*EG v Non- Governmental Organisations Co-Ordination Board & 4 Others* (Petition 440 of 2013) [2015] eKLR.

⁵⁴*Non-Governmental Organizations Co-Ordination Board v EG & 5 Others* (Civil Appeal 145 of 2015) [2019] eKLR.

⁵⁵*NGOs Co-Ordination Board v EG & 4 Others; Katiba Institute (Amicus Curiae)* (Petition 16 of 2019) [2023] KESC 17 (KLR) (Constitutional and Human Rights) (24 February 2023) (Judgment) (with Dissent - MK Ibrahim & W Ouko, SCJJ).

Anti-LGBTIQ+ Rights Violations Reported (July 2022 to July 2023)

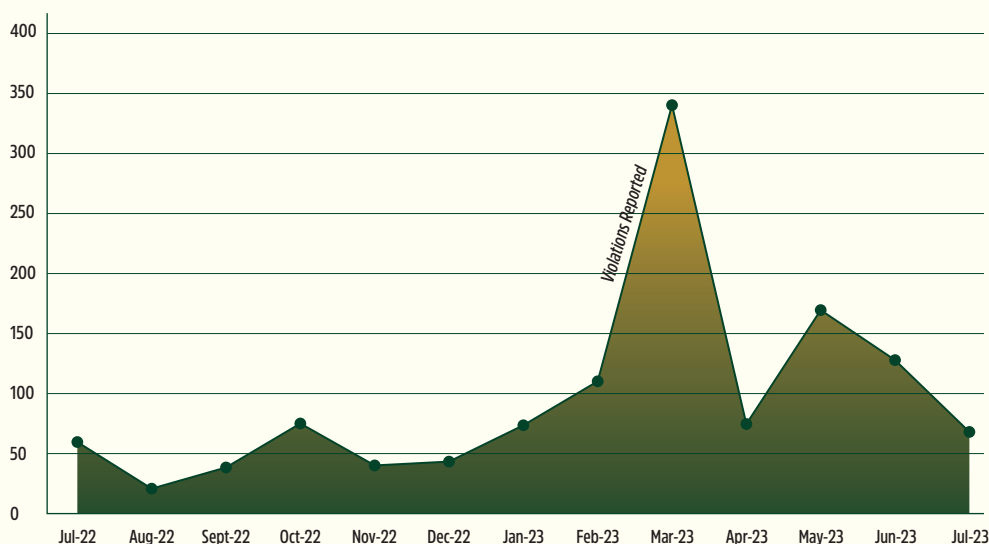


Figure 5: Line graph showing trend in violations between July 2022 and July 2023.

Types of Violations

“Generally, I have experienced a lot of violations, especially threats and intimidation. There was one year when I was evicted 8 times. I have also been subject to arbitrary arrests, especially during the height of the COVID-19 pandemic when I was working to respond to violations against LGBTIQ+ persons. I have experienced online abuse to the point of not being active on social media anymore. The number of violations increased when I started receiving gender affirming care. These days, I am afraid of leaving the house and being in public, even when I travel to areas where not a lot of people know who I am.” – **N, a trans defender based in Western Kenya.**

Over the past three years, 70% (n=7) of respondents had experienced eviction and 71% (n=8) received threats/ intimidation, the two most common violations experienced. 44% (n=5) had experienced physical assault, while 29% (n=2) had experienced conversion practices aimed at “changing” their sexual orientation, gender identity, or sex characteristics. Another common violation reported was technology-facilitated harassment (**Figure 6**).

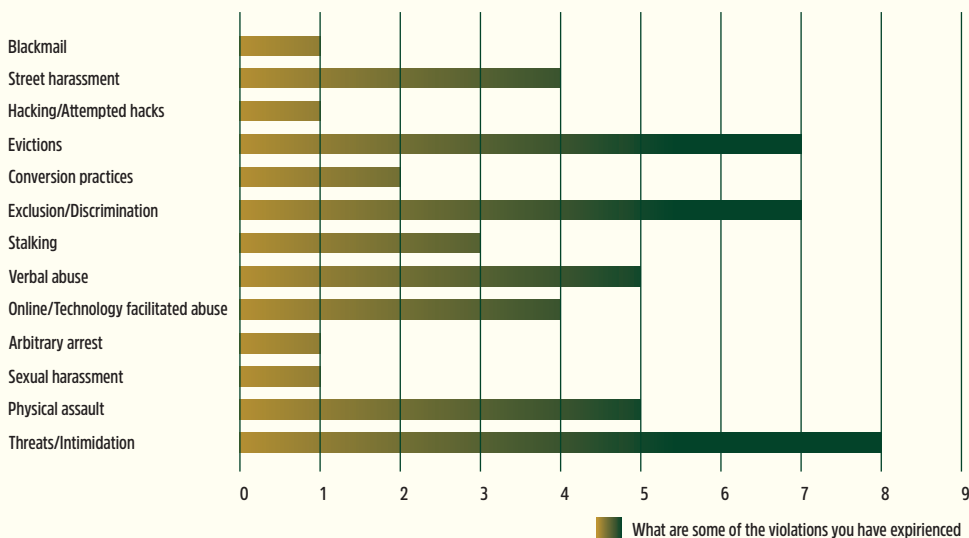


Figure 6: Bar graph showing types of violations reported by respondents.

This pattern is similar to that found by the NGLHRC Legal Aid Clinic, with 42% of violations reported in the 2020/2021 period involving physical assault, eviction and threats/ intimidation (**Figure 7**).⁵⁶

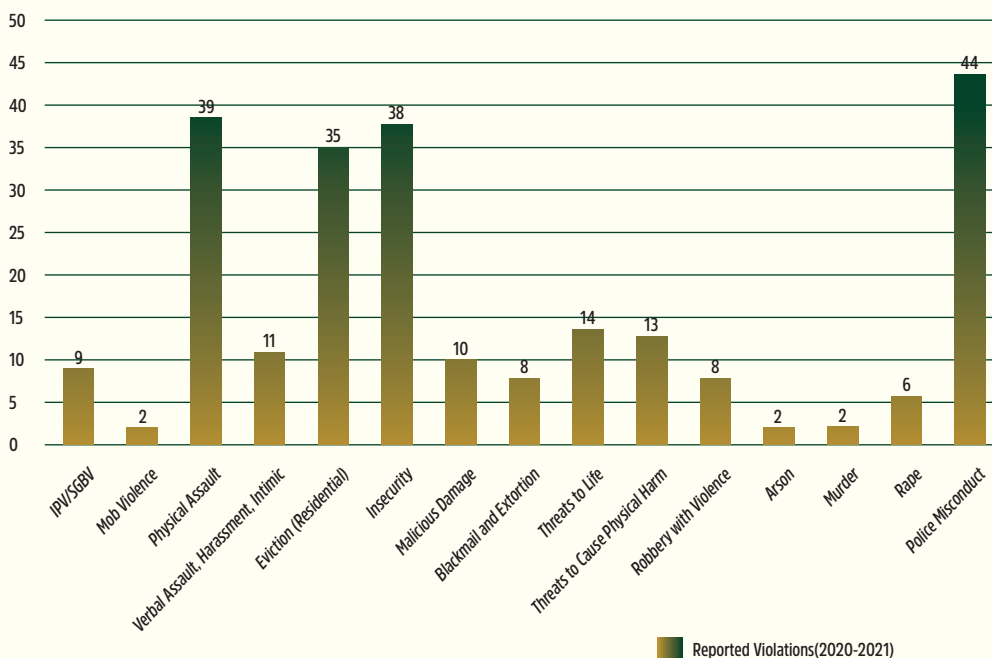


Figure 7: Bar graph showing types of violations reported to the NGLHRC Legal Aid Clinic in the 2020-2021 period.

⁵⁶NGLHRC (n.40)

Threats and Reprisals

Threats against LGBTIQ+ HRDs infringe on their right to life and security, as they often escalate into violence, looting and destruction of property, or forced evictions from their homes or workplaces. Threats may also extend to infringement on their right to privacy, as defenders may find themselves facing an invasion of their personal lives and exposure of personal information. According to respondents, threats propagated online are often more violent and graphic, with perpetrators relying on their online anonymity to maximise their actions.

“As a lawyer and advocate of the High Court, I feel like I have more space to act as a defender for the rights of LGBTIQ+ persons compared to other defenders who are not lawyers. However, this does not mean that I have not experienced any violations. I have moved houses twice in the recent past because of intimidation by the local administration and community leaders in my area. In both instances, these leaders visited my residence to see who I was living with. My legal representation of LGBTIQ+ persons was specifically cited as a point of concern. Organisations working to promote and protect the rights of LGBTIQ+ persons have also faced exclusion in my area. This has taken the form of blocking them from participating in legal awareness clinics, owing to their support for LGBTIQ+ rights.”
– P, a gay human rights lawyer and defender.

According to a report by the Kenya National Commission on Human Rights released in 2021, reprisals against LGBTIQ+ HRDs involve the imposition of undue restrictions on their working environment such as the refusal to register organisations, refusal to offer financial services, and refusal by the police to intervene when LGBTIQ+ HRDs report violations. The KNCHR found that threats and reprisals were commonly used as a tactic to apply pressure and instil fear among LGBTIQ+ HRDs, potentially causing them to cease their work or relocate to a different area. Additionally, threats and reprisals against LGBTIQ+ HRDs often extend to their close friends and family. The KNCHR report recorded high rates of concern among LGBTIQ+ HRDs for the safety of their family and close associates, with 80% of defenders in Kajiado expressing this concern.⁵⁷

⁵⁷Kenya National Commission on Human Rights, “The Undefended Defender,” *The Situation of Human Rights Defenders Working Towards Addressing Violence Based on Sexual Orientation, Gender Identity and Expression (SOGIE) in Kenya* (KNCHR, 2021), accessed October 18, 2023, 41 https://www.knchr.org/Portals/0/KNCHR_The_Undefended_Defender_B5_Final.pdf.

“ I come from a religious family which is well known in our community. This makes my work very difficult because it means that my family members can be targeted in response to the work I do. Once, I received a letter rebuking me for going against my faith. I later found out that my parents were also monitored on account of my work. I had to move out and stay away from my parents' house after this experience. I keep getting warnings which prompt me to seek assistance to relocate when I cannot pay for these expenses myself. Part of why these threats and intimidations keep happening is because my photo has been circulated on anti-LGBTIQ+ WhatsApp groups in my area after being secretly photographed during a sensitization meeting on LGBTIQ+ rights with religious leaders.” – **E, a non-binary human rights defender.**

Violence and Harassment

Respondents reported facing violence and harassment from a wide range of actors, including police, members of the public, vigilante groups and mobs, family members, and intimate partners. According to The Undefended Defender report, “at least one in every two defenders working on addressing SOGIE-related violence in Kenya is likely to suffer physical or emotional violence”.⁵⁵

The violence LGBTIQ+ HRDs experience can be spontaneous and opportunistic or coordinated and planned. One respondent had been attacked while at a nightclub by a group of male patrons. Many forms of opportunistic violence involved groups of men in public spaces. Concerning the recent increase in anti-LGBTIQ+ organising in the coastal region and





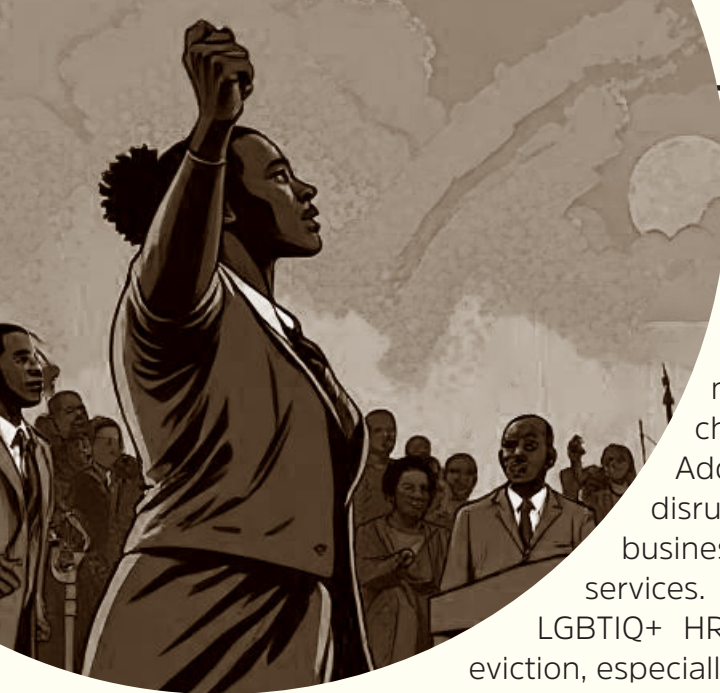
Nairobi, the defenders interviewed spoke about the heightened risk of coordinated attacks against LGBTIQ+ individuals and HRDs in their homes or at work. This prompted heightened security measures such as hiring professional security companies and moving to well-guarded residential buildings and areas.

All the HRDs interviewed for this study had experienced insults, profiling or harassment when seeking services from the police (e.g., when securing the release of LGBTIQ+ people in police custody) and healthcare workers (e.g., when seeking health services or accompanying LGBTIQ+ people to health facilities). Respondents reported the risk of such harassment escalating into assault, sexual violence or even murder. One respondent described being stalked, harassed, and threatened by a member of the public who was opposed to their work.

“ I have faced violations on many occasions. A lot of these violations take place when I am out in public. For instance, I have experienced verbal harassment and assault in public because people insist on finding out my gender, in their words. I am non-binary and that sometimes means that using public bathrooms is very difficult. I have been screamed at while trying to enter the bathroom, verbally harassed and even ejected from public bathrooms in the past. My relationship with my family is not easy. They have tried to “exorcise” me and subjected me to religious rituals to change my gender identity. A lot of people in our society think that being an LGBTIQ+ human rights defender means you are representing people who are immoral. This makes our work very difficult, even when we engage with policy makers who are supposed to represent the interests of everyone in our society.” – **F, a non-binary activist.**

Forced Evictions

Forced eviction was among the most common violations reported by respondents. Ten (10) respondents reported being forcibly removed from their homes and places of work, including workspaces leased by their organisations with seven (7) respondents stating that they had been evicted multiple times within a one or two-year period. Other respondents pre-empted forced eviction by relocating as soon as they experienced scrutiny from the surrounding community. For one respondent, the precondition to a formal rental agreement was that they had to disclose the nature of their work.



Forced evictions create socio-economic precarity, with LGBTIQ+ HRDs having to quickly figure out their housing needs, usually without the funds needed for such an abrupt change in circumstances. Additionally, forced relocation disrupts their work, community links, businesses, and access to healthcare services. It might also be difficult for LGBTIQ+ HRDs to secure housing after an eviction, especially in cases where these defenders are known for their LGBTIQ+ rights advocacy. Further, forced evictions cause a strain on funding for relocation and resettlement within CSOs that offer said services such as Defenders Coalition. According to Front Line Defenders, 61% of protection grant requests from LGBTIQ+ HRDs in Sub-Saharan Africa were for temporary relocation.⁵⁸

“ In May 2023 I was evicted from my flat by the landlord. The reason he gave was that I had violated the terms of my rental agreement by keeping a pet. However, when I pressed further, the landlord hinted that I was having “interesting” visitors to my apartment and that this was becoming a nuisance for the other residents in the property. My landlord is a very religious person and so are the housing agents who I relied on to get this property; it is difficult to find housing in my area without relying on these agents. I had a party the day before the landlord gave me the notice to vacate the property. I had told the housing agent that I would be having a birthday party that would end late, and they did not oppose my plan. I suspect that surveillance by my neighbours and the fact that I lived with my partner contributed to my eviction. The eviction took place in early 2023 around the time the Supreme Court issued its decision in the freedom of association case and there was a lot of tension and opposition to the decision where I used to live. This was a lesson learned for me. When I moved to my new apartment, I made it clear to the landlord about the work that I do and the fact that I would be living with my partner.” - **T, a queer activist.**

⁵⁸Front Line Defenders, “Global Analysis 2022” (Front Line Defenders, 2023), accessed October 18, 2023, https://www.frontlinedefenders.org/sites/default/files/1535_fld_ga23_web.pdf.



Blackmail and Extortion

Blackmail and extortion are a major violation facing LGBTIQ+ HRDs. Perpetrators of these crimes take advantage of the stigma towards LGBTIQ+ people, the culture of impunity around anti-LGBTIQ+ rights violations, and the unwillingness of many LGBTIQ+ persons to report these crimes to the police. According to the LGBTIQ+ HRDs interviewed for this study, perpetrators of blackmail and extortion use a variety of tactics to lure LGBTIQ+ HRDs into dangerous situations. For instance, one interviewee stated that some extortionists make false reports of violations and then entrap HRDs who respond to the situation. Another tactic used is arranging private meetings with would-be victims through dating apps, upon which perpetrators demand money in exchange for safe release. According to one of the LGBTIQ+ HRDs interviewed for this study, police officers were also known to work with these perpetrators of blackmail and extortion.

The Undefended Defender report by KNCHR found that LGBTIQ+ HRDs who run safe-houses have received demands for money from neighbours, community elders, boda boda operators, and private security staff in exchange for anonymity.⁵⁹ This led to the operators of these safe-houses to either move to secluded areas or dense residential areas in order to maintain their anonymity and privacy.⁶⁰

Online and Technology-facilitated Violations

Although the LGBTIQ+ rights movement in Kenya was one of the first social justice movements to leverage the internet and social media as an advocacy, awareness raising and networking tool, LGBTIQ+ HRDs face numerous violations in the online sphere today.⁶¹ This reflects the deteriorating human rights situation globally and the fact that the online sphere has become a battleground for human rights and social justice issues.⁶² Perpetrators of online and technology-facilitated violations rely on anonymity to amplify anti-LGBTIQ+ hate speech, incitement to violence, harassment and defamation campaigns.

⁵⁹Kenya National Commission on Human Rights, “The Undefended Defender,” 48.

⁶⁰Kenya National Commission on Human Rights, “The Undefended Defender,” 49.

⁶¹Evan Mwangi, “Queer Agency in Kenya’s Digital Media,” *African Studies Review* 57, no. 2 (August 18, 2014): 93–113, <https://doi.org/10.1017/asr.2014.49>.

⁶²David Brooks, “Globalization Is Over. The Global Culture Wars Have Begun.,” *New York Times*, April 8, 2022, accessed October 18, 2023, <https://www.nytimes.com/2022/04/08/opinion/globalization-global-culture-war.html>.

According to a 2018 joint report by Defenders Coalition and Privacy International, surveillance by both state and non-state actors is a concern for many of these defenders.⁶³ Surveillance may be used to track their activities, collect private and identifying information, and to direct coordinated attacks against them.⁶⁴ Respondents noted that online violations were on the rise, prompting them to take additional precautions when performing their work online. The use of social media was also noted as being instrumental in anti-LGBTIQ+ mobilization.

“As someone who has been a human rights defender working on LGBTIQ+ issues for a while now, I know how to navigate difficult situations. I take a lot of steps to protect myself online and in other spaces. Personally, I only use social media sites like X (formerly Twitter) to keep in touch with friends because of the risk of abuse online for speaking out about LGBTIQ+ rights.” – **K, a lesbian human rights defender.**

Attempted hacks of the social media and email accounts of LGBTIQ+ HRDs and organisations was also found to be common. To address the risk of hacks and data breaches, Twelve (12) of respondents had participated in online safety and security training workshops convened by Defenders Coalition and like-minded organisations which offer this service. According to the Global Analysis 2022 report by Front Line Defenders, LGBTIQ+ CSOs and HRDs were among the top sectors requesting for digital protection support.⁶⁵

“I haven’t experienced any major violations like physical assault recently. My past experience has made me very careful about who I give access. Because I work on issues of safety and security for the LGBTIQ+ community, I know how to keep myself safe, but it doesn’t work all the time. Recently, some of my social media accounts were hacked and there was an attempted hacking of my email. This was a very scary experience, and it made me wonder if I was a marked

⁶³Defenders Coalition and Privacy International, “Stop Watching Me: A Perception Survey on Communication Surveillance and Privacy of Human Rights Defender in Kenya,” Elibrary.Defenderscoalitions.Org (Defenders Coalition & Privacy International, May 2018), accessed October 27, 2023, <https://elibrary.defenderscoalition.org/reports/Stop%20Watching%20Me.pdf>.

⁶⁴Jennifer Earl, Thomas V. Maher, and Jennifer Pan, “The Digital Repression of Social Movements, Protest, and Activism: A Synthetic Review,” *Science Advances* 8, no. 10 (March 11, 2022), <https://doi.org/10.1126/sciadv.abl8198>.

⁶⁵Front Line Defenders, “Global Analysis 2022” (Front Line Defenders, 2023), accessed October 18, 2023, https://www.frontlinedefenders.org/sites/default/files/1535_fld_ga23_web.pdf.



person. For that reason, I have removed LGBTIQ+ references in my public social media accounts.” – J, a non-binary activist based in Nairobi.

Discrimination

Respondents reported experiencing discrimination on a near daily basis and in most areas of their lives. Five (5) respondents reported facing discrimination in the workplace (in cases where LGBTIQ+ HRDs are formally employed outside the human rights field), institutions of higher learning, public transport, public service points, and in interactions with the legal system.

“ I was open about my queer identity when I was in university, and this led to a lot of discrimination from fellow students and the faculty. In most cases, I was left out and excluded from social gatherings, I felt a lot of tension when I attempted to be part of these spaces. It took a lot for me to be recognized and awarded for my studies. I often reflect about how only 5 of my friends applauded me during my graduation ceremony, out of a room filled with hundreds of people. I felt really bad about this experience at the time.” – T, a queer activist.

Intersex respondents described early life experiences which had far-reaching negative consequences. Bullying, discrimination, and invasive medical and surgical procedures during childhood ultimately lead many would-be intersex HRDs to drop out of school, making it difficult for them to navigate the highly professionalized civil society sector in Kenya.

Discrimination also affects the operations of LGBTIQ+ rights organisations. Four (4) respondents reported encountering discrimination when trying to register CSOs. It was noted, discrimination occurs when seeking to open bank accounts or secure rental office space. In these cases, service providers either refuse to offer services to organisations bearing words like “gay,” “lesbian” or “transgender” or require disclosure of the purpose of the organisation before agreeing to offer services. According to the respondents, LGBTIQ+ defenders seeking to register these organisations are forced to use “less controversial” names for their organisations, pay disproportionately high amounts for services, or avoid describing their organisation’s work in specific terms.

A key challenge noted by respondents is discrimination when attempting to access public servants. Respondents highlighted instances of public servants refusing to meet with LGBTIQ+ HRDs, ignoring written

correspondence, and denying these defenders and organisations service on account of their SOGIE status or affiliation.

Root Causes of Violations Against LGBTIQ+ HRDs

“ I recently tried to have a conversation about LGBTIQ+ rights with a pastor. I was very open about my own beliefs in support of LGBTIQ+ rights. The pastor was very upset with me. Sometimes I feel as if the discrimination we experience is based on lack of knowledge.” – J, a non-binary defender based in Nairobi.

Violations against LGBTIQ+ defenders stem from deep-rooted cultural, religious, and societal beliefs among Kenyans. These beliefs are marked by homophobia and transphobia, propagating harmful stereotypes and biases against individuals based on their SOGIESC status. One widely held notion is that African societies did not have sexual, sex characteristic, or gender diversity before colonialism, a belief that has been disproven by historical and ethnographic research.⁶⁶ Additionally, monotheistic religions are characterised by teachings on the immorality of same-sex relationships



⁶⁶Marc Epprecht et al., “Boy Wives, Female Husbands Twenty Years on: Reflections on Scholarly Activism and the Struggle for Sexual Orientation and Gender Identity/Expression Rights in Africa,” *Canadian Journal of African Studies* 52, no. 3 (September 2, 2018): 349–64, <https://doi.org/10.1080/00083968.2018.1546604>.



and gender non-conformity. These cultural and religious beliefs prescribe harsh “punishments” for offenders including ostracization, conversion practices, physical and sexual abuse, and death.

The harmful effect of these religious and cultural norms is not limited to LGBTIQ+ HRDs, with women HRDs similarly facing sexist and misogynistic reprisals for engaging in public advocacy for human rights and challenging the relegation of women to the private sphere.⁶⁷

Another widely held societal view is that HRDs are “troublemakers” who want “special rights and protections”, misrepresenting work by LGBTIQ+ HRDs to include LGBTIQ+ people in existing rights frameworks.⁶⁸ LGBTIQ+ individuals are further portrayed as only engaging in human rights advocacy for the purpose of receiving funding from western donors, recruiting children or young people into the “LGBTQ” lifestyle, acting on behalf of secretive entities who want to “destroy” communities, and highlighting topics that are not a priority for the rest of the population.⁶⁹ All the respondents reported that these widespread beliefs were a huge hindrance to engaging the public and government officials. These beliefs are further entrenched in Kenyan society by media censorship, online misinformation and disinformation campaigns, and harmful rhetoric from religious and political leaders.

The criminalization of same-sex relationships as well as the use of personation laws to target trans, intersex, non-binary and gender non-conforming individuals are major contributors to violence against LGBTIQ+ HRDs. Key stakeholders such as the police, the judiciary and governmental human rights agencies are often either ill-equipped or unwilling to implement the government’s human rights obligations. Additionally, legal provisions outlawing adoption by persons convicted for adult and consensual same-sex relationships as well as laws that justify the

⁶⁷Michel Forst, “Situation of Women Human Rights Defenders,” *Report of the Special Rapporteur on the Situation of Human Rights Defenders* (Human Rights Council, March 22, 2019), accessed October 18, 2023, <https://digitallibrary.un.org/record/1663970?ln=en>.

⁶⁸ISHR, “‘Troublemakers’ and ‘Foreign Agents’: The Situation of Corporate Human Rights Defenders in Central Africa,” *Submission to the African Commission on Human and Peoples’ Rights Working Group on Extractive Industries, Environment and Human Rights Violations* (ISHR, July 2015), accessed October 18, 2023, https://ishr.ch/sites/default/files/article/files/submission_to_the_african_commission_v2.pdf.

⁶⁹Michael Bronski, Ann Pellegrini, and Michael Amico, “You Can Tell Just By Looking”: *And 20 Other Myths about LGBT Life and People*, 2013, https://openlibrary.org/books/OL26180754M/You_Can_Tell_-_Just_By_Looking_And_20_Other_Myths_About_Lgbt_Life_And_People.

refoulement of LGBTIQ+ refugees and asylum seekers contribute to a belief that LGBTIQ+ identities are criminal offences as opposed to immutable characteristics that are part and parcel of a diverse human community.

The activities of HRDs and CSOs are also restricted by the weaponization of the justice system. According to a study by the KNCHR, HRDs face unfavourable bail terms, fines and long trials when charged with offences related to the freedom of assembly and right to protest.⁷⁰

Violations against LGBTIQ+ HRDs are condoned by society and rarely investigated by police, creating an atmosphere of impunity. According to the Special Rapporteur on human rights defenders, impunity for the killings of human rights defenders “remained a key driver for more murders.”⁷¹ In a statement published in August 2023, the Inter-American Commission on Human Rights noted that the impunity rate for the killings of human rights defenders exceeded 90% in some countries in the region.⁷²

Impact of Violations on the Work of LGBTIQ+ HRDs

The human rights violations experienced by LGBTIQ+ HRDs have profound social, economic, and psychological impacts (Figure 8). Twenty (20) of respondents reported facing unprecedented precarity and expressed worry about the trajectory Kenya is taking vis-à-vis human rights.

⁷⁰Kenya National Commission on Human Rights, “Defending the Defender: Human Rights Defenders in Conflict with the Law” (Kenya National Commission on Human Rights, 2016), accessed October 18, 2023, https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Defending%20the%20Defender_Human%20rights%20defenders%20in%20conflict%20with%20the%20law.pdf?ver=2018-06-06-175208-833#:~:text=The%20high%20Bond%20and%20Bail,200%2C000.

⁷¹OHCHR, “Impunity for Killings of Human Rights Defenders Remains a Key Driver for More Murders, Special Rapporteur on the Situation of Human Rights Defenders Tells Human Rights Council,” OHCHR.org, March 5, 2021, accessed October 18, 2023, <https://www.ungeneva.org/fr/news-media/meeting-summary/2021/03/morning-impunity-killings-human-rights-defenders-remains-key>.

⁷²Inter-American Commission on Human Rights, “IACHR and UN Human Rights Call on States to Guarantee Access to Justice for Defenders Who Are Victims of Human Rights Violations,” August 10, 2023, accessed October 18, 2023, https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/178.asp#:~:text=The%20IACHR%20received%20information%20on,human%20rights%20defenders%20exceeds%2090%25.

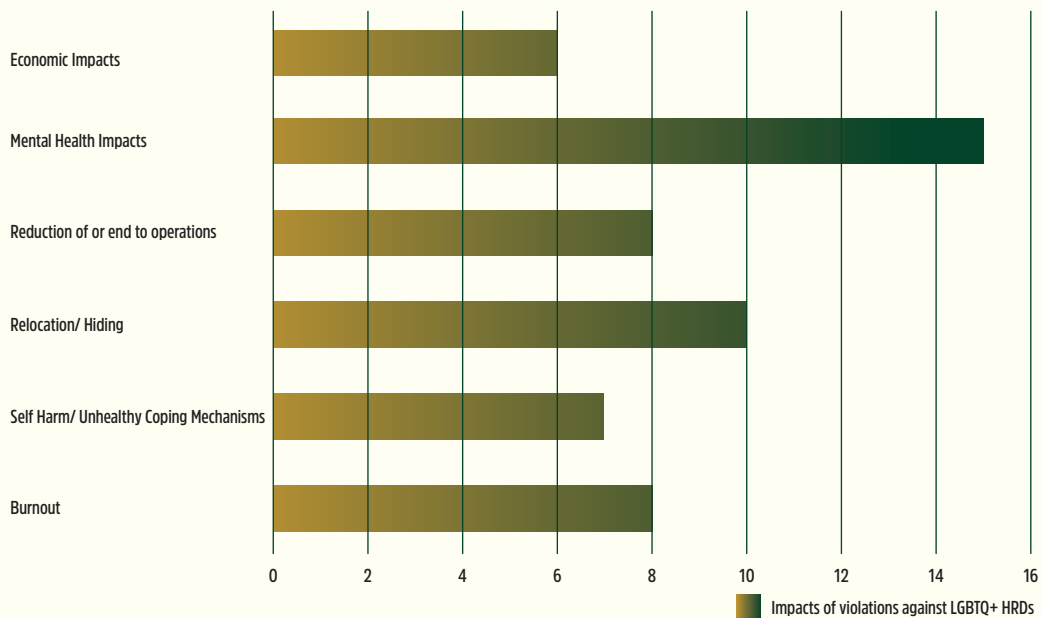


Figure 8: Impacts of violations on the work of LGBTQ+ HRDs

Social Impact

The LGBTQ+ defenders interviewed reported alienation from family, friends, and the wider community. This alienation manifests as exclusion from public events, social gatherings, and community activities. According to seven (7) of the respondents, violence, threats and reprisals against their family members and friends were the cause of their exclusion. LGBTQ+ defenders were either excluded by family and friends or voluntarily dissociated from them to protect them.

“ I no longer visit what used to be my church because I felt it had started to become toxic. Members of the church started talking about my sexuality and what I did for a living. Now I prefer going to churches where no one knows me. This deprives me of a feeling of belonging in a religious space. This beats the essence of belonging and wanting to fellowship with people.” – **T, a queer activist.**

Economic Impact

Respondents spoke of the economic precarity occasioned by their advocacy work. This is in contrast with the pervasive myth that LGBTQ+ HRDs receive large amounts of money when they are “recruited” to change



their SOGIESC status.

Although all the respondents reported working for an LGBTIQ+ CSO, four (4) stated that their organisations did not have sufficient funding to cover personnel costs, with most funds dedicated to advocacy or rapid response. Four (4) reported that they worked on a voluntary basis or used their own funds to carry out their human rights work.

Additionally, the risks faced by LGBTIQ+ HRDs may further compound their economic vulnerabilities. For instance, Six (6) LGBTIQ+ HRDs who had received relocation or resettlement support described adjusting to a new environment, especially when they were relocated from rural to urban areas, as being prohibitively costly. LGBTIQ+ HRDs who had faced forced evictions, looting, or destruction of their property also had to contend with the high cost of replacing lost items while also looking for new housing.

Psychological Impact

The combination of violence, threats, and reprisals with daily instances of hate speech, disinformation, and incitement to violence as well as non-existent or inadequate protection mechanisms often leads to instances of severe psychological stress among Kenyan LGBTIQ+ defenders. This psychological stress manifests as burnout and emotional exhaustion. One of the mechanisms adopted by respondents to avoid harm was self-isolation. Five (5) respondents also expressed a wish to take a break from LGBTIQ+ rights advocacy either out of a sense of exhaustion or to pursue other opportunities that were less psychologically taxing.

⁷³Joanna Sadgrove et al., “Morality Plays and Money Matters: Towards a Situated Understanding of the Politics of Homosexuality in Uganda,” *Journal of Modern African Studies* 50, no. 1 (February 27, 2012): 125, <https://doi.org/10.1017/s0022278x11000620>.

Conclusion

From the findings of this survey, it is clear that LGBTIQ+ HRDs in Kenya are currently facing the most challenging times in the movement's history. The LGBTIQ+ rights situation in Kenya is dire and characterised by a sharp increase in violations over the past ten years.

Despite the usefulness of online spaces in mobilisation and co-ordination for human rights advocacy, the growth of these spaces has been a major contributor to the increase in violations against LGBTIQ+ HRDs. Online spaces have increased the level of vulnerability experienced by LGBTIQ+ HRDs, with both state and non-state actors employing them for illegal surveillance. This vulnerability is experienced not only by the HRDs themselves, but their friends, family, and associates.

This survey also highlights some of the harmful norms and behaviour that characterise Kenyan society. Underlying these norms and behaviour is a pervasive culture of ignorance, violence, and impunity. These undercurrents create an atmosphere in which misinformation and disinformation are easily propagated, and LGBTIQ+ HRDs are forced to face violations with no justice or resolution in sight. Further, key power figures such as politicians and religious leaders have recognized these features of Kenyan society and are often willing to manipulate them for their own gain. This is evidenced by the fact that escalations in violations against LGBTIQ+ HRDs predictably coincide with events that are politicised on a national level.

Efforts to protect LGBTIQ+ HRDs are marred by significant challenges. Of these challenges, the most restrictive is a limitation in resources which is part of a larger funding gap faced by HRDs and CSOs working on the promotion and protection of human rights. These limited resources are further strained by the unpredictable nature of violations against LGBTIQ+ HRDs, with funds often being reallocated to address emergencies such as relocation and property damage. Due to the unpredictable nature of violations, the current approach to protection of HRDs is more reactive than pre-emptive. Such an approach is not only less effective, but more costly.

The current relentless antagonism and violence against HRDs have led to high rates of emotional exhaustion and burnout. This psychological impact is compounded by a lack of access to inclusive and affordable mental health services, and a lack of awareness on healthy and affirming coping mechanisms. As such, the LGBTIQ+ movement in Kenya faces the risk of



high attrition rates of HRDs.

On a positive note, this survey highlights areas of commonality between LGBTIQ+ HRDs and HRDs working on other thematic areas. This creates room for further collaboration across different spheres of human rights work, offering LGBTIQ+ HRDs much-needed support. Additionally, significant progress has been made on societal change, as indicated by the presence of networks with key stakeholders, supportive engagement from sections of the public and changes made to punitive laws.

Recommendations

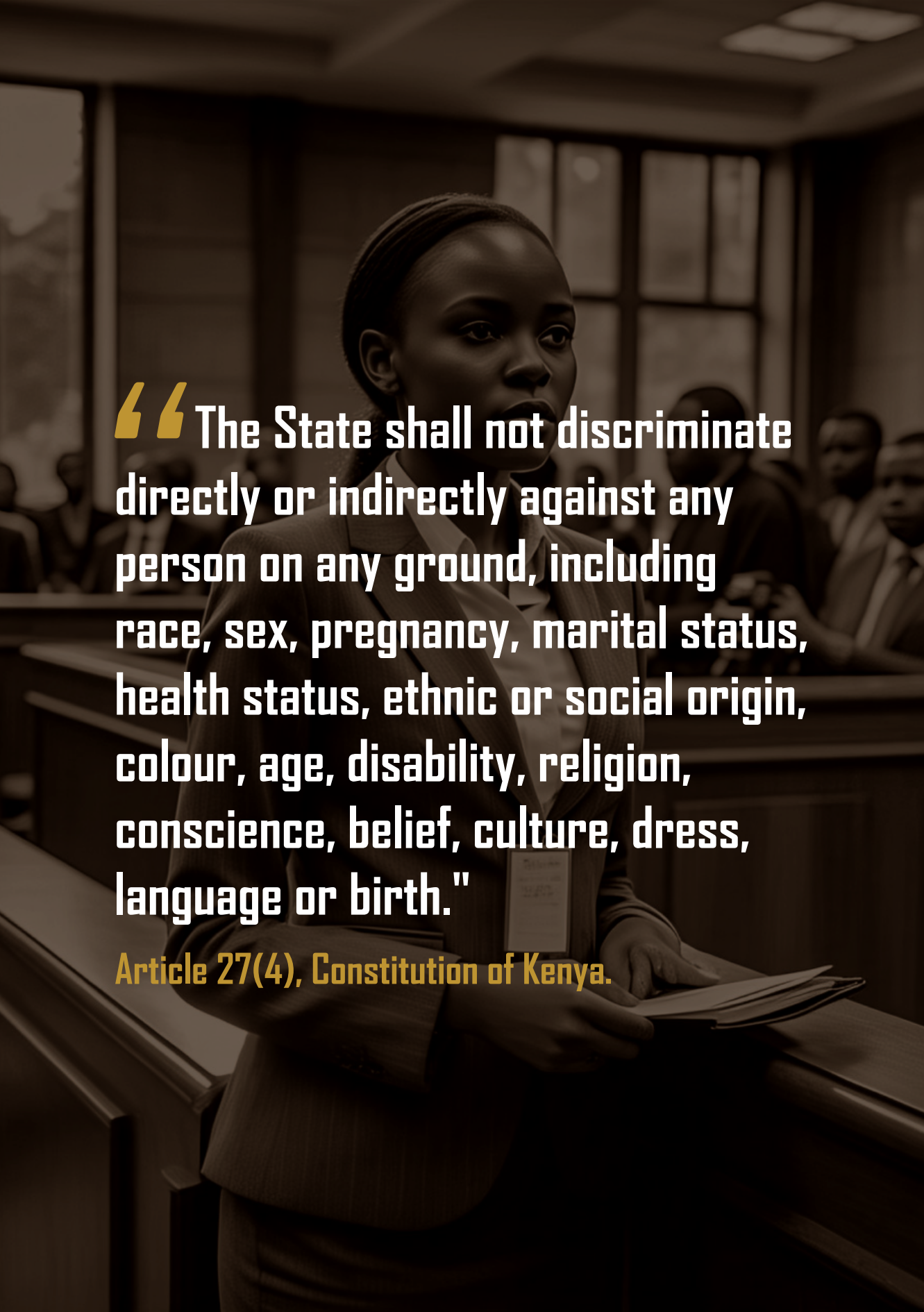
Based on the conclusions drawn above, the following are actionable recommendations for Defenders Coalition and other CSOs working on the protection of LGBTIQ+ HRDs:

1. Extend data collection on LGBTIQ+ HRDs nationwide to improve the effectiveness of protection measures.
2. Accelerate the sensitization of LGBTIQ+ HRDs on effective measures to counter online misinformation and disinformation through regular periodic trainings.
3. Increase the regularity of cybersecurity trainings and safety checks for LGBTIQ+ HRDs.
4. Engage in regular online advocacy campaigns aimed at demystifying the LGBTIQ+ community and the nature of human rights work.
5. Collaborate with other HRDs and CSOs on campaigns aimed at re-educating the Kenyan public to counter the culture of violence and impunity.
6. Design advocacy campaigns aimed at pre-empting harmful rhetoric and violence during periods identified to be high-risk for the LGBTIQ+ community e.g., the pre-election period.
7. Collaborate with other CSOs and like-minded legislative officials to repeal discriminatory and punitive laws and provide effective oversight of government institutions.
8. Strengthen existing networks within the justice system to improve access of HRDs to legal support and to sensitize law enforcement on implementation of human rights.
9. Create medium to long-term strategies for addressing recurrent vulnerabilities e.g.
 - A. Pre-identification of safe zones for housing LGBTIQ+ HRDs and refugees.
 - B. Sensitization of the financial services industry on unique challenges of the LGBTIQ+ community, particularly limited access to legal documents among the intersex and trans communities.
10. Establish networks with already-existing affordable and



LGBTIQ+-friendly psychosocial support programmes and create databases of the same that are easily accessible to HRDs.

11. Create opportunities for HRDs to form communities around activities that serve as healthy mechanisms for reprieve and recovery.

A woman in a professional suit stands in a courtroom, looking forward with a serious expression. She is holding a folder or book. In the background, other people are seated at desks, and large windows are visible. The image has a dark, sepia-toned overlay.

““ 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.”

Article 27(4), Constitution of Kenya.



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