



National Gay and Lesbian Human Rights Commission (NGLHRC)
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INTRODUCTION:

The National Gay and Lesbian Human Rights Commission (NGLHRC) is an independent Human Rights institution that exists to realize legal and policy reforms towards equality and full inclusion of Sexual and Gender Minorities in Kenya; with full legal redress on real or presumed violations with specificity to Sexual Orientation and Gender Identity. The institution is rooted in the belief that legal vigilance against discrimination based on Sexual Orientation and Gender identity, when complemented with public education, could be a catalyst to social change.

BACKGROUND:

This report is influenced by a virtual national Community Consult check-in call initiated by the National Gay and Lesbian Human Rights Commission (NGLHRC) and Initiative for Equality and Non-Discrimination (INEND) in May 2020, with Queer and Trans* organisations in Kenya, as an exploration of the state of LGBTQ+ organising within these unprecedented times of the COVID-19 pandemic. This Community Consult also revealed emerging trends affecting the LGBTQ+ citizenry post COVID-19, social distancing during IDAHOBIT with the theme “Breaking the silence,” and reflections around our devastating loss on **#Repeal162** one year later post COVID-19.

Call for input to a thematic report: The impact of COVID-19 on the human rights of LGBT persons, communities and/or populations:

Key questions and types of input sought

To inform his report the Independent Expert would like to receive contributions and views from States, regional and national human rights institutions, non-governmental organisation, UN agencies, academic institutions, local governments and other relevant stakeholders.

How did the State evaluate the situation of LGBT persons vis-à-vis the pandemic and potential specific vulnerabilities?

1. What measures were adopted by the State to ensure that LGBT persons would not be subjected to discrimination in the implementation of COVID-19 related interventions?

The State has not adopted any measures to ensure that the LGBTQ+ citizenry is not subjected to discrimination in the implementation of COVID--19 interventions. Sadly, of note, is that with nationwide mandated dusk to dawn curfew with closed borders, has accelerated violations including evictions, arbitrary arrests, physical abuse from the police, and extra-judicial killings with utter loneliness and misery with mental wellness breaks leading to suicides. Our LGBTQ+ refugees have especially been at risk, stemming from not having valid alien identification documents, homelessness and heightened fear of State Agencies with unadulterated Homophobia, Transphobia and Xenophobia for these very vulnerable SOGIESC constituents.

<https://www.the-star.co.ke/news/2020-04-13-refugee-commits-suicide-after-scuffle-with-police-over-food/>

Further, the State has not set any urgent action measures for preparedness for food and shelter and organised testing for COVID-19 for the LGBTQ+ citizenry. Our Sex Workers being especially vulnerable with no means to earn a living because of the curfew and hot-spots were shut down, our people living with HIV also have had difficulty accessing our clinics for ARVs, condoms and treatment.

2. Did LGBT civil society participate in the design of measures taken to respond to the pandemic? If no, why not?

The LGBTQ+ civil society has actively been designing measures to respond to the pandemic by aggressively fundraising for food drives, key allies including HIAS and the UNHCR have made deliberate efforts to ensure that many refugees are assessed and receive financial support to meet rent and food needs.

Partners such as Refuge Point that provide food support have continued to provide the same with specific focus on those with medical needs and persons with disabilities. UNHCR is in frequent communication with national, regional, and international partners to ensure that there is a coordinated national response to the needs of the LGBTQ+ refugee community to avoid duplication of support.

NGLHRC in this regard has continued to fulfil her mandate on all violations against the SOGIESC citizenry litigiously nationally; all other Queer and Trans* organisations have continued to have their clinics open to three hours before curfew, treating, medicating, counselling and offering much needed PPEs to patients and to their constituents and additionally holding virtual sensitisation training on COVID-19 to the community and other LGBTQ+ and MSM/MSW organisations. Mental wellness hotline numbers have also been established by these organisations with therapists on call for SOGIESC patients nationally.

3. What is the information available to the State as to the impact of the COVID-19 pandemic on the general situation of LGBT persons and their access to education, housing, health and employment and on their living conditions?

With LGBTQ+ persons NOT being a protected class, the information that is available to the State is sadly skewed, because the data they have on these particular constituents is based on Key Population data, with direct correlation to HIV/AIDS. The MSM, MSW and Sex Worker constituents are a very small fraction of the entire LGBTQ+ citizenry. The predominantly MSM and Queer organisations have linkages to the Ministry of Health and other Health Parastatals because of rising need for ARVs, condoms, lubricants and testing kits. On all matters COVID-19, LGBTQ+ persons are especially at a disadvantage because of homelessness and fear of reprisal from State Agencies, they are also unable to safely quarantine and social distancing measures are impossible. Not being a protected class, lumps us all in the poor, voiceless and unseen category.

Also, of note is that the Universal Periodic Review that clearly concluded that, "to date, no Kenyan government agencies have dealt with Sexual Orientation and Gender Identity issues specifically. Rather, the State focuses on HIV and Key Populations programming. Although these efforts have impacted LGBTQ+ individuals, direct services are not tailored to encompass other issues present in the lives of these individuals to ensure their civil and human rights. In addition, there is no focus on anti-violence programs and access to justice for LGBTI individuals living in Kenya."

https://www.upr-info.org/sites/default/files/document/kenya/session_35_-_january_2020/js4_upr35_ken_e_main.pdf

4. Can you identify good practices in the State interventions in relation to COVID-19 and LGBT persons? Can you identify good practices stemming from civil society actions? Have lessons be learned from the pandemic on how not to leave LGBT persons behind in emergency situations?

Minimal good practices in the State interventions in relation to COVID-19 and LGBTQ+ persons only came about after the intervention of the Law Society of Kenya who filed a petition claiming that the curfew itself was unconstitutional, "because it is blanket and indefinite, and because it is ultra vires [it contravenes] the Public Order Act" and that the curfew posed a threat to the health of the general population. The petition further asserted that, "police recklessly horded large crowds on the ground, contrary to WHO advice on social distancing. Moreover, the first respondent (police) stopped the media from monitoring their movement and assaulted journalists covering the process". On March 30, the High Court of Kenya upheld the curfew itself, but barred police from using excessive force to enforce the curfew and demanded the police provide guidelines for observing the curfew.

<https://www.nation.co.ke/dailynation/news/covid-19-curfew-court-orders-stop-to-police-brutality-283340>

Given that the LGBTQ+ citizenry are not a protected class, we benefited from this ruling from High Court Judge Weldon Korir.

Good practices stemming from Civil Society of LGBTQ+ allied organisations have greatly and positively impacted us nationally. Urgent action preparedness is in place for all Queer and Trans* Diverse Human Rights Defenders, food drives, PPE supplies and support of SOGIESC

organisations with financial relief towards evictions, arbitrary arrests, and other vile violations. International funding partners have also sent numerous calls for concept notes and COVID-19 aligned narratives to SOGIESC organisations, and allowed changes in existing narratives and concept notes to allow dispensation of basic need allotments to our constituents.

Lessons learned have been hinged upon accelerated Community Consults, Paralegal Training, high alertness on all violations and all hands-on-deck adjusting to our new reality. We have also identified all gaps on all matters security, enhanced our Monitoring and Evaluation matrix to be better and more prepared for our people. We are also living hand to mouth now, because most of us have been severed from employment, and evicted. This is our lived reality now, and we have adjusted as best we can, accordingly.