

Human Rights Law and the LGBTI Community in Kenya



My Way, Your Way or The RIGHT Way?

Implementing the Yogyakarta Principles in Kenya

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A FOREWORD BY DAVID KURIA

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Glossary

UNDERSTANDING SEXUALITY & GENDER

Sex refers to the physical and biological characteristics that differentiate males from females. We assign sex based on external, observable characteristics such as genital appearance.

Gender is the social role we use to explain differences between males and females. Gender is expressed in ways such as dress, speech and body language.

Sexual Orientation is a person's emotional, romantic and sexual attraction to people of the opposite gender (**heterosexual**), the same gender (**homosexual**) or both genders (**bisexual**). Homosexuals are either **gay** (usually, male) or **lesbian** (female). **Asexual** persons are without sexual feelings.

Gender Identity is a person's internal experience of gender, and it may or may not match their physical sex. When experience of gender does not match assigned sex (for example, when a person born with a male body feels like a woman) we consider them as **transgendered**.

Intersex persons are born with physical and physiological characteristics that make it difficult to classify them male or female. These may include complex genitalia not considered *standard* for male or female, or dual organs. These anomalies may be seen at birth or later in life.

The acronym **LGBTI** is abbreviation for **Lesbian, Gay, Bisexual, Transgender** and **Intersex** persons.

affirmative action Policy designed to redress past discrimination against minority groups through measures to improve their economic and educational opportunities.

assisted procreation The volunteering of a woman as surrogate to assist in the reproductive activity of conceiving and bearing a child on behalf of a couple through donor insemination (the transfer of semen into the uterus of a female in order to establish a pregnancy) or embryo transfer (the transfer of one or several embryos into the uterus of a female in order to establish a pregnancy).

civil union A legal union similar to marriage established to allow equal rights to same-sex couples as the partners in marriage have.

closet Referring to undisclosed sexual behavior, sexual orientation or gender identity.

coming out Disclosing of one's sexual orientation or gender identity, personally or publicly.

dignity The automatic honour and respect every human being has and is entitled to by the simple virtue of being human.

discrimination The unfair treatment of a category of people in ways that favor a group of persons causing the less favoured person or group of persons harm or hurt.

gender reassignment therapy Medical procedures regarding sex change for transgender and intersex persons, including psychological therapy, hormonal therapy to modify secondary sex characteristics and sex reassignment surgery to alter primary sex characteristics such as chest and genital modifications. Not all transgender persons undergo these medical procedures. A **transsexual** is a transgender person that has undergone at least one such medical procedure.

homophobia (and transphobia) The attitude of hate and often violence towards LGBTI persons.

hormonal therapy/ hormone replacement therapy (HRT) Hormonal medication taken to modify secondary sex characteristics (shape of body, the distribution of hair etc.).

human right Any legal entitlement believed to belong to every human being, and whose enjoyment Government should not interfere.

marginalise Treat a person or group as of less importance in society.

MSM Men who have sex with men.

Pride Parades Also known as Gay Pride, they are events and marches celebrating LGBTI culture.

redress Act of correcting an error, a fault or an evil.

remedies To correct/improve/rectify a situation.

same-sex sexual activity A range of public and private displays of affection between persons of the same gender; from holding hands and kissing, to fondling or sex.

Foreword

The discussion on Gay Rights is invariably linked to Same-sex Marriage. There is an incredible desire by the media and the church to paint the quest for basic human rights for the Lesbians, Gays, Bisexual, Transgender and Intersex (LGBTI) Kenyans as an introduction of foreign, un-African and un-religious ideologies. Since same-sex marriage between men, would indeed be a new phenomenon – (some communities in Kenya still practice same-sex marriage between women), that reductionist and scarecrow approach to the basic human rights of the LGBTI, has been effective – until now.

This book, attempts to explain in very simple and clear terms, what the LGBTI rights are. That these Rights are neither Special Rights, nor are they New Rights. Indeed when in 1996, some 20 leading Human Rights lawyers sat in the city of Yogyakarta – Indonesia, with a representation of 2 Kenyan Human Rights Giants, the desire was to demonstrate that the Universal Declaration of Human Rights does indeed reflect the quest of the LGBTI people world wide.

The product of their meeting, was the now famously known, Yogyakarta Principles. The principles are naturally drafted in a legal language because the audience is assumed to have some appreciation of this language. Gay Kenya Trust - GKT however, have now broken down these principles into a language that is easy for every Kenyan to understand, and even produced illustrations for added effect.

This book is a welcome resource for any person or organization that decries any form of discrimination between people, or works for comprehensive equality for all Kenyans. Indeed although the book does focus on sexual minorities, the principles apply for any group of Kenyans struggling for equality and non-discrimination.

This book also comes at a time when the LGBTI community is struggling with access to health services. Research by John Hopkins University¹ now demonstrates that comprehensive service provision to the LGBTI, especially HIV services has positive effect on the general population as well. Yet we also know that such comprehensive health service provision cannot happen when there are laws that criminalize them, discriminate against them, and relegate them to second class citizens of our beloved country.

By enshrining these principles into our own Counties and National Laws, Kenyans will take pride in becoming Frontrunners in the universal respect of basic human rights for all its citizens in a continent largely known for an ever deepening cry for respect human rights by her people. Anyone who reads through this book will soon realize that enshrining the respect of LGBTI rights in their community is not only very easy but also very urgent. The book is a welcome tool for Human Rights Advocacy for and by all Kenyans.

David Kuria

General Manager – Gay and Lesbian Coalition of Kenya (GALCK).

¹ Prof. Chris Beyrer on HIV comprehensive service provision to MSM, could lead to reduction in HIV infection, up to 10,000 new cases in the general population each year.

The Yogyakarta Principles

In November 2006, in response to well documented patterns of abuse, a distinguished panel of international human rights experts met in Yogyakarta, Indonesia to outline a set of principles relating to the equal treatment of persons of diverse sexual orientations and gender identities. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards and which promise a different future where all people born free and equal in dignity and rights can fulfill their precious birthright.

The Making of **My Way, Your Way, or The RIGHT Way?**

In May 2010, in response to stigma and targeted violence mostly arising from ignorance and misinformation, a panel of LGBTI activists convened for a retreat in Nairobi, Kenya to affirm and situate the ideals of the Yogyakarta Principles in contemporary Kenya. We write to highlight inconsistencies that underlie discriminatory provisions in our law so that all Kenyans will be more aware of their rights and advocate law reform that protects these rights. In honour of the love and support of LGBTI activists and friends, and with respect for the patience and strength of LGBTI Kenyans we bestow this vision.

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My Way, Your Way, or The RIGHT Way?

The Yogyakarta Principles: A Kenyan Interpretation

WE, the LGBTI Community in Kenya, INSIST that all Kenyans are entitled to:

1. The Right to the Universal Enjoyment of Human Rights

Human rights apply to all persons. Human rights are also inter-related and dependent on one other. We cannot apply them selectively. Together they preserve the dignity of all people. No one right is more important than another, and no Kenyan should be denied any of their rights on any grounds, including on grounds of sexual orientation and gender identity.

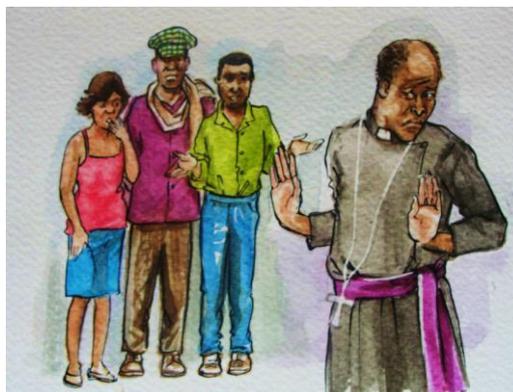
All Kenyans are equal no matter how different they are from each other. Our differences—social, cultural, or religious—must not be used to oppress or incite people against one another. We cannot say LGBTI Kenyans are entitled to certain *minimum* rights such as a right to life, but denied the rights to privacy, to security, to access healthcare, or to found a family.



2. The Rights to Equality and Non-discrimination

All Kenyans should be treated equal before the Law. Kenya is a rich and diverse country in terms of its social and cultural make-up. None of these aspects of diversity, even when they regard sexual orientation, sex or gender identity, should make any Kenyan be treated or considered more important or less important than another Kenyan.

When we condone discrimination on the basis of a person's sexual orientation or gender identity we create room for discrimination on other grounds such as disability status, gender, creed, political class, and colour.



3. The Right to Recognition Before the Law

The law should recognize and respect the dignity of all Kenyans whether heterosexual, homosexual, bisexual, asexual, transgender, intersexual, or any other gender variances. No one expression of sexuality or gender should limit or improve the rights of any Kenyan.

The Government of Kenya should also provide a fair and efficient procedure for transgender and intersex Kenyans to change their gender in registration documents where they provide the complete report of a medical practitioner trained on matters of gender identity change.

Give me an ID; I'm neither a Man nor a Woman

Muchemi Wachira and James Kariuki, Saturday Nation, June 5 2010

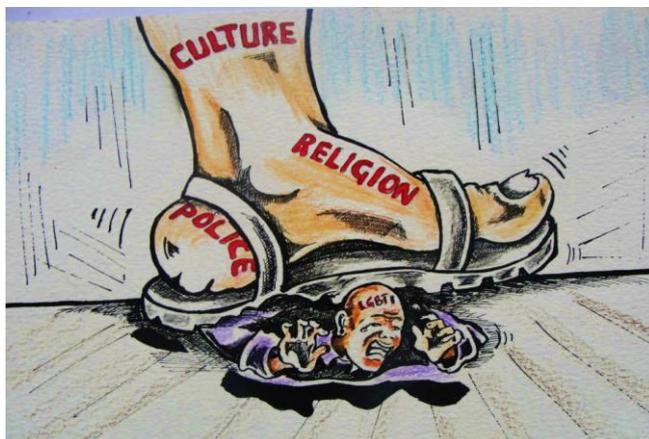
In school, he was male. But now she feels she is a woman, and this unusual gender transition facing the 26-year-old is driving "him" mad. Andrew Mbugua's voice and hair are feminine, and her transitional condition has led to police harassment and a stint in jail for alleged female impersonation although no charges were ever brought. She has dropped Andrew in favour of Audrey, which she feels doesn't give away her gender. She has written to the Registrar of Persons seeking new identification documents explaining the sexual transformation that began when Audrey was pursuing a university education.



4. The Right to Life

Every Kenyan has right to life, and no one should be killed on grounds of sexual orientation or gender identity. On many occasions though family members, neighbors, and work colleagues have beaten up, wounded, disabled, and even secretly planned to kill LGBTI Kenyans. In addition, some religious leaders incite followers, in speech and action, to eliminate LGBTI Kenyans from society. Such actions are supported by the lack of laws protecting LGBTI Kenyans and go unconvicted because the police believe it *right* to punish LGBTI persons.

Any individual, group, or institution that incites or carries out violence and threatens the life of any Kenyan on grounds of their sexual orientation or gender identity should be thoroughly investigated, tried, and duly sentenced. It is important that the Government of Kenya decriminalize same-sex sexual activity to allow for private sexual activities among Kenyans of consenting age. The law should instead punish sexual offences that lack consent and that are violent such as rape and child abuse.



5. The Right to Security of the Person

All Kenyans should live in a safe environment free from violence, or incitement to violence. Any activity, attitude or belief that threatens the security of any Kenyan should be dealt with appropriately by the police, and so the Government of Kenya must facilitate comprehensive police reform that safeguard the security of all marginalised groups, including LGBTI Kenyans. It is the duty of Government to protect all its citizens at all costs.

Forms of violence include, but are not limited to, physical threats (harassment, riots, beatings, lynching and mob justice), hateful printed matter (text messages, posters, books, printed and online publications) and hate speech. The Government should thoroughly investigate and punish perpetrators of violence. In addition, victims of violence should be fairly compensated and assisted with legal suits, medical care and psychological support without discrimination.

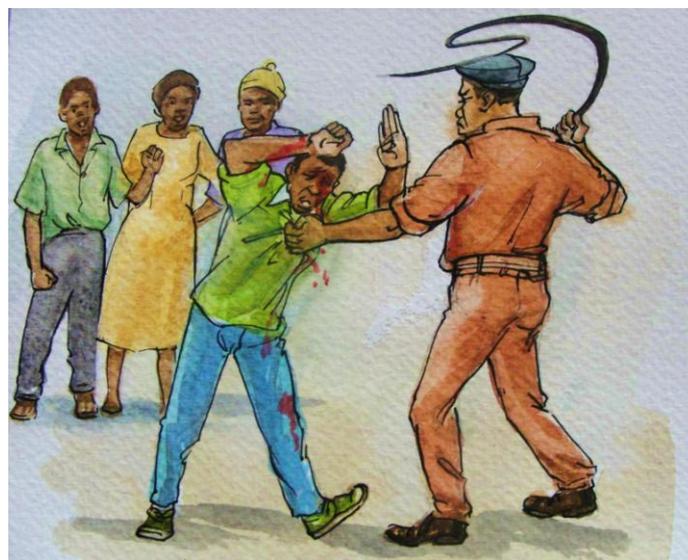
The Government of Kenya should take the responsibility to educate communities on the equal rights of LGBTI Kenyans in order to counter the homophobia and transphobia that underlies violence. The Government should also support initiatives by civil societies working in the areas of LGBTI advocacy to sensitize the police, educational and public institutions, the media and religious leaders against bullying, harassment and cruel treatment of LGBTI persons.

Why Kenyan Constitution must Protect Gays

Prof. Makau Mutua, Sunday Nation, October 24, 2009

Constitutions are not meant to protect only individuals that we like, and to leave unprotected those who are unpopular, or those the majority may find morally objectionable. A person's identity—especially if it exposes them to ridicule, attack, or discrimination—must be the reason for constitutional protection. Constitutions protect individuals from tyranny of the state and oppression from their fellow human beings.

Heterosexuality, which is only one expression of sexuality cannot be treated as the only legitimate form of sexual expression. The full development of each human being—which must be the overriding raison d'être of the constitution, must allow for diversity of sexual expression. That's why constitutions pivot on the bill of rights. The bill of rights is an admission that the majority is not always right, and that certain rights are foundational to civilisation. One of those rights is the equal protection of minorities against discrimination. South Africa recognised this basic fact when it protected sexual minorities and gay rights in its post-apartheid constitution. Kenya must follow suit.



6. The Right to Privacy

All Kenyans should be entitled to their privacy. Coming out (that is, making one's sexual orientation or gender identity public) is one's choice. Every Kenyan has the right to disclose or not to disclose whether they are LGBTI, and when, to whom and how to disclose it.

The Government of Kenya should protect the freedom of every Kenyan citizen to enjoy their private life, intimate decisions and human relations. Intrusion into one's privacy includes instances when a person, their home or property is searched, their possessions seized or when forced to provide information relating to their families or private affairs unnecessarily, or when their communications (online and post, text messages, and phone calls) are tracked.

Any form of blackmail against LGBTI persons to force them to come out, to threaten them, or to get money on the basis of their sexual orientation and gender identity is illegal and should be punished seriously by law.

A Family Scarred by Homophobia

Muchiri Karanja, Daily Nation, 23rd October 2009

The family of Daniel Chege, whose gay marriage to Charles Ngengi last weekend in London set off a storm of controversy across Kenya, is facing a backlash from homophobic neighbors. The harassment has taken a toll on Chege's family in Murang'a, said Ms Mary Muthoni, a neighbor. "This thing has affected the old parents. Chege's father, has all but lost his ability to speak ever since the pictures from the union emerged Sunday." Also, Chege's mother has developed a fear for strangers and no longer welcomes them home. Chege's two brothers, Humphrey and Mwangi also said they had endured constant harassment.



7. The Right to Freedom from Arbitrary Deprivation of Liberty

No Kenyan should be arbitrarily deprived of liberty: that is, arrested without lawful reason. When arrested, LGBTI Kenyans, as all Kenyans, should be informed of the nature of the charge(s), what their rights are, and they should be brought before a judge or magistrate within twenty-four hours of arrest, and be entitled representation in court by an advocate.

The language in all the written laws of Kenya should be direct. Vague language in the Penal Code that refers to sexual behavior as ‘unnatural’ or ‘grossly indecent’ has been misused to justify arrests and detentions of LGBTI Kenyans. Such provisions should be repealed and the police instructed that sexual orientation and gender identity are not valid grounds for arrest.

Five men arrested in Kenya over Gay Wedding Plans

Pink News, February 12, 2010

Five men suspected of being gay have been arrested after local people protested over a planned gay wedding. Hundreds of people in Mtwapa protested after details of the secret ceremony became known. The five men, aged between 20 and 23, were said to be guests at today's ceremony and were taken in custody after residents alerted police. The men who were to marry reportedly escaped the town and police had to rescue a number of men accused of being gay from angry crowds.

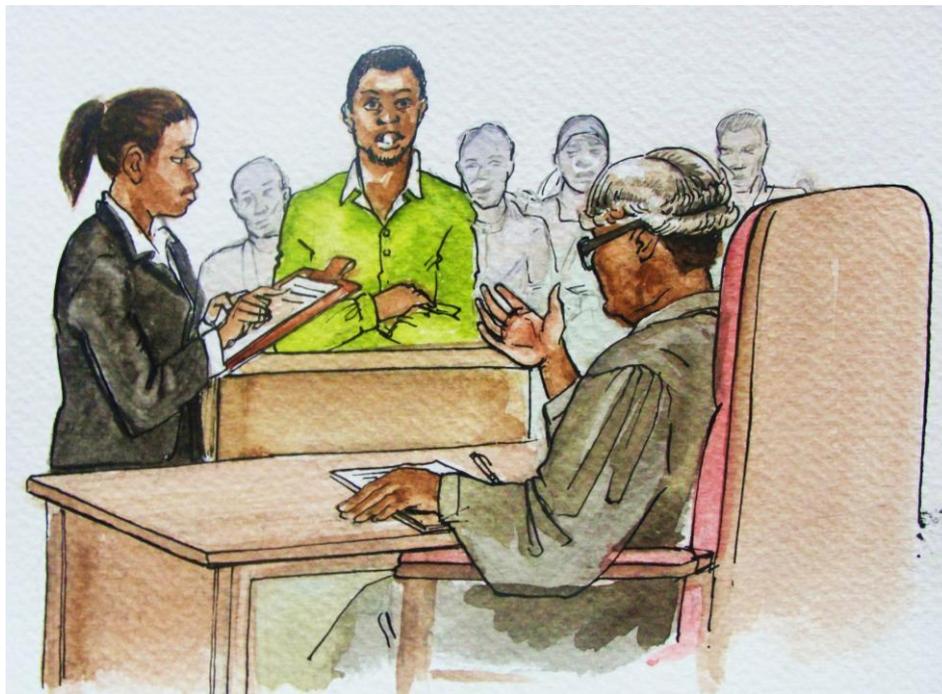


8. The Right to a Fair Trial

All Kenyans are entitled to fair, public hearings in courts and tribunals, presided by competent and neutral judges and magistrates. Where parties in a criminal or civil suit find a judge or magistrate biased or discriminating on grounds of sexual orientation and gender identity, he/she should disqualify themselves from the proceeding.

Sexual orientation and gender identity should not be used to cast doubt on the evidence of a witness, to question the character of a party in a case, or to affect or vary the ruling of a judge or magistrate.

In addition, the law should allow for interested parties, especially relevant civil societies and human rights organizations, to participate in cases affecting particular work they engage in.



9. The Right to Humane Treatment while in Detention

Kenyans who have been arrested should be treated humanely. Currently, there are significant cases of LGBTI persons in jails and detention isolated in cells, verbally and sexually abused by staff and detainees, and refused medication sometimes even when they are HIV-positive.

The Government of Kenya should institute prison reforms that maintain safe and clean prisons with balanced meals, sufficient and inclusive medical services, recreation and exercise facilities, educational and rehabilitation resources. These reforms should also address the needs of vulnerable prisoners, perhaps even provide separate blocks for LGBTI persons that wish to use them, equal access to reproductive health services to all, and inclusive HIV/AIDS information and therapy that recognizes and respects the health of LGBTI Kenyans.

The Government should allow for independent monitoring and critique of detention facilities by civil societies, including those working in the areas of LGBTI advocacy.

Kenyan Challenges State Over Prison Facilities

Jillo Kadida, Mail & Guardian Kenya, 21st September 2009.

An intersex Kenyan has applied to Kenya's constitutional court to be released from Nairobi's Kamiti Maximum Security Prison on grounds that he belongs in neither a jail for men nor women. Richard Mwanzia Muasya, who was convicted and jailed for robbery with violence, says he is subjected to continuous human and constitutional rights violations at the prison, suffering inhuman and degrading treatment at the hands of male convicts, prison warders and the public. Muasya was born with both male and female sex organs, but regards himself as a man. There are no provisions in prison for people like him.

10. The Right to Freedom from Torture, Cruel, Inhumane or Degrading Treatment or Punishment

No one should be subjected to cruel, inhumane, or degrading treatment or punishment for reasons relating to their actual or assumed sexual orientation or gender identity. Cruelty shall be understood to include physical or verbal statements intended to cause fear or bodily harm.

11. The Right to Protection from All Forms of Exploitation, Sale and Trafficking of Human Beings

The sale of Kenyans, including LGBTI Kenyans, or their exploitation in sex trade or drug trade is illegal.



Exploitation, sale and trafficking of human beings usually begins with rejection by families and communities, or a lack of financial independence. The Government of Kenya should protect all Kenyans from vulnerability to exploitation, sale and trafficking by ensuring there are adequate poverty reduction measures and economic stimulus programs, and that there is no discrimination in access to employment, social services, housing, education and healthcare.

Limiting a child's or dependent's freedoms of movement and expression, cutting them off from educational support, or sending them away from home because they identify as LGBTI should be considered illegal because it exploits their situation. Dependant LGBTI Kenyans should not be manipulated by families because of their sexual orientation or gender identity.

In addition, sex work (whether same-sex or heterosexual) should not be criminalized. Criminalizing sex work makes it difficult for sex workers to access essential services. Sex workers should be equally entitled to healthcare, legal support and protection by the police.

12. The Right to Work

All Kenyans have the right to work where they please, if they are qualified, and to just and favorable conditions of work. Public institutions should not reserve the right to admit to employment, or dismiss from work anyone because of sexual orientation or gender identity.

All Kenyans should be equally considered for employment, and their retention, promotion and remuneration should not be affected by sexual orientation or gender identity. All working Kenyans should also be entitled to health cover while in employment, retirement benefits, pensions and other social security benefits, parental leave and the right to unionize.

Benjamin Kaniaru was intern in a Public Relations firm in Nairobi, and he was dismissed from employment because some of his colleagues and his employer's son did not approve of his dressing and effeminate nature. They believed his alleged feminine disposition made him incapable of performing his duties.



13. The Right to Social Security and to Other Social Protection Measures

The Government of Kenya should provide equal access for all to social security and social protection measures including poverty reduction strategies, health and life insurance, support for the elderly, pensions and benefits when one's partner falls ill or dies, and equal rights to inheritance, home and property ownership.

Kenyan Law should recognize same-sex civil unions so that State-sponsored care and benefits programs (such as retirement benefits, National Social Security Fund and National Hospital Insurance Fund) are made available to all persons and all families without discrimination. In this regard, in all decisions concerning the welfare of children, the child's best interest should be primary concern. The Government should protect children from discrimination in health insurance and in provision of welfare benefits on the basis of their sexual orientation or gender identity or that of any member of their family, and especially their parents.



14. The Right to an Adequate Standard of Living

Every Kenyan has the right to a dignified and continuously improving standard of living, which includes equal access to the basic needs of food, shelter and clothing, safe drinking water, and sanitation. The Government should also provide amenities that improve standard of living such as electricity, roads, modes of communication (telephony and internet), and measures that address pollution and environmental conservation. The Government should take all legislative and administrative steps to facilitate access to these basic needs to all communities, without discrimination on the basis of sexual orientation or gender identity.



15. The Right to Adequate Housing

The right to adequate housing is the right of every human being to gain and sustain a safe and secure home and community in which to live peacefully. The Government of Kenya should provide access to affordable housing to all, and protect all citizens from forced evictions. This means that there must be equal rights in property ownership without discrimination on basis of sexual orientation, gender identity, marital or family status. In addition, landlords and housing providers, parents and guardians should not submit tenants and dependants to isolation and homelessness due to sexual orientation or gender identity.

Fabian Stanley and Peter Odems, a gay couple were evicted from their home following a rumour that they engage in homosexual acts. Peter was attacked by members of public and later chased from their house and the couple was unable to access their house hold items. They reported the matter to the police but no action has been taken.

Rev. Michael Kimindu, pastor at MCC—Neema Church Nairobi, a church that welcomes LGBTI individuals, their friends and families was ordered to vacate his Nairobi flat by his landlord after appearing on the Daily Nation addressing the public urging them to embrace and include LGBTI Kenyans.

16. The Right to Education

No one should be denied access to education on the basis of their sexual orientation or gender identity. All persons should be welcome to apply to public institutions of learning and they should be selected and retained purely on basis of their performance and discipline. Students should not be punished, suspended or expelled on grounds of actual or suspected sexual orientation or gender identity.

The Ministry of Education should review school syllabuses, particularly in social ethics and religious education to correct misconceptions of LGBTI persons as social deviants and ensure that the culture in schools promotes respect for all people and for human rights, and the respect for each child's family values in a spirit of understanding, tolerance and equality.

Schools policies should provide adequate protections for LGBTI students, teaching and non-teaching staff from discriminate dismissals, social exclusion or bullying within the school and ensure that measures of discipline in educational institutions are administered in a manner consistent with human dignity, without discrimination on the basis of LGBTI identities.



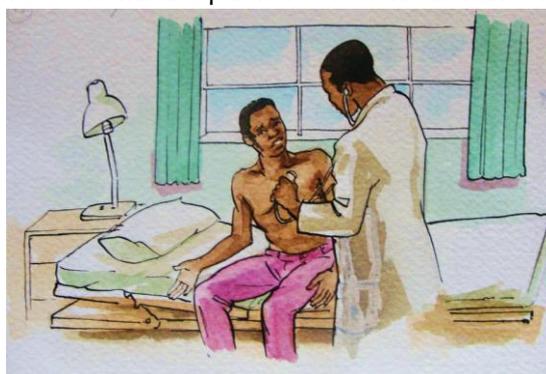
17. The Right to the Highest Attainable Standard of Health

The Government of Kenya should develop inclusive health programs addressing the health needs of all Kenyans, including LGBTI Kenyans.

LGBTI Kenyans accessing treatment for STIs, counseling and testing for HIV, and transgender and intersex Kenyans seeking general care are often afraid of honestly responding to medical interviews because honesty could lead to rebuke, arrest or both. Too often doctors violate the privacy of LGBTI patients by exposing them to other staff or police, preaching to redeem them, or altogether denying them care. It should be unethical to deny anyone treatment.

Doctor-patient confidentiality and the safe keeping of medical records and histories should be standard medical practices, without discrimination on the basis of one's sexual orientation or gender identity. Also, LGBTI Kenyans should be free to nominate partners of choice as next of kin, and to share insurance policies with partners of choice, and children they choose to raise.

With regard to transgender and intersex persons, medical provisions should be made for persons that choose to undergo gender reassignment therapy, with the satisfactory and complete report of a medical practitioner trained on matters of gender identity change.



18. Protection from Medical Abuses

A person's sexual orientation or gender identity is not a disease and cannot be studied as a clinical condition to be treated through corrective counseling or medical experimentation without the free and genuinely informed consent of the person.

The Government of Kenya should take all measures to ensure full protection against harmful and degrading medical practices on persons that identify as LGBTI. Such practices include forced HIV testing, forced anal and rectal probing by police, and hormonal, shock or psychological therapy to correct an LGBTI identity without the consent of the person.

Also, intersex individuals should be allowed to choose their gender after being allowed to grow up in supportive environments. Therefore, in cases of intersex births, the Ministry of Health should issue guidelines directing families and medical practitioners on how to facilitate a child's genuinely informed consent. These guidelines must ensure the child's body is not irreversibly altered by medical procedure in attempt to impose a gender at the time of birth.

19. The Right to Freedom of Opinion and Expression

Everyone has the right to freedom of opinion and expression. This includes expression of identity through speech, dress, bodily characteristics, and choice of name, as well as the freedom to seek, receive and share information on human rights, through any medium.

The Government of Kenya must not use excuses of public order, morality, health and security to limit freedoms of opinion and expression. In fact, the Government of Kenya should promote the publishing and broadcasting of materials on all human rights, including LGBTI rights, and the participation of LGBTI representatives in public debates and the formulation of national policy.

It is important too that media houses be sensitive and seek to promote positive appreciation of diversity when reporting news pertaining to LGBTI persons. Educational institutions and religious groups should be cautioned and encouraged against discrimination and violence.

20. The Right to Freedom of Peaceful Assembly and Association

All Kenyans have the right to peaceful assembly and association. The Government of Kenya must allow Kenyans to form and have recognized any associations, particularly those associating around human rights. Such associations should be free to educate the public on human rights, and to advocate for the rights of all Kenyans, including LGBTI Kenyans. Therefore LGBTI Kenyans should be free to assemble and associate in public functions and debates, and to make presentations and raise their concerns in such avenues.

The Government must under no circumstances stop exercise of the rights to assemble and association on any grounds and must provide adequate security and physical protections against violence and harassment to persons exercising rights to demonstrate or picket.

21. The Right to Freedom of Thought, Conscience and Religion

Every Kenyan, including LGBTI persons, has the right to freedom of thought, conscience and religion. The Government of Kenya should guard the rights of all persons, regardless of sexual and gender identity, to hold and practice their faith or non-belief, alone or in association with others, and to be free from having others force their beliefs on them.

The Government should ensure expression of different religious convictions with regard to sexuality in no way incites violence towards or violates the human rights of LGBTI Kenyans. Religious opinions that divide people and threaten the dignity and security of any section of the Kenyan population should be made criminal, and be strongly rebuked.

Church where Kenya's gay, lesbian Christians worship

Emeka-Mayaka Gekara, Daily Nation, May 20th 2010

Rev. Michael Kimindu, an ordained Anglican priest, is not your usual preacher; he is on a mission to help Christians "read the Bible with new eyes". The priest, who was "stopped" from the Anglican Church, has been running probably the first openly declared gay church in Kenya to preach to "the other sheep". It serves as local branch to the American-founded Metropolitan Christian Community.

The priest, a retired military chaplain, says of his church: "We include everybody because sexual orientation is not a choice; it is innate and there is nothing one can do about it." The mainstream church is opposed to gay life saying it is evil but for the Rev. Kimindu gays are the "other sheep" Jesus was out to rescue in the Gospel of John 10:16. "All these people were created by God and since He is the Lord of love, who are we to keep His people out of church?"

Rev. Kimindu's church is a unique fellowship of university students, middle-level professionals and clergy aged between 23 and 40. This closely knit group attends church, 3pm Sundays where they discuss living gay but Christian lives. Young professionals told the Nation they go to the Rev Kimindu's church because they "feel more accepted." "There is a lot of stigma out there," says a volunteer at the church.

22. The Right to Freedom of Movement

Every Kenyan lawfully residing within the country has freedom of movement and residence in any part of Kenya without hindrance on account of sexual orientation or gender identity. Sexual orientation and gender identity should never be brought up to limit or block the entry, exit or return home of any Kenyan.



23. The Right to Seek Asylum

Everyone has the right to seek and enjoy refuge from religious and/or politically motivated violence, and other forms of persecution. Kenya may not send away a person seeking asylum or refuge to another country where that person may face a well-founded fear of persecution, cruel treatment or punishment on the grounds of their sexual orientation or gender identity.

The Government of Kenya should review the Refugee Act to make considerations for well-founded fears of persecution on the basis of one's LGBTI identity as grounds for recognition of refugee status and the provision of asylum status.

24. The Right to Found a Family

All human beings have the right to form a family regardless of their sexual orientation or gender identity.

A family may be founded by a single individual, an opposite-sex union or a same-sex union, and through procreation between the parents, assisted procreation with the help of a surrogate mother, and adoption. The Government of Kenya should revise laws to cater for legal assistance on assisted procreation and to allow for adoption by LGBTI individuals.

The Government should ensure that in all decisions concerning children, whether undertaken by social welfare institutions, courts of law or administrative organs, the best interests of the child is primary consideration, without discrimination on the basis of the sexual orientation and gender identity of the child or any of its family members, and especially its parents.

Jane and Sally met ten years ago. They have been living together for the past eight years. Jane runs a small scale business and Sally is a banker. Sally has a nine-year old son. He lives with them. They are about to move into a new house they bought together. Their neighbors think they are cousins. Their son often asks about the 'other' auntie living with his mother. He knows they are close but it is clear he doesn't fully understand it. Maybe he will someday. Jane cannot ask too many questions at the son's school because they consider her to be the aunt. Jane has fears about the future. What would happen if Sally died, and the family took their son away. Or if she dies, and her family refuses to recognize Jane and their son as part of her family.

Shiko and Katie have been in a relationship four years. They have brought up Shiko's son, Kevin, together, since birth. They have been loving parents, providing him all he needed. Living in Kenya has not been easy because of the stigma towards their kind of relationship. They have been in the middle of conflicts even before Kevin. Shiko, the biological mother, has been called back home by her parents is beaten up by her family because they consider she embarrasses them. The local chief has instructed Katie not to be seen 50 meters around their compound.

One day, Kevin got seriously ill. The doctors diagnosed him with TB. Katie tries to use her health insurance for Kevin, but her insurance card is declined because she is not Kevin's biological mother. Katie turns to Kevin's biological father for help, but he wants nothing to do with the couple or their son. Kate later finds out Kevin was misdiagnosed. She cannot transfer Kevin because the hospital administrators won't cooperate or recognize her. Kevin has rheumatoid arthritis. Shiko loses her job and it becomes difficult to sustain her ailing son. She resorts to prostitution. Eventually, due to family pressure, their relationship ends.

25. The Right to Participate in Public Life

Every Kenyan of deserving qualifications has the right to participate in public life, to be appointed to public office, and to get elected into public office including the highest office of the land. Appointments and elections to public office and public service, including the police and military should be made available to all without discrimination on grounds of sexual orientation or gender identity.

The Government of Kenya must guard the right of each person to participate in making laws and policies affecting their welfare, without discrimination and with full respect for different sexual orientations and gender identities.



26. The Right to Participate in Cultural Life

Culture refers to customs and achievements of a particular ethnic, political or social group.

Widely, African culture recognizes birth, initiation, marriage and death as key and meaningful life stages that, for the dignity of all peoples, should be celebrated and protected. Every Kenyan therefore has the right to be accommodated and to participate freely and fully in cultural life with respect for their sexual orientation and gender identity.

Kenya must also respect the different cultures of all its citizens, including marginalized social groups such as the LGBTI community. The Government of Kenya should promote the establishing of LGBTI cultural villages and protect the interest of the LGBTI community to organize Pride Parades and Festivals as part of multi-cultural celebration, historical recording, education, tourism and economic stimulus.

27. The Right to Promote Human Rights

Everyone has the right, individually and in association with others, to promote human rights. This includes activities directed towards protection of rights of LGBTI persons and the right to develop and discuss new human rights standards and to advocate for their acceptance. The Government of Kenya should provide for the protection of LGBTI rights defenders against violence, threat or retaliation in response to their human rights work.

The Government should also promote a favorable environment for human rights activism by, among other things, ensuring the composition of Kenya National Commission on Human Rights (KNCHR), or its equivalent, has at least one qualified LGBTI defender as Commissioner.

Kenya: Health Anti-Gay Campaigns

Protect Health Workers, Activists: Condemn Mob Violence, Incitements to Hate

Human Rights Watch, New York, February 17th 2010

Kenya's government should act quickly to protect people accused of homosexual conduct and groups offering HIV/AIDS services from vigilante attacks. Vigilante violence hit Mtwapa, a town northeast of Mombasa, in recent days and appears to spread to Mombasa and elsewhere.

"The government is sitting silent while mobs try to kill human rights defenders and assault people they suspect are gay," said Dipika Nath, researcher in the LGBT rights program at Human Rights Watch. "Inaction is complicity, and silence can be lethal."

In late January 2010, unsubstantiated rumors about a "gay wedding" scheduled for February 12 started circulating in Mtwapa, in Kilifi District. Local and national radio stations picked up the unconfirmed story. On February 7, several imams and muftis (Islamic scholars) told their congregations during Friday prayers to be vigilant and to "expose" homosexuals in Mtwapa.

On February 11, Sheikh Ali Hussein, Council of Imams and Preachers of Kenya (CIPK) Kikambala Coordinator and Bishop Laurence Chai of the National Council of Churches of Kenya held a news conference. The two religious leaders demanded an investigation of the Kenya Medical Research Institute (KEMRI), a government health center that provides HIV/AIDS services to the community. They criticized the government for "providing counselling services to criminals" and demanded that the KEMRI office in Mtwapa be shut down.

Local activists said, in a statement after the meeting, that the religious leaders promised to "flush out gays." The Daily Nation reported that Chai is the leader of a network called "Operation Gays Out," whose actual numbers and aims are not known. On February 12, an armed mob of up to 300 people surrounded the KEMRI health center. Witnesses told Human Rights Watch that a man, Faridi, an organizer of the mob, said a KEMRI staff member was homosexual because he wore a T-shirt promoting safe sex. In response, police at the scene took him and another KEMRI staffer into custody.

Earlier the same day, Faridi, with police, forcibly entered another private individual's home, claiming that the two people in the house were homosexual. Police took the two into custody, too. Local activists have informed Human Rights Watch that none of the men were charged and they have all since been released, and that the police were attempting to protect them from violence by taking them into custody.

28. The Right to Effective Remedies and Redress

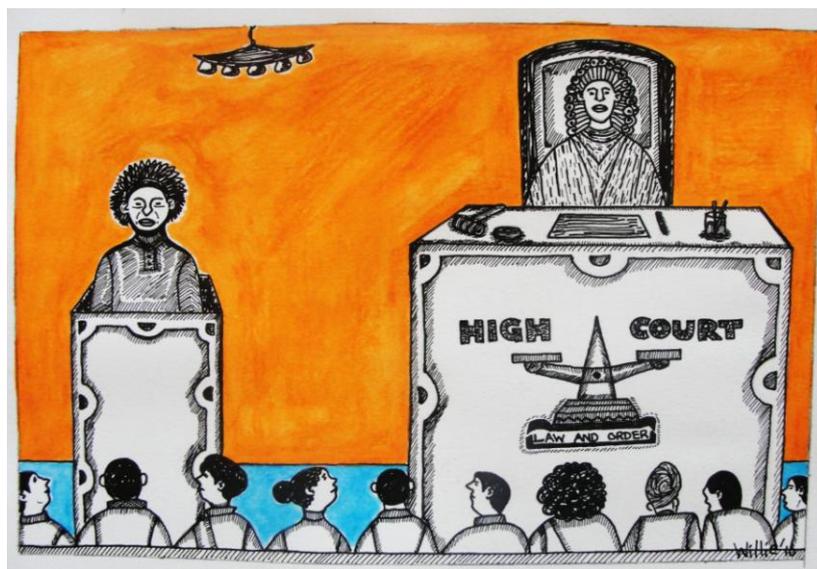
Every victim of a human rights violation including on basis of sexual orientation and gender identity has the right to present their grievances to relevant authorities and have them addressed. Appropriate procedures should be set out in law to improve the condition of victims of human rights violations. Effective remedies and redresses include apology, timely prosecution of the perpetrator(s), financial compensation, medical and psychological care.



29. Accountability

The Government of Kenya should move with speed to end the culture of impunity including its past failures to deal with human rights violations based on sexual orientation and gender identity. Every Kenyan whose human rights are violated is equally entitled to have those responsible for the violation held accountable.

The Government of Kenya should reform institutions that contribute to human rights violations and that hide or condone those responsible for any and all human rights violations. The Government should also facilitate judicial reform and establish independent procedures to monitor enforcement of law at local administrative levels to ensure elimination of all forms of discrimination from the grassroots.



Action Areas

We recommend that **Citizens**—

1. REFRAIN from labels and stereotypes about LGBTI individuals as they are often insulting, demeaning and untrue, and hate speech because it encourages violence.
2. RESPECT all people and all forms of families even when people have different opinions, when they practice different lifestyles and different faiths.
3. ENGAGE in our communities and neighbourhoods seeking out and helping the youth build self-esteem, get education, secure employment and practice healthy sexuality without judging or moralizing their choice of expressing themselves and HELP the homeless, the poor and the sick without discrimination.
4. ATTEND and SUPPORT public education events and debates concerning all human rights, including LGBTI rights, because when we unite to stamp out any one form of discrimination we apply pressure against other forms of discrimination.
5. VOLUNTEER time and DONATE resources to a local civil society working at a cause you believe in.
6. WRITE your Member of Parliament about issues that are important to you, FILL petitions on human rights appeals.
7. PARTICIPATE in demonstrations, festivals and rallies around issues you care about.
8. TALK to friends, family and medical therapists about things that make you anxious or doubtful. Be yourself. Love yourself. And share your challenges. If these include coming out and letting people know that you are of a different sexual orientation or gender identity, it could be healthier when people important to you know.
9. LISTEN to people that are often not given a fair hearing—they too have their story.
10. VOTE; always that we all take as sacred our duty to elect to office leaders of merit based on their commitment, policies and performance.

We recommend that **the National Assembly**—

1. PASS a comprehensive equality and non-discrimination law that expands affirmative action to cover appointment of qualified LGBTI Kenyans into public service towards improving access to education, healthcare, security, and employment for all marginalised groups, including LGBTI persons.
2. RECALLING the fundamental rights and freedoms contained in the Universal Declaration of Human Rights, of which Kenya is a signatory, REPEAL sections of the Penal Code (particularly 162, 163, and 165) that criminalize same-sex sexual activity

and vague provisions of criminal law used by police to arrest and detain LGBTI persons and STOP local councils from making ambiguous criminal by-laws.

3. RECOMMEND police and prison reforms that ensure accurate and up to date recording of arrests and detentions, improve the general condition of prisons and that affect training on the equal rights of LGBTI persons for police, prison personnel and all other officials in public and private sector who are in a position to encourage, perpetrate, condone or prevent acts of violence.
4. INTEGRATE in law those Principles relevant to international human rights agreements Kenya signs on to, and push that the Government of Kenya takes back its negative position on international law that supports LGBTI persons.
5. RECOMMEND that the composition of Kenya National Commission on Human Rights (KNCHR) at any given time should include at least one Commissioner specifically representing the LGBTI Community in Kenya.
6. GUIDE Government in constituting a Sexual Minorities Department in key ministries, but at the minimum in the Ministry of Gender to undertake public education that addresses cultural and historical discriminations against LGBTI persons to counter the misunderstanding that underlies homophobia and transphobia and to identify victims of torture on basis of their LGBTI identity, and offer them remedies and redress.
7. GUIDE the Ministry of Health in issuing clear policy guidelines on the handling of LGBTI persons in basic public health and on matters of reproductive health, HIV/AIDS and STIs and gender reassignment therapy, in manners consistent with these Principles.
8. INSTITUTE measures that instruct administrators in educational institutions, media houses, religious leaders and employers (in public and private sectors) to exercise professionalism and tolerance and share opinion that does not subject LGBTI Kenyans to social exclusion or amount to incitement to violence so all Kenyans are protected from bullying by any individual, group or authority.

We recommend that **Civil Societies, especially those organizing around human rights—**

1. ENDORSE these Principles and MAINSTREAM LGBTI rights advocacy in their work.
2. MAKE submissions to the National Cohesion and Integration Commission on historical injustices oppressing Kenyans on all grounds, including sexual orientation and gender identity with a view of integrating LGBTI rights into mainstream human rights law and practice in Kenya.
3. FILE a constitutional petition to the High Court seeking orders for declaration of rights in the Bill of Rights to protect LGBTI persons from continued discrimination.
4. CONSTITUTE programs that sensitize judicial officers, police, ministries, civil servants, professional and commercial organizations and other relevant actors on the human rights issues concerning LGBTI persons.
5. URGE the Kenya National Commission on Human Rights (KNCHR) to endorse the Yogyakarta Principles and/or this local presentation of the Principles in public forums and to sponsor training and awareness-raising activities to promote the contents.

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G-Kenya Trust (formerly, Gay Kenya) is a human rights advocacy group committed to fighting all legal, social, cultural and economic oppressions targeted at LGBTI Kenyans through community education, opinion publications, legal petitions and economic empowerment initiatives to redress discriminatory processes that deny LGBTI persons safety, dignity and equal participation in society.