Breaking the Silence

The Status of Women Who Have Sex with Women in Kenya

MINORITY WOMEN IN ACTION

Credit: flickr.com/carbonnyc

MWA 2013 • info@minoritywomeninaction.co.ke • Nairobi

Inquiries should be addressed to

Minority Women in Action (MWA)
info@minoritywomeninaction.co.ke

Credits

Written, prepared and designed by Sidra S. Zaidi, M.A. Candidate, Columbia University in the City of New York.

Acknowledgements

MWA thanks the following organisations for their funding and support which made this study possible: the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), the Norwegian LGBT Organisation (LLH), the Norwegian Ministry of Affairs and HIVOS. MWA would also like to thank Women Working with Women and Persons Marginalized and Aggrieved (PEMA-Kenya) for their significant assistance with outreach to voluntary interviewees in Kisumu and Mombasa, respectively. In particular, the following individuals were instrumental to principal research: Akinyi Ocholla of MWA and Paula Abuor of Women Working with Women. Moreover, MWA would like to acknowledge the study's data collectors: Fatuma Matemu, Halima Hussein, Louisa Essendi and Mary Muthui of MWA; Paula Abuor of Women Working with Women; and Esther Odhiambo and Dorah Wakio of PEMA-Kenya.

Fair Use

Table of Contents

ACRONYMS & ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACLJ	American Center for Law and Justice
AfCHPR	African Court on Human and Peoples' Rights
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CEDAW	Convention (Committee) on the Elimination of all forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention (Committee) on the Rights of the Child
GII	Gender Inequality Index
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
LBTI	Lesbian, Bisexual, Transgender and Intersex
LGB	Lesbian, Gay and Bisexual
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MSM	Men Who Have Sex with Men
MWA	Minority Women in Action

SOGI	Sexual Orientation and Gender Identity
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UPR	Universal Periodic Review
WSW	Women Who Have Sex with Women

ABOUT MINORITY WOMEN IN ACTION

Minority Women in Action (MWA) is a grassroots lesbian, bisexual, transgender and intersex (LBTI) rights advocacy organisation located in Nairobi, Kenya. In 2006, during a lesbian, gay, bisexual, transgender and intersex (LGBTI) rights conference supported by Urgent Action Fund, it became clear to female attendees that both LGBTI rights groups and Kenyan society at large had ignored the particular concerns of LBTI women in Kenya. A set of female activists thus agreed to establish an organisation that would make visible LBTI women's human rights. Although MWA only has one transgender member, our founders aimed to provide an inclusive environment for transgender and intersex persons within MWA's activities. MWA currently has 80 members who reside in and around Nairobi, range from ages 20 to 50 and represent a spectrum of economic classes. In addition, MWA connects with a network of more than 600 local contacts who are sympathetic to advocacy efforts for LBTI women's human rights. Moreover, since 2009, MWA has served as the Women's Secretariat for the International Lesbian, Gay, Bisexual, Trans and Intersex Assocation (ILGA). ILGA was the first LGBTI rights organisation to acquire consultative status at the United Nations Economic and Social Council.

MWA's main objectives include:

- Increasing social acceptance of LBTI persons in Kenyan society and the wider global community;
- Strengthening access to support for LBTI populations in Kenya and abroad (including emotional, social, financial and health services);
- Establishing local, national, regional and international policy and legislative frameworks that recognise and support LBTI persons;
- Functioning as an excellent and effective resource for LBTI populations and their rights.

I. Executive Summary

Female Same-Sex Sexualities in Kenya

Kenyan women who have sex with women (WSW) as well as Kenyan men who have sex with men (MSM) face widespread discrimination, abuse and violence largely because of their sexual orientation(s) and/or gender expression. Although a number of WSW may choose to publicly identify as lesbian or bisexual, most do not reveal their sexual orientation(s) to their families, physicians, colleagues and others. Still, despite the fact that African same-sex sexualities are historical in nature, many WSW do not personally recognise the labels "lesbian" and "bisexual".[1] Moreover, some examiners of African same-sex sexualities point out that women who have sex with both women and men may not necessarily be "bisexual".[2] It is important to note that because same-sex sexual conduct invites stigma, and even criminal sanction, many WSW engage in sexual relations with men in order to avoid social judgment or harassment.

While the considerations of transgender and intersex persons often intersect with WSW, transgender and intersex communities are "gender minorities", and not necessarily "sexual minorities". That is, transgender and intersex individuals may be either heterosexual or homosexual, depending on their gender identity and attraction to either members of the same or opposite gender. Therefore, transwomen and intersex women can be, but are not necessarily, attracted to women. What's more is that there exist non-gender conforming individuals who do not identify as either male or female. Due to the diversity of sexuality and gender expression in Kenya, and the need to develop information on female same-sex sexualities, this report will refer to all women who identify as women and have sex with women as "WSW".

---

[1] Marc Epprecht. "Bisexuality and the Politics of Normal in African Ethnography". *Anthropologica* 48, no. 2 (2006): 187–201.

[2] Ibid.

Discrimination and Violence

The criminalisation of homosexuality in Kenya provides a legal basis for, and thus largely contributes to, the egregious obstacles WSW populations must face in securing non-discriminatory access to healthcare, livelihoods, education, justice mechanisms and other vital services.[3] Kenya, along with several other former British colonial states, criminalises consensual same-sex sexual conduct among adults.[4] The Kenyan Penal Code imposes for such acts a penalty of up to 14 years in prison.[5] Although Kenyan authorities rarely enforce anti-sodomy laws, the practical effects of criminal sanction include widespread discrimination against WSW in areas such as education, healthcare and employment. Criminalisation is also instrumental to threats, abuse and violence against actual and perceived WSW because perpetrators may believe that the state would be less inclined to fully bring to justice those who pursue violence against these groups. Moreover, governmental recognition of anti-sodomy laws — as well as homophobic rhetoric issued by state officials — contributes to prejudiced and hateful attitudes that may spur violence against WSW. What's more is that when Kenyan WSW experience violence and discrimination, they often do not report these incidents to the police or any authority because of the possibility of further harassment, arrest and even violence.

The Need to Analyse Discrimination and Violence Against WSW in Kenya

Kenyan MSM routinely suffer egregious affronts to their human dignity; however, WSW endure distinct forms of discrimination because of their status as both women and sexual minorities. The United Nations Development Programme's 2012 Gender Inequality Index (GII), for example, ranked Kenya 130 out of 148 countries.[6] The GII demonstrates gender inequality in relation to reproductive health, empowerment (in the form of parliamentary representation as well as attainment in secondary education) and

---

[3] Courtney E. Finerty. "Being Gay in Kenya: The Implications of Kenya's New Constitution for Its Anti-Sodomy Laws". *Cornell Int'l LJ* 45 (2012): 431–723.

[4] Alok Gupta. *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism*. New York: Human Rights Watch, 2008.

[5] Kenya Penal Code, (2009) Cap. 162.

[6] United Nations Development Programme. *Human Development Report 2013*. New York; London: United Nations; Eurospan [distributor], 2013.

labour force participation.[7] While Kenyan women in general struggle to achieve full equality in these dimensions, many Kenyan WSW face extraordinary obstacles in accessing sexual and reproductive health services, education and employment.

In the past decade, international and local advocacy groups have increased documentation and reporting of human rights violations against Kenyan LGBT populations. These include Amnesty International;[8] the Kenyan Human Rights Commission[9] and the Gay and Lesbian Coalition of Kenya, among others. Despite these advances, there exists little analysis on particular violations against the human dignity of Kenyan WSW.

Silence about the status of WSW in Kenya has called for baseline data that sheds light on the particular violations WSW suffer due to the oppression of sexual minorities as well as women in Kenya. This is the first study of its kind regarding Kenyan WSW's sexual, reproductive and mental health, economic status and experiences with discrimination, abuse and violence. By presenting the findings of this survey, MWA intends to demonstrate how sexism, prejudiced attitudes and homophobia have created systematic injustice against WSW in manifold and often concurrent degrees.

Stigma against WSW has been directly conducive to the marginalization of these women, impacting almost all aspects of their daily lives, and often resulting in, *inter alia*: unjust dismissal from school or work; the perpetuation of sexual violence as well as physical and mental abuse by community members and relatives; low economic status; lack of family support; decreased access to sexual and reproductive health care services, including safe abortion care as well as infertility services such as sperm banks and artificial insemination; lack of recognition in national guidelines and policies; increased susceptibility to mental illness; and decreased access to justice. Furthermore, this report draws attention to the criminalisation of same-sex sexual conduct in Kenya, and how

---

[7] Ibid.

[8] *Making Love a Crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa*. Amnesty International, April 2013.

[9] Kenya Human Rights Commission. *The Outlawed Amongst Us: a Study of the LGBTI Community's Search for Equality and Non-discrimination in Kenya*. Nairobi, Kenya: Kenya Human Rights Commission, 2011.

Kenya's repressive policies toward sexual minorities provide legal justification for discrimination against WSW. That is, criminalisation intersects with disparities in lesbian, gay and bisexual (LGB) peoples' health and educational outcomes, ability to seek and secure gainful employment and ability to report crimes committed against them to law enforcement.

Kenya's International and Domestic Human Rights Obligations

Due to the vulnerable status of WSW in Kenya, this report also calls on the Kenyan government to commit to its international and domestic human rights obligations toward all its citizens, no matter their sexual orientation(s). Global treaty-monitoring bodies, most notably United Nations (UN) special procedures, have called on state governments to respect, protect and fulfil the human rights of LGB persons. Moreover, in 2010, the United Nations Human Rights Council (UNHRC) explicitly recommended that Kenya decriminalise consensual same-sex sexual conduct in order to protect Kenyan LGB persons from discrimination.[10] Kenya, however, has rejected these guidelines.[11]

Although the UNHCR's recommendations are non-binding under international law, Kenya's refusal to decriminalise its anti-sodomy laws as well as enact comprehensive anti-discrimination protections for sexual minorities violates the state's constitution. The 2010 Kenyan constitution requires the government to recognise human rights entitlements as they are understood in international law, including international customary law.[12] Kenyan state officials therefore have a constitutional responsibility to decriminalise homosexuality and to respect, protect and fulfil LGB persons' human rights.

---

[10] UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya*, 17 June 2010.

[11] Ibid.

[12] Constitution, Art 2§4, 2§5, 2§6 (2010).

II. The Legal Status of Lesbian, Gay and Bisexual (LGB) Populations in Kenya

Criminalisation

The Kenyan government outlaws consensual same-sex sexual conduct among adults under the Cap.63 Penal Code: Sections 162, 163 and 165.[13] Section 165 explicitly makes same-sex sexual conduct between two males, but not two females, a criminal act; however, Section 162 states: "Any person who — a) has carnal knowledge of any person against the order of nature; or b) has carnal knowledge of an animal; is guilty of a felony and is liable to imprisonment for fourteen years".[14] Although the language "any person against the order of nature" is extremely vague and arbitrary, it is understood to mean the criminalisation of consensual sexual conduct between two adults of the same sex.

Criminalisation of consensual same-sex sexual conduct is discriminatory against LGB populations on its face. This is because homosexuality is not a choice: Individuals do not choose their sexualities, but are born with them. Additionally, criminalisation indirectly discriminates against LGB persons by providing legal justification for state officials as well as non-state actors to violate the human rights of LGB Kenyans with impunity.

Negative Attitudes Toward LGB Persons in Kenyan Society and Lawmaking

Kenyan public officials have repeatedly used homophobic rhetoric to demonstrate their support for the country's anti-sodomy laws. One recurring justification for criminalisation among Kenyan lawmakers and political figures is that homosexuality in Africa is a Western import. Former President Daniel Arap Moi once remarked, '[h]omosexuality is against African norms and traditions … Kenya has no room for homosexuals and lesbians'.[15] Most recently, following US President Barack Obama's

---

[13] Ibid. at 5. Cap. 163 and 165.

[14] Ibid. at 5.

[15] "Being Gay in Kenya". *News24*. Accessed 18 August 2013. http://www.news24.com/Africa/Features/Being-gay-in-Kenya-20060222.

July 2013 visit to Senegal where Mr. Obama endorsed LGB peoples' rights, Kenyan Deputy President William Ruto declared at a church service: 'Those who believe in other things, that is their business. We believe in God … President Obama is a powerful man but we trust in God as it is written in the Bible that cursed is the man who puts trust in another man'.[16] At the same time, Kenyan President Uhuru Kenyatta echoed Ruto's reaction to Mr. Obama's support for LGB rights with a similarly vague and religious statement, 'We are a people who submit to and fear God'.[17]

Public officials' support for homophobia reinforces general anti-LGB attitudes in Kenyan society, which are further impacted by religious conservatism. From 2 March to 1 May 2013, Pew Research Center conducted a survey on attitudes toward homosexuality in 39 countries.[18] The survey found that nine out of 10 Kenyans answered "no" to the question, "Should society accept homosexuality?"[19] According to Pew's analysis, there exists a strong correlation between "poorer countries with high levels of religiosity" and low acceptance of homosexuality.[20] Mr. Ruto's and Mr. Kenyatta's statements indicate how religiosity often corresponds with state-sanctioned discrimination against LGB individuals in Kenya.

All the while, Kenya is a secular country. Article 8 of the Kenyan constitution provides that "[t]here shall be no State religion".[21] As a result, not only have Kenyan officials failed to respect democratic secular principles, state leaders have actively used prejudiced and hateful rhetoric in the name of political expediency.

---

[16] Gay and Lesbian Coalition of Kenya. "Press Release: The Value of Life", 14 July 2013. http://galck.org/index.php?option=com_content&view=article&id=233:press-release-the-value-of-a-life&catid=34:news&Itemid=108.

[17] "Barack Obama Endorse Gayism as Uhuru and Ruto Claim Kenya is a Christian Country". *KTN Prime*. Nairobi: Kenya Television Network, 1 July 2013. http://www.standardmedia.co.ke/ktn/video/watch/2000067220/-barack-obama-endorses-gayism-as-uhuru-and-ruto-claim-kenya-is-a-christian-country.

[18] "The Global Divide on Homosexuality". *Pew Global Attitudes Project*, 4 June 2013. http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/.

[19] Ibid.

[20] Ibid.

[21] Constitution, art. 8 (2010).

In addition, religious groups opposed to homosexuality have directly influenced state policy and the enforcement of constitutional protections. Many of these organisations are not even Kenyan in origin. Although Mr. Ruto and Mr. Kenyatta have remarked that intolerance of homosexuality is fuelled by African culture mores, US-based anti-LGB religious organisations have largely contributed to homophobic rhetoric in both Kenyan media and policymaking.[22] For example, in the past few years, the American Center for Law and Justice (ACLJ), an organisation founded on evangelical Christian beliefs, established an East African office in Nairobi with a specific anti-LGB mandate.[23] ACLJ also hired American staff to lobby for a ban on homosexuality as well as to exclude protection on the basis of sexual orientation in Kenya's 2010 constitution.[24] The dedicated involvement of US evangelicals in limiting LGB people's human rights thus indicates that homophobia, not homosexuality, can be thought of as a Western import.

Another irony of the claim that homosexuality is "un-African" deals with the original emergence of criminalisation. British colonial standards, rather than Kenyan customary law, brought anti-sodomy laws to Kenya. Motivated by Victorian moral ideals, in the early part of the 20th Century, colonisers replaced customary criminal law in Kenya, as well as other colonised regions, with English legal norms.[25] Colonial rulers justified anti-sodomy laws under the pretence that non-Western cultures in Commonwealth territories were too sexually liberal. Following independence in 1963, the Kenyan legal system inherited, accepted and applied Sections 162, 163 and 165 of the Penal Code (criminalising same-sex sexual conduct) from the British Legal System.[26] This does not suggest that Kenyan society fully accepted homosexuality before colonisation. At the very least, however, Kenyan attitudes, by lacking criminal penalties, tolerated same-sex sexualities in customary law.

---

[22] Kapya Kaoma. *Colonizing African Values: How the U.S. Christian Right Is Transforming Sexual Politics in Africa*. Political Research Associates, 2012.

[23] Ibid.

[24] Ibid.

[25] Ibid. at 4.

[26] Ibid.

III. Fundamental Human Rights Considerations in Domestic & International Law

Domestic Human Rights Considerations: Kenya's 2010 Constitution

Kenyan LGB peoples' rights are not new rights — they are already enshrined in Kenya's 2010 constitution. Kenyan LGB persons are entitled to, *inter alia*, the right to:

- Life (Art. 26);
- Equality and freedom from discrimination (Art. 27);
- Human dignity (Art. 28);
- Freedom and security of the person (Art. 29);
- Privacy (Art. 31);
- Freedom of expression (Art. 33);
- Access to information (Art. 35);
- Freedom of association (Art. 36);
- Assembly, demonstration, picketing and petition (Art. 37);
- The highest attainable standard of health, which includes the right to health services, including reproductive healthcare (Art. 43[1][a]);
- Education (Art. 43[1][f]);
- Access to justice (Art. 48).

While the Kenyan constitution does not explicitly safeguard the right to non-discrimination on the basis of sexual orientation, judicial interpretation could potentially establish LGB persons as a constitutionally protected group. That is, Article 27§4 of Kenya's constitution guarantees that "[t]he State shall not discriminate directly or indirectly against any person on any ground".[27] These sweeping provisions, which target both *de jure* and *de facto* discrimination, address the concerns of LGB persons.

With respect to the criminalisation of consensual same-sex sexual conduct, the Kenyan Penal Code directly discriminates against LGB populations on the basis of sexual orientation. Criminalisation in turn contributes to indirect discrimination against LGB

[27] Constitution, art. 27§4 (2010).

persons by state officials and third parties. However, because the constitution's non-discrimination provision does not explicitly mention "sexual orientation" as a protected status, judicial interpretation is necessary for establishing whether LGB community members and sexual orientation constitute the "any person" and "on any ground" clauses, respectively. Nevertheless, a plain reading of the Kenyan constitution suggests that it may protect LGB persons' rights to equality and freedom from discrimination.

Another distinguishable feature of the Kenyan constitution bolsters LGB persons' human rights claims further. Kenya's constitution is distinct in that it recognises and protects human rights norms found in international law. Article 2§5 states that "[t]he general rules of international law shall form part of the law of Kenya";[28] Article 2§6 guarantees that "[a]ny treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution".[29] Under Article 2§4, "[a]ny law, including customary law, that is inconsistent with [the] Constitution is void to the extent of the inconsistency, and any act or omission in contravention of [the] Constitution is invalid".[30] In the past 19 years, international human rights treaty-monitoring bodies and procedures have given substantial credence to LGB persons' human rights. The Kenyan government is a State Party to core human rights treaties. Therefore, Kenya's direct and indirect discrimination of LGB persons undermines "general rules of international law".

Moreover, in 2010, following a review of Kenya's human rights record, the UNHRC specifically recommended that Kenya address violations against its LGB citizens. The Kenyan government explicitly rejected the UNHRC's endorsement for LGB persons' international human rights. As a result, the state has violated its own constitution.

---

[28] Constitution, art. 2§5 (2010).

[29] Ibid. Art. 2§6 (2010).

[30] Ibid. Art. 2§4 (2010).

International Human Rights Considerations

Overview of International Human Rights Law

There exist a variety of sources of law that protect LGB persons' human rights. These sources include protections found in international treaties, as interpreted by UN treaty-monitoring bodies. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are three core human rights treaties collectively known as the International Bill of Human Rights.[31] The UDHR, specifically, provides a strong basis for rights protections found in the ICCPR and the ICESCR. Moreover, due to State Parties' widespread accession and ratification of the UDHR, the international community considers the protections found in this treaty to be customary law.[32]

As previously mentioned, the Kenyan constitution protects those human rights norm evoked by customary international law. The Statute of the International Court of Justice defines customary international law in Article 38(1)(b) as "evidence of a general practice accepted as law".[33] In other words, the general practice of states has underscored universal protection of the basic rights and freedoms found in the UDHR.

Global experts have explicitly stated that protections found in the International Bill of Human Rights as well as subsequent core human rights instruments also protect rights to equality and freedom from discrimination, as well as other key liberties, on the basis of sexual orientation.[34] These core treaties include: the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) and the Convention on the Rights of the Child (CRC). Each one of these human rights instruments assigns a

---

[31] UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights,* June 1996, No. 2 (Rev.1).

[32] UN Office of the High Commissioner for Human Rights. "Digital Record of the UDHR", February 2009. http://www.ohchr.org/EN/NEWSEVENTS/Pages/DigitalrecordoftheUDHR.aspx.

[33] United Nations, *Statute of the International Court of Justice*, art. Article 38(1)(b) 18 April 1946.

[34] UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, September 2012, HR/PUB/12/06.

treaty-monitoring body, comprised of international specialists in human rights norms, with the task of interpreting the meanings of the various treaties as well as determining State Parties' obligations to the agreements.

Treaty-monitoring bodies enforce and interpret protections found in international human rights treaties by regularly evaluating each State Party's compliance with a particular treaty. Committees then issue their assessments of State Parties in the form of Concluding Observations. In addition, treaty-monitoring bodies routinely offer guidance for state compliance in documents known as General Comments and Recommendations. Finally, certain treaties, including ICESCR, ICCPR, CEDAW, CRC and CAT, are associated with "Optional Protocols". Optional Protocols allow citizens of State Parties to submit individual complaints to a committee of experts. The committee then analyses whether a State Party has violated the aspects of a treaty dependent on the complainant's specific concerns.

In 2006, following UN General Assembly (UNGA) Resolution 60/251, a distinct human rights monitoring mechanism known as the UN Human Rights Council (UNHRC) came into force.[35] The UNHRC is an intergovernmental body comprised of 47 States that uses mechanisms known as "Special Procedures" to assess and protect universally recognised human rights.[36] The UNGA elects Member States to serve on the UNHRC for a maximum of two consecutive three-year terms. Moreover, the UNGA selects seats that are proportional to the UN's regional groups: Africa (13 seats); Asia (13); Eastern Europe (six); Latin America and the Caribbean (eight); and Western Europe and Others (seven).[37] Among other tasks, the HRC's chief duties include routinely evaluating each UN Member State for its compliance and non-compliance with core human rights treaties through a process known as the Universal Periodic Review (UPR). The UNHRC also adopts resolutions in response to concerns over serious violations.

Certain UNHRC Member States, during Kenya's first UPR in 2010, explicitly called on the Kenyan government to address a number of human rights concerns which

---

[35] UN General Assembly, *Human Rights Council : resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251.

[36] Ibid.

[37] Ibid.

Kenya directly rejected. Kenya's dismissal of the UNHRC's recommendations to decriminalise homosexuality and to secure non-discrimination protections for LGB persons is in outright violation of Kenya's constitution. Kenya has acceded to core international human rights instruments, including ICCPR, ICESCR, CEDAW, CAT and CRC. The state has thus voluntarily bound itself to the terms of these treaties. Moreover, by providing constitutional protection for the aspects of these treaties, Kenyan officials are obligated to protect LGB persons' rights as determined in international human rights law.

LGB Persons' Rights as International Human Rights

In July 2013, the UN Office for the High Commissioner for Human Rights (UNOHCHR) unveiled its "Free and Equal" campaign, the largest global public education campaign affirming lesbian, gay, bisexual and transgender (LGBT) and intersex peoples' human rights in international law.[38] Free and Equal acquired its name from Article 1 of the UDHR: "All human beings are born free and equal in dignity and human rights".[39] The campaign follows almost 20 years of international recognition for equality on the basis of sexual orientation and gender identity (SOGI).

Since 1994, UN institutions and interpreters of international law have confirmed their explicit support for LGB persons' human rights. World leaders such as Navi Pillay, the UN High Commissioner for Human Rights and Ban Ki-moon, the UN Secretary-General, have affirmed LGB people's rights within the meaning of international human rights law and the UN Charter.[40] In addition, global human rights considerations by various UN human rights treaty-monitoring bodies and Special Procedures (including Special Rapporteurs), have declared that international human rights norms support equality for LGB persons.[41] Moreover, in June 2011, the UNHRC adopted Resolution 17/19, which conveyed "grave concern" at violence and discrimination against sexual and

---

[38] UN Nations Office of the High Commissioner for Human Rights. "UN Free & Equal: About Us", 2013. https://www.unfe.org/en/about.

[39] Ibid.

[40] Ibid.

[41] Ibid. at 35.

gender minorities.[42] This unprecedented action culminated in the UNOHCHR's first official report detailing and condemning rights violations against LGBT and intersex persons.[43] There is no question then that Kenya's anti-sodomy laws are directly incompatible with international norms and therefore with the Kenyan constitution.

UN Special Rapporteurs

UN Special Rapporteurs are individual experts who work under the Special Procedures mechanism of the UNHRC. The UNHRC mandates Special Rapporteurs by country or theme to investigate and report allegations of human rights violations. The Special Rapporteur on extrajudicial, summary or arbitrary executions has consistently underscored concerns for documented killings of LGB persons.[44] Moreover, the Rapporteur has called on governments to combat homophobia by enacting "policies and programmes geared towards overcoming hatred and prejudice against homosexuals and sensitising public officials and the general public to crimes and acts of violence directed against members of sexual minorities".[45]

The Special Rapporteur on violence against women has also brought attention to sexual violence faced by WSW. Following visits to El Salvador, Kyrgyzstan and South Africa, the Rapporteur wrote that "lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths", including "for instance, that lesbian women would change their sexual orientation if they are raped by a man", also known as "corrective rape".[46] Next, the Special Rapporteur on health has noted that "[s]anctioned punishment by States reinforces existing prejudices,

---

[42] UN Human Rights Council, *Human rights, sexual orientation and gender identity : resolution / adopted by the Human Rights Council*, 14 July 2011, A/HRC/RES/17/19.

[43] Ibid. at 35.

[44] *Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions*: E/CN.4/1999/39,at para. 76; E/CN.4/1999/39, at para. 76; E/CN.4/2000/3, at para. 54; E/CN.4/2001/9 at para. 48; E/CN. 4/2002/74, at para. 62; A/57/138, at para. 38; E/CN.4/2003/3, at para. 66; A/59/319, at para. 60; A/HRC/ 4/20 and Add.1; A/HRC/4/29/Add.2; A/HRC/11/2/Add.7; A/HRC/14/24/ Add.2; and A/HRC/17/28/Add.1.

[45] *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (E/CN.4/2000/3), at para. 116.

[46] *Report of the Special Rapporteur on violence against women* (A/HRC/4/34/Add.1), at paras. 632-633.

and [legitimises] community violence and police brutality".[47] In addition, the Special Rapporteur on torture has brought attention to abuses faced by sexual minorities, particularly those who have been victimised by the police after reporting crimes.[48]

Human Rights Committee (HRC)

The HRC, the treaty-monitoring body for the International Covenant on Civil and Political Rights (ICCPR), has repeatedly held that the criminalisation of homosexuality violates fundamental rights and freedoms. In the landmark complaint *Toonen v. Australia*, the HRC found that Tasmania's anti-sodomy law interfered with Nicholas Toonen's right to privacy.[49] The HRC also concluded that the mentioning of "sex" in Article 26 (right to non-discrimination) of the ICCPR could be interpreted to mean sexual orientation since anti-sodomy laws criminalise activity on the basis of the sex of two individuals.[50] Following the *Toonen* ruling, the HRC, in its Concluding Observations, has frequently welcomed non-discrimination legislation for LGBT persons.[51]

Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR is tasked with interpreting and enforcing the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has specifically called attention to violations against individuals on the basis of sexual orientation in several of its General Comments.[52] In *General Comment No. 18 (The Right to Work)*, for example, the CESCR

---

[47] *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* (A/HRC/14/20), at para. 20.

[48] *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (E/CN.4/2002/76/Add.1), at para. 16.

[49] *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994.

[50] Ibid.

[51] *Concluding observations of the Human Rights Committee on Greece* (CCPR/CO /83/GRC), at para. 5; Finland (CCPR/CO/82/FIN), at para. 3; *Slovakia* (CCPR/CO/78/SVK), at para. 4; *Sweden* (CCPR/C/SWE/CO/6), at para. 3; *Denmark* (CCPR/C/DNK/CO/5), at para. 4; *France* (CCPR/C/FRA/CO/4).

[52] Committee on Economic, Social and Cultural Rights, *General Comments No. 20* (*Non-discrimination in economic, social and cultural rights)*, at para. 32; *No. 19 (Right to social security)*, at para. 29; *No. 18 (Right to work)*, at para. 12(b); *No. 15 (Right to water)*, at para. 13; *No. 14 (Right to the highest attainable standard of health)*, at para. 18.

has stated that the ICESCR "prohibits discrimination in access to and maintenance of employment on grounds of … sexual orientation".[53]

Committee on the Elimination of all forms of Discrimination Against Women (CEDAW)

The CEDAW, the treaty-monitoring body for the Convention on the Elimination of all forms of Discrimination Against Women, has cited grave concern for deleterious violations against WSW. In *General Recommendation No. 27 (on Older Women and Protection of their Human Rights)*, the CEDAW included sexual orientation as a distinct factor in violations against older women.[54] Again, in *General Recommendation No. 28 (on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women)*, the CEDAW included SOGI as protected factors for non-discrimination.[55] Moreover, in its 2010 Concluding Observations on Uganda, the CEDAW expressed "[s]erious concern about reported harassment, violence, hate crimes and incitement of hatred against women on account of their sexual orientation and gender identity. The Committee [was] further concerned that they face discrimination in employment, health care, education and other fields".[56]

Committee on the Rights of the Child (CRC)

The CRC monitors compliance with the Convention on the Rights of the Child. It has repeatedly expressed concern for homophobic discrimination in schools, such as the perpetration of bullying, suspension and even expulsion on the basis of SOGI. Moreover, the HRC, CESCR and CRC have all drawn attention to prejudice and homophobia in

---

[53] Committee on Economic, Social and Cultural Rights, *General Comment No. 18 (Right to work)*, at para. 12.

[54] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 27 (on older women and the protection of their rights)*, at para. 13.

[55] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 (on the core obligations of States parties under article 2)*, at para. 18.

[56] *Concluding observations of the Committee on the Elimination of Discrimination against Women on Uganda* (CEDAW/C/UGA/CO/7), at paras. 43-44.

schools, and how the lack of efforts by state authorities to address these concerns interferes with LGBT persons' rights to education and freedom from discrimination.[57]

[57] *Concluding observations of the Human Rights Committee on Mexico* (CCPR/C/MEX/ CO/5), para. 21; *concluding observations of the Committee on Economic, Social and Cultural Rights on Poland* (E/C.12/ POL/CO/5), paras. 12-13; and *Committee on the Rights of the Child General Comments No. 3* (CRC/GC/ 2003/3), para. 8; No. 13 (CRC/C/GC/13), paras. 60 and 72 (g); *Committee's concluding observations on New Zealand* (CRC/C/NZL/CO/3-4), para. 25; *Slovakia* (CRC/C/SVK/CO/2), paras. 27-28; and *Malaysia* (CRC/C/MYS/CO/1), para. 31.

Kenya's Defiance of International Human Rights Recommendations

During Kenya's UPR in 2010, certain State Parties of the UNHRC demonstrated significant interest in the Kenyan government's criminalisation of consensual same-sex sexual conduct between adults. For example, Belgium, Czech Republic and the Netherlands all submitted advance questions to Kenya asking what steps, if any, the state would take to address discrimination against — as well as criminalisation of — LGB populations.[58] Kenya did not address these questions in its National Report.[59]

The report of the Working Group on the UPR also brought attention to criminalisation. It mentioned: "With regard to same-sex relationships, there had been serious intolerance because of cultural beliefs and overwhelming opposition to the decriminalisation of such relationships".[60] The report acknowledged, however, that Kenya's government "did not support discrimination in terms of access to services".[61]

Nevertheless, State Parties urged Kenya to: "Take concrete steps to provide for the protection and equal treatment of lesbian, gay, bisexual and transgender persons" (Netherlands); "decriminalise same-sex activity between consenting adults" (Czech Republic); "repeal all legislative provisions which criminalise sexual activity between consenting adults" (United States of America); "decriminalise homosexuality by abrogating the legal provisions currently punishing sexual relations between consenting individuals of the same sex and subscribe to the December 2008 General Assembly Declaration on sexual orientation and human rights" (France).[62]

---

[58] UN Office of the High Commissioner for Human Rights, "Advance Questions", http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KE/kenya.pdf; "Advance Questions, Addendum 2", http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KE/kenyaAdd.2.pdf.

[59] UN Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 : [Universal Periodic Review] : Kenya*, 22 February 2010, A/HRC/WG.6/8/KEN/1.

[60] UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya*, 17 June 2010, A/HRC/15/8, at para. 62.

[61] Ibid., at para. 50

[62] Ibid., at para. 103(5).

In response, the Kenyan government explicitly rejected these recommendations, arguing that "same-sex unions were culturally unacceptable in Kenya".[63] Geoffrey Kibara, Kenyan Secretary of Justice and Constitutional Affairs, specifically stated the following:

> 'One, there has been a serious intolerance to homosexual relationships in the country because of cultural beliefs. In fact, these relationships are considered taboo in Kenya. The only way we see these being accepted would be over the long term if there are cultural changes. But currently there is serious opposition to decriminalising same-sex relationships. In fact, during the constitution-making process, public views were received on this and they were overwhelmingly towards continuing the current criminalisation of same-sex relationships. But we also want to state that as a government, we do not support discrimination on people who practice same-sex relationships. Discrimination whether in terms of access to services is expressly outlawed, particularly with regard to access to HIV/AIDS prevention and support facilities. The law that is HIV and AIDS Prevention and Control Act of 2006 expressly prohibits any discrimination towards same-sex relationships or people on the basis of their sexual orientation'.[64]

Secretary Kibara's deflection to low public opinion for LGB persons during the constitution-making process before an international human rights body is ironic in that the Kenyan constitution specifically states that "[t]he general rules of international law shall form part of the law of Kenya".[65] Moreover, the Secretary's statement that "the government" does not "support discrimination" against LGB persons conflicts with homophobic sentiments issued by Kenyan politicians. Through their rhetoric on the LGB population, state leaders have routinely submitted to the public that hatred against LGB persons is justified and tolerated by the law. Moreover, the HIV and AIDS Prevention and Control Act of 2006 does not, as Secretary Kibara suggested, "expressly [prohibit] any discrimination" against LGB persons. Rather, the act only protects individuals from discrimination on the basis of HIV status.[66] Furthermore, even if the government may not support discrimination against LGB persons, it has done little to address widespread abuse against sexual minorities in the workplace, at schools, at the hands of family members and by law enforcement.

---

[63] Ibid. at 61, para. 108.

[64] UN Human Rights Council, Eighth Universal Periodic Review, 7th Plenary Meeting, *Comments and Answers by Kenya*, 6 May 2010.

[65] Ibid. at 29.

[66] HIV and AIDS Prevention and Control Act of 2006 (2012).

Regional Human Rights Considerations

The African Commission on Human and Peoples' Rights

In 1992, Kenya acceded to the African Charter on Human and Peoples' Rights, a regional instrument that protects fundamental human rights for citizens of State Parties.[67] The Charter provides for an enforcement mechanism known as the African Commission on Human and Peoples' Rights (ACHPR).[68] Members of the ACHPR promote, protect and interpret human rights considerations in the Charter by submitting recommendations to African heads of state. These recommendations are non-binding; however, in 1998, African Union (AU) Member States adopted the Protocol on the Establishment of an African Court on Human and Peoples' Rights (AfCHPR).

The AfCHPR considers complaints from alleged victims of human rights abuses who are citizens of State Parties to the Protocol.[69] Moreover, the AfCHPR, unlike the ACHPR, issues final and binding decisions on State Parties. Kenya is a State Party to the AfCHPR and its attorney general has offered its support to a fully functional court.[70] However, Kenya has so far not fully committed to offering Kenyan women all of the protections afforded by the AfCHPR.

Ten years ago, the AfCHPR also gained the authority to interpret stronger protections for African women's human rights. In 2003, the AU adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol.[71] This agreement offers entitlements that help ensure gender equality, such as respecting and protecting women's human rights to

---

[67] African Commission on Human and Peoples' Rights. "Ratification Table / African Charter on Human and Peoples' Rights / Legal Instruments / ACHPR". http://www.achpr.org/instruments/achpr/ratification/.

[68] Organisation of African Unity, *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 30.

[69] Organisation of African Unity, *Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights*, 10 June 1998.

[70] "Muigai: Kenya Will Support the African Court". *News 24*. 18 July 2013. http://m.news24.com/kenya/MyNews24/Muigai-Kenya-will-support-the-African-Court-20130718.

[71] African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003.

dignity, access to reproductive health services (including access to safe abortion) and freedom from discrimination, among other considerations. Kenya has signed, but not yet ratified, the Maputo Protocol.[72]

Nevertheless, Kenya upholds the Charter's obligations in its constitution. Although the Charter does not explicitly include sexual minorities in its non-discrimination provisions, the Charter does prohibit discrimination based on "other status".[73] Moreover, in its *Concluding Observations* to Cameroon, the ACHPR expressed concern about "intolerance towards sexual minorities".[74] At the same time, however, the ACHPR has refused to grant observer status to the Coalition of African Lesbians.[75] Nevertheless, there are promising opportunities at the regional level for the ACHPR or AfCHPR to interpret non-discrimination on the basis of sexual orientation within the meaning of the Charter.

---

[72] African Commission on Human and Peoples' Rights. "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa / Legal Instruments / ACHPR". Accessed 18 August 2013. http://www.achpr.org/instruments/women-protocol/.

[73] Ibid. at 67, art. 2.

[74] African Commission on Human and Peoples' Rights, *Concluding Observations and Recommendations on the Periodic Report of the Republic of Cameroon*, 11– 25 May, 2005, para. 14, ACHPR, 39th Ordinary Sess.

[75] "African Commission Rejects Coalition of African Lesbians' Application". *Daily Observer.* 11 November 2010.http://observer.gm/africa/gambia/article/african-commission-rejects-coalition-of-african-lesbians-application.

Current Legal Challenges

The enforcement of the "Sexual Offences Act" against one gay male living in Kenya has opened the door for judicial interpretation concerning the question of LGB individuals' constitutionally protected status. In 2006, the Kenyan legislature passed a bill known as the "Sexual Offences Act" which establishes methods to prevent and protect persons from illegal sexual acts, including sexual violence and abuse against both adults and children as well as sexual harassment, child trafficking, child prostitution and other "indecent acts".[76] Although the Sexual Offences Act does not explicitly prohibit consensual same-sex sexual conduct between adults, Kenyan authorities have used the law to criminalise a gay man living in Kenya.

In September 2012, Kenyan authorities charged Ian Castleman, an Australian missionary residing in Nakuru County, with "child sex offences" for having sex with two adult men who once lived in Castleman's orphanage.[77] Castleman faces a minimum 10-year sentence in jail. He has filed a petition to the Kenyan High Court, arguing that the criminal charges constitute discrimination based on sexual orientation. Specifically, Castleman's defence points to the incompatibility between Kenya's criminalisation of consensual same-sex sexual conduct and international human rights law. The case is currently awaiting judicial interpretation.

---

[76] Sexual Offences Act: No. 3 of 2006 (2006).

[77] "Australian Missionary Unlikely Gay Rights Champion in Kenya", *ABC*. 30 May 2013. http://www.abc.net.au/am/content/2013/s3770620.htm.

IV. Key Findings: Baseline Study of WSW in Kenya

Introduction

From June 2012 to November 2012, MWA collected baseline data from Kenyan WSW living in Nairobi, Mombasa and Kisumu — Kenya's three most populous cities. The aim of the study was to better understand the interrelation between criminalisation and urban WSW's socio-demographic factors, sexual, reproductive and mental health concerns and experiences with discrimination and violence. This section of the report will discuss findings from the baseline survey in order to demonstrate important human rights and public health considerations for urban Kenyan WSW.

Data from the baseline survey indicates how the Kenyan government has failed to respect, protect and fulfil the human rights of one of its most marginalised groups of citizens. To begin, this report presents both quantitative and qualitative data concerning the sexual, reproductive and mental health as well as financial status of urban Kenyan WSW. In particular, data from this study sheds light on the circumstances of those Kenyan WSW and girls who have faced discriminatory dismissal from the workplace and/or school. Furthermore, the survey details urban Kenyan WSW's experiences with violence, abuse and threats at the hands of family members and other third parties. Finally, this study demonstrates that Kenyan officials have ignored the need to sensitise police officers to the concerns of WSW who are subjected to persecution, violence and threats due to their sexual orientation and/or gender expression.

In addition to collecting baseline data from Kenyan WSW, MWA also interviewed sexual and reproductive health providers in Kisumu and Nairobi in order to establish practitioners' attitudes toward actual or potential WSW patients.

Methodology

MWA investigated the status of Kenyan WSW living in Nairobi, Mombasa and Kisumu due to our organisation's contacts with local lesbian and bisexual advocacy groups in these cities. Our partners (Women Working with Women in Kisumu and

PEMA-Kenya in Mombasa) recruited voluntary interviewees among their members. In addition, MWA approached health providers in both Kisumu and Nairobi and requested interviews.

MWA and its partner organisations interviewed 300 WSW aged between 18 to 55 years who reside within and around Nairobi, Mombasa and Kisumu. The study utilised a community-based cross-sectional survey employing quantitative and qualitative data collection methods. A trained research assistant developed pre-tested semi-structured questionnaires for data collection. Interviewers were recruited from the study area's respective cities and received three days of intensive training on the data collection instruments and their administration. The chosen language was English. Research instruments examined respondents' socio-demographic characteristics, sexual and reproductive health history, financial status, mental health and experiences with discrimination and violence. Trained data collectors used the same set of questions in each city and personally interviewed each respondent.

Research assistants then coded, entered and analysed data using Microsoft Excel. From the original 300 disseminated surveys, seven WSW questionnaires that were incomplete or missing data were excluded from the findings. Data was separately analysed for each city. In total, the following numbers of WSW surveys were accepted from each study area: Nairobi (100); Mombasa (108); Kisumu (85). For the health care providers data, all 15 surveys were accepted from Kisumu and all eight surveys were accepted from Nairobi.

Socio-Demographic Data

Age and Relationship Status

Almost eight out of 10 respondents from Nairobi, Mombasa and Kisumu were 18-29 years old. The majority of women in all three cities were in committed relationships. In Mombasa, nine per cent of women were married; in both Nairobi and Kisumu, five per cent of women were married.

Educational Attainment

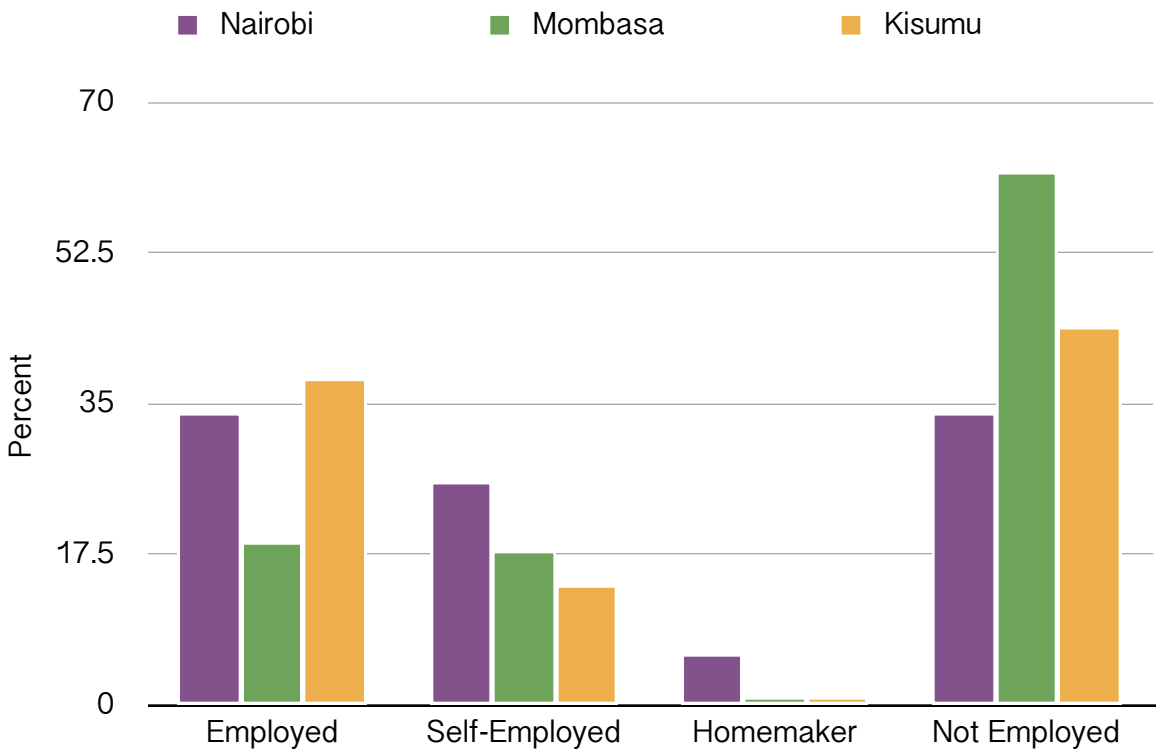
The highest achieved education levels of urban WSW included primary school, secondary school, college diploma/certificate, Bachelor's degree and Master's degree. On average, urban Kenyan WSW were highly educated compared to the national population. Among the three study areas, WSW from Nairobi were more likely to have earned a post-secondary degree. In Nairobi, 43 per cent of respondents had earned a college diploma/certificate, 31 per cent had earned a Bachelor's Degree, 17 per cent had finished secondary school, seven per cent had gone no further than primary school and one per cent had earned a Master's degree. In Mombasa, 55 per cent of respondents had earned a college diploma/certificate but only 10 per cent had earned a Bachelor's degree. Moreover, 28 per cent of WSW in Mombasa had finished secondary school while five per cent had finished primary school and one per cent had earned a Master's degree. WSW from Kisumu were least likely among the three populations to have earned a college certificate or degree. About 31 per cent of Kisumu respondents had earned a college diploma/certificate, 14 per cent had earned a Bachelor's degree, 45 per cent had finished secondary school and seven per cent had only completed primary school.

Economic Status

WSW in all three cities were likely to be unemployed and to earn less than 10,000 Kenyan shillings ($114) per month before taxes. In Nairobi, 34 per cent of WSW

respondents were unemployed; 49 per cent earned less than 10,000 Kenyan shillings per month. WSW respondents from Mombasa had the least stable source of income: 62 per cent were unemployed and 44 per cent earned less than 10,000 Kenyan shillings per month. In Kisumu, 38 per cent of WSW were unemployed and 29 per cent earned less than 10,000 Kenyan shillings per month.

Fig. 1: Employment Status of WSW in Nairobi, Mombasa and Kisumu



Sexual and Reproductive Health

Experiences with Health Providers

WSW respondents were asked to explain their experiences when seeking health care services from either a primary physician or a gynaecologist. In both Nairobi and Mombasa, one out of four WSW had never visited a physician. Moreover, 58 per cent in Nairobi had last visited a doctor or gynaecologist in the past one to two years (65 per cent Mombasa) and 14 per cent of Nairobi WSW and 10 per cent of Mombasa WSW had last visited a doctor or gynaecologist more than two years ago. WSW from Kisumu were

most likely to have seen a physician in the past one to two years (69 per cent). However, 13 per cent had never visited a doctor.

It is likely that many urban WSW had never seen a physician because most were young, and therefore more likely to be in good health. Moreover, it is possible that these WSW sought healthcare services from other types of practitioners, such as nurses, clinicians and community health workers. However, WSW respondents who did see physicians often cited fears surrounding discrimination and criminalisation. Of the Kisumu and Mombasa respondents who had ever visited a primary doctor or gynaecologist, three out of four indicated they could not talk openly with their physicians about their sexualities. In Nairobi, only 34 per cent of respondents who had ever seen a doctor were able to talk openly. Common reasons issued by WSW for hiding their sexualities included fear of discrimination by hospital staff:

> **'Due to the fear of not being given the check up I needed due to my sexual orientation'.** (Nairobi)
>
> **'I was afraid of the treatment I would get from the hospital staff'.** (Nairobi)
>
> **'I don't think they would have accepted to treat me due to my sexuality'.** (Nairobi)
>
> **'I don't want to be discriminated against'.** (Kisumu)
>
> **'I did not think the doctor would understand'.** (Mombasa)
>
> **'I was afraid of being judged. I feared the doctor's reaction'.** (Mombasa)

Respondents who felt they could not speak openly also feared that their doctors would breach their patients' confidentiality:

> **'I was afraid of my doctor telling my parents because we all go to the same hospital'.** (Nairobi)
>
> **'They (my family) can't know I'm bisexual because we have a family doctor'.** (Kisumu)

However, for WSW who did talk openly about their sexualities, almost all described positive experiences:

> **'It was amazing. She was not homophobic'.** (Nairobi)
>
> **'The hospital I go to has friendly staff and they are not discriminative'.** (Nairobi)

'The doctor who was from CDC Kemri was friendly and nice and knew of the existence of lesbians in Kisumu'. (Kisumu)

'Yes (I had a positive experience), because the person I was seeing was also a lesbian'. (Kisumu)

'He (the doctor) understood and made me feel free'. (Kisumu)

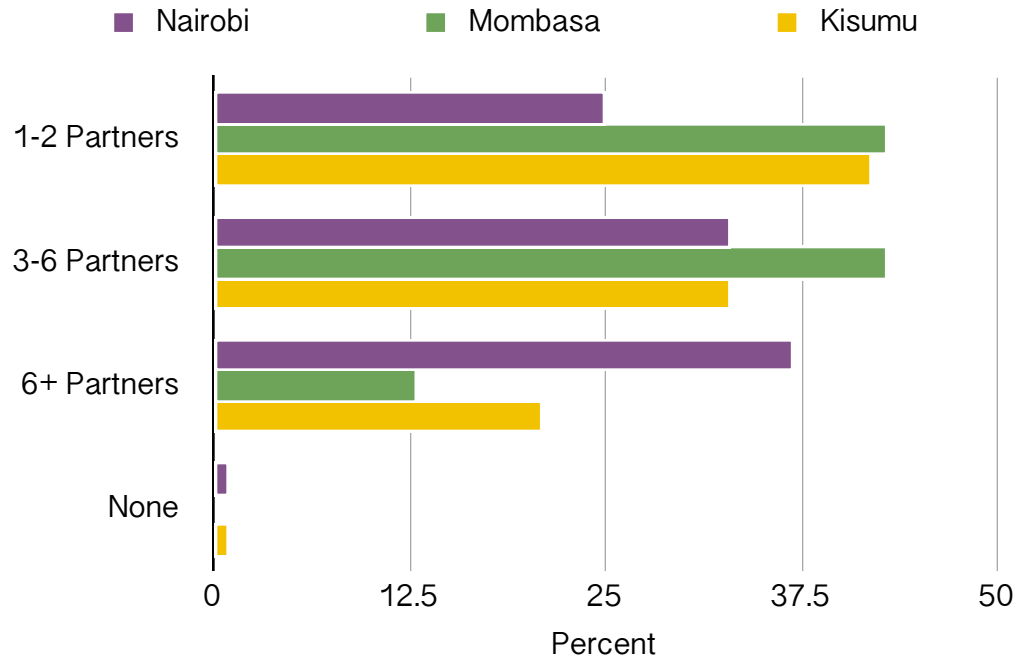
'She was understanding because she is my family doctor and a good friend. We share everything. I got more teaching on being safe with my body'. (Mombasa)

The fact that most WSW respondents who were "out" to their doctors described positive experiences supports MWA's findings from interviews with 23 sexual and reproductive health providers' in Kisumu and Nairobi. Almost all providers showed positive attitudes toward WSW. All were willing to learn more about health concerns for lesbian and bisexual patients, although most were unfamiliar with or had little knowledge of what these concerns might be.

Sexual Partners

Many WSW indicated that they had had both male and female sexual partners in the past three years. About 45 per cent of respondents from Nairobi and Mombasa, and 27 per cent of respondents from Kisumu, had at least one male sexual partner in the past three years. The majority of respondents, however, had only female sexual partners in the past three years. Kenyan WSW demonstrated that they often have multiple female partners, although many are relatively monogamous.

Fig. 2: Number of Female Sexual Partners Among WSW in Nairobi, Mombasa and Kisumu



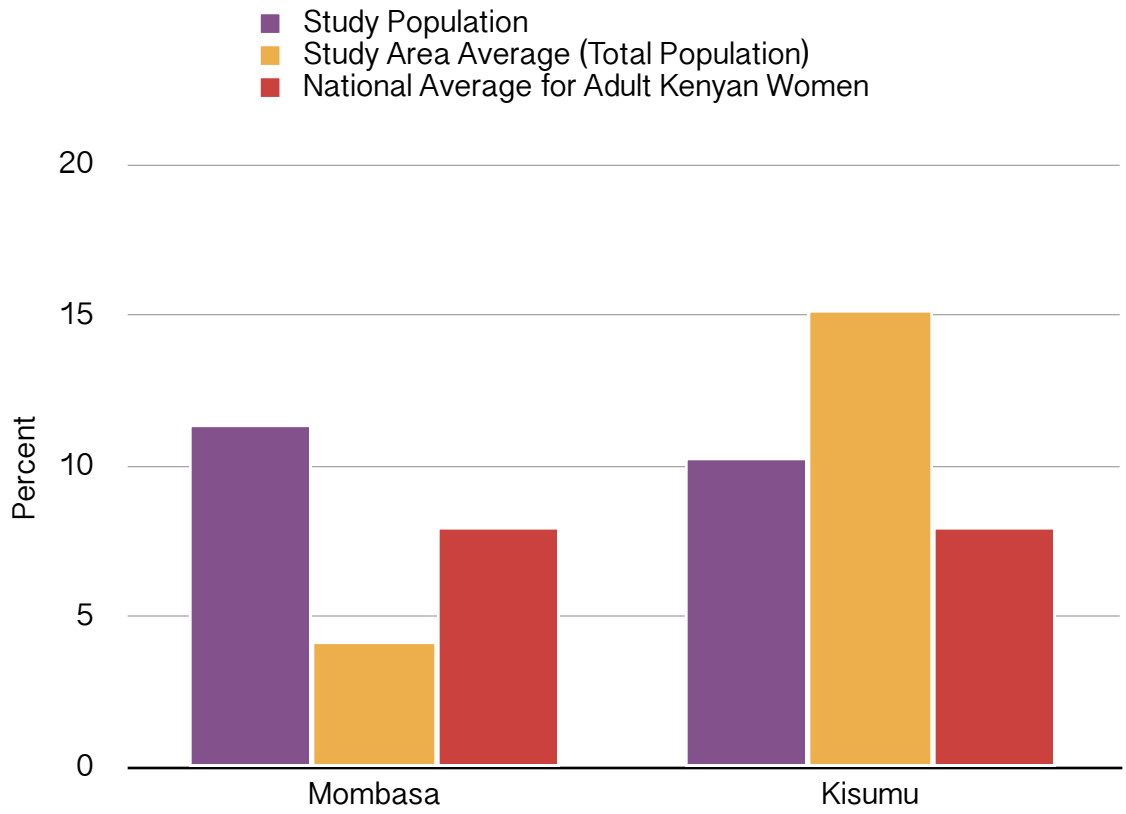
HIV/AIDS

The majority of WSW sought HIV testing within the past year. In both Nairobi and Kisumu, about seven out of 10 respondents were tested for HIV within the past year; one out of five were tested two years ago. In Mombasa, 60 per cent sought HIV testing within the past year; 21 per cent were tested two years ago; and 13 per cent had never been tested. More than eight out of 10 women from Mombasa and Kisumu indicated that they were not tested with a partner. However, in Nairobi, 38 per cent of WSW did get tested with a partner.

While only three per cent of WSW from Nairobi tested positively for HIV, infection rates in Mombasa and Kisumu were much higher than not only rates in Nairobi but also the national average for adult women. In Mombasa, more than 11 per cent of WSW tested positively for HIV. In Kisumu, more than 10 per cent tested positively. According to the Kenya National Bureau of Statistics, in 2010, the average HIV

prevalence rate for adult women aged 15-64 was eight per cent.[78] The general HIV prevalence rate in the Coastal region (where Mombasa is located) is even lower than the national average, standing at 4.2 per cent.[79] However, HIV prevalence in Kisumu WSW appear to be lower than the study area average. One study of HIV prevalence in Nyanza Province, for which Kisumu is the capital, found that HIV prevalence was 15.4 per cent overall and 20.5 per cent among females.[80]

Fig. 3: HIV Prevalence Rate Among WSW in Mombasa and Kisumu



[78] Kenya National Bureau of Statistics, ICF Macro (2010). *Kenya Demographic and Health Survey 2008–09*. Calverton, Maryland (USA): Kenya National Bureau of Statistics, ICF Macro.

[79] Martin Mwita. "Kenya: Counselling, Testing Bring Down Rate of HIV Infection", *The Star (Nairobi)*, 16 May 2013. http://allafrica.com/stories/201305170367.html.

[80] Pauli N. Amornkul, et al. "HIV Prevalence and Associated Risk Factors Among Individuals Aged 13-34 Years in Rural Western Kenya." *PLoS ONE* 4, no. 7 (July 31, 2009).

While most HIV-positive WSW had had both male and female sexual partners in the past three years, there were two exceptions. Two women in Kisumu who tested HIV-positive within the last 12 months indicated that they had one to two and three to six female partners, respectively, in the past three years and no male partners in the past three years. It is unclear whether these WSW contracted HIV from female or male partners or through other means, such as intravenous drug use and sexual violence.

Safer Sex Practices

Of the 45 women in Nairobi who had male sexual partners in the past three years, more than 31 per cent stated that they did not use condoms. In Mombasa and Kisumu, 90 per cent and 48 per cent of respondents who had sex with men used condoms, respectively. Of the HIV-positive WSW from Kisumu who reported having both female and male partners in the past three years, only one-third used condoms with male partners. All HIV-positive WSW from Mombasa, however, reported that they used condoms with male partners.

Respondents noted that they did not generally use barrier mechanisms (such as dental dams or condoms for sex toys) with female sexual partners. Only 31 per cent in Nairobi, 23 per cent in Mombasa and 5 per cent in Kisumu used safety measures with female partners. None of the HIV-positive Kisumu WSW used barriers or safety measures with female partners. Nine out of ten HIV-positive WSW in Mombasa did not use safety measures with female partners. In addition, many WSW were not in monogamous relationships: 50 per cent in Nairobi, 45 per cent in Mombasa and 95 per cent in Kisumu stated that they were not having sex with a faithful partner.

Abortion

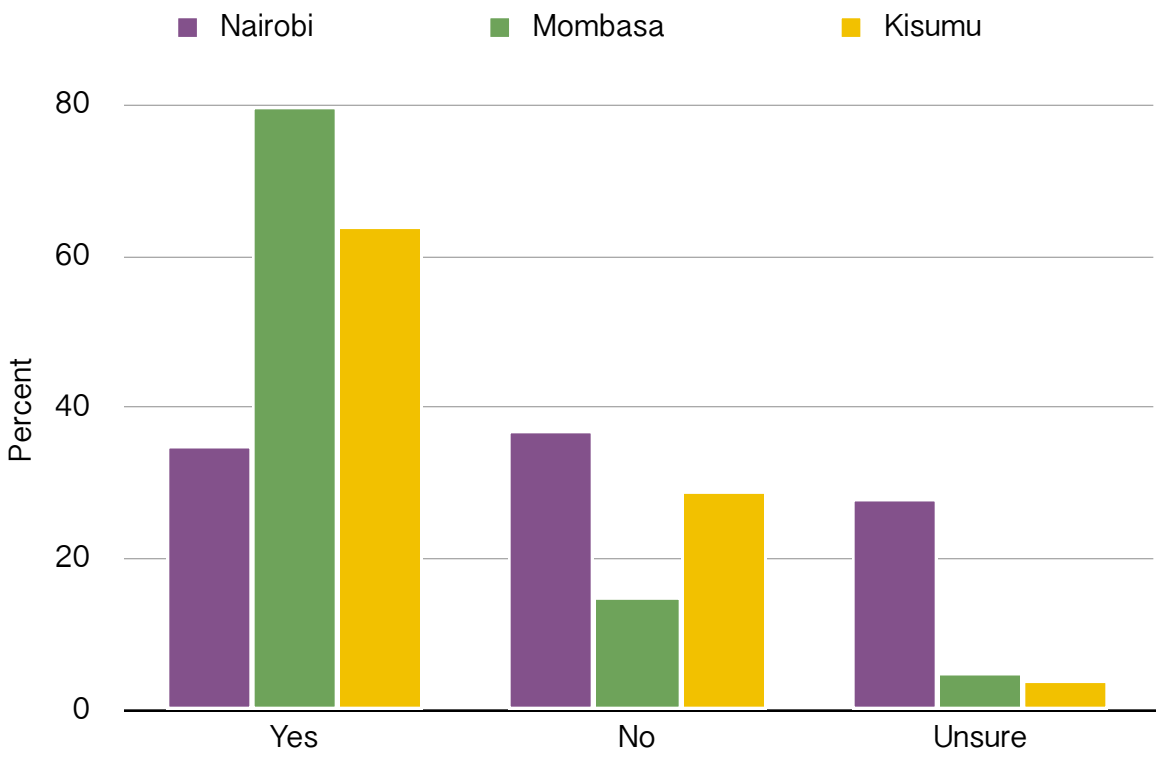
A number of WSW respondents indicated that they had procured abortions. In Nairobi, 11 per cent of WSW stated they had ever procured an abortion. Only seven per cent of Kisumu WSW had ever procured an abortion. However, in Mombasa, more than one-fifth of WSW had ever procured an abortion.

Mental Health

Experiences with Depression, Stress and Low Self-Esteem

A large number of WSW revealed they often have feelings of depression, stress and low self-esteem. In Nairobi, 35 per cent of WSW indicated they struggled with these factors. In Mombasa and Kisumu, where there are fewer WSW organisations and support systems, these numbers were higher (80 per cent in Mombasa; 64 per cent in Kisumu). Out of the total number of respondents who indicated they had feelings of depression, stress and low self-esteem as well as for WSW who were unsure whether they had these feelings, many attributed the state of their mental health to their sexual orientation or gender identity (42 per cent in Nairobi; 25 per cent in Mombasa; 23 per cent in Kisumu). WSW respondents were allowed to indicate more than one reason for depression, stress and low self-esteem.

Fig. 4: WSW in Nairobi, Mombasa and Kisumu Who Have Feelings of Depression, Stress and Low Self-Esteem



Other common reasons for WSW's depression, stress and low self-esteem included poor finances, lack of a job, stress from work and problems with an intimate relationship (either family or girlfriend). In Nairobi, 23 per cent and 32 per cent of WSW attributed depression, stress and low self-esteem to lack of a job and poor finances, respectively. These figures were 21.3 per cent (lack of a job) and 43.5 per cent (poor finances) in Mombasa. For Kisumu, the results were 14 per cent for each response.

In Nairobi and Mombasa, many WSW turned to marijuana and cigarettes to cope with stress and depression. Of WSW in Nairobi, 34 per cent said they smoke one pack of cigarettes per day. In Mombasa, 11 per cent of respondents noted that they smoke at least one pack of cigarettes per day. In addition, 28 per cent of WSW in Nairobi smoke one or more joints of marijuana per day. While few WSW in Kenya stated they used hard drugs, this may be an avenue for future research. In addition, there is a need for additional studies on Kenyan WSW's alcohol usage.

Moreover, WSW commonly cited that criminalisation of consensual same-sex sexual conduct in Kenya caused them a great amount of anxiety and depression because it inhibited their desire to form a family. When asked about specific causes of their anxiety, some WSW indicated concerns about reconciling their wish to form a family with the threat of criminalisation:

> **'I don't know how I will get a child'.** (Mombasa)
>
> **'Commitment in the future with a partner due to the fact that gay marriage is still not legal'.** (Mombasa)
>
> **'Raising a family'.** (Mombasa)

Other WSW attributed their poor mental health to fear of being subjected to stigma and discrimination if they were to come out. One woman from Kisumu who suffers from depression said **'the fact that you are practicing lesbianism and no one is fine with that culturally'** gives her constant stress. Another, also from Kisumu, mentioned **'the thought of one day coming out to my parents'** causes her much mental anguish.

Discrimination and Violence

Family Discrimination

Many WSW in Kenya said that they did not have a supporting family or family member who know(s) about their sexual orientation and gender identity. Approximately 57 per cent in Nairobi, 40 per cent in Mombasa and 61 per cent in Kisumu mentioned that they are "out" to at least one family member. Most WSW who specified which family members they had come out to indicated that their confidantes were age-mates, such as cousins or siblings.

When asked if their family would support them if they came out, a significant number of WSW responded that their family members would **'disown'**, **'reject'**, or even **'kill'** them. One Nairobi woman answered, **'Not even if it's the only thing that would save my life if I was dying'**. A number of women said their families would never support them because they are **'very religious'** and **'homophobic'**. One WSW from Kisumu who did come out to her family stated, **'I have been beaten several times by family members and thrown out of the home**'. Several WSW mentioned, however, that their siblings or cousins might be supportive, but not their parents. Still, some women cited that they were in committed heterosexual relationships and could not, therefore, reveal their sexual orientation(s). One Kisumu woman said she could not come out because she is married and Muslim.

Expulsion or Suspension from School and Dismissal from Work

Many WSW respondents had confronted extensive discrimination in schools and the workplace due to their sexual orientation(s) and/or gender expression. In Nairobi, 27 per cent of WSW had been dismissed from their jobs or suspended or expelled from school in a discriminatory fashion. Almost 14 per cent of WSW in Mombasa and 11 per cent of women in Kisumu reported the same.

> **'I was fired for dressing like a man'.** (Nairobi)
>
> **'In 2006, [I was punished] after I was found with love letters from a girl in school'.** (Nairobi)
>
> **'In 2007, I was expelled from school. I was known to be a lesbian and was suspended [because the school believed] I was a bad influence on the rest of the girls. Then I was later expelled'.** (Mombasa)

> **'In 2006, I was suspended from school because of suspicions that I was a lesbian'.** (Mombasa)

> **'I was suspended from school in 2004, [dismissed] from church and fired from [my job]'.** (Kisumu)

Often, girls who are accused of "lesbianism" in school are forced by school administrators to name classmates who also identify as lesbian or bisexual. In many cases, these girls are also punished or expelled:

> **'I was expelled from Asumbi Girls in 1998 after being outed by fellow lesbian students'.** (Kisumu)

> **'In 1994, I was suspended from Kisumu Girls School. There were ladies caught in the hostel so they mentioned names of others who were also lesbians'.** (Kisumu)

Moreover, in Nairobi, one out of three WSW reported that their chances of finding and/or securing employment have been hindered because of their sexual orientation or gender expression. Although most respondents did not note they were expelled or fired from work, this could indicate that the majority of Kenyan WSW are fully or semi-closeted to employers or school administrators in order to escape persecution. It is often when these women are "outed" by others that they risk losing their livelihoods and access to education:

> **'I got fired last year from a very high-end job because my boss found my Facebook details and pictures'.** (Nairobi)

> **'My mom, knowing that I am a lesbian, went to my college and I got expelled'.** (Nairobi)

> **'My employer, a salon owner, fired me because she heard that I was a WSW'.** (Nairobi)

> **'I was discontinued from college in 2009 because I came out to one of my classmates and she told the dean'.** (Nairobi)

Discrimination, Harassment, Threats, Abuse and Violence

A large number of WSW in Kenya have experienced discrimination, threats, harassment, public humiliation and even mental and physical abuse and violence. This baseline survey found that 33 per cent of WSW in Nairobi, 14 per cent in Mombasa and 41 per cent in Kisumu had been discriminated against, threatened or subjected to violence as a result of their sexual orientation and/or gender expression:

'I was outed by the coach of my team over the microphone during a tournament we were playing. I was arrested and tortured and then later released. [I could not report the incident because] my name was not recorded anywhere in the police book'. (Kisumu)

'I was beaten by my brother'. (Kisumu)

'I was raped by someone I know'. (Kisumu)

'My peers once beat me and dragged me to the mosque so that the imam would teach me to behave like a normal Muslim woman'. (Nairobi)

'Before suspension, I was caned by the deputy head teacher'. (Nairobi)

'I appeared in the papers following an LGBTI activity and was attacked after my neighbours saw me'. (Nairobi)

'I was almost raped in college because the boys complained that I was taking away their girls'. (Nairobi)

'Some men found me making out with a woman and raped us'. (Kisumu)

Almost none of the WSW who experienced discrimination, threats, harassment, abuse or violence reported the incident to the police or any authority. In Nairobi, 91 per cent of WSW did not report. In Kisumu and Mombasa, not one single woman reported the incident. WSW often cited that it was not in their best interests to report to the police because law enforcement officials are 'homophobic'. Women also often feared revealing their sexuality or sexual orientation(s), stating that this might perpetuate further harm against them. Common responses as to why WSW refused to seek help from the police or any authority included:

'If I reported this case, the news would get to my family and that would make matters worse'. (Nairobi)

'If I reported it, the police wouldn't do anything about it'. (Nairobi)

'I knew even if I reported, the policemen would still harass me because of my sexuality'. (Nairobi)

'I had no support and didn't want more people to know about me'. (Nairobi)

'I felt I had no power to talk about the incident' (school expulsion). (Kisumu)

'The policemen are not informed. They might end up arresting [me]. They only offer security to heterosexuals, not homosexuals'. (Kisumu)

'Thought reporting would be risking my life'. (Kisumu)

'That would have been too dangerous. The people would have attacked me after'. (Kisumu)

‘I thought the police and others wouldn’t believe me since this happened in this guy’s house’ (was raped by someone she knew). (Kisumu)

‘I [felt] I could be arrested instead’ (sex worker who is sometimes abused by her clients for being bisexual). (Kisumu)

‘We were afraid we could be arrested’ (women who were raped after some men discovered the two kissing). (Kisumu)

V. Discussion and Analysis of Baseline Survey Data

LGB individuals in Kenya remain highly vulnerable to a slew of rights violations and *de facto* discrimination in public arenas that affect their access to acceptable healthcare, education, gainful employment and justice. An analysis of survey data concerning the status of Kenyan WSW reveals that Kenya's criminalisation of homosexuality has corresponded to a lack of protection for Kenyan WSW's basic human rights. Kenya's constitution, which is bolstered by additional provisions and interpretations of international human rights treaties, affords these rights to all citizens without discrimination on any ground.

Non-Discriminatory Access to the Highest Attainable Standard of Health

Rights to: Life, Equality and Freedom from Discrimination, the Highest Attainable Standard of Physical and Mental Health, Privacy and Access to Information

Urban WSW in Kenya face many obstacles in accessing vital health services. Many WSW from Nairobi, Mombasa and Kisumu mentioned that they avoid seeking medical treatment and/or talking openly about their sexualities due to the risk that doctors will refuse to offer treatment and/or disclose their patients' sexual orientation(s) to family members. Moreover, few of the health care providers MWA interviewed were aware of particular health concerns of WSW. The Kenyan government has taken no action to provide physicians with knowledge of or sensitisation toward WSW's health needs. Anxiety surrounding criminalisation as well as the resulting lack of national guidelines for lesbian and bisexual health can thus limit physicians' abilities to properly care for WSW patients.

Not only are WSW less likely than heterosexual women to receive adequate medical care because of the threat of discrimination, WSW also have very little access to information about safer sex practices. The few comprehensive sexuality education programs available in Kenya exclude information on safer sex practices for WSW. Even if Kenyan WSW were better able to learn how to practice safer sex, through the use of

dental dams and hygienic sex toys, these products are largely unavailable in Kenya due to criminalisation. Indeed, the arbitrary and vague nature of Kenya's anti-sodomy law leaves individuals who do offer access to dental dams, sex toys and sexuality education for WSW vulnerable to arrest: The Kenyan Commission on Human Rights has pointed out that these solicitors could be accused of providing information to commit a felony.[81]

Lack of access to imperative sexual and reproductive health services and information is potentially instrumental to negative health outcomes among Kenyan WSW, especially with regard to HIV/AIDS transmission. As survey data indicates, Kenyan WSW often have male sexual partners, either through sex work or through heterosexual relationships. These findings suggest that a large number of WSW are potentially at greater risk than previously considered of both HIV/AIDS transmission as well as unwanted pregnancy.

Although the risk of transmission is very low when compared to heterosexual transmission, there are a host of factors that may explain HIV/AIDS transmission in WSW. These include intravenous drug use, heterosexual intercourse (especially sex work), barriers to health access and sexual violence.[82] The WSW baseline survey indicated that more than 11 per cent of WSW in Mombasa and 10 per cent of WSW in Kisumu tested HIV-positive from 2011-2012. In Mombasa, HIV prevalence among WSW was almost three times the average rate in the Coastal region. The Kenyan government should therefore consider potential risks of HIV transmission among WSW (and women who have sex with both women and men) in its national HIV/AIDS guidelines, which are as of yet silent on WSW.[83]

Many Kenyan WSW also suffer from distinct burdens that make the process of securing adequate medical care especially difficult. A number of WSW in this survey credited discriminatory polices in the workplace and school as hindrances to their

---

[81] Ibid. at 9, pg. 50.

[82] Avinder K., Deol and Alicia Heath-Toby. *HIV Risk for Lesbians, Bisexuals & Other Women Who Have Sex With Women*. New York: Women's Institute at Gay Men's Health Crisis, June 2009. http://www.gmhc.org/files/editor/file/GMHC_lap_whitepaper_0609.pdf.

[83] National AIDS Control Council (Kenya), and National AIDS and STDs Control Programme (Kenya). *The Kenya AIDS Epidemic Update 2012*.

economic security. Moreover, WSW mentioned experiencing abuse and discrimination at the hands of relatives, leaving them without family assistance. The concurrence of these factors largely contributes to many WSW's economic challenges. Survey data indicated that a large number of WSW, which are often exacerbated when WSW require medical care. Kenyan WSW's difficulty in accessing affordable care also extends to maternal health services for those WSW who become pregnant, either through rape and coercion, sex work or after a consensual sexual encounter.

On the matter of pregnancy, Kenya's lack of accessible and affordable maternal healthcare services threatens women's rights to life and health in general. Currently, Kenya's maternal mortality ratio is between 400 and 500 deaths for every 100,000 live births, a figure that is intolerably high when compared to other parts of the world.[84] Kenya's restrictive abortion laws play a significant role in this figure: Unsafe abortion accounts for 30 per cent of all maternal deaths in Kenya, the leading case of maternal mortality.[85] Furthermore, due to the law's vague language, few women who become pregnant as a result of rape are aware that the Kenyan government will provide safe abortions for rape survivors.

Article 26§4 of Kenya's constitution prohibits abortion except for cases that require "emergency treatment" or if a health professional — including nurses, doctors and midwives — assesses that "the life or health of the mother is in danger".[86] Although this last stipulation effectively legalises abortion in many cases, Kenyan women must still face egregious obstacles in finding trained health care providers willing to perform an abortion. Most practitioners are reluctant to do so because of the stigmatising effect of Kenya's abortion law. Those who do offer abortion services often ask for high fees. As a result of inaccessibility due to expense, distance and the chilling effect of Kenya's abortion laws, a significant amount of women turn to unsafe methods.[87] These include

---

[84] Samuel Kisika. "Maternal Mortality Rates Still High in Kenya", *News 24*. 5 June 2013. http://www.news24.co.ke/MyNews24/Maternal-mortality-rate-still-high-in-Kenya-20130605

[85] Michael Oriedo. "Unsafe Abortion Leading Cause of Maternal Deaths", *The Standard*. 6 January 2011. http://www.standardmedia.co.ke/?id=2000026104&catid=442&articleID=2000026104

[86] Constitution, art. 26§4.

[87] Rubina Hussain. "Abortion and Unintended Pregnancy in Kenya", *In Brief*, New York: Guttmacher Institute, 2012, No 2. http://www.guttmacher.org/pubs/ IB_UnsafeAbortionKenya.pdf

inserting foreign objects into the uterus, overdosing on certain drugs, consuming dangerous substances, physically exhausting themselves and/or exerting substantial force on their abdomens.

Unsafe abortion practices are frequent and fatal. Kenya's heightened criminalisation of safe abortion care therefore jeopardises some of the most vulnerable populations in Kenya. WSW are no exception. A significant number of WSW respondents mentioned they had had abortions. In Mombasa, more than one-fourth of WSW had procured abortions. At least one respondent from Mombasa, who was unemployed, procured an abortion as a result of rape. Likewise, other WSW in Mombasa indicated financial obstacles as their reasoning for seeking abortion care.

Still, for WSW who would like to become mothers, there are additional challenges to forming a family. Anecdotal evidence from MWA members indicates that practitioners at the few sperm banks in Kenya often discriminate against single women or women suspected of homosexuality. Moreover, the Children Act, 2001 prohibits unmarried individuals and LGB persons from adopting children.[88]

In addition to WSW's distinct sexual and reproductive health concerns, most WSW respondents mentioned experiencing depression as a result of constant stress from dealing with widespread discrimination. Researchers have characterised the higher prevalence of mental disorders in LGB persons as "minority stress", where "stigma, prejudice and discrimination create a hostile and stressful social environment that causes mental health problems".[89] Kenyan WSW commonly experience minority stress. Some WSW respondents specifically cited concern over being able to marry and/or raise children as contributory factors to poor mental health.

Some respondents indicated that poor finances or lack of a job contributed to their depression or stress more so than their sexual orientation(s) in general. However, homophobic attitudes frequently interfere with or prevent WSW from securing gainful employment. As such, for some WSW, anxiety associated with economic status

---

[88] The Children Act, 2001, Section 158(3)(c), Section 158(3)(d).

[89] Meyer, Ilan H. "Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence". *Psychological Bulletin* 129, no. 5 (2003): 674.

demonstrates the interrelation between discrimination on the basis of sexual orientation and WSW's poor mental health.

What's more is that WSW's increased risk of mental health issues can cause or exacerbate other harmful health conditions. These include poor nutrition and substance abuse. Constant stress, depression and anxiety that is fuelled by stigma and discrimination can also place WSW at greater risk of suicide.

Equal Opportunities for Education and Employment

Rights to: Equality and Freedom From Discrimination; Human Dignity; Privacy; Freedom of Expression; Education; and Access to Justice

Survey data demonstrated that urban WSW in Kenya are frequently victim to school suspension and/or expulsion on the basis of sexual orientation. A specific figure of how many lesbian and bisexual girls are suspended or expelled from school each year is unknown. However, in as recently as June 2013, a school in Murang'a, Central Province expelled six girls for alleged "lesbianism".[90] In some cases, schools (and employers) target students who express their gender(s) in a non-normative manner, such as girls and women who may choose to dress in a masculine style. Moreover, certain educational staff encourage students to "out" fellow lesbian and bisexual students. Not only do these school administrators directly discriminate against students on the basis of sexual orientation and gender expression, they also impart prejudiced and homophobic attitudes to youth.

In addition, several urban WSW indicated recurrent discrimination from employers. In Nairobi, one-third of WSW revealed that their sexual orientation(s) and/or expression hindered their chances of finding a job and/or securing employment. Therefore, many WSW feel the need to closet themselves from family, friends, colleagues, employers and the general community in order to secure gainful employment. Forcing sexual minorities to conceal or change their identities causes many to suffer constant and severe anxiety, and is therefore an affront to their rights to human dignity, privacy and freedom of expression. Moreover, few girls and women who have endured discrimination at the hands of school officials and employers trust that existing justice

[90] Ibid. at 16.

mechanisms will address their claims. In particular, these individuals often fear that in the process of attempting to access justice, they will expose themselves to further harassment and arrest.

Freedom from Family and Community Discrimination, Harassment and Violence

Rights to: Equality and Freedom from Discrimination; Human Dignity; Freedom and Security of the Person; Privacy; Freedom of Expression; Access of Justice

In addition to experiencing discrimination by school officials and employers, a large number of WSW confront discrimination at the hands of family and community members. Many WSW respondents noted they have suffered public humiliation, threats, beatings and sexual violence on the basis of their sexual orientation(s) and gender expression. A number of WSW also indicated that they had been raped because of their sexualities. These women often had nowhere to turn for legal assistance, creating a system of impunity for men who rape WSW. Lack of access to police protection also increases the chance that men who rape WSW will do so again.

WSW who survive sexual violence may also fear seeking medical treatment that would require them to report the crime and therefore reveal their sexualities. Moreover, due to the fact that same-sex sexual conduct is criminalised in Kenya, Kenyan police often bribe, extort and/or blackmail sexual minorities who attempt to report crimes that are committed against them.[91] It is no surprise, then, that almost all WSW respondents who experienced egregious violations against their rights to dignity and security felt they could not report these incidents to law enforcement officials.

[91] Ibid. at 9.

VI. Recommendations

In order for the Kenyan government to meet its obligations under both constitutional and international law, state officials should take steps to respect, protect and fulfil the human rights of LGB citizens. In particular, the government should:

1. **REPEAL** sections 162, 163 and 165 of the Penal Code Cap. 63 which criminalise consensual same-sex sexual conduct among adults.

2. **ENACT** comprehensive equality laws that explicitly provide protection from discrimination on the basis of sexual orientation, gender identity and gender expression, particularly with respect to accessing education, employment and mental and physical health services.

3. **SENSITISE** health care practitioners to the concerns and health needs of WSW. Consider WSW in national HIV/AIDS and STI prevention programming and guidelines. Ensure equal access for WSW to health services and prophylactic devices, including dental dams. Provide greater access to psychosocial health and support services for WSW.

4. **INSTITUTE** comprehensive sexuality education programming that offers information on safer sex practices for sexual minorities in school programming. Establish in schools policies and procedures that affirm tolerance and respect for LGBTI persons' human rights. Safeguard LGBTI persons' rights to access education by eliminating disciplinary procedures that discriminate on the basis of sexual orientation, gender identity and gender expression.

5. **LIBERALISE** Kenya's abortion laws to allow for abortion-on-demand. Increase access to maternal healthcare, including access to safe abortion care. Ensure that health care professionals receive training in abortion services. Guarantee access to affordable and safe abortion services for both urban and rural girls and women, particularly for rape survivors. Ratify the Maputo Protocol, especially Article 14, which provides express access to abortion services in cases of sexual assault and rape. Inform the general public on women's human rights to access reproductive health services.

6. **REPEAL** section 158(c)-(d) of the Children's Act, 2001 which forbids LGB persons and unmarried individuals from adopting children. Guarantee WSW equal access to infertility treatment, including access to sperm banks and artificial insemination.

7. **ENSURE** that police officers and other state officials effectively document and investigate crimes reported by WSW and other sexual minorities. Sensitise police officers to particular violations WSW often confront, such as fear of arrest on the basis of sexual orientation, "corrective rape", family discrimination and other forms of sexual violence, harassment and abuse. Protect on an equal basis the rights of female sex workers who have sex with women to access justice. Monitor police stations and prisons for compliance.

8. **APPROVE** hate crime legislation that requires harsher penalties for perpetrators who commit verbal or physical abuse, harassment, assault, injury, sexual violence or murder on the basis of SOGI. Properly investigate, prosecute and punish individuals who incite hate crimes against LGBTI persons. Institute effect remedies and redress for LGBTI victims.

9. **IMPLEMENT** far-reaching public education campaigns that promote respect for LGBTI persons' human rights. Sensitise public officials and Kenyan society to crimes, acts of violence and other egregious obstacles faced by LGBTI persons. Duly condemn violent acts, abuse, discrimination and threats against sexual and gender minorities.

10. **RATIFY** optional protocols to core international human rights treaties, including individual complaint mechanisms to the ICCPR, ICESCR, CEDAW and CAT.