

# LGBTQ SRHR

## Frequently Asked Questions



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Developed by Gay and Lesbian Coalition of Kenya (GALCK) which is part of the Right Here Right Now Kenya Network,



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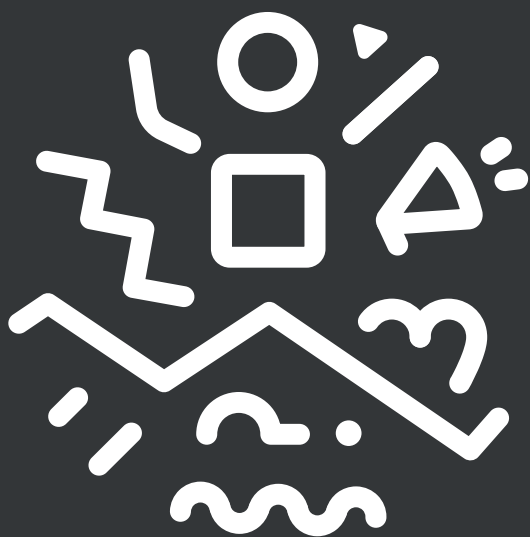
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*"Reproductive Health Rights and Needs of Adolescent and Youth is Our Priority"*

**CONTRIBUTED BY:**



# Right Here Right Now Kenya



Right Here Right Now (RHRN) is a five-year programme and global strategic partnership that is active in ten countries, and the Caribbean sub-region. Our partnership envisions a world where all young people are able to access quality and youth-friendly health services and are not afraid to openly express who they are and who they love. We believe that young people, everywhere, have the inalienable right to make their own choices, and lead happy and healthy lives.

Right Here Right Now Kenya advocates for emotive issues of access to safe and legal abortion by Kenyan women and also meaningful inclusion of gender and sexual minorities (GSM). Most of the times the stories around GSM and safe abortion are underreported or misreported by the media, this creates an avenue for stigma and discrimination which in most cases hinders full enjoyment of human rights contrary to the constitutional requirement under article 10 on national values and principle of governance that binds all state officers and all Kenyans to respect human dignity, equity and social justice.

The platform members include; Centre for the Study of Adolescence (CSA), Family Health Options Kenya (FHOK), Network for Adolescent and Youth of Africa (NAYA), Africa Alive! (AA), Youth Action Movement (YAM), Nyanza Rift Valley Western LGBTI Network–Kenya (NYARWEK), Gay and Lesbian Coalition of Kenya (GALCK), Trust for Indigenous Culture and Health (TICAH), Youth Accountability Strategy Network (YAS), Dream Achievers Youth Organization (DAYO), Kenya Human Rights Commission (KHRC), Young Women Leadership Institute (YWLI), and Gender Engagement and Media (GEM). African Population and Health Research Centre (APHRC)

# Acknowledgements

This resource document was compiled by the Gay and Lesbian Coalition of Kenya (GALCK), Youth Action Movement (YAM), Nyanza Rift Valley Western LGBTI Network–Kenya (NYARWEK), and Kenya Human Rights Commission (KHRC). It highlights the fundamental human rights and sexual reproductive health challenges as well as needs for young LGBTQ+ persons in Kenya.

It serves as vital resource document for partners, friends, allies and Government officials to base their strategies and interventions upon.



# Terminologies



## Sexual Orientation:

An enduring emotional, romantic, or sexual attraction primarily or exclusively to people of a particular gender or genders.

## Heterosexuality:

An enduring emotional, romantic, or sexual attraction primarily or exclusively to people of a different or opposite gender. People who are heterosexual often identify as "straight."

## Homosexuality:

An enduring emotional, romantic, or sexual attraction primarily or exclusively to people of the same gender. People who are homosexual often identify as "gay" or "lesbian."

## Heteronormativity

The presumption that everyone is heterosexual or the belief that heterosexual people are naturally superior to gender and sexual minorities.

## Bisexuality:

An enduring emotional, romantic, or sexual attraction to people of more than one gender. People who are bisexual often identify as "bisexual."

## Asexuality:

An enduring absence of sexual attraction. People who are asexual often identify as "asexual."

## Biological Sex:

A medical term used to refer to the chromosomal, hormonal, and anatomical characteristics that are used to classify an individual as female, male or intersex.

## Intersex:

An umbrella term that refers to a variety of chromosomal, hormonal, and anatomical conditions in which a person does not seem to fit the typical definitions of female or male.

## Transgender:

An umbrella term referring to an individual whose gender identity is different from the sex they were assigned at birth. "Trans" is shorthand for "transgender." (Note: Transgender is correctly used as an adjective, not a noun, thus "transgender people" is appropriate but "transgenders" is often viewed as disrespectful).

## Transgender Man:

A term for a transgender individual who was assigned female at birth and currently identifies as a man (also "FTM"; Trans man/men).

## Transgender Woman:

A term for a transgender individual who was assigned male at birth and currently identifies as a woman (also "MTF"; Trans woman/women).

# Terminologies

## Trans\* diverse

An umbrella term used to describe all those whose gender identity is different from their biological sex.



## Gender Affirming Surgery:

Surgical procedures that change one's body to better reflect a person's gender identity. This may include different procedures, including those sometimes also referred to as "top surgery" (breast augmentation or removal) or "bottom surgery" (altering genitals). Contrary to popular belief, there is not one surgery; in fact there are many different surgeries. These surgeries are medically necessary for some people, however not all people want, need, or can have surgery as part of their transition. "Sex change surgery" is considered a derogatory term by many.



## Key Population:

UNAIDS considers gay men and other men who have sex with men, sex workers, transgender people, people who inject drugs and prisoners and other incarcerated people as the five main key population groups that are particularly vulnerable to HIV and frequently lack adequate access to services.

## Gender-Variant:

This term describes people who by chance or choice do not conform to gender norms associated with their assigned sex.



## Hormonal Therapy:

Transgender hormone therapy is a form of hormone replacement therapy (HRT) in which sex hormones and other hormonal medications are administered to transgender or gender variant individuals for the purpose of more closely aligning their secondary sexual characteristics with their gender identity.



## Transition(ing):

The time when a person begins to live and socialize as the gender with which they identify rather than the gender the sex they were assigned at birth, which often includes changing one's first name (for some) and dressing and grooming differently. Transitioning may or may not also include medical and legal aspects, including taking hormones, having surgery, or changing identity documents (e.g. driver's license, passport and other identity documents) to reflect one's gender identity. Medical and legal steps are often difficult for people to afford.





## Gender Norms:

A culturally-defined set of roles, responsibilities, rights, entitlements, and obligations, associated with being female and male, as well as the power relations between and among women and men, boys and girls.

## Gender Non-Conforming

A person or people who don't ascribe to the binaries of gender. These people experience gender outside of what society has ascribed as either male/female.



## Gender Expression:

The external display of one's gender, through a combination of appearance, disposition, social behavior, and other factors, generally measured on a scale of masculinity and femininity.

## Gender Identity

A person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.



## Sexism:

Prejudice, stereotyping, or discrimination, typically against women, on the basis of sex. (Oxford Dictionary Definition). Sexism usually stems from the assumption that one sex is superior to the other.



## Homophobia/ Biphobia/Transphobia

The fear, rejection, or aversion, often in the form of stigmatizing attitudes or discriminatory behavior, towards homosexuality, bisexuality or towards transgender and gender non-conforming people.

## Non-binary

An umbrella term referring to individuals who experience gender that is neither exclusively male/female, or is in between or beyond the gender binary. Sometimes gender non-conforming and non-binary can be used interchangeably but not always.



## Outing:

Telling people (e.g., through gossip or other unsolicited form) that someone else is a lesbian, gay, bisexual, transgender, gender non-conforming person or without that person's permission, no matter the intention.



LOVE IS LOVE



# CHALLENGES

## The LGBTQ+ Community Face

1. Existence of sections 162 a) & c) and 165 of the Penal Code of Kenya, criminalize consensual same sex sexual conduct among adults, consequently resulting in arbitrary arrests of individuals due to their real or perceived sexual orientation, gender identity or gender expression.
2. Sexual, physical, verbal and psychological harassment and violence.
3. Stigma and discrimination is justified as a result of existing criminalizing laws and a lack of explicit provisions for non-discrimination within article 27 (4) & (5) of the COK 2010.
4. Negative attitudes from healthcare providers hinder access to quality healthcare services.
5. LGBTQ+ persons are unable to seek legal redress for human rights violations against them due to the state lacking a system of documenting/logging human rights violations based on an individual's real or perceived sexual orientation, gender identity or gender expression.
6. Homophobia, biphobia, transphobia, conversion therapy and other forms of harmful religious and cultural practices.
7. Blackmail and extortion.
8. Negative and sensational reporting of LGBTQ+ issues and persons by the media.
9. LGBTQ+ persons are rejected by their families and close friends.
10. Eviction from housing by landlord and/or tenants. -
11. Expulsion from academic institutions.
12. Rejection, denial and termination of employment opportunities.
13. Transgender and gender non-confirming persons are often charged with impersonation and fraud under sections 382 of the Penal Code of Kenya.
14. Freedom of association as contained in the Bill of Rights, is denied to LGBTQ+ led and serving organizations seeking to register as non-governmental organizations promoting the rights and freedoms of LGBTQ+ persons.
15. Transgender persons face a tedious and bureaucratic Government process when effecting change of names and gender markers on their respective official documents.

# Challenges LGBTQ+ Face In Accessing SRHR Services

## Lesbian, Bisexual & Queer Women

1. Inadequate information around the availability and access to safe and legal abortion services.
2. Focus on STI and HIV related information including prevention and treatment options is centered around gay men and heterosexual persons, relegating LBQ women from the conversation.
3. Lack of information and access to female contraceptive options and female condoms in particular
4. Physical, sexual and other forms of targeted violence against LBQ women impact the mental health and social wellbeing of LBQ women consequently impacting their ability to seek services.
5. Less focus on female contraceptive options for LBQ women.
6. SRHR services are not tailored to the unique needs of LBQ women. They are structured to respond to heterosexual women
7. LBQ women are unable to afford the expensive cost of procuring comprehensive SRH services
8. Stigma, discrimination and hostility from health service providers impacts the ability of LBQ women to seek SRHR services at health facilities.
9. Health service providers have little knowledge and understanding of the SRH needs of LBQ women.
10. High costs of access to SRHR services impact the financial agency of LBQ women
11. In cases of rape and other forms of sexual and gender-based violence, LBQ women have been denied emergency medical treatment upon disclosure.
12. Confidentiality is not guaranteed
13. Patriarchy and harmful cultural practices such as FGM, decreases the ability of LBQ women to access SRHR services.
14. Lack of adequate research highlighting the SRHR needs for LBQ women
15. Lack of support to LBQ SRHR health-based initiatives.
16. Inadequate information on the specific SRH needs and options for LBQ women



## Gay, Bisexual Men & Other Msm

## Transgender Persons

1. Inadequate focus on the sexual reproductive health needs of men besides HIV.
2. SRHR services are structured to respond to heterosexual men
3. Gay, bisexual men and other MSMs face stigma and discrimination from health service providers upon disclosure of sexual behavior.
4. Fear of stigma, discrimination and hostility impact the ability of Gay, bisexual men and other MSMs to seek SRHR services at public health facilities.
5. Health service providers have little knowledge and understanding of the SRH needs of Gay, bisexual men and other MSMs i.e. treating anal warts.
6. Confidentiality is not guaranteed
7. Criminalizing laws within the Penal Code of Kenya discourages gay men and other men who have sex with men from seeking SRH services.

1. Limited access to safe and legal abortion services for transgender men and diverse persons
2. Little knowledge and understanding around how best to deliver SRHR services to Transgender persons.
3. Limited access to affordable hormonal therapy within public health facilities.
4. Inadequate health service providers equipped to provide psychosocial support to transgender persons.
5. Confidentiality is not guaranteed
6. Fear of stigma, discrimination and hostility impact the ability of transgender persons to seek SRHR services at public health facilities.
7. Sexual reproductive health services are tailored to meet the needs of cisgender heterosexual men and women.
8. Health service providers have not been fully equipped to understand and distinguish between gender identity and expression issues and how they impact access to sexual reproductive health of Transgender and gender non-conforming persons

# Facts And Misconceptions Around LGBTQ+ Issues

Facts	Misconceptions	Why
<p>Human Rights are human rights for all including LGBTQ+ persons.</p>	<p>LGBTQ+ rights are special rights</p>	<p>LGBTQ+ rights are ordinary human rights and freedoms enshrined in the Constitution but have been denied or limited to LGBTQ+ persons as a result of their real or perceived sexual orientation, gender identity or gender expression. The rights are limited by the existence of sections 162 a) c) and 165 of the Penal Code of Kenya.</p>
<p>Stigma and discrimination on grounds of sexual orientation, gender identity and gender expression is unconstitutional.</p>	<p>Stigma and discrimination on grounds of sexual orientation, gender identity and gender expression is acceptable.</p>	<p>Article 27 (4) and (5) of the Constitution states that the state and a person shall not discriminate directly or indirectly against any persons on any ground. Global precedence on the interpretation of sex as a non-discriminatory ground has been interpreted to include sexual orientation. As a signatory to the International Convention of Economic, Social and Cultural Rights and the International Convention on Civil and Political Rights, Kenya is subject to the global interpretation of these conventions.</p>



## Facts

Sections 162 a) and c) 165 of the Penal Code of Kenya in applies to all Kenyans.

## Misconceptions

Sections 162 a) and c) 165 of the Penal Code of Kenya only apply to homosexuals in Kenya.

## Why

Sections 162 (a) and (c) says that any person who has 'carnal knowledge against the order of nature' or permits a person to have 'carnal knowledge against the order of nature' against them has committed a crime.

'Carnal knowledge against the order of nature' is any sexual activity between two or more persons that does not involve the penis penetrating the vagina. This includes anal sex, oral sex, frottage (sexually rubbing and touching a clothed body part as a way of achieving sexual pleasure), thigh sex, handjobs, and anilingus (sexual stimulation of the anus by the tongue or mouth) use of dildos, vibrators and other sex toys.

Section 165 states that any person who commits an act of 'gross indecency with another male person' has committed a crime.

'Gross indecency' is any sexual activity between two men that does not involve penetration whether committed in public or in private. This involves kissing, hugging, holding hands, cuddling, sleeping on the same bed, or touching and rubbing of any body part as a way of achieving sexual pleasure.

The existence of sections 162 a) and c) 165 of the Penal Code of Kenya are in violation of the Bill of rights; the right to privacy, right to human dignity, freedom of association, freedom of expression, freedom of assembly, right to life, equality and freedom from discrimination, freedom and security of the person, right the highest attainable standards of health including reproductive healthcare, right to education



The existence of sections 162 a) and c) 165 of the Penal Code of Kenya justify the human rights violations, stigma, discrimination and violence against individuals based on their real or perceived sexual orientation, gender identity or gender expression.

The existence of sections 162 a) and c) 165 of the Penal Code of Kenya preserve the moral fabric and order of society

Facts	Misconceptions	Why
<p>Sections 162 a) and c) 165 of the Penal Code of Kenya criminalize unnatural sexual acts.</p>	<p>Sections 162 a) and c) 165 of the Penal Code of Kenya criminalize sexual acts, sexual orientation, gender identity and expression that does not conform to society's expectations.</p>	<p>Sections 162 (a) and (c) and 165 of the Penal Code of Kenya criminalize unnatural sexual acts. These laws do not criminalise how individuals identify or how they choose to express their gender.</p> <p>Stating openly that you identify as lesbian, gay, bisexual, transgender or queer is a protected freedom under article 33 of the constitution (Freedom and expression)</p>
<p>Every person including people who identify as LGBTQ+, have a right to equal opportunities of employment</p>	<p>An employer is justified to fire/dismiss/limit opportunities/deny employment/harass employees because of their real or perceived sexual orientation, gender identity or gender expression</p>	<p>According to the Employment Act, it is the duty of the Government and an employer to promote equality of opportunity between employees. Article 27 of the Constitution also protects LGBTQ+ from any kind of discrimination on grounds of real or perceived sexual orientation, gender identity or gender expression</p> <p>This means that all employees have the same chances to promotions, salaries, and work benefits and that all persons who apply for a job including LGBTQ+, have the same chances of being employed. The only thing that disqualifies an applicant from being hired is their qualifications.</p>
<p>Every person including people who identify as LGBTQ+, have the right to live in an area of their choosing within the boundaries of Kenya</p>	<p>Landlords can evict tenants because of their real or perceived sexual orientation, gender identity or gender expression.</p> <p>Landlords can evict persons who are, or are perceived to be LGBTQ+ in order to stop them from recruiting and defiling minors.</p>	<p>Article 43 (1) (b) of the constitution says that every person has the right to "accessible and adequate housing, and reasonable standards of sanitation." According to this law, 'every person' includes all persons regardless of their sexual orientation and gender identity or gender expression.</p>

## Facts

Every person including people who identify as LGBTQ+, has the right to access the highest attainable standards of health-care including SRHR services.

Sexual orientation is diverse.

Sexual orientation is innate.

Gender identity and expression is not binary, it is diverse.

## Misconceptions

The existence of sections 162 a) and c) and 165 of the Penal Code of Kenya coupled with the health service provider's cultural and religious biases, justify the denial or the provision of sub-standard SRHR services to persons who are, or are perceived to be LGBTQ+.

In the case of sexual violence and assault, it is justified to deny/refuse LGBTQ+ persons emergency treatment.

Sexual orientation, gender identity and gender expression outside the societal heteronormative expectations is a mental/psychological disorder, unnatural, demonic, a choice, it is learnt, taught and influenced.

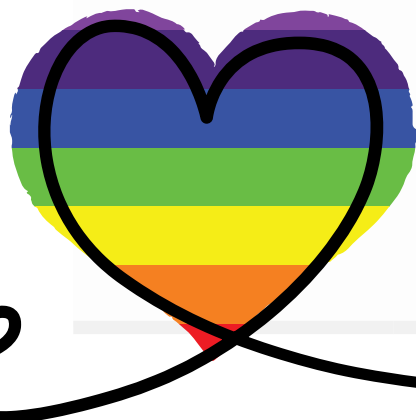
Conversion therapy is justified as means of eradicating homosexuality from an individual.

## Why

Article 43 1 a) of the Constitution of Kenya states that every person has the right to the highest attainable standards of health including reproductive health. Article 43 2 also provides that a person shall not be denied emergency medical treatment. According to this law, 'every person' includes all persons regardless of their sexual orientation, gender identity or gender expression.

Individuals can identify either gay, straight or bisexual and as such as protected from discrimination by law. Sexual orientation is not a choice, it is not learnt or taught or influenced. Sexual orientation is innate and diverse. Stigma, discrimination, violence and harmful cultural and religious practices move individuals to conform to society's expectations of sexual orientation and gender identity and expression.

The American psychiatric association removed homosexuality from the list of mental illnesses in 1973. The World Health Organization removed homosexuality from its list of mental illnesses in 1992. Identifying as Transgender person was removed from the WHO list of mental illnesses in 2019.



## Facts

Every person including people who identify as LGBTQ+ has the right to education

## Misconceptions

The existence of sections 162 a) and c) and 165 of the Penal Code of Kenya coupled with cultural and religious biases, justifies the expulsion and denial of education to students from academic institutions.

## Why

Article 43 1) f) of the Constitution of Kenya states that a person has a right to education. Article 55 also states that the State shall put in place affirmative action programs to ensure that the youth access relevant education and training.

Basic education Act 2013, article 34 2) states that a school or a person responsible for admission shall not discriminate against any child seeking admission on any ground.

Every person including people who identify as LGBTQ+, has the right to life

Every person including people who identify as LGBTQ+, has the right to freedom of association





# Recommendations

1. Repeal sections 162 a) c) and 165 of the Penal Code of Kenya.
2. Sensitize and engage community leaders (chiefs, elders, religious leaders, law enforcement) and opinion shapers, on the human rights of LGBTQ+ Kenyans with a focus on protecting, respecting and fulfilling the rights of LGBTQ+ Kenyans.
3. Engage the judiciary in expanding the interpretation of article 27 (4) & (5) of the COK 2010 to include sexual orientation, gender identity and gender expression as non-discrimination grounds.
4. Adopt and enact the 2015 UPR recommendations to Kenya
5. Develop and incorporate knowledge and attitude transformation within the training curriculum for healthcare service providers.
6. Engage law enforcement agencies in understanding their duty to protect, respect and fulfill the human rights of LGBTQ+ persons in Kenya.
7. Sensitize and engage families and friends of LGBTQ+ persons, religious leaders and local chiefs and elders on human rights of LGBTQ+ Kenyans with a focus on freedom from all forms of discrimination.
8. Engage Law enforcement agencies in understanding their duty to serve and protect all Kenyans.
9. Sensitize and engage media personnel in understanding the vulnerability of LGBTQ+ persons and their duty to deliver factual and objective reporting around LGBTQ+ issues.
10. Sensitize and engage parents, community leaders (chiefs, elders, religious leaders) and opinion shapers in understanding sexual and gender diversity and the physical and psychological implications of hate, violence, disownment and forms of rejection.
11. Sensitize and engage parents, community leaders (chiefs, elders, religious leaders) and opinion shapers in understanding sexual and gender diversity and the physical and psychological implications of hate, violence, disownment and forms of rejection.
12. Reduce the administrative bottlenecks and bureaucracies associated with effecting change of names and gender makers on official documents for transgender persons.
13. State agencies mandated with the registration of non-governmental organizations should respect and adhere to judicial pronouncements on the registration of organizations serving and protecting the human rights of LGBTQ+ persons.

# Legal Framework On LGBTQ+ Issues In Kenya

## 26 Right to life

## 27 Equality and freedom from discrimination

1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

## 28 Every person has inherent dignity and the right to have that dignity respected and protected

## 29 Every person has the right to freedom and security of the person

## 31 Every person has the right to privacy

## 33 Every person has the right to freedom of expression

## 36 Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind

## 43 a) Every persons has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care

## 48 The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice

# Penal Code of Kenya

## Unnatural Offenses

### 162 Any person who—

- a. has carnal knowledge of any person against the order of nature; or
- b. permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

- i. the offence was committed without the consent of the person who was carnally known; or
- ii. the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act. [Act No. 5 of 2003, s. 32.]

### Indecent practices between males

- 165 Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.



# Regional and International Human Rights Instruments ratified by Kenya

The African Charter on Peoples and Human Rights (ACHPR) Resolution 275

The Universal Declaration of Human Rights (UDHR)

International Human Rights Instruments

1. International Covenant on Civil and Political rights
2. International Covenant on Economic, Social and Cultural rights





