

STATEMENT
UPR Pre-session on KENYA
Geneva, 10TH December 2019
Delivered by: Gay and Lesbian Coalition of Kenya

This statement is delivered by the Gay and Lesbian Coalition of Kenya on behalf a collective of 10 organizations who have participated in the UPR process at the national level since 2018.

Eight (8) national consultations with different stakeholders were organized by a national coalition of organizations at different times. These consultations brought together over 300 stakeholders and interest groups including sexual and gender minorities and Key Population organizations to draft the National Stakeholders shadow report.

This statement addresses the following issues: (1) stigma and discrimination (with a focus sexual and gender minorities and key populations) (2) punitive laws impacting quality of life and health of sexual and gender minorities and key populations.

1. Stigma and Discrimination

a. Follow up to the previous review

In 2015, the Kingdom of Sweden recommended that Kenya adopts a comprehensive anti-discrimination law affording protection to all individuals, irrespective of their sexual orientation or gender identity. This recommendation was supported by the Government of Kenya but has yet to be implemented.

Article 27(4) of the Constitution of Kenya 2010 guarantees every citizen Equality and Freedom from Discrimination. However, the absence of sexual orientation, gender identity or gender expression as explicit grounds for non-discrimination continues to predispose sexual and gender minorities to multiple forms of stigma and discrimination. According to the *Are We Doing Alright study* report, 44% of sexual and gender minorities have survived sexual violence and 52% among gender minorities alone.

The Kenya AIDS Strategic Framework notes that stigma and discrimination impact the individual agency and health seeking behaviours of key populations, consequently contributing to the increased prevalence and the spread of HIV.

b. New developments since the previous review

Judicial precedence and court interpretations in several sexual and gender minorities cases held that sexual orientation and gender identity are non-discrimination grounds in Article 27 (4) of the Constitution of Kenya.

Further, the existence and use of favorable policies and guidelines by the Ministry of Health is a significant milestone in the promotion and provision of HIV services free from stigma and discrimination for key populations.

c. Recommendations

The State should adopt a comprehensive and inclusive equality and non-discrimination law that affords protection to all Kenyans regardless of their real or perceived sexual orientation, gender identity or expression.

The Government of Kenya should put in place a comprehensive legal and policy framework to protect and provide relevant services to transgender persons.

2. Punitive Laws

a. Follow up to the previous review

In the last universal periodic review, Kenya noted five (5) recommendations seeking to eradicate punitive laws impacting LGBTQ+ persons from statute.

Sections 162 a) c) and 165 of the Penal Code of Kenya exposes LGBTQ+ persons to widespread human rights violations. According to the *Are we doing alright report*, 59% of Transgender and GNC persons have faced inhuman, degrading and inappropriate law enforcement practices during the implementation of these laws resulting in post-traumatic stress and other mental health related challenges.

In addition, Section 26 of the Sexual offences Act and Section 5 of the Narcotics Act which criminalize transmission and/or exposure to HIV and the provision of harm reduction services respectively, impact the availability, accessibility and quality of HIV services, driving key populations further from reach for fear of prosecution and persecution.

b. New developments since the previous review

There has been no notable developments in this arena other than a few favorable court pronouncements and judgements upholding the Constitutional rights of LGBTQ+ persons to register organizations and to effect change of names in Government documents, to mention a few. However, the state has remained unwilling to fully enforce some of these judgements and court pronouncements.

The Ministry of Health also recognizes that criminalizing laws impedes availability and access to quality HIV/AIDS services for Key Populations and recommends an alignment of policies and laws and the harmonious coordination of Government units to strengthen access and uptake to HIV and other SRH services.

c. Recommendations

The Government of Kenya should bring national legislation into conformity with its international human rights obligations by aligning the Penal Code of Kenya with the constitution.

The Government of Kenya should review all legal, policy and structural barriers that impede the provision of SRH Services among LGBTI and other Key Populations.

We thank you all for your time