



The politics of social (in) exclusion of sexual and gender minorities in Kenya

A political economy analysis

1.0 Background

Social exclusion can be defined as the limitation or non-realization of citizens' economic, social, and political rights. In Kenya, sexual and gender minorities (SGM) experience stigma, discrimination, and violation of their human rights due to ambiguous state policies and laws and widespread societal rejection and pressures. Social exclusion is characterized by the limitation or non-realization of a citizen's economic, social, and political rights. Institutionalized practices and cultures,

societal structures, and norms of discrimination and stigma play a key role in the marginalization of sexual and gender minorities. Given the complexities around social exclusion and its various mechanisms in practice, exploring the context of exclusion (and processes of inclusion) is critical to unlocking the implications of social exclusion and inclusion and the interests, power dynamics, decision-making and practices of key actors influencing social exclusion and inclusion of these individuals.

2.0 What does the evidence say?

The findings provide insights into socio-political contexts surrounding the social inclusion and exclusion of LGBTQ+ people, which may aid advocacy efforts in Kenya.

We found that social exclusion of SGM stems in part from **contradictions within policies and legal frameworks**, the Constitution, **formal and informal practices, and the key actors' interests, motivations, decision-making, and collaborations.**

The stakeholder analysis shows that there are social inclusion influence dynamics in four broad categories: high interest with high influence, low interest with high influence, low influence with high interest, and low influence with low interest in the SGM agenda.

Social inclusion and exclusion occur at the individual level, within families, in the general community, and at service delivery points, including the government and related sectors/service delivery points.

The government of Kenya has a responsibility for the social inclusion and exclusion of SGM. This is drawn from an extensive examination of the relationship between the government of Kenya and international development partners and local Civil Society organizations (CSOs), specifically regarding HIV intervention and criminalization of same-sex behaviors among citizens. There is little clarity on, discussion of, or commitment to tackling social exclusion through government policy.

The Judiciary is a promising institution through positive jurisprudence on minorities.

While the 2010 Constitution and a pro-inclusion jurisprudence offer social inclusion to all Kenyan citizens, a **restrictive Penal Code and disjuncture in governments' policies and laws**, including unwritten (non)conventional practices, promote the rhetoric of social exclusion for sexual and gender minorities. Explicitly, the Constitution, which promotes inclusivity, clings to the Penal Code, which impedes the full enjoyment of human rights by SGM.

Some government agencies have unwritten social exclusion practices that negate advancements for SGM inclusion; together with the Penal Code, these make it difficult to advance social inclusion as prescribed in the Constitution of Kenya.

Despite the findings pointing to an improved social environment that is attributed to advocacy activities, the socio-political environment remains hostile. The study points to continued **negative attitudes** toward SGM in their social environments.

The **prevailing discrimination and stigma** toward SGM have led to unseen internal displacement. Key factors propelling social exclusion include discriminatory policies, laws, and practices; negative political rhetoric and belief systems; limited awareness and knowledge of sexual and gender minorities and selective media reporting.

The unnoticed internal displacement of SGM exposes them to **economic precarity**, in particular those from poorer socioeconomic groups, who are the ones least able to deal with the negative consequences of social exclusion. SGM with little or limited education and inadequate access to resources and opportunities essentially thrive on the growth of sex work and an NGO-driven economy.

While different key actors are pro-social inclusion, and a few actors, such as the public, the Judiciary, development partners, and the media, are **very influential on social exclusion**, the national government accounts for the highest level of the present social exclusion. Despite the promise of social inclusion through HIV interventions within the public health sector, the government remains committed to the Penal Code.

The politics of money shapes local mobilizing and advocacy. Development partners, mainly donors, are powerful in shaping efforts toward social inclusion. However, development partners' interests are usually not aligned with those of CSOs.

While funding is critical in advancing social inclusion, it seems to be a weak link for the CSOs. Competition for funding is a diversion from a common goal to personal interests. As it is now, funding seems to drive inequality and division within the LGBTQ+ community rather than inclusion.

Building power through organizing is significant in driving social inclusion and has increased the number of key actors who support the social inclusion of LGBTQ+ people. However, fragmented interests among specific sexual orientation and gender-minority groups, self-interests, misunderstanding, mistrust, and the lack of a shared social inclusion goal or unifying identity often hamper effective organizing and social inclusion efforts.

There is little commitment to social inclusion or exclusion by county governments and no commitment by regional bodies.



3.0 How did we find the answers?

This study adopted the problem-driven political economy analysis (PEA) approach to explore the context and underpinning of social exclusion practices focusing on LGBTQ+ communities in Kenya. We relied on both secondary and primary data. Specifically, we conducted a policy desk review between April and May 2021 and between March and April 2022 to explore various policies on LGBTQ+ people and key actors, their activities, and practices on influencing social exclusion and inclusion of LGBTQ+ people. We searched the websites of Kenya government departments, development partners, and relevant CSOs. We also reviewed several Kenyan newspapers. In addition, we conducted key informant interviews (KIIs), in-depth interviews (IDIs), and community-social mapping focus group discussions (FGDs) from March to August 2021 in Mombasa, Nairobi, and Kisumu counties. We conducted 47 KIIs with key actors, such as county and national government representatives, development partners, CSO representatives, and community or opinion leaders. We also held 40 IDIs with LGBTQ+ people and six community mapping FGDs with LGBTQ+ people.

4.0 Recommendations and actions

Key recommendations	Actions
● Enhance the coordination of CSOs to strengthen local sexual and gender minority organizations.	● <i>Build strong structures and establish mechanisms to streamline CSO work</i>
● Enhance accountability for the social inclusion of SGM.	● <i>Strengthen CSOs, including investing in lobbying towards the national Parliament, county governments, and related government departments.</i>
● Expansion or intensification of efforts that address sexual and gender minorities is needed.	● <i>Create awareness among the public and sensitize opinion leaders and service providers on human rights perspectives. This would also include raising awareness of the benefits of social inclusion in contrast to the outcomes of social exclusion. Investment in training of opinion leaders and service providers on social norms is critical.</i>
● Development and transnational partners should pay attention to the politics of interests and other issues, such as social economic development, and review their engagement in social inclusion efforts.	● <i>Invest in strengthening CSOs' leadership and increase funding to train national and sub-national government departments, including ministries of Interior, Education, Labor, and Public Service, on the value of promoting social inclusion and diversity.</i>
● Redefine the relationship between government and SGM-led organizations, and the roles and collaboration relationships between international NGOs and CSOs, as well within CSOs, to streamline advocacy and policy engagement.	● <i>Revisit stakeholder mapping and analysis to define different stakeholders' influences and interests on SGM. Also, explore potential gaps and strategies that can be used to enhance stakeholder engagements</i>
● Enhance SGM organizations' resilience by encouraging strong support for organizational capacity.	● <i>Facilitate capacities in project monitoring and evaluations, co-creation and co-designing, and documentation of processes.</i> ● <i>Where financial systems are unstable, financial management of movements should be delegated to financial institutions such as auditing firms.</i> ● <i>Legal reform on decriminalization of sexual orientation should be separated from sodomy or unconsented same-sex behaviors.</i>
● When developing opportunities for interaction between local SGM-led organizations, international NGOs and the various arms of the Kenyan government, such as the Judiciary or the Executive (e.g., Health, Education, Labor, and Public Service ministries), should be at the discussion table to advance social inclusion.	● <i>Government and civil society organizations should implement programs that raise community awareness through dialogues with community members to discuss SOGIE issues and find solutions. Issues of concern should include discrimination, stigma, education, economic opportunities, health, and social inclusion generally:</i> <i>i. Community dialogue, which brings together LGBTQ+ and non-LGBTQ+ people for open discussions, can be a viable pathway to creating awareness.</i> <i>ii. Trained community leaders (e.g., religious leaders) can facilitate such dialogue. It is essential to identify strategies to frame LGBTQ+ people's rights to resonate with the local citizenry in implementing such programs.</i>
● Support future research activities that will inform community awareness programs and strategic advocacy programs. Generating new cross-cutting, action-oriented, and policy-relevant evidence is required to deepen knowledge and inform policy about sexual and gender diversity in Kenya.	● <i>More qualitative identity-specific research is needed on lesbians, transgender people, and bisexuals, socio-class differences and mapping of LGBTQ displacement flight. With the rural area producing the most LGBTQ+ internally displaced persons, expanding PEA to other counties, including rural communities, will provide insights into geographic insights for programming.</i>

5.0 Policy priorities

- 1 Health sector:** The Ministry of Health must show clear leadership at national and county levels to coordinate services for SGM. This involves appointing specific departments or units dedicated to addressing these issues, ensuring that there is a focused and organized approach.
- 2 Harmonizing legal frameworks:** There is a need to resolve the contradictions between the inclusive Constitution and the restrictive Penal Code. Policymakers should work towards aligning these legal frameworks to ensure that the rights guaranteed in the Constitution are not undermined by other laws.
- 3 Addressing unwritten practices:** Government ministries (Interior, Health, Education, and Labor) need to review and reform unwritten practices that contribute to social exclusion. These practices often negate formal policies and laws aimed at promoting inclusion.
- 4 Promoting collaboration:** Foster collaboration between government agencies, CSOs, and international development partners to align efforts and resources towards a common goal of social inclusion.
- 5 Support for economically vulnerable SGM:** Develop programs to support SGM facing economic precarity, particularly those involved in sex work and reliant on the NGO-driven economy. This includes creating job opportunities and providing vocational training.
- 6 Targeted interventions:** Design interventions that specifically address the needs of SGM with limited education and resources, ensuring they have access to economic and social opportunities.
- 7 Leveraging judicial promises:** Build on the judiciary's positive jurisprudence to advocate for further legal reforms and protections for SGM. Encourage the Judiciary to continue setting precedents that support social inclusion.
- 8 Policy implementation and review:** Establish mechanisms to monitor the implementation of inclusion policies and hold relevant authorities accountable for progress. Regular reviews and reports can help track advancements and identify areas needing improvement.
- 9 Inclusion at county and regional levels:** Advocate for more significant commitment to social inclusion at county and regional government levels. Encourage local governments to adopt and implement policies that promote inclusivity in their jurisdictions.

6.0 Conclusion

There was general acceptance that the findings resonated with the participants and the community. The lack of a unified approach by SGM organizations and individuals was raised. Not only are SGM persons discriminated against, facing homophobia, biphobia, lesbophobia, or transphobia, but they also experience discrimination from members of the community and are at times excluded from the decision-making table. This hinders the community from achieving unified goals. Some common examples of discrimination among the members include segregation between men who have sex with men, male sex workers, and transgender people, as well as different priorities among these groups.

Similarly, this occurs due to differences in social status, finances, dress code, classes and categories, and gender expression issues. Furthermore, the role someone plays promotes public stigma and segregation: i.e., the perceived bottom (poor) is more harassed than the top (middle- and upper-class).

The analysis has shown windows of opportunities, including the emerging ally(ship) with religious groups, visibility, and the need for resilience that stakeholders can strengthen and tap into.

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