The politics of social (in) exclusion of LGBTQ+ people in Kenya:

A POLITICAL ECONOMY ANALYSIS

STUDY REPORT: 2024

Research Team

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Acknowledgments

Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ASWA	African Sex Workers Alliance
CBO	Community-based organization
CEC	County Executive Committee
CSO	Civil society organization
EALA	East African Legislative Assembly
FGD	Focus group discussion
GALCK	Gay and Lesbian Coalition, Kenya
HIV	Human immunodeficiency virus
HIVOS	Humanist Institute for Development Cooperation
HOYMAS	Health Options for Young Men on HIV/AIDS/STIs
HTC	HIV testing and counseling
ICRH	International Centre for Reproductive Health
IDI	In-depth interview
INGO	International non-governmental organization
ITGNC	Intersex, transgender, and gender non-conforming
KEMRI	Kenya Medical Research Institute
KHRC	Kenya Human Rights Commission
KII	Key informant interview
LBQ	Lesbian, bisexual, and queer
LGBTQ+	Lesbian, gay, bisexual, transgender, and other sexually and gender-diverse people
MSM	Men who have sex with men
MWA	Minority Women in Action
NACC	National AIDS Control Council
NASCOP	National AIDS STI Control Programme
NGLHRC	National Gay and Lesbian Human Rights Commission
PEA	Political economy analysis
PMTCT	Prevention of mother-to-child transmission of HIV
SDG	Sustainable Development Goals
SGM	Sexual and gender minorities
SOGIE	Sexual orientation and gender identity expression
SRHR	Sexual reproductive health and rights
STI	Sexually transmitted infection
SWOP	Sex Workers Organization Programme
USAID	United States Agency for International Development

Key definitions

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

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

Discrimination: The act of treating someone differently; prejudice directed toward anyone perceived as a sexual and gender minority, in which they are deprived of opportunities and access to services.

Gay: The sexual orientation of a person who is emotionally, romantically, and/or sexually attracted to people of the same sex or gender; a male whose primary and romantic attraction is toward other males.

Gender: The attitudes, feelings, and behavior that a given culture associates with a person's biological sex. Behaviour that is compatible with cultural expectations is referred to as gender-normative; behavior that is viewed as incompatible with these expectations constitutes gender non-conformity.

Gender diversity: The extent to which a person's gender identity, role, or expression differs from the cultural norms prescribed for people of a particular sex. This term is becoming more popular as a way to describe people without reference to a particular cultural norm.

Gender expression: External characteristics and behaviors that are socially constructed within the culture as either masculine or feminine, such as clothing, chores, social interactions, mannerisms, and hairstyles.

Gender identity: The internal sense of who we are and how we see ourselves regarding to being a man, a woman, or somewhere in between or beyond these identities.

Gender-sensitive approach: Laws, policies, programs, or training modules that recognize that there are different-gendered actors (women, men, girls, boys, transgender, and gender-diverse individuals) within a society, that these individuals are constrained in different and often unequal ways, and that they may therefore have differing and sometimes conflicting perceptions, needs, interests, and priorities.

Homophobia: A discriminatory or prejudiced action or idea related to someone's actual or perceived sexual orientation.

Lesbian: The sexual orientation of a female whose primary sexual and romantic attraction is toward other females.

Lessophobia: A discriminatory or prejudiced action or idea related to females whose primary sexual and romantic attraction is toward other females.

Non-binary person: A person identifying as either having a gender that is in between or beyond the two categories "man" and "woman," as fluctuating between "man" and "woman," or having no gender, either permanently or some of the time.

Sexual orientation: Who a person is physically, spiritually, emotionally, romantically, and emotionally attracted to based on their sex, gender identity, and gender expression. It is not correlated to gender identity or gender expression.

Transgender: An umbrella term referring to an individual whose gender identity is different from the sex assigned at birth. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their preferred gender.

Transphobia: A discriminatory or prejudiced action or idea related to someone's actual or perceived gender identity or gender expression.

Gender pronouns

Common pronouns include:

» He / him / his (for someone who identifies as male)

» She / her / hers (for someone who identifies as female)

» They / them / their (for someone who does not identify strictly as male or female; these pronouns are considered gender neutral)

Executive Summary

Introduction

Social exclusion is defined as the limitation or non-realization of citizens' economic, social, and political rights. In Kenya, sexual and gender minorities–particularly lesbian, gay, bisexual, transgender, and other sexually and gender diverse (LGBTQ+) people–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 as the limitation or non-realization of a citizen's economic, social, and political rights. Institutionalized cultures and practices, societal structures, and norms of discrimination and stigma play a key role in the marginalization of LGBTQ+ people. 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 LGBTQ+ individuals.

Study objectives

The aim of this study is to deepen the understanding of social inclusion and exclusion of LGBTQ+ people in Kenya. This is done by deploying problem-driven, political economy analysis to examine the politics of social inclusion and exclusion, to inform ongoing advocacy strategies. The main study objective is to understand the dynamics around the vested interests, powers, ideas, values, incentives, decision-making processes, and collaborations of identified key actors. The study is designed to determine and provide a broad picture of the socioeconomic and legal environments of social exclusion as well as the power dynamics among key players in decision-making, existing practices of collaboration, and their incentives.

Methodology

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 to explore various policies on LGBTQ+ people and key actors, their activities, and practices on influencing social exclusion and inclusion of LGBTQ+ people. We conducted a desk review between April and May 2021 and between March and April 2022. We searched the websites of Kenya government departments, development partners, and relevant civil society organizations (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.

Findings

The findings provide insights into socio-political contexts in claims around social inclusion and exclusion of LGBTQ+ people that may aid the advocacy efforts in Kenya. We found that social exclusion of LGBTQ+ people stems in part from contradictions within policies and legal systems, the Constitution and the Penal Code, and formal and informal practices, as well as key actors' interests, motivations, decision-making, and collaborations.

Findings

- The stakeholder analysis shows their 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 limited interest in an LGBTQ+ agenda.

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

- The Government of Kenya continues to matter in the social inclusion and exclusion of LGBTQ+ people in Kenya. By examining the relationships between the Government of Kenya and international development partners and local CSOs regarding HIV intervention and criminalization of same-sex behaviors by citizens, the Government of Kenya continues to matter in terms of social inclusion and exclusion of LGBTQ+ people. This is the case despite little clarity on, discussion of, or commitment to tackling social exclusion through policy by the government.

- 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 restricts same-sex behaviors.

- Government ministries of Interior, Health, Education, and Labor have in place unwritten social exclusion practices reinforcing social exclusion; 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 LGBTQ+ people in their social environments.

- The prevailing discrimination and stigma toward LGBTQ+ people have led to unseen LGBTQ+ internal displacement. Key factors propelling social exclusion include discriminatory policies, laws, and practices; unwritten government sector practices; negative political rhetoric and belief systems; limited awareness and knowledge of sexual and gender minorities; and biased media reporting.

- The unnoticed internal displacement of LGBTQ+ people 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. Members of the LGBTQ+ community with little or limited education and poor access to resources and opportunities largely 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.

Findings

»➤ The politics of money shapes local mobilizing and advocacy. Development partners, mainly donors, are powerful in shaping efforts toward social inclusion However, the interests of development partners are usually not in alignment with the interests and practices 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 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 common social inclusion goal or unifying identity often hamper effective organizing and social inclusion efforts.

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

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

Recommendations

»➤ Building strong structures and establishing mechanisms to streamline the coordination of efforts by CSOs is critical to strengthen local LGBTQ+ organizing. Development and transnational partners should also pay attention to the politics of interests and other related issues, such as socioeconomic development and security for LGBTQ+ people.

»➤ Strengthen CSO including accountability and invest in lobbying of the national Parliament, county governments, and related government departments on the social inclusion of LGBTQ+ people.

»➤ The expansion or intensification of efforts to create awareness among the public and to sensitize opinion leaders and service providers on human rights perspectives around sexual and gender minorities is needed. This would also include raising awareness on the benefits of social inclusion, in contrast to the outcomes of social exclusion.

»➤ Development and transnational partners should pay attention to the politics of interests and other issues, such as social economic development, and should review their engagement in social inclusion efforts.

»➤ 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.

»➤ Leverage awareness efforts on sexual orientation and gender diversity, and the benefits of inclusion of sexual and gender minorities and human rights among the general public, opinion leaders, and service providers. Investment in training of opinion leaders and service providers on social norms is critical.

Recommendations

»➤ A redefinition of relationship between government and LGBTQ+-led organizations, and the roles and collaboration relationships between international NGOs and CSOs, as well within CSOs, is needed to streamline advocacy and policy engagement.

»➤ Leverage LGBTQ+ organizations' resilience by encouraging strong support for organizational capacity in project monitoring and evaluations, co-creation and co-designing, and documentation of processes. Documenting best practices and cross-learning should be encouraged.

»➤ Where financial systems are unstable, financial management of movements should be delegated to financial institutions such as auditing firms.

»➤ Legal reform on decriminalization of sexual orientation should be separated from sodomy or unconsented same-sex behaviors.

»➤ When developing opportunities for interaction between local LGBTQ+-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.

»➤ Government and civil society organizations should implement programs that raise community awareness through dialogues with community members to discuss SOGIE issues to find solutions. Issues of concern should include discrimination, stigma, education, economic opportunities, health, and social inclusion generally:

   i. Community dialogue, which brings together LGBTQ+ and non-LGBTQ+ people for open discussions, can be a viable pathway to creating awareness.

   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.

»➤ Provide support for 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. 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.

Introduction

Sexual and gender minorities in African countries face significant social exclusion. Their lives are characterized by stigmatization and human rights violations [1-4], homophobia and related negative acts [2-4, 5] and criminalization and restrictive laws [6, 7], resulting in economic and health vulnerabilities [8-11]. The consequences include marginalization from mainstream societal opportunities, such as access to health, justice, housing, education, and employment [2, 4, 5, 6, 12, 13].

Same-sex relationships are very contentious in Kenya. Such relationships are widely stigmatized and discriminated against. The legal and policy environment that is associated with colonial laws sustained in Kenya's 2010 Constitution [2] arguably exacerbates the position of lesbian, gay, bisexual, transgender, and other sexually and gender-diverse (LGBTQ+) people. While the Constitution of Kenya upholds inclusiveness, and it is assumed that government departments have the responsibility to cascade inclusivity, Section 162 of the Penal Code criminalizes same-sex acts, punishable to a 14-year sentence. While there have been no reported incarcerations among LGBTQ+ people, the law does not expressly prohibit discrimination against them. This ambiguity in the law may be a window that fundamentally contributes to institutionalization of stigmatization and discrimination. This has increased negative attitudes and arbitrary harassment and vulnerabilities, clearly curtailing social inclusion and affecting the well-being of LGBTQ+ people.

Politics around same-sex citizenship revolve around social inclusion and exclusion. The term "social exclusion" is the limitation or non-realization of citizens' economic, social, and political rights [14-16]. It describes the state of being unable to fully participate in economic, social, political, and cultural life, as well as the processes leading to and maintaining such a state of being [17]. Social exclusion fuels poverty, inequality, disparity, displacement, and related vulnerabilities. Social exclusion makes people feel devalued and disrespected, which may cause them not to fully participate in society. The complexity of social exclusion based on sexual orientation is informed by institutionalized stigmatization and related cultural and religious beliefs and discourses. Social exclusion can manifest in legal structures through criminalization of same-sex relations, through non-inclusive policies, and in social structures through homophobic acts such as violence, rejection, isolation, ostracism, and discrimination [16].

Social inclusion assumes the protection of dignity and rights of every human being, including political rights and equal access to public services, such as education, health, housing, and economic mobility [17-19]. The United Nations' Sustainable Development Goals (SDGs) offer a rights-based approach to global and national policymaking that ensures social inclusion through aspirational notions of "leave no one behind." Every person is entitled to benefit from prosperity and enjoy an adequate standard of living, according to the 2030 Agenda (SDGs) through the fundamental premise of equality [17]. Social inclusion has resulted in marginalized communities being able to access basic needs such as education, economic opportunities, health, food, and housing. Initiatives such as the African Union's Human Rights Charter and Agenda 2063, and the Kenyan Constitution of 2010, take an inclusivity framework. Despite this, accountability structures to ensure that inclusive policies for all individuals, regardless of their identities, are weak at all levels—national, regional, and global—leaving many groups out. The most marginalized of these groups are people of diverse sexual orientation and gender identities (SOGIE), such as LGBTQ+ persons.

Since 2009, men who have sex with men (MSM) have been targeted in HIV/AIDS interventions in Kenya as a key population.

With the quest for the rights of sexual and gender minorities, three divergent legal stances have manifested in Africa. Few countries have decriminalized same-sex relations, and others' legal stance on sexual and gender minorities (SGMs) remains gray, with over half of the countries criminalizing same-sex relations. However, despite the legal status, negative attitudes—denial of services, rejection, isolation, and violence, including murder—is evident among the LGBTQ+ community.

Since 2009, men who have sex with men (MSM) have been targeted in HIV/AIDS interventions in Kenya as a key population. The group, which includes gay, bisexual, and transgender men, and other men who have sex with men, is prioritized in programs delivered by the National AIDS Control Council (NACC) and National AIDS and STI Control Programme (NASCOP) because of the high incidence of HIV in this group, leading to a concentrated epidemic. The focus on MSM as a key population is contested, with proponents supporting and pushing for the social inclusion of LGBTQ+ people and opponents pushing for the status quo: social exclusion. Social science researchers, however, have concentrated on HIV prevalence and access to HIV services, focusing less on the social inclusion of LGBTQ+ people [20, 21]. With all these developments, we know so little about the nature of the social exclusion of LGBTQ+ people in Kenya.

Rationale and objectives

While efforts to include marginalized groups such as women, adolescents, and people enabled differently have been made in national, regional, and continental instruments, sexual and gender minorities have been left out. A political economy analysis (PEA) is used to understand issues concerning lives of sexual and gender minorities, and politics and economies shaping the social exclusion and inclusion of LGBTQ+ communities. Institutionalized cultures of social exclusion need to be questioned to explain how decisions are made, who the key actors are, what they want, and what are their interests, ideas, incentives, and values; to identify allies in critical moments; and to refine strategies for advocacy. A political economy analysis is one of the approaches used to make sense of the politics around LGBTQ+ social exclusion and inclusion. The aim of this study is to examine the politics of social exclusion and inclusion of LGBTQ+ persons through a problem-driven analysis approach to inform ongoing advocacy strategies. The main PEA objective is to understand key actors' interests, values, incentives, decision-making, power dynamics, and collaborations. Specific objectives include examining existing policies and legal processes at national and sector levels; understanding the socio-political environment; and identifying and sharing knowledge on potential opportunities, including factors impeding and enabling moments of dialogue between various actors that facilitate social inclusion.

The PEA consists of three elements: 1) problem-driven analysis; 2) sector analysis; and 3) sharing knowledge for advocacy. In adopting the problem-driven methodology, we focused on actors' decision-making logic and "room for maneuvering." First, we analyzed the legal and policy framework underpinning social exclusion and inclusion. Second, we highlighted the lived experiences and contexts of social exclusion and inclusion of LGBTQ+ persons. Third, we mapped out key actors and analyzed the interests, values, norms, power dynamics, and incentives that influence their decision-making and actions. We also interrogated non-documented institutional practices of social exclusion and inclusion. The underlying rationale for this approach is to provide a more nuanced analysis that can help advocacy actors in advancing the social inclusion of LGBTQ+ people in Kenya.

The PEA consists of three elements:

1. Problem-driven analysis

we analyzed the legal and policy framework underpinning social exclusion and inclusion

2. Sector analysis

we highlighted the lived experiences and contexts of social exclusion and inclusion of LGBTQ+ persons

3. Sharing knowledge for advocacy

we mapped out key actors and analyzed the interests, values, norms, power dynamics, and incentives that influence their decision-making and actions.

Methodology

1. Study setting

We conducted the PEA in three counties in Kenya: Nairobi, Mombasa, and Kisumu. Kenya is situated in East Africa and has a population of 47 million, of whom 22% live in urban areas. Nairobi is the administrative and commercial capital of Kenya. It hosts a high number of development partners and civil society and community-based organizations, including LGBTQ+-led ones. As such, it attracts high numbers of the LGBTQ+ community. Mombasa County, located in the coastal region, is the second-largest city and the main port of Kenya. It is known for its hospitality industry and has a sizable population of LGBTQ+ people [22] and male sex workers, and a number of CSOs. Kisumu County, the third-largest city in Kenya, is located in the western region and serves as a hub for the Eastern Africa region through Lake Victoria. It is one of the counties with a high HIV prevalence and has attracted a significant number of international, national, and community-based CSOs focusing on human rights and LGBTQ+ individuals. The county has the largest LGBTQ+ movement, comprising vibrant LGBTQ+-led organizations.

2. Design

We conducted a PEA of LGBTQ+ social exclusion and inclusion. We used secondary and primary data. The secondary data analysis involved a desk review to identify laws, policies, and key actors of social inclusion and exclusion. The desk review played an important role in informing stakeholders in the space that were included as participants in primary data. The primary data collection involved interviews and discussions with a range of key actors on power dynamics, rules, incentives, decision-making, collaborations, influencing, and related social exclusion and inclusion activities, perceptions, and practices. Data were collected between March and August 2021.

3. Policy desk review

A comprehensive review of existing national policies—content and process—and the legal framework around social exclusion/inclusion, key actors, their roles and informal and formal relationships, and documentation of incentives—implicit interests, values, and norms that serve to influence the decisions and actions of key actors and advocacy efforts—were conducted both online and offline. We used a scoping literature review approach. We searched both published and gray literature through search engines and databases. We included legal and policy documents, organizational documents, academic articles, and reports. We searched Google Scholar, PubMed, and PsycINFO. We searched the Google search engine for policies and legal instruments of Kenya. We also searched national and county government departments and sectors such as Public Services, ministries of Health and Education, the Judiciary, NACC, and NASCOP; and development partners' and CSOs' websites. We searched paper-review databases for publications. Articles in three Kenyan newspapers—the Daily Nation, The Standard, and the Star—and organizations' reports were included. First, the research team searched for citizen protection and welfare laws of Kenya, including the Constitution, and county governments' bylaws. Terms related to SGMs, LGBTQ+, lesbian, gay, bisexual, transgender, policies, social exclusion, social inclusion, MSM, MSM sex workers, key population, Kenya, laws, donors, government, and CSO were used in search string strategies. Boolean terms were used to combine terms associated with the topic to improve the search: 1,567 articles were mined and screened, and only 157 articles that described social exclusion and inclusion laws and policies, non-conventional practices, key actors, and lived experiences of LGBTQ+ people in Kenya between 1963 and June 2022 published in English were included.

4. Stakeholder analysis

We conducted a participatory stakeholder mapping and analysis process during the validation of the study findings in all four sites of the study. The participants at the study validation workshop were 23 in Nairobi, 29 in Kisumu, 25 in Eldoret, and 23 in Mombasa. These participants evaluated the level of interest and influence of the SGM stakeholders in Malawi in eliminating discrimination and exclusion of LGBTQ+ people in Kenya; they also worked together to refine the results and propose additional recommendations. We adopted the Mendelow Influence vs Interest Matrix to analyze stakeholder groups based on both their ability to influence the LGBTQ+ agenda and priorities and the strength of their interest.

5. Empirical data collection

Primary data were collected through key informant interviews (KIIs), in-depth interviews (IDIs), and community mapping focus group discussions (FGDs). Key informants included actors at the national, count, and sector levels. KIIs were unstructured and were carried out using a topic guide. We used an open-ended topic guide with prompts to elicit more information. The interviews were face to face or virtual, using online platforms like Zoom and Google Meet. Participants were considered based on awareness of LGBTQ+ issues, including public discourses, policies, or legal frameworks, or were drawn from relevant sectors. To be eligible to be interviewed, KIIs had to have resided in Kenya for 12 months and be willing to participate. We conducted 47 KIIs with key actors. For government sector representatives, we focused on their policies and practices.

We held 40 IDIs with LGBTQ+ individuals. These interviews elucidated information on lived experiences and how they related to national and sector education, policies, and laws in various spheres of life, such as health, economy, and social well-being. Semi-structured interview guides were used.

Six community mapping FGD sessions were conducted with gay and bisexual men; transgender, lesbian, and bisexual women; and LGBTQ+ refugees. In this exercise, participants were asked to name and rate the power dynamics of key actors at the national, community, and sector levels. The primary objective of integrating the FGD technique in community mapping was to ascertain knowledge about key actors and normative beliefs and practices of actors influencing or inhibiting social inclusion.

Methodological note on locating study participants: We acknowledge the sensitivity of the SGM in Kenya. Only one of the APHRC researchers was familiar with the LGBTQ+ community; therefore, we intentionally included three researchers from the LGBTQ+ community as both mobilizers and researchers for each study site. In this cooperation, while there were possibilities of connecting to the field and mobilizing participants, there was an opportunity to build research skills of partners, which is one of the CPSE project goals. The three LGBTQ+ mobilizers had previously worked with one of the APHRC researchers on various studies and were influential in the LGBTQ+ space, as they came along with their organizations. We agreed on mutual collaboration, where APHRC led the research data collection training while researchers from the LGBTQ+ community led a training on LGBTQ+ terminologies and on value and attitude clarification and transformation.

The decision to include LGBTQ+ researchers was beneficial in terms of mobilizing study participants and garnering trust within the community. After the training on data collection, the LGBTQ+ researchers were tasked with mobilizing study participants. They reached out to potential participants via phone call or email, through contacts obtained in the course of their work on LGBTQ+ issues. Potential participants included groups or individuals working on LGBTQ+ interventions; donors and the organizations managing donor funds; national and sub-national government departments; and NGOs, opinion leaders, and other CSOs that work with LGBTQ+ people. We conducted interviews with study participants in almost all categories, either in person or virtually, depending on the government's COVID-19 containment measures. Participants who were unavailable provided referrals to people whom they knew to be available and knowledgeable about the topic.

Because of the relative ease in accessing study participants through the LGBTQ+ mobilizers, we had to be careful to not just recruit allies or people who seemingly only supported social inclusion. We intentionally sought out those opposed to social inclusion of LGBTQ+ people. Recruitment of these participants who do not support or do not have a stand on same-sex relations took more time than the mobilization of pro-inclusion participants. We therefore asked some of the anti-inclusion participants to direct us to others with similar views, which helped widen the pool of participants.

Obtaining access to some national government departments, such as the Education, Health, Interior and National Development, and Labor ministries, and other government arms, such as the Judiciary, presented challenges. As the study was initially conducted during the first and second COVID-19 waves in 2020–2021, when most people, including government staff, were working remotely, we conducted email interviews with officials from these departments. Efforts to reach them through other means were unsuccessful, and even when we made follow-up telephone calls, we were told to wait for email responses. Four police officers in Kisumu and Nairobi declined to participate in the study, asking that we first seek approval from the Ministry of Interior and National Development or their head office, even after reading through consent forms and being reassured about interview confidentiality. Officials from the head office largely did not respond to our emails. A few accepted our requests, but they later declined virtual interviews, citing ethical dilemmas. They expressed fears of hidden recordings since the interviewers and interviewees were not in the same space. "How can I trust that you will not record when it is virtual? We are not in the same room, and I cannot see what you are doing," stated a police officer who declined a virtual interview.

Analysis: We used thematic analysis with a mixed approach (deductive and inductive) to analyze the interviews [23]. All interviews and discussions were tape recorded and transcribed verbatim. Two researchers and a professional data coder familiarized themselves with the data—both desk review and empirical data—by reading through three transcripts that were randomly selected from various data sources. They reread the transcripts, iteratively identifying themes, sub-themes, and their properties. They developed a coding framework that entailed naming and defining themes and sub-themes that were mostly similar. Computer-assisted analysis was done with QSR NVIVO, Version 12.

Ethical approval: We obtained ethical approval from the African Medical Research Foundation – Health (AMREF-ESRC P892/2020), as well as a research permit from the National Commission for Science, Technology, and Innovation (NACOSTI) License No: NACOSTI/P/21/8632. All study participants provided their informed consent.

Findings

We report on key findings as they relate to social exclusion and inclusion of LGBTQ+ people. The findings begin with the legal and policy context, specifically examining the interaction of LGBTQ+ people and the state. Second, we analyze relevant features of the socio-political environment examining LGBTQ+ people's lived experiences, including factors driving social exclusion and inclusion. We then map and analyze key actors, including their interest, incentives, power dynamics, decision-making, and influencing. Finally, we provide insights into advocacy opportunities and strategies.

The life of the LGBTQ+ individual: Legal and social context

The social exclusion of LGBTQ+ people in Kenya can be understood by exploring their relationship with the state and related agencies, as well as with society. The laws of Kenya are prescriptive of how Kenyan people should be treated by the state and how members of the society should engage with each other. In this section, we analyze policies and laws on social inclusion and exclusion of LGBTQ+ individuals in Kenya. We focus on both documented and informal practices at the national and county levels.

The LGBTQ+ individual and the state: Legal-political environment

In this section, we analyze Kenyan laws and policies around the social inclusion and exclusion of LGBTQ+ individuals. We focus on both documented and undocumented laws at the national, county, and government-sector levels.

Key finding: *The policy and legal environment of Kenya could be inclusive; however, it is held back by the Penal Code and cultural practices.*

The LGBTQ+ individual does not stand alone in their relationship with the state and related organs: they are a Kenyan citizen. Two broad streams of legal discourse are presented that tend toward social inclusion and exclusion. The Kenyan government takes the lead responsibility for social inclusion of its citizens through various instruments and practices. The laws of Kenya prescribe how Kenyan people should be treated by the state and how they should engage with each other as a society. The Constitution of Kenya (2010), which is the highest law in the land, includes the Bill of Rights, which covers all people [24]. Articles 4, 10, and 27(1) of the Constitution promise political, economic, and social inclusion through equality and freedom. Article 20(2) of the Constitution protects rights and fundamental freedoms, while Article 27(1) promises equality before the law, the right to equal protection and equal benefit of the law. Articles 19 and 28 speak to freedom and dignity, Article 29 addresses the right to freedom and security of the individual, while Article 31 promises the right to privacy. Articles 33, 36, and 37 protect the rights of freedom of expression, demonstration, association and assembly, picketing, and petition, although each of these rights may be restricted under specific circumstances. The protection of marginalized communities is captured in Articles 10(2)(c), 21(3), 28, 29, 56, 91(1)(e), 100(e), and 174(e), among other articles of the Constitution of Kenya.

Article 2 of the Constitution states that general rules of international law shall form part of the law of Kenya, and any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution. Kenya has made commitments to numerous international treaties and regional conventions, including the Universal Declaration of Human Rights [26]; the International Covenant on Economic, Social and Cultural Rights (ICESCR 1976) [27]; the International Covenant on Civil and Political Rights (ICCPR) [28]; Resolution 275 of the African Charter on Human and Peoples' Rights [29]; and the Convention on the Elimination of all forms of Discrimination against Women (1981) [30]. Except for Resolution 275 of the African Charter on Human and Peoples' Rights, there are no specific laws in the country that provide for non-discrimination on the grounds of sexual orientation, gender identity, or gender expression.

Recent jurisprudence, policies, and acts of Parliament provide for inclusivity in Kenya. These legal and policy documents, which are summarized in Table 1 below, include the Health Act 2017 [31]; Registration of LGBTQ+ Organizations 2019 [32]; Employment Act of Kenya [33]; Kenya AIDS Strategic Framework II [34]; National Policy on Gender and Development [35]; Persons Deprived of Liberty Act 2014 [36]; Change of Names for Trans Persons 2014 [37]; Anal Examination Case 2018 [38]; the Supreme Court ruling in favor of the registration of the LGBTQ+ organizations by the NGO board [39], and the criminalization of the 2019 same-sex case [40].

In 2009, key populations, including MSM, were named as a target population for HIV interventions in the Kenya AIDS Strategic Framework due to the high rates of HIV transmission among them . In part, their inclusion in HIV programming was also driven by activism by key population groups in Kenya and donor agencies.

Table 1. *Laws and policies that provide for inclusivity in Kenya*	
Event, Report, Policy, or Legislation	**Summary of Content Relating to Sexual and Gender Minorities**
Constitution of Kenya (2010) Article 20(1) states that "The Bill of Rights applies to all law and binds all State organs and all persons." Article 20(2) states that "Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom." Article 19 refers to freedom from torture and cruel, inhumane, and degrading treatment and punishment. Article 27(1) states that every person is equal before the law and has the right to equal protection and equal benefit of the law. Article 28 states that every person has inherent dignity and the right to have that dignity respected and protected. Article 29 states that every person has the right to freedom and security of person. Article 31 states that every person has the right to privacy. Articles 33, 36, and 37 protect the rights of freedom of expression, association and assembly, demonstration, picketing, and petition. Article 43(1)(a) states that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.	These provisions of the Constitution guarantee the rights and freedoms of Kenyan citizens, ensuring that every individual, including those of particular interest to this study, that is LGBTQ+ persons, is entitled to enjoy the rights and freedoms enumerated in the bill of rights. Each of these rights may be restricted under certain specified circumstances, but there are no specific restrictions regarding the rights of LGBTQ+ people. In 2015, the High Court of Kenya ruled that these rights are held by every person, including LGBTQ+ people. Article 45 of the Constitution recognizes only marriages between persons of the opposite sex. There is no legal recognition of same-sex couples.
The Penal Code 1930 (Rev. 2012) Section 162 criminalizes "carnal knowledge … against the order of nature," with a penalty of 14 years' imprisonment. Section 163 prohibits attempts to commit the offenses criminalized under Section 162, with a penalty of seven years' imprisonment. Section 165 prohibits acts of "gross indecency" between men, or the procurement or attempted procurement thereof, with a penalty of five years' imprisonment.	This provision is applicable to sexual intercourse between men.
Kenya AIDS Strategic Framework II 2009/10 Men who have sex with men are included in the HIV strategic plan.	Recognizes men who have sex with men, and transgender people, as key populations for HIV response work.

Event, Report, Policy, or Legislation	Summary of Content Relating to Sexual and Gender Minorities
Persons Deprived of Liberty Act 2014 An Act of Parliament provides for the protection of fundamental rights of detained and imprisoned persons inter alia not to be treated or punished in a cruel, inhuman, or degrading manner. It recognizes rights of detained and imprisoned intersex persons to choose the sex of the person by whom they should be searched and their separation from persons of binary gender.	All intersex people in custody can now choose the sex of the person by whom they should be searched. The Act also directs that intersex persons must be held separate from other persons.
Change of Names for Trans Persons 2014 A High Court ruling that names can be changed via a deed poll under the Registration of Documents Act.	Transgender individuals can change their names to suit their gender identity.
Anal Examination Case 2018 Ruling by the Court of Appeal that conducting forced anal examinations on people who are accused of same-sex relations is unconstitutional.	The ruling reversed a 2016 High Court decision that had upheld the Kenyan authorities' use of forced anal exams to attempt to provide evidence of homosexual conduct.
Registration of LGBTQ+I Organizations 2019 and 04 May, 2023 KESC 17 (KLR) Ruling by the Court of Appeal (COA) and the Supreme Court that the government could not use colonial-era laws criminalizing gay sex to block the National Gay Lesbian Human Rights Commission (NGLHRC) from being registered as a non-profit organization.	Three of the five judges of COA upheld an earlier verdict by the High Court, saying sexual minorities were entitled to the same rights as all other Kenyans, including the right to associate. Five of the seven justices of the Supreme Court affirmed the right to registration and association by LGBTQ+Q organizations.
Continued Criminalization of Same-Sex Conduct 2019 A decision by Kenya's High Court to uphold discriminatory laws that target LGBTQ++ people.	The court found that Sections 162, 163, and 165 of the Penal Code do not violate the rights of LGBTQ+ Kenyans to access health, a fair trial, security of the person, and freedoms of conscience, religion or belief, human dignity, or privacy.
Employment Act of Kenya Section 5(2) provides that "An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice." This is further enforced in section (5)(3), where the Act states that "No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee–(a) on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status; (b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment."	The implication of this provision is that persons of same-sex unions, or those who are transgender or intersex, should engage in economic activities without fear of discrimination regarding their sexual orientation or gender assignment.
Health Act, 2017 Section 11(1) of the Act on Confidentiality provides that "Information concerning a user, including information relating to his or her health status, treatment or stay in a health facility is confidential except where such information is disclosed under order of court or informed consent for health research and policy planning purposes."	Confidentiality is something that is of fundamental importance, especially for LGBTQ+ people, who may not want to seek medical treatment for fear of being exposed. This provision empowers the patient to seek treatment.

Event, Report, Policy, or Legislation	Summary of Content Relating to Sexual and Gender Minorities
National Policy on Gender and Development The first National Policy on Gender and Development (NPGAD) was adopted in 2000. The policy provided a legitimate point of reference for addressing gender inequalities at all levels of government and by all stakeholders. It further provided an avenue for gender mainstreaming across all sectors to generate efficient and equitable development outcomes.	This informed the registration of the National Gay Lesbian Human Rights Commission (NGLHRC).
International and regional conventions Universal Declaration of Human Rights The International Covenant on Civil and Political Rights (1966) The International Covenant on Economic, Social and Cultural Rights (1966) Resolution 275 of the African Charter on Human and Peoples' Rights (2014)	[6] The Penal Code (Rev. 2012)

While the county governments can make specific laws and policies that align with the Constitution, only Kisumu County, in its Kisumu County Sexual and Reproductive Health Strategy 2019–2024, has standards focused on provision of sexual and reproductive health and rights (SRHR) services to transgender and intersex persons (Table 2). These standards are milestones in the social inclusion of LGBTQ+ persons.

Table 2. *Standards of provision of SRHR to transgender and intersex persons in the Kisumu County Sexual and Reproductive Health Strategy 2019–2024*
Standards of provision of SRHR services to transgender people
1. Health literacy: provider and trans person awareness of specific trans health issues and needs
2. Gender-affirming services for transgender, gender diverse, and intersex movements
3. Creating a safe and comfortable agency space
4. Use of inclusive and gender-neutral language
5. Confidentiality of client information
6. Building and engaging in a trusting relationship with trans people
7. Ensuring staff diversity and training
8. Harm reduction
9. Referrals and comprehensive resource list
Standards of provision of SRHR services to intersex people
1. Information, communication, and education on intersex as a sexual and gender identity
2. Prevention of HIV and STIs through appropriate prevention methods
3. Provision of curative services as per the established protocols
4. Provision of all services according to the protocols of medical ethics
5. Observance of privacy

Although a majority of participants were less aware of the progressive inclusive legislations except for the Kenya AIDS Strategic Framework II, they had knowledge of the Constitution of Kenya to be inclusive, that is, it promises to protect all people equally:

> *"Yeah, because the Constitution is very clear, we are all equal, one; two, I would refer to that Medical Act. It says we as Kenyans, we are all entitled to get equal treatment, so I think only that shall be clear to bring out the point of inclusion, yeah, that policy. Like you said, what policy."* **FGD, Nairobi**

A few specifically mentioned the Bill of Rights to promote inclusion:

> *"Yes, we have a policy that talks about social inclusion, that is our bill of rights, that really covers that."* **KII, Mombasa**

Legal policy contradictions

Key finding: *Contradictory government policies and practices.*

Kenya maintains vestiges of colonial-era laws in its legislation concerning LGBTQ+ people. The social inclusion of LGBTQ+ persons is trapped in the ambiguous interactions between Articles 162 and 165 of the Penal Code and the Constitution of Kenya [24]. On one hand, the right to health and inclusion of MSM in HIV policies and programs fosters social inclusion, while on the other hand, Sections 162 and 165 of the Penal Code and Article 45 of the Constitution enable social exclusion. The same Constitution which promises inclusivity has some clauses that cast a shadow on inclusion of SGMs. Participants were aware of this ambiguity in the laws citing Penal Code Sections 162, 163, and 165, and Article 45 of the Constitution, the Marriage Act of Kenya defines marriage as the voluntary union of a man and a woman. This expressly excludes same-sex unions. Section 158 (3) (c) of the Children Act states that an adoption order shall not be made if the applicant or, in the case of joint applicants, both or any of them is a homosexual. There is no legal gender recognition for transgender persons. They link these discriminatory laws to stigmatization, discrimination, and violence:

> *"Of course, we have the Section 162 of the Penal Code [provides inter alia that any person who has carnal knowledge of any person against the order of nature commits a felony and is liable to imprisonment for 14 years] that has been used, and we know that the community is in court to repeal that so that law has been largely used to hinder, to exclude, LGBTQ+I because of who they are. You know, the law enforcers easily quote that law when they arrest you arbitrarily; without any mistake, they will quote that law or they will blackmail us and also threaten people. When they blackmail you, they will cite such laws; if you try to maybe sue them or report them, they will say, but you know if you report me, the law doesn't even allow."* **Opinion leader, Mombasa**

The discrepancies in the law and practices are considered a danger to social inclusion of LGBTQ+ people:

> *"Article 29 of the Constitution [provides inter alia that every person has the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman, or degrading manner]. A lot of LGBTQ+ members are brutally beaten because of their sexuality, a lot of trans persons are being beaten because they are perceived to be cross-dressing; a lot of degrading treatment because someone is perceived to be gay and so now they want to attack you. They are putting you through harsh conditions; as much as the Constitution of Kenya is supposed to protect the human rights of every person, to some extent sometimes it goes without doing justice to it."* **KII, National CSO, Mombasa**

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[1]*Section 165 of the Penal Code says it is a felony for a male person to commit "any act of gross indecency with another male person," whether in public or in private. This is punishable by five years' imprisonment.*

[2]*MSM includes gay, bisexual, and transgender men, and other men who have sex with men.*

[3]*The Marriage Act (2014). National Council for Law Reporting. http://kenyalaw.org/kl/#!eadmin/pdfdownloads/Acts/"eMarriage_Act2014.pdf*

While HIV interventions were a step toward social inclusion of MSM, a section of participants faulted the current approach by the government to LGBTQ+ issues, which has been limited to HIV control. Article 43(1)(a) of the Kenyan Constitution promises every person the right to the highest attainable standard of health, pushing for a holistic approach to health, and not just around HIV. Participants stated that the law to include MSM in HIV intervention took effect only when supported by science, which is when the epidemiological evidence became a public health concern. In addition, donor funding further influenced the HIV interventions. As such, approaches toward broader social inclusion, such as the "beyond HIV" outlook or other aspects of LGBTQ+ life, were of little interest.

> "So, it means if we go on with the current situation, with the current laws and policies that are not helping to make the inclusion of LGBTQ+ in everything, it means … we look at SDG 2030 … we are going to have more LGBTQ+ who don't have houses, who are not going to access quality health care services. And there will be more violence toward this group, physical, sexual, and economic violence. It means the laws are going to be more hostile than they are … According to me, I think Kenya will not meet the goals, because according to SDGs, it means everyone, and this includes LGBTQ+. But according to Kenya, we still have those laws discriminating against LGBTQ+, so it means we are not going to carry everybody along in that ship." **KII, ICRH, INGO, Mombasa**

Participants highlighted contradictions in practice around Article 19 of Kenya's Constitution, which promises freedom from torture and violence. State institutions and departments are obliged to uphold inclusivity and the protection of human rights for all citizens. However, the PEA revealed contradictions between documented laws and policies as well as the tendency toward unwritten practices that are rooted in a hostile belief system and criminalization of same-sex relations. Sexual and gender minorities experience violent and degrading treatment and lack protection from the state security apparatus. There are contradictions in various government departments, including health, housing, education, and employment. The analysis also shows contradictions in government practices. Few government sectors or departments are working toward social inclusion, like the Kisumu County Government Health Department is doing with health programming that goes beyond HIV interventions. Policies and practices by some government departments, like Education and Health, seem to sanction social exclusion through practices that deny LGBTQ+ people access to services and opportunities.

> "So, for instance, at the HIV testing and counseling level, I will be asked to come with my partner, and that is a guideline. And coming with my partner, I go and bring James on board and the health care provider will look at me and say no, this is not your partner … your partner must be a lady, and to that extent I will be denied services. So, the policy is clear that they are supposed to give services without stigma and discrimination, but also the policy says that if I am to get services as a man, my partner must be a lady, and they will quote Article 45 of the Constitution and tell you that it says marriage is between a man and a woman … it cannot be between a man and a man, hence some of the policies also are acting as barriers to implementation." **KII, INGO, Nairobi**

Participants also stated the difficulty faced by SGMs in accessing education and housing. Prevailing laws and policies reinforce negative attitudes and exacerbate LGBTQ+ people's vulnerabilities.

The LGBTQ+ individuals and society

Key finding: *The socio-political environment remains hostile to LGBTQ+ people; however, positive changes are slowly occurring.*

The power of the Constitution as well as the religious and cultural grounds that form the basis for anti-LGBTQ+ claims make social inclusion difficult. Study participants indicated both a positive and negative socioeconomic environment. Although negative attitudes toward LGBTQ+ individuals in society remain an everyday reality, some positive societal changes have occurred in the last five years that have resulted in more positive lived experiences for LGBTQ+ people.

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[4]Republic of Kenya (2002). The Children Act. Nairobi: Government of Kenya. http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ChildrenAct_No8of2001.pdf

Some level of acceptance or tolerance in families was reported.

> *"… expressing my sexual orientation and identity has not been a challenge so much because I had cooperative parents. My family understands who I am, and they embrace my queerness, and access to education has not been such a challenge because I had the privilege to go to schools, I had the privilege of [fees] being paid for, I had the opportunity to go to college, I had the opportunity to work …."* **LGBTQ+ interview, Kisumu**

Positive changes in jurisprudence and community awareness were reported and attributed to the advocacy and activism of various actors. Advocacy efforts, primarily by LGBTQ+ organizations, helped create awareness and advance LGBTQ+ individuals' rights:

> *"First, we have created a lot of awareness on the existence of this kind of a group and the rights that they have, by virtue of them being human. … Regardless of their race, social status, sexual orientation, all that, they are guaranteed the rights as enshrined by the Constitution, by virtue of them being human. We have done a lot of awareness creation, and we have also done a lot of lobbying and advocacy on policy formulation within the health sector and other sectors, to include that group or such members of our group within our policies."* **KII, Mombasa**

A classic example of a positive change is the inclusion of MSM as a key population in the Kenya National AIDS Strategic Plan 2009. Advocacy and training milestones made in community awareness and service delivery are reducing stigmatization and discrimination. Society is becoming more knowledgeable and understanding of sexual orientation. This has led some parents, families, and friends to become supportive and more accepting of LGBTQ+ people.

> *"… I have received support from family and friends: I have received major support from friends, well-wishers and organizations."* **LGBTQ+ interview, Nairobi**

Participants indicated advocacy work with different audiences, such as national governments and related arms of governments and departments, as shared by an LGBTQ+ participant in Kisumu:

> *"So, there has been a lot of advancement in terms of policy work, there a lot of work being done in the county governments, … by the Judiciary, by the Kenya police, there is a lot of work, like to minimize discrimination of the LGBTQ+ in the community, so it is not the same."*

However, pervasive negative attitudes toward LGBTQ+ people prevail in families, society, livelihoods, and service delivery, leading to greater secrecy. Coming out is therefore a problematic affair that is avoided.

> *"… I mean, if you are an LGBTQ+ person and do not disclose yourself, then things may work out for you. It will not be easy when you expose yourself."* **LGBTQ+ IDI, Kisumu**

Where there is uncertainty around the outcome, disclosure remains a daunting task:

> *"It is not a smooth line. [Be]cause, sometimes when you get a job, you have to hide because if they find out about your sexuality, sometimes they tend to pull away from giving you some responsibilities."* **LGBTQ+ IDI, Mombasa**

Discussions in the focus groups emphasized grappling with outcomes of disclosure:

> *"Worse, it is a tough one. But like in my case, it was worse because when I came out some few years ago, back then there was no exposure. They expect you to be a man. I told them … I love men, and yet you are a man! It hit them so hard, and it led to me being excommunicated from the whole family; I was discriminated against. So, for like ten years I have not been close to my family, yeah."* **LGBTQ+ IDI, Mombasa**

Participants noted that the negative attitudes toward LGBTQ+ individuals are entrenched in cultural and religious belief systems. Coming out and discussing sexual identity within their families and churches is usually fraught with emotions, excommunication, or conversion therapy. Others face harsh social environments such as negative stereotyping, rejection, and isolation that force them into internal displacement. They have become moving targets, constantly subjected to negative attitudes based on socially embedded norms and practices. They keep moving from one place to another for safety.

In Nairobi, an LGBTQ+ IDI participant explained,

> *"I was stigmatized by my relatives when they came to know I am gay … so I had to get out of the house and go and fend for myself. I was stigmatized during celebrations, I was not even invited, and I was only being invited to contribute to funerals."*

In addition to constant mobility, LGBTQ+ participants indicate economic hardship and lack of social support, which is blamed on unrecognized internal displacement position. "When you leave in a hurry without anything, no money, no place to stay, but you just leave for unknown, nowhere to report or seek help from, yet maybe you have no education certificate," laments an LGBTQ+ in-depth interviewee. LGBTQ+ individuals are expelled from or voluntarily walk out of institutions of learning. During a community mapping focus group discussion, participants explained how LGBTQ+ individuals voluntarily walked away from school under the watch of the school's administration.

> *"… At that time, the head teacher does not get involved. They cannot protect or help you: on one hand, they know your life is in danger, and on the other hand they are not expelling you so that they are not blamed for expelling you … so, they do not want to expel you, but watch as you leave the school."* **FGD, Kisumu**

They noted that for people who are financially better off, when children are expelled from schools, and their parents are aware, the parents change their schools frequently, and therefore they have the ability to hide their sexual orientation.

> *"… So, a child may be taken to different schools in an effort to make sure they get education, but risk being excommunicated from the family when they insist on portraying their identity that may embarrass their families. Especially in boys' schools, at other times, they are beaten."*

The impact of low levels of education, stigmatization, and related challenges–such as livelihood, shelter, and health care–were discussed. Simply put, LGBTQ+ individuals in displacement are usually condemned to hustle for survival. "Being a queer person comes with a lot of challenges, and of course our livelihood is one of the biggest challenges because you have to hustle. However, the hustling is a bit limited because we are judged at the workplace, unless you are working within a queer-led institution."

> **An LGBTQ+ IDI participant in Kisumu indicated that** *"… it becomes a … challenge in terms of earning a decent living. Or just a livelihood that can enable you to buy clothing, buy food, or even pay rent. We are struggling with work. It will be tough, but there is progress."*

However, even those who were educated hustled; some of them did not get jobs, and if they did, some lost their jobs. In Mombasa, LGBTQ+ people are seen as carriers of bad luck and are either dismissed or denied opportunities irrespective of their education and skills. They noted the incapability of functioning in the society.

> *"You cannot function like any other people in society."* **FGD, Mombasa**

Education may improve life for some of the educated LGBTQ+ people excelling in the socioeconomic space, while lack of education cultivates social and economic precariousness.

Interviews with LGBTQ+-led CSO representatives, government representatives, and LGBTQ+ individuals in community mapping FGDs reveal how LGBTQ+ persons encountered challenges accessing employment opportunities and accessing health care from public health facilities.

> *"… In the education sector, you find that if you are known to be an LGBTQ+, most of the time you find … in schools, people tend to isolate such persons or they tend … to go through a lot of mistreatment, even at the community level, so they cannot even find employment … they are considered to be … kind of not human, not normal, and you find that even politically, they cannot stand up to be able to talk or say anything because you are not supposed to be that way, God did not make you that way. So … these affect decision-making, they affect being included even in decision-making, and sometimes, then, we were trying to implement these policies in the health sector. It was hard and difficult because some people wanted to beat them when they were coming to hospitals. So, you see, access to health care services still is or rather was a bit difficult, so you can imagine at the community level."* **KII, Sector analysis**

Politicization of LGBTQ+ people was cited as an exclusionary measure. That is, some politicians in Kenya are on record with negative utterances about LGBTQ+ people, which could influence ways in which SGMs are treated. In the 2013 deputy presidential debate, the deputy presidential aspirant and current president, William Ruto, equated gay people to dogs, saying, "… if you read the Bible clearly, it equates homosexuals with a very derogated animal called a dog. They are in the same school according to the Bible." In 2015, he stated that there is no room for gays in Kenya [41]. During the debate about the Anti-Homosexuality Bill in Uganda in 2014, Kenyan Member of Parliament Irungu Kang'ata created a caucus in Parliament that was set to combat homosexuality in Kenya [42]. This caucus sought to introduce laws that would further criminalize same-sex conduct over and above the laws that are already in place. The media debate that followed the mention of LGBTQ+ people by prominent politicians led to an increase in violence, stigma, and discrimination faced by sexual and gender minorities, as reported by the Gay and Lesbian Coalition of Kenya (GALCK).

A bisexual IDI participant in Kisumu who attempted to vie for political office was thwarted due to his sexual orientation, which was used to deny him the opportunity: "… in terms of political spaces, I wanted to vie sometime back, but the kind of reaction that I got from the constituents and also my opponents who were using it as a tool for their political mileage is that we do not accept bisexual people and that homosexuality is not allowed in our society, and if I manage to get into the position, I will use it to influence LGBTQ+ issues, and so that didn't make me comfortable." LGBTQ+ people's participation in political elective offices is hampered by their sexual and gender identities. According to LGBTQ+ FGD participants in Mombasa, "tradition [culture] and religion are often used to manipulate potential supporters, especially used by political opponents when seeking for elective positions. [Those against you] will quote morals of the Bible or quote traditional ways when they want to pass something. [Saying] this goes against our tradition, this goes against our Christian values, this goes against our Muslim values." More challenging when it comes to securing employment are transgender individuals:

> *"It is not easy to employ a transgender individual. Because their legal documents do not conform to how they are, or who they are. So, then you find that there's the stigma surrounding their employment."* **KII, Mombasa**

The demand for partners is a barrier in reproductive health service delivery. Several gay men interviewed for the study noted that they are afraid to utilize public hospitals for fear of being outed (having their sexual orientation revealed without their consent) by the health care workers. Minority Women in Action (MWA), an organization working with lesbian, bisexual, and queer (LBQ) women, has reported instances of women being denied SRHR services due to their sexual orientation. The lack of understanding about transgender specific health care needs in most spaces has reduced the number of health centers that transgender people can access.

Survival tactics and resilience

Key finding: *LGBTQ+ people use various resilience tactics, such as sex work, mobility, NGO-ization, and concealment of identities in negotiating survival in the community.*

While LGBTQ+ people experience difficult socioeconomic and political environments, our analysis provided insights into the survival tactics they use to navigate the world around them, meet their basic needs, and ensure their well-being.

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[5]*Kenya Deputy Presidential Debate (Part 1) (Directed by Capital FM Kenya, 2013)*
<https://www.youtube.com/watch?v=OU7neGAvmAc>

Survival, navigation, and resilience

Mobility, the suppression of feelings, the concealing of sexual and gender identities, and participation in sex work and the NGO economy are the principal survival strategies reportedly employed by LGBTQ+ people. Some LGBTQ+ people conceal or suppress their identities to co-exist within their communities. Tactics include the avoidance of any behavior or associations that would lead to suspicion or the unintentional disclosure of their sexual identity. Such behavior entails conforming to heteronormative social interactions or relationships, such as marrying an individual from the opposite sex or conforming to heteronormative styles of dressing, as noted by an in-depth interviewee in Nairobi: "It is not a smooth line. Because sometimes when you get a job, you have to hide. [Because] if they find out about your sexuality, sometimes they tend to pull away from giving you some responsibilities."

Non-disclosure, mobility, and concealment

Other strategies focus on invisibility. Suppression of feelings, mobility, and the concealment of sexual identity are mechanisms used to navigate stigma, discrimination, violence, and lack of social support. Suppression and concealment of sexual and gender identity involve being vigilant about deliberate or accidental disclosure of sexual identity and orientation to ensure the maintenance of social support and the avoidance of violence from the community.

> *"I have to say that for me personally … I have existed as someone without an identity for a long period of time up until I came out. And you know, I could not identify as straight, I could not identify as queer for obvious reasons, based on the society that I live in. It was actually very difficult to do so. So, I would say that I was present, but I didn't really exist: I did not really feel that I existed, up until that period when I came out. And I just got backlash from family and friends and all that."* **LGBTQ+ interview, Mombasa**

Participants reported suppression of feelings and even modes of dressing, as the LGBTQ+ person who has not disclosed their identity conforms to heteronormative dressing.

> *"Sometimes, how we dress is important. As a lesbian, if you dress too manly, they don't take it lightly. So, they have to restrict you from dressing how you prefer to how they prefer."* **LGBTQ+ IDI, Nairobi**

Mobility as a tactic to escape unintended disclosure or suspicion is another reality that is common among LGBTQ+ people. They move to areas where secrecy is possible, enabling them to escape potential negative consequences, such as physical violence and stigmatization. Directionally, most movements are from rural to urban areas or from one city to another, where they can feel more secure. Members of the refugee community reported having to move from their countries of origin, mainly Uganda and the Democratic Republic of Congo (DRC), to Kenya, where they would then apply for relocation to their preferred destinations.

> *"We have LGBTQ+ refugees from Uganda, Rwanda, and DRC, but we face challenges. … But you know, for a refugee it's very different; you know, the problems are so deep that it needs a collective effort of … support from Kenyans and refugees themselves to be able to … overcome some of these challenges. Because whereas, yes, we both identify as, let's say for example, a lesbian or a gay person, it's going to be difficult, for my chances of acquiring employment are very minimal here in Kenya. Because even besides the organization's policies, the national policies themselves are not favorable for me as a foreigner. With these challenges, most of us apply for relocation abroad, where we could get opportunities like education or jobs."* **KII, CSO, Nairobi**

Rural–urban mobility is partly due to advocacy and activism efforts concentrated around major Kenya cities such as Nairobi, Kisumu, Mombasa, and Eldoret. However, even in these cities, people may be suspicious about gay couples or two men sharing a house. Many gay couples therefore remain mobile within cities.

Sex work economy and NGO-ization

Sexual orientation and gender diverse–driven stigma and discrimination denied some LGBTQ+ individuals education and economic opportunities in all study sites. Sex work emerged as a primary income source and a core aspect of the LGBTQ+ survival strategy:

> *"When you are not given a job or you are dismissed from a job, the only alternative is sex work. My peers mostly meet their livelihood through sex work, and it is sustaining for them mostly."* **LGBTQ+ participant, Nairobi**

Similar sentiments were expressed by participants in Mombasa, who reported, "Most of them have to engage in sexual activities … to earn or maybe to get food, get a house, all that." In Mombasa, it was reported that if you are a gay businessperson, people refuse to buy from you, and if you are working in a hotel or salon, you are told you bring bad luck to the business and you are told to go:

> *"I used to work in a hotel, and one day I was called and told they have learnt that I'm gay, and that I will bring bad luck to the business. I left and never looked for a job. Now I do sex work to pay the bills."* **LGBTQ+ participant**

The significance of the sex work economy was evident during the COVID-19 pandemic, as the disruption of the sex work economy deepened the economic precarity of LGBTQ+ people. "Corona[virus] has ruined everything … [even] accessing clients at the hot spot." LGBTQ+ IDI, Nairobi

Besides sex work, the flow of funding that has accompanied the HIV response targeting key population groups, including MSM, has resulted in the growth of local networks of organizations, some of which are led by LGBTQ+ people. Such organizations have become a source of income for LGBTQ+ people:

> *"With the policies that deliberately mention key population and LGBTQ+, you realize that it has really attracted resources into the country in terms of financial aid to really focus on the development aspects of health, as well as economy … So, … I would say like 80% or 70% of the funding toward health has been catalyzed because of the key population cohort. Because of the mention of LGBTQ+ persons in the health policies. So that has really contributed much in terms of health development."* **FGD, Mombasa**

Participants indicated that since the inclusion of MSM in HIV interventions and the increased attention on human rights for LGBTQ+, numerous local organizations have proliferated and are participating in HIV interventions and advocacy. These organizations have become conduits for economic opportunities for LGBTQ+ individuals, providing job opportunities in peer education (community sensitization, awareness creation, and distribution of condoms and lubricants), advocacy, or activism. Although these opportunities are limited to a few, they are avenues to access HIV interventions, sources of empowerment, channels for mobilization, and a step toward greater visibility of the LGBTQ+ community and human rights activism.

> *"… Let me say that I am one of the most privileged trans women or LGBTQ+ members/persons. Because when I came to Mombasa, I was able to join a very good, let's say proficient, organization, by the name P. It has actually enabled me to meet all my basic needs that a trans woman or an LGBTQ+ person needs. Like, when it comes to legal representation, there will be knowledge there for me. As I said, anything to do with social welfare, they have enabled me to get work. … So, I can say almost what I'm earning today, what I am feeding, what I'm bringing on my table, I think it is all about PEMA, as an organization that deals with LGBTQ+."* **LGBTQ+ IDI, Mombasa**

As seen in the excerpt above, the most vulnerable members of the LGBTQ+ community are transgender and gay people. These organizations provide long-term contracts or full-time jobs based on funding availability. Such opportunities are clearly carved out for those from the LGBTQ+ community who could not get a job elsewhere.

> *"… Okay, for now I am just doing some volunteer work [with] the gay organization. But earlier, I was doing some little work at the cafeteria. So, I had difficulties in doing that job because I was just doing it to gain some income. By the time the owner of the cafeteria realized that I am gay, it became a problem. He treated me like a nobody. All of a sudden, he reduced my salary, from KES 10,000 to KES 4,600. And life became so difficult. He did not want me to interact with male customers. I was a waiter and then I was pushed to the kitchen to go and now start cooking in the kitchen. And [at] that time, I did not have any experience as a chef. My experience was just as a waiter, yes."* **LGBTQ+ interview, Mombasa**

The LGBTQ+-led organizations received funding for economic empowerment opportunities, and members of the LGBTQ+ community have benefited by receiving cash or training or both.

> *"So far, I will say with over ten years that I have worked with civil societies, like P, I would say now things are getting better. Beneficiaries have been taken through the social and economic empowerment project that's still ongoing. And, currently, they are planning on commercializing the IGAs into products now. So, you see, with this kind of training, it makes us have a card for us to play on our own in society. And also, you know with the forthcoming efforts, P, … it means we will be having an extra income from the one that we are making in the community, and the ones that we will be using P to sell the products …."* **LGBTQ+ IDI, Mombasa**

As many LGBTQ+ people face challenges in unsupportive workplaces, some intentionally work in LGBTQ+-led and related organizations only.

> *"I have always worked for organizations which either do things for LGBTQ+ people or organizations that work for sex workers. The organizations that work for KPs [key populations] because they will understand us more."*
> **LGBTQ+ IDI, Mombasa**

However, such long-term engagement opportunities are available to only a few individuals, meaning the majority of LGBTQ+ individuals can access only part-time or periodic job opportunities. Almost all LGBTQ+-led organizations have similar interventions or activities, including work in HIV and human rights advocacy. Most of the workers in these projects are peer educators who are hired periodically, specifically to create awareness and distribute condoms.

Factors driving social exclusion

Key finding: *Government policies, laws and practices, negative political rhetoric, belief systems, lack of awareness and knowledge on sexual and gender minorities, and the media drive social exclusion.*

Social exclusion manifests through stigmatization, discrimination, violence, manipulation, blackmail, isolation, ostracization, and extortion. In this section, we analyze the implicit incentives and factors that influence social exclusion and inclusion. Findings indicate that laws and policies from national and county governments, belief systems, political rhetoric, lack of knowledge or information, lack of support from key policymakers, transfers of trained personnel, and the media are drivers of social exclusion for LGBTQ+ people.

> *"African traditions, culture and religion have not accepted the existence of such kinds of people. That is why even sometimes, in our own families, we might have people who are LGBTQ+, but we tend either to hide them or disown them or even chase them away, telling them that 'you are no longer a family member.'"* **KII, National NGO, Mombasa**

Government policies, laws, and practices

The government has the power to drive inclusivity, but its lack of commitment results in social exclusion for LGBTQ+ people. As mentioned earlier, legal and policy gaps, and the Penal Code in particular, are known to influence social exclusion. The LGBQT+ and CSO study participants questioned the government's commitment to inclusivity for all and mistrust its efforts.

> *"The same government that insists on upholding the Penal Code is the one that conducts interventions for key populations, establishing a gray line between inclusion and exclusion."* **FGD, Kisumu**

Participants also highlighted a fragmented approach to inclusivity, manifest in the government's different departments. While there have been some improvements in the health sector, the PEA pointed to other sectors, including education and labor, where social exclusion is reinforced through undocumented laws or practices.

> *"Maybe at the education level, the universities, colleges, and also [in] workplaces, we should have laws, we should have policies that are non-discriminatory. We should also have people who are friendly … to the LGBTQ+ community. We should have the LGBTQ+ being part of everything. They should be included in everything that is being done."* **KII, INGO, Mombasa**

A classic example of unwritten practices or directives was on 30 December 2021, when the then Cabinet Secretary of Education, the late Prof. George Magoha, attempted to ban homosexuals and lesbians from boarding schools at the secondary level. Prof. Magoha declared that "children who are homosexual and lesbians must go to day schools close to their homes." [43] This statement, coming from a top government official, could be interpreted as expelling gay and lesbian students from boarding schools.

Belief systems

Culture and religion are at the center of social exclusion for LGBTQ+ individuals. An argument posed against sexual and gender minorities is that homosexuality (relating to the whole of the LGBTIQ+ spectrum) is un-African. This argument has been used in Kenya not only by politicians and religious leaders but also by the society at large. Some respondents interviewed in this study stated that homosexuality is a western import and that LGBTIQ+ people and organizations that work toward their rights are emulating western cultures. They stated that Kenya's culture does not allow men to be with other men or women to be with other women. The belief and value systems driven by culture and religion are significant drivers of social exclusion. Participants reported that the negative attitudes toward LGBTQ+ people are a product of the belief that Kenya's culture and religiosity do not allow same-sex relations. Kenyan society mainly holds the view that LGBTQ+ people and the organizations that work for their rights are imitating Western culture.

> *"Tradition and religion are the biggest manipulators because politicians will use them. [They] will quote … the Bible or quote traditional ways when they want to pass something. This goes against our tradition, this goes against our Christian values, this goes against our Muslim values …."* **FGD, Mombasa**

Such a belief system pursues the idea of a heterosexual state. Condemnation of LGBTQ+ people's behavior is therefore rooted in religious beliefs and heteronormative values.

> *"… when someone sees you as a man, whatever he expects from you is to be a man, and that expectation, I think, to a very big extent has led to exclusion."* **FGD, Kisumu**

Religious teachings condemn same-sex relations as sinful.

> *"They are saying same-sex relations are [anti-]religious, and it is a sin, and it is considered a curse. So that is also another factor in the [exclusion]."* **FGD, Kisumu**

Both religion and culture promote greater intolerance toward LGBTQ+ people, which in turn fosters more secrecy among them. Participants suggested that religion has been a force for discrimination and condemnation of LGBTQ+ people. Religion is used to incite the general public to act against, violate, and exclude LGBTQ+ people, making social inclusion even more difficult. If LGBTQ+ people are not excommunicated from places of worship, they choose to stay away from such religious associations or communities.

> *"People feel that they don't belong, they don't fit, they are not loved, they are not cared for. So, some of the [LGBTQ+] people … live scared because they don't find a landing place, especially the churches…."* **Opinion leader, Kisumu**
>
> *"While some churches are slowly accepting LGBTQ+ individuals, there is resistance from congregation members, and in other churches [they] always preach about sin. … This is a sin, do not do this, this is a sin, this is a sin, so it is always in that church."* **FGD, Nairobi**

Arguably, culture and religion remain significant barriers to policy decisions. Study participants explained that policymakers carry their traditional and religious thinking into the policymaking process. These policies are informed by the cultural norms of the communities they represent, and policymakers may think that their decisions reflect the beliefs of their wider community.

> *"… culturally, our culture abhors the same. Two, the law of Kenya categorically says it is illegal, that is why it does not find space to be discussed…."* **Sector analysis, Kisumu**

Unsupportive policymakers: Negative political rhetoric and practices

The PEA also points to a lack of support from key policymakers. Social exclusion is associated with practices and rhetoric grounded in belief systems. Politicians are seen as key drivers against the social inclusion of LGBTQ+ people. FGD participants narrated how politicians use anti-LGBTQ+ statements to gain political mileage. Some may seek the votes of LGBTQ+ people during political campaigns, but once in office, they prove to be unsupportive.

> *"These politicians, instead of supporting us, they are the ones who bring us backward, and this really affects [us], because I believe our community members voted for them, but when they take office, [when] they are supposed to be advocating for our rights, you find that they don't include us, they keep on blocking us from being included."* **FGD, Kisumu**

Negative attitudes among health care service providers were linked to a lack of sensitization or training on LGBTQ+ issues.

> *"When you visit a public facility, if you have a provider who has not been sensitized on LGBTQ+ issues, you will find that he will deny, there will be no access to medical health care because of one or two things, or maybe because he has never witnessed the same, or he knows that the Penal Code does not allow it. But on the other side, the Bill of Rights mentions that 'everybody is entitled to the right to health care.'"* **FGD, Kisumu**

A participant provided an example about how a gay man was handled by health providers at a public health facility, despite the right to health and privacy:

> *"In 2018, a friend of mine was at Kenyatta National Hospital, which is a public hospital, to be treated for anal warts; so the health provider was a lady, and then when she tried to examine, she was like 'Eee! What are these things? How did you get these things?' And then she called the other colleagues around and was like just 'Come and see,' you know … he was then directed to the next room, where he was to be seen by a doctor. So, you see, that kind of thing. There is still that stigma and discrimination from the public health providers. The laws and policies are there, but we really need to train them, especially on the side of our health issues; yeah, in public health facilities, once they realize you are a key population member, they will definitely discriminate against you."* **Community mapping FGD, Nairobi**

Lack of awareness and knowledge

The lack of awareness and knowledge on sexual and gender minorities intersects with the negative rhetoric from leaders to propel negative attitudes toward same-sex relations. "The biggest limitation is knowledge and information," said a key informant. They cited the lack of information as grounds for stigma and discrimination.

> *"The issue of inclusion or exclusion is just news for most of the people. And every time you go to them, [for] most of them [it] would be the first time hearing this from you. So … if you have a good entry point you … tailor your message. So, the big issue is that information and messaging is not that common in my community."* **KII, Opinion leader, Mombasa**

The findings reveal a lack of knowledge or information among LGBTQ+ people, service providers, and the larger community on human rights disadvantages for LGBTQ+ individuals:

> *"There is a lack of knowledge among the LGBTQ+ persons. And I say so because many times you find that somebody has been violated, but because he or she does not know that he has been violated, he ends up doing nothing."* **FGD, Kisumu**

While lack of knowledge and awareness among the general public was reported, it was apparent that the study participants themselves were not fully conversant on progressive developments in laws and policies. Participants reported this to be a major challenge to social inclusion, as stated in a focus group discussion: "You cannot protect your rights if you don't know them."

Transfer of government personnel

While training of government staff, especially for those in the health and security sectors, has borne positive outcomes in inclusive service delivery, this progress is stunted when staff transfers and attrition occur.

> *"But the challenges have always been there, they sensitize probably five, two, three, then … in a short while they are transferred to other places, you start afresh. So I was just thinking … the curriculum for the training, in Kiganjo or whatever, something [needs] to be included in that curriculum so that as they graduate from there and they come back to serve us, they already know, that thing should be in them, instead of us keeping on sensitizing; you know, policies should be put in their curriculum during their training to understand."* **FGD, Mombasa**

The situation for transgender people is even more complex because of their nonconformity with their assigned gender and biological sex.

> *"… it's not easy to employ a transgender individual. Because their legal documents do not conform to how they are, or who they are. So, then you find that there's stigma surrounding their employment … [they] can't go to a bank with the name of Essie [female name] and yet [they are] a different person, like, for example, Ishmael [biological male]. That automatically leads to social exclusion."* **KII, Mombasa**

The media

Like the religious and societal leaders, the media was viewed as driving hatred toward sexual and gender minorities. Participants lamented that the media was fueling the social exclusion of LGBTQ+ people.

> *"Even the media themselves will also want to make money out of this story and … they will also want to play safe so that they will not be judged by the community."* **FGD, Mombasa**

Despite profoundly constraining social, structural, and economic contexts, LGBTQ+ people move on.

> *"Media is key, too. Because what the media says influences so many people. And if it is a positive thing, it is a good thing, but most of the time they are negative. So, there are instances where maybe the media has messed up. I remember there was a time one of the MSM-led organizations that was within Tom Mboya [Street] here, MEGO, was having some activity. And the Standard, I think it's the Nation Media, visited them and wanted to know what goes on. So, they took them through everything … thinking that the media would highlight the good work that they are doing … But what the media reported was different because they said that this organization is recruiting young men into 'gayism' … it was a very bad thing, and the backlash was not good."* **KII, Sector analysis**

Factors and initiatives driving social inclusion

Key finding: *Perceived reductions in stigma and discrimination, sensitization activities, HIV, funding, and increased pro-social inclusion stakeholders favor LGBTQ+ social inclusion.*

> *"Social inclusion is the holistic inclusivity of lesbians, gays, bisexuals in all things or all matters of life. It comes to employment, family, religion—you know, like any other activity within the society."* **KII, Mombasa**

Several factors drive social inclusion and influence the effects of social inclusion on the lived experiences of LGBTQ+ people. Besides the Constitution of Kenya, there are a number of laws and policies that expand inclusivity (cf. Table 1). HIV epidemiology has played a critical role in shaping social inclusion through progressive legislation.

> *"… my docket where I sit, I have to engage to ensure that the right to health of the SOGIE community has been put into consideration because the Constitution is very clear and precise referring to every citizen, and they belong to the aspect of the citizens."* **KII, INGO, Nairobi**

The stigma and discrimination faced by sexual and gender minorities hinders access to health care services. The deliberate inclusion of key population groups—including men who have sex with men (MSM), bisexual men, and transgender (GBT) people—in the 2009/10-2013/14 Kenya AIDS Strategic Framework (NACC, 2009) has been lauded as a fundamental milestone toward social inclusion.

> *"We can now access health care services, like for instance, you will find public facilities and those GBMSM organizations. For them to provide these services, you will find within a government setting a specific space whereby the community members can just go there and get the services, which was not the case some time back."* **FGD, Kisumu**

The growth in the number of stakeholders working with LGBTQ+ people and the accompanying HIV inclusiveness and increased funding is an indication of social inclusion. Participants in this study stated that the inclusion of key populations and LGBTQ+ people attracted resources into the country in terms of financial aid and contributed immensely to the inclusion of this community in health policies. Further, it opened up space for activism and the formation of important influential interest groups. It also provided a holistic approach to the inclusion of LGBTQ+ people in a range of activities and opportunities.

> *"The number of stakeholders working with the community has also grown. More and more we are seeing governments working with different stakeholders and themselves being stakeholders in different projects. There [are] a lot of financial generating activities going on. In a holistic [sense], a lot of LGBTQ+ persons are being involved either in theater, in music, in different creative activities. They are getting [in measures that are effective in the containment of COVID-19] to professional spaces because of the activism that has gone [on] and the lobbying; it has become possible for ways to be worked out so that marginalized people have more access to education, furthering careers and building themselves as individuals."* **KII, Opinion leader, Kisumu**

Increased sensitization among service providers and communities to enhance inclusivity was reported. However, while acknowledging some progress in reducing levels of stigma in service delivery, participants felt that LGBTQ+ people were more accepted within the family than the larger community.

> **An LGBTQ+ IDI in Nairobi noted,** *"I think the families are now accepting us because, today, we are many, and with time, the society will accept us; the harassment is no longer there."*

The family is believed to be key to changing society's attitudes toward LGBTQ+ people. A participant in FGD in Kisumu reported, "We are seeing a lot of tolerance nowadays in the community … people are getting informed … the world is a global thing: they want to see how other countries are handling themselves when it comes to LGBTQ+ and they are trying to copy some of the practices and bring it to the system … generally, [it] is becoming more and more accepting [with] the years."

Participants acknowledged some changes in community attitudes, including reduced levels of stigmatization and discrimination toward LGBTQ+ individuals over the years. This has been attributed to increased awareness and visibility:

> *"For the last 10 years that I have been involved with the community in one way or another, a lot of change has happened, a lot of leeway has been made, a lot of giant steps have been made. We now have, like recently we had … a public figure, well, not a public figure, it is a celebrity, but coming out. We have more and more celebrities coming out and saying that they are members of the SOGIE community, and I mean they are SOGIE persons, and within the workforce, within the employment in general, whether private sector or government, we have more and more allies who won't be visible but are helping behind the scenes to work out things."* **KII, Opinion leader, Mombasa**

These changes were attributed to the more inclusive HIV approach and training in human rights of government security officials and the police. The PEA shows some changes in the interactions between the police and LGBTQ+ individuals.

> **In Kisumu, a participant in FGD observed,** *"… [unlike before] we now have access to the police station, whereby when you have a report for the gender-based desk, you just go to the gender-based desk and at least you will be heard in a different way from the OB [police offence book]. So, I think the sensitization has [led to] some improvement than way back where we were … now we can access the police station and things are working."*

Various LGBTQ+-led civil society and community-based organizations have conducted training and sensitization workshops on sexual and gender minorities for health care workers across a number of government health institutions. Health care providers in public health facilities have been trained on how to offer LGBTQ+-friendly services, including HIV testing and counseling and treatment of STIs and other related ailments. Besides health care providers, police officers and religious leaders have been the targets of training by LGBTQ+-led organizations on co-existence with LGBTQ+ individuals and the need for protection of human rights and tolerance. Participants spoke out on the changes in service delivery that have occurred in various departments and institutions:

> *"We had a lot of problems with police, but the moment we engaged the police, we started talking to them, giving them health talks, providing the tables for the gender-based; they became our friends, and they know. They understand that there is someone called an MSM, there is a community called lesbian, there is a community called this and this, so at least they understand us. The stigma we used to face five years ago is not the same now."* **LGBTQ+ IDI, Mombasa**

Signals of inclusivity were reported in the religious communities. Some churches are accepting of or becoming more tolerant toward LGBTQ+ individuals, and it is expected that more churches will follow suit.

> *"And in just about five years, a lot more religious leaders stood up in pulpits and said we are in support of the community, and they are welcome in this congregation, and we offer total inclusion. And by the time CAC church was born, it had a lot of allied and incorporated centers where they could claim allegiance, and right now as we speak, we have … I think there are more than 20 churches within the country that are totally inclusive, and the space is growing. Currently, what we are targeting is called zero violence. So, as we incorporate more pastors and more faiths, whether Islam or Christianity, to come in as allies, we are advocating for people who are not able to do much in the way of publicly claiming to have total inclusion, to publicly advocate for zero violence from their congregation."* **KII Opinion leader, Nairobi**

Some pastors have publicly announced that they would not send away LGBTQ+ individuals if they attended their church services. Some of the pastors reported that they were sensitized on sexual and gender minorities by LGBTQ+-led organizations. A pastor in Kisumu who reported accepting LGBTQ+ individuals into the church explained how some parents in his congregation used to bring children for prayers [conversion therapy] to change their sexual behavior.

> *"Yes, I used to pray and invite them for further counseling. Some people got to know about me. I was called by very key people in Kenya … a cabinet minister, and then I went and sat with the family, I think someone connected me with them. When I went it was so hard because the father had already drawn the line, but the boy wanted to feel accepted. The boy, his complaint was, 'Daddy, if I am not safe outside and then I am not safe inside your home, then where can I go?' The boy eventually died. If you look into history, probably they didn't announce in the news the exact cause of the death of the boy, but I knew because I was there and I counseled the father. But because of the powers, the guy and his family could not let the boy have his freedom and socialize in his home and even outside, so the boy was feeling much ashamed. So, this is what it is, we have them in our houses, in our homes, in our churches and our community, in our nation."* **KII, Opinion leader, Kisumu**

According to this pastor, religious and cultural beliefs were a major impediment to the acceptance of sexual and gender minorities by society. Participants (LGBTQ+ participants and some opinion leaders) also mentioned the emerging LGBTQ+ churches, founded and led by LGBTQ+ people in Nairobi and Kisumu. One of the opinion leaders, a pastor identifying as gay in Kisumu, talked about founding and leading a church for LGBTQ+ people.

> *"So, in terms of faith, I can say, for me, I am a religious person but basically, we are having a church, I can say that, and a church is for the LGBTQ+ persons—cosmopolitan as a family church. So, in terms of decision-making, we just do it as a team, then you know we are having very powerful people on top because you know with us, we are just operating within the ground. We just make decisions as a team, then we [have] leaders within the church, and I can say I am also one of the leaders that started the church, so from the people that are down raising their concerns within the church to the leaders, then the leaders are the people who should share with the top leaders within the church for us to make decisions in terms of maybe … we have different decisions within the church in terms of who to be in charge of this program."* **LGBTQ+ IDI, Kisumu**

Configurations of key actors' interests, power, incentives, and influence: Follow the money

There are seven broad categories of stakeholders central to social inclusion and exclusion of LGBTQ+ people: (i) government and its various sectors/departments; (ii) development partners; (iii) civil society organizations; (iv) the public; (vi) church/religious leaders; (vi) LGBTQ+ people and community, including activists; and (vii) the media.

The most powerful mobilizing for LGBTQ+ people in Kenya has been around HIV and the repeal of Section 162 of the Penal Code. Since 2009, a cost-effective anti-HIV strategy has been implemented that redirects interventions to key populations. These cost-effective strategies are not limited to screening and voluntary counseling and testing: they also include provider-initiated counseling and testing. In terms of social exclusion and inclusion of LGBTQ+ people in Kenya, the findings indicate a growth of a local HIV political economy. Donors provide financial support to stakeholders, including government and civil society organizations, as well as other key actors to develop and implement interventions targeting key populations to reduce HIV prevalence. This implies possibilities for cooperation in a space that is rife with interests, incentives, and power. We examined the interests, power, and influence of key actors in relation to social exclusion and inclusion of sexual and gender minorities. We focused on the national and sub-national (county) levels of the Kenyan government; related government arms, departments, or sectors; development partners (donors); civil society organizations; the media; opinion leaders; community members; and LGBTQ+ individuals whose interests, activities, and influence are regarded as relevant to social inclusion.

The Government of Kenya

Key finding: *The Government of Kenya continues to matter in social inclusion and exclusion of LGBTQ+ people. This despite little clarity, discussion, and commitment to tackling social exclusion through policy by the government.*

> *"I think the government is responsible for the political framework [for] some of these policies that are being formulated or are being enacted [by] the Parliament … So, as for me, I would say political space or the executive arm of government as well as the parliamentary arm of government has a lot to do with either exclusion."* **FGD, Mombasa**

Government has a crucial role, as it is at the center of social exclusion and inclusion of LGBTQ+ people. According to the Constitution of Kenya (2010), the Republic of Kenya is a unitary state, divided into 47 counties led by the national government, and 47 county governments. The two levels of government work in close consultation. The institutions of the president, the deputy president and the cabinet form the leadership of Kenya's national executive with the responsibility to govern and protect the Constitution and Kenyan citizens. Participants stated that the national and county governments are therefore key actors in the social exclusion and inclusion of LGBTQ+ people in Kenya.

While the government is a key power with strong influence on the social inclusion and exclusion of LGBTQ+ people, study participants identified two distinct roles for the government: (i) the protector of inclusivity, and (ii) the moral authority or castigator of sexual and gender minorities. Participants reported that the government has failed to take a clear stand on discrimination and inclusion of LGBTQ+ people. As same-sex relations are illegal and punishable, and also are generally not accepted by the public, the government mainly limits its role in social inclusion to public health. Some participants noted the government's role in castigating and decriminalizing same-sex relationships. A key informant in Mombasa spoke about the indecisive nature of the government regarding social inclusion of LGBTQ+ people.

> *"… the government has money, power, but they are not using it as [they] should. As in when they are talking about social inclusion [for] everyone, including the LGBTQ+ community, that is not happening. They talk about it at nightfall; when it comes to broad daylight, they are not friends of the LGBTQ+."*

At sector level, ministries of Education, Foreign Affairs, Public Service and Gender, ICT Innovation and Youth Affairs, Health, and Labour and Social Services play significant roles in the factors that influence inclusion and exclusion of sexual and gender minorities in Kenya. However, the national government's interest in LGBTQ+ people has mostly been in addressing HIV. It pursues these efforts through sectoral coordination.

"Because of the risk of HIV/AIDS and STIs, that's why we really have to work together to ensure that prevention of HIV or incidence of new infections is reduced. So … I can say that we've been working together with the community. By working together, at least we've together realized a lot of things and we have also learned a lot of things, especially when it comes to access to services. There is a lot we have to do. We have to train people, at least the attitudes, to change their attitudes toward the LGBTQ+. Also, we do a lot of advocacy for the environment to be conducive for the access of services." National government sector staff, Nairobi

The influence of the government on HIV has led to the emergence of stakeholders through the Ministry of Health's departments–NASCOP and NACC–which influence provision of HIV services to LGBTQ+ people in public health facilities. In turn, this could have influenced numerous stakeholders, including CSOs, activists, and government ministries, creating a platform for growth of a local HIV political economy.

"So, we have a stakeholder matrix: NASCOP works with all stakeholders, so in coming up with these guidelines, we have various ministries involved: Ministry of Planning … divisions of health … HTC [HIV Testing and Counselling], PMTCT [prevention of HIV transmission from mother to child], various ministries and institutions, and also various community representations … Now, if we are coming up with a guideline for ITGNC [intersex, trans, and gender non-conforming], be 100% sure the ITGNC community will be involved, but through a consortium. We usually tell them [these are ITGNC guidelines], and the ITGNC community themselves want representation … Yes, we have a stakeholder matrix that lists … all the stakeholders that we work with in developing guidelines or policy." **KII, Granter (donor), Nairobi**

While the interests of NACC and NASCOP are to strategically engage MSM and LGBTQ+ people in addressing HIV as a public health concern (cf. the section on HIV policies), for some participants, the government made the existence of LGBTQ+ people more visible in the country.

"My take is that it is true [that] HIV issues brought [in]to [the] limelight that we had gay people existing, particularly in Africa and in Kenya, because initially the thinking was that we don't exist, that this is something that is being imported from the West and no African is gay, and if he is gay he is just trying to copy what is happening in the West … so, the HIV/AIDS issue [highlighted] the fact that gay people do exist in Africa, particularly in Kenya. That is my take." **LGBTQ+ FGD, Kisumu**

The LGBTQ+ participants faulted the Kenya government for maintaining the Penal Code on one hand, while, on the other hand, supporting their inclusion in HIV interventions.

"The more reason to include MSM in the HIV interventions was the role they played in HIV transmissions in the general populations. Like, for example, [men] who have sex with men … you find that the transmission of HIV is very high among them …." **Sector participant, Kisumu**

The Kenya National Commission on Human Rights as an independent National Human Rights Institution informed by Article 59 if the Constitution of Kenya and established through the KNCHR Act of Parliament (the Kenya National Commission on Human Rights Act, 2011). It is mandated to act as a watchdog over the government on human rights and to provide key leadership in moving the country towards a human rights state. Consisting of individual commissioners and a secretariat, KNCHR has over the years, in achieving its human rights mandate, worked towards the recognition of sexual and gender minorities issuing a report in 2013 that called on the government to decriminalize same sex relationships, encouraging health care providers to consider sexual minorities as vulnerable groups, and calling for community sensitization to cultivate tolerance and acceptance of sexual minorities in society. [44]

Despite the KNCHR in place, the view that the government is against same-sex relations and the decriminalization of Sections 162 and 165 of the Penal Code was passionately expressed by study participants. LGBTQ+-led organizations and individuals faulted the government, specifically the Ministry of Health, NASCOP, and NACC, for failing to provide evidence during the decriminalization case that called for the repeal of the Penal Code's Sections 162 and 165. Some participants lamented the lack of support from NACC and NASCOP.

> *"The case was dismissed for lack of evidence. There was some evidence that was supposed to be produced in court as evidence to support the repeal of Sections 162 and 165 of the Penal Code. NASCOP and NACC had been working with the [men who have sex with men] community, and we expected them to present that evidence to the court. So, the evidence was with NASCOP, and NASCOP is a government ministry … NASCOP had evidence but decided not to present that evidence to the courts of law; yes, the case flopped."*
> **KII, Grantee, Nairobi**

While donors provided financial support for the decriminalization of Sections 162 and 165 of the Penal Code, the interests of LGBTQ+ groups campaigning for their recognition and acceptance by the government should not be underestimated. They invested their time and energy. Led by NASCOP, the government department leading HIV interventions and efforts against stigmatization and discrimination has stepped up in service-delivery points. Crucially, the HIV-focused approach has led to the emergence of LGBTQ+ champions, including health providers, who champion non-discrimination in health services delivery.

> *"… it is written that you are not supposed to discriminate against somebody because of sexual orientation, and it is put there in black and white. So, I think that has happened because NASCOP took it very quickly and there is training, and providers are being trained on how to handle LGBTQ+ persons wherever they are. This is an online training that any health provider [can do] … you see, by the way, part of our training, wherever we are trained, you are not supposed to discriminate [against] somebody, you are there to give services."*
> **FGD, Kisumu**

County governments

County governments play a key role in the social inclusion of county residents. The governor, the deputy governor, and County Executive Committee (CEC) members appointed by the governor form the executive arm of county governments. The county executive consists of county departments led by CEC members, who are responsible for various functions. The CECs are responsible for the preparation of county policies, plans, and budgets for approval by the County Assembly. The County Assembly is also a forum for debate of county policies and budgets. Of all Kenyan counties, only Kisumu County Government has taken a positive approach to LGBTQ+ issues, through its sexual and reproductive health policy that includes transgender and intersex people.

The Legislature

According to Article 94(4) of the Constitution, Parliament shall protect the Constitution, promote the democratic governance of the republic, and debate national policies and budgets. Discussions around sex and sexual orientation are sensitive topics for lawmakers, and Parliament has steered away from discussions on sexual and gender minorities. While some members of Parliament acknowledge the existence of LGBTQ+ people and may be willing to support debates, they shy away from giving their open support or being linked with the LGBTQ+ community. This is partly due to their fear of loss of political support and capital, or victimization in Parliament and in their constituencies. A community mapping participant in Nairobi explained the dilemma that politicians face around LGBTQ+ issues:

> *"Some two, three years back, the LGBTQ+ leaders managed to reach out to the current majority leader in Parliament … So, the approach was about coming up with a bill to allow same-sex marriages in this country. The Majority Leader acknowledged the existence … 'We know you [LGBTQ+] people, we know these things exist … it's happening … now unless you probably approach a Member of Parliament willing to draft the bill for discussion in the house, then we can debate.' He was afraid, and he [shied] away and said he represents the president. 'I represent the country. I can't come up with such … a bill.' Later on still, the group happened to meet the governor, and then the governor was like, 'Yes, I am more than ready to support you people, but you know I am a leader, the governor of the city. I can't start; yeah, you should come up with something to do, around health issues, look for a way, you can hide yourself around the health issues, then we can come in forcefully to support you."* **FGD, Nairobi**

A pastor narrated how they tried in vain to get a member of the County Assembly (MCA) to introduce an LGBTQ+ bill in the Kisumu County Assembly.

> *"It's like, okay, because they are in the Assembly and there are some bills which are passed in the Assembly, and they are the people who pass those bills which are against the LGBTQ+. Like that one, we had one … an MCA who was trying to push a bill … We had to call him, sit in a hotel, and ask him, 'Brother, what is happening?' and you know he just came from the church also, so I had an upper hand over him because he is my friend. And he was putting that bill in the Parliament … I think the politicians and then the other people that you talked about, that were convinced, they just decided now to throw that bill away."* **KII, Opinion leader, Kisumu**

While Parliament may have a strong influence on the social inclusion of LGBTQ+ people, it was indicated that their collective silence on the matter perpetuates social exclusion.

> *"Our political leaders have a great influence on social exclusion. We have had politicians coming out, calling us names like 'shoga wewe' [you gay person]." Community mapping* **FGD, Kisumu**

The Judiciary and jurisprudence

The Judiciary is the independent custodian of justice established by Chapter 10 of the Constitution of Kenya and is tasked with the role of interpreting the law in a just manner. The Judiciary is expected to resolve disputes while also protecting the rights and liberties of all, facilitating attainment of the ideal of rule of law. In terms of LGBTQ+ laws and policies, participants referred to the Judiciary's judgment in the 2019 case on the repeal of Sections 162 and 165 of the Penal Code. While the case was unanimously dismissed, many participants were aware of and applauded the various decisions by the High Court. In this case, they did not fault the Judiciary (court); instead, they pointed to the Ministry of Health departments—NASCOP and NACC—for refusing to provide the needed evidence.

> *"… that is clear: [if] you give compelling evidence, you win; we have had wins before. But if you cannot convince the judges, you lose. The evidence that was there was with NACC and NACSOP, and they refused to provide the evidence."* **KII, Grantee, Nairobi**

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[6]Section 162(a) and (c) of the Penal Code say it is a felony for any person to have "carnal knowledge of any other person against the order of nature" or to permit "a male person to have carnal knowledge of him or her against the order of nature." This is punishable by 14 years' imprisonment.

[7]Section 165 of the Penal Code says it is a felony for a male person to commit "any act of gross indecency with another male person," whether in public or in private. This is punishable by five years' imprisonment.

Our desk review highlighted a number of instances of jurisprudence on social inclusion in Kenya. There have been a series of forward-looking and independent court judgments in Kenya. These include permitting the registration of organizations for SGMs and LGBTQ+ people, [32] allowing a transgender person to change their name and gender marker in their education certificates, [37] inclusion of 'intersex' as a third gender marker, [9] and declaring the conducting of intrusive anal examinations to prove the sexuality of people as unconstitutional [38].

Registration of LGBTQ+ organizations remains a challenge in Kenya, as a number of these organizations are registered under names that conceal their association to the LGBTQ+ community. However, since the inclusion of MSM in HIV interventions, some organizations, such as GALCK, NGLHRC, and PEMA Kenya, that speak to sexual orientation or gender identity have been registered.

According to participants and the desk review we conducted, the Judiciary is gaining trust and influence among the LGBTQ+ community through its jurisprudence. Such jurisprudence includes the 2014 Persons Deprived of Liberty Act, the 2014 Change of Names for Trans Persons, the 2018 Anal Examination Case, the 2019 Registration of LGBTQ+ Organizations, and the continued anti-criminalization of same-sex cases (cf. Table 1 above).

> *"We have confidence [in] the Judiciary, and I think we are going to win through the independence of [the] Judiciary. I applaud the court. We have a number of cases that have been successful through the court. Take an example of the anal test case, where two men were caught [by] the police and charged [with] homosexuality practices … This case was disqualified by the court. The judge ruled that [it] was wrong to subject the accused to [an] anal test because it infringes on their privacy. The judges do not fear to make the right ruling."* **KII, Grantee, Nairobi**

Last but not least is the Supreme Court of Kenya upholding Article 36 of the Constitution, guaranteeing freedom of association.

Development partners

Key finding: *Donors are the key drivers of sustainable support for LGBTQ+ issues, through financial support, lobbying and advocating for LGBTQ+ rights and needs, and building partnerships with the national government and CSOs.*

> *"The main donors, like the governments, deal with bigger issues, such as trade, which is between governments, and issues like LGBTQ+ are left to organizations such as ours. So the governments channel funds to organizations like ours, and we sub-grant organizations to implement activities … Yeah, so you see now the way we work, some of the projects that we do are innovation projects, where we are personally the ones who are funding the projects, but after that we usually expect that there will be traction within the donor world to support this continuation. So, currently, it is still ongoing, but we are working toward having this owned by the community and being community led. So, that project will be a project [where] we are seeking to transfer the knowledge and also the expertise directly to a community-led organization. At HIVOS, our phase has ended, but the continuation will continue under a community-led organization."* **KII, Grantor, Nairobi**

As a country that is heavily dependent on external donor funding for HIV and SRHR, donors occupy an important space in social inclusion. They have the power to influence development agendas. While the government has taken the lead in HIV interventions, budget allocations for the health dockets fall way below the 15% GDP Abuja Declaration commitment made in 2001. Kenya's official development assistance between 2011 and 2021 was, on average, 3 billion US dollars [45]. As a country heavily dependent on external donor funding, policy in Kenya is also influenced by the conditions set by the development partners [46]. As much as foreign aid conditionality around good governance and human rights creates discourse and sometimes even compliance on the conditions, delinquency often goes unpunished. Over the past decades, USAID, PEPFAR, Global Fund, and CDC have financed over 90% of HIV-related activities in Kenya. In 2017, of the US\$ 870 million HIV funding in Kenya, 49.4% was sourced from development assistance, 36.4% from government, 11% from out-of-pocket payments, and 3.2% from other

sources. Donor funding provide HIV-related services to key populations in the areas of diagnosis, treatment, care, and support, as well as managing co-infection with tuberculosis, STIs, and nine strategies adopted to provide HIV-related services to MSM. The multi-donor funding mechanism includes grantors, grantees, and sub-grantees. LGBTQ+-related activities including mobilization, HIV programs, activism, health, and litigation are all donor dependent. While LGBTQ+ issues are not their core activities, the power and influence of development partners cannot be underestimated.

> *"I think … it depends, like the Global Fund. You cannot dictate how they do their projects: it is about health, and health alone. There is nothing about litigation, about funding, so if you are like … like my friend said … It is only health, nothing about litigation … Yeah, the funding around litigation and advocacy is very limited, it is so small, so major funding goes to HIV and STI, yes."* **KII, CSO, Nairobi**

At the helm of financing are grantors (primary donors) who finance LGBTQ+ projects through grantees.

> *"The donors, like governments, deal with major development issues and give us money for such issues as SRHR …."* **KII, Grantor**

Grantors for LGBTQ+ projects may not have the capacity to organize the community structures and movements that are at the forefront of project implementation. They influence this through their grantees.

Grantees (also known as donors to the organizations they fund) include the Humanist Institute for Development Cooperation (HIVOS), Global Fund, United Nations Development Programme, United Nations Population Fund, United States Agency for International Development (USAID), international non-governmental organizations (INGOs) such as Family Health International 360, Center for Disease Control), Rutgers University, UHAI Ushiri, Open Society Initiative for East Africa, Liverpool Health, Pathfinder International, and Action Aid. These organizations also fall into the CSO category as international, regional, or transnational non-governmental organizations. As representatives of the grantors, their interests are aligned with the grantors, and they have the power to influence the government as well as national and community organizations.

> *"… My organization funds the work at the community level: that is, both LGBTQ+ organizing and the sex workers. So, our work is basically to try to get the community voices stronger. We have realized that a lot of donors are stringent when it comes to funding: you must be registered, you must have a bank account, you must be having an operational budget—you know, a lot of things, but now UHAI does not look at those things. UHAI is that donor who is very flexible: they will give you money, they can allow your money to be hosted by another organization which already has structures as you attempt to have structures as well, and the funding is flexible in a way that they provide core support. Like, let's say, for example, this is an organization that is working around LBQ organizing—that is, for the lesbians, bisexuals, and queer women—and they notice that there is a need … around safety and security. So, UHAI will come in, if there is that funding … [and] try to support. UHAI is a very flexible funding mechanism that is out there to try and empower communities to speak on their own."* **KII, Grantor, Nairobi**

Some grantors, like USAID, directly fund government activities through the President's Emergency Plan for AIDS Relief (PEPFAR) program for major interventions such as HIV:

> *"I would have to say the community has been there for a lot of us, including myself, when it comes to meeting our needs. When it comes to welfare needs, when it comes to legal matters. I always say, the community has played a great role. With organizations taking their place and empowering LGBTQ+I people in Mombasa. Comparing the level of impact that it has had with that of the government and some families, I would say the community has surpassed both of them marvelously."* **LGBTQ++ IDI, Mombasa**

These INGOs work through local organizations, including LGBTQ+-led organizations. They influence the focus of organizations they fund. Since the organizations they work with most likely have limited capacity, they offer them training in setting up financial systems, leadership, programming, organization, and advocacy. Grantees represent the interests of the donors, and they are incentivized to do so through donor funding and global advocacy. The INGO's main focus has been on HIV and human rights, including equality, freedom, and social justice.

> *"I will say, so far, you see this LGBTQ+ agenda has not been well welcomed, looking at the set-up, the African set-up. Culture and traditions and even religion have not welcomed LGBTQ+ very well. … The least empowered is either the community or even the lawmakers themselves. Because now the aspect of African traditions, culture, and religion … even they haven't accepted the existence of such kind of people. That's why even sometimes, in our own families, we might have people who are LGBTQ+, but we tend to hide them or disown them or even chase them away. And say, 'You are no longer a family member.'"* **KII, Muhuri CSO, Mombasa**

Regional bodies

Key finding: *Regional bodies offer a platform where LGBTQ+ rights and agendas should be discussed and pushed. However, they show minimal interest in LGBTQ+ matters and have contributed to stagnation of the agenda. If nay, there is minimal involvement of LGBTQ+ community in these spaces, which results in more social exclusion.*

Sub-regional and regional bodies were highlighted as existing or potential key actors in the social inclusion and exclusion of SGMs. These include the African Union (AU), the East Africa Legislative Assembly (EALA), and the African Commission on People and Human Rights. The engagement by CSOs with the EALA on SRHR was noted. However, those interviewed indicated resistance to LGBTQ+ issues within these bodies.

> *"I would say I have been engaged with EALA only once, and the kind of reception that was there was not so good because I was the only representative from the key population. Yes, being the only representative, I was really bashed, and it was not so friendly … So, they had a lot of questions; I was trying to speak for all key populations, but they had a lot of questions, like 'Do you think sex work is supposed to be work? Do you think being gay is human?' A lot of questions which were also quite intimidating. So, in such a platform, it is meant to be a kind of a platform where you can easily represent your issues, but now the people who fit in those EALA spaces are people who probably are less interested in human rights or because of the cultures and the different cultures from the East African Community countries, because of their cultures, LGBTQ+ is not supposed to be talked about in public. We need our spaces in those high-level spaces whereby the LGBTQ+ persons can speak for their rights and can also maybe be able to enlighten other people on issues of human rights and fair treatment."* **KII, CSO representative, Nairobi**

The limited interest of the African Union was noted. Participants faulted the AU on inclusion of LGBTQ++ people. They argued that while the AU engages on health issues in the region, their attention to the inclusion of LGBTQ+ people was minimal. Participants speculated that LGBTQ+ issues are not deemed important to the AU, and there is poor representation of these issues. Individuals who may be supposed to represent them likely do not know how to represent their issues adequately. While the AU is recognized as a potential key actor, their disengagement on LGBTQ+ issues seems to pose a challenge to social inclusion.

However, the African Commission on Human and Peoples' Rights (ACHPR) has taken up the issue of LGBTQ+ people, ensuring the active participation of LGBTQ+ members who are sitting in some of their committees to further their agenda.

> *"That is one engagement that I can say has been productive over the years, because we have LGBTQ+ persons sitting in those spaces, unlike the very many other charters and the very many other unions in Africa that have not given LGBTQ+ persons that space to sit in those high-level meetings."* **KII, CSO representative, Nairobi**

The desk review shows the inclusion of LGBTQ+ issues in various articles by ACHPR. Despite this recognition, ACHPR rejected the observer status applications of Alternative Côte d'Ivoire, Human Rights First Rwanda, and Synergía – Initiatives for Human Rights in 2022. In the Final Communiqué of its 73rd Ordinary Session, held in Banjul, Gambia, from 20 October to 9 November 2022, the ACHPR stated that it rejected the applications of the three organizations on the grounds that "sexual orientation is not an expressly recognized right or freedom under the African Charter" and is "contrary to the virtues of African values." This decision is a step backward in the efforts to end ongoing human rights violations against individuals and communities on the basis of their real or perceived sexual orientation, gender identity and/or expression, and sex characteristics.

Civil society organizations

Key finding: *Though fragmented and fragile, CSOs continue to matter in social inclusion of LGBTQ+ individuals.*

Participants recognize the efforts made by CSOs which have created a space for agency and empowerment so that LGBTQ+ individuals can champion their issues. CSOs are recognized and appreciated for advocating for the LGBTQ+ community through various channels:

> *"… In a positive way, there are organizations that advocate for [the] LGBTQ+ community. They have been trying, even though they haven't reached there. But it is a long walk to freedom. But they have been trying to advocate for us … and also there are some organizations which are nowadays doing radio advocacy. That one also helps, slowly, slowly. They have also been trying to engage the policymakers … Those kinds of treatments we don't give them. There is this issue of Linda Mama … mothers are supposed to have Linda Mama. But you find that at times, the facility may not be in a position to afford even preparing tea for this woman who has been struggling for the last three to four days. But traditional birth attendants (TBA) will cook, they will eat together. Are you seeing? So, that one is above us, it's at the county level when the funds cannot be brought to the facility that is above us. So, it's a challenge."* **LGBTQ+ interview, Kisumu**

The CSOs occupy a key space in the social inclusion and exclusion of LGBTQ+ individuals. One important element of the CSO as a key actor, which has generated great interest, is the issue of funding that is linked to the emergence of many LGBTQ+-led organizations since the inclusion of MSM in HIV interventions. Participants indicated that the proliferation and growth of these organizations since the inclusion of MSM in HIV has been encouraged by donor support and government HIV interventions. Many of these LGBTQ+ -led organizations are urban-based, community-based organizations focused on HIV interventions, creating awareness, mobilizing the community to access HIV testing, treatment, and distributing condoms and lubricants. They are registered as community-based organizations (CBOs), while a few are registered as NGOs. Most of these organizations strategically emerged following an influx of donor funding.

> *"… if you try to contemplate some five years down the line and you compare with the current situation, we have made a step as [the] LGBTQ+ community. So, how are we strengthening ourselves, our advocacy, to do what? All the policies that are in place are being strengthened, because I know the policies are there. It is only that, who do we have at that level, to do what, to push for the strengthening of these policies, you see."* **KII, INGO, Kisumu**

The CSOs extend sensitization efforts to the general community and strategically target influential institutions such as religious organizations, the Police Service, health care workers, magistrates, local administrators like chiefs and assistant chiefs, and other opinion leaders on the rights of LGBTQ+ individuals. Some of the organizations engage the government on policy issues, including human rights. These organizations are mostly LGBTQ+-led and are concentrated in Nairobi, Kisumu, and Mombasa. Opinion leaders acknowledged the achievements of these organizations, including the focus on the plight of LGBTQ+ people through various channels, such as the church, social media, and mainstream media, especially local radio stations:

> *"So, we have achieved a lot, we have reached out to religious leaders and so far, as we talk, we have so many religious leaders in this country who are able now to understand and they are able to support. Some of the members had been chased away; we have brought them back to the church just after realizing they have very powerful gifts, and they can be useful in the House of God. So also, again we have been able to train young people who can be able to understand that if you see a girl, a boy who behaves this way in school, then you will be able to understand the issues of diversity. We have gone to Ghetto Radio, we have gone to Mtaani Radio and other social media platforms. Some are opposing, some are not opposing, but eventually we spark a conversation."* **KII, Opinion leader, Nairobi**

The NGOs are led by either LGBTQ+ people or non-LGBTQ+ individuals. The LGBTQ+-led organizations have strategically built their power by bringing a number of organizations together to focus on a particular advocacy message, fostering the agency to navigate power and accumulate influence. There are over 20 LGBTQ+-led and non-LGBTQ+-led organizations that conducted around LGBTQ+ issues. Among the organizations are three coalitions, including a movement. Coalitions bring together organizations that work toward a common cause for a particular segment of LGBTQ+ groups.

Both national LGBTQ+-led organizations and networks and those led by non-LGBTQ+ people play an important role by raising awareness, making advocacy efforts, and engaging government on policy issues such as human rights and related social inclusion matters for LGBTQ+ people. They also lead litigation processes and engage with religious leaders. In sum, at both national and community levels, organizations led by LGBTQ+ people or non-LGBTQ+ individuals seek to influence opinion leaders and health providers through training, dialogues, and sensitization workshops.

> *"We have been having conversations, we have been having awareness creation, we have been having sensitization meetings, but remember this is something which will not—sensitization and awareness creation— will not end. This is like therapy to them, and this is like a program we have created as a community, because there are other generations which are coming up, which they will also be religious leaders, but remember the ones we are educating: they are also moving in that area."* **KII, Nairobi**

The space has attracted national NGOs led by non-LGBTQ+ people, with interventions targeting LGBTQ+ and MSM sex workers. The Sex Work Organization Programme (SWOP) provides clinical services and peer education to MSM and sex workers in Nairobi. The ICRH and Kenya Medical Research Institute [KEMRI] Mombasa are research institutions which also engage in peer education and commodity distribution. Other organizations in this space include Kituo cha Sheria, African Sex Workers Alliance (ASWA), and the Kenya Human Rights Commission (KHRC). Kituo cha Sheria and KHRC are legal organizations focused on human rights and justice, while a sex workers' regional organization is considered an ally.

The advocacy efforts of these organizations provide them with possibilities to influence social inclusion at national and regional levels. For example, a sex workers' regional organization, which focuses on female and male sex workers, including LGBTQ++ sex workers, plays an important role at the regional and national level. ASWA has reportedly conducted advocacy at the regional and sub-regional level.

> *"We have engagement at the East African Legislative Assembly, country level, and at the African Union. We have also supported male and female sex workers to do the CEDAW—Convention to End Violence Against Women—so that people know that sex workers face violence and also voice out at a global level. Also, the Universal Healthcare, the Universal Periodic Review, so that we can ensure that issues of sex workers are also heard at the global level."* **CSO representative, Nairobi**

Such organizations are driven by funding and the quest for social justice, including decriminalization of same-sex relations through the repeal of the Penal Code's Sections 162 and 165, as well as other legal cases concerning LGBTQ+ individuals and communities. Study participants mentioned the benefits of having many diverse organizations that are able to develop a strategy for collaboration.

> *"But we now work hand in hand with our partner organizations on legal challenges … For example, Kituo cha Sheria is not specifically dealing with LGBTQ+ refugees, but they offer legal support to LGBTQ+ refugees. So, now, which organization will be best suited for that … a human rights commission for gays and lesbians and an organization for men who have sex with men are a paralegal team. If I have a problem as a sexual minority person, where do I seek redress? I'm not going to seek redress in an organization that does not have a clue about sexual and gender minorities. It's difficult, so in terms of the law, we now partner with organizations that understand, are able to understand and translate the context of the law."* **KII, CSO, Nairobi**

LGBTQ+ individuals

LGBTQ+ individuals were listed as key actors in the social inclusion arena. Study participants reported that LGBTQ+Q individuals are influencing and shaping discourse on inclusion through various activities, such as raising awareness with the general public and local authorities. LGBTQ+ individuals and activists have been at the forefront, advocating for the rights of their community. The case for the decriminalization of same-sex relations is one such example. In this case, the first petitioner was a member of the LGBTQ+ community and a senior activist.

> *"Okay … I will still go back to the case here, the repeal case: it is a member of the community who brought that, you see; it is a senior activist. So, we believe if we have such people who represent us in court. He took a bold step, he did the petition, he did very well, but they need to support you to win … we have some few organizations that supported the LGBTQ+ …."* **FGD, Nairobi**

It was also reported that LGBTQ+ individuals gain influence by telling their stories, which serve to correct misconceptions about LGBTQ+ people in the wider community.

> *"We try to change these reforms by writing our stories. The stories that are out there are so biased, and that is why we had to come up with a program where we collected our stories and put them in a book and shared them. At least we changed the perspective that people had about us. They realized that our lives do not only revolve around sex. We have other good things that we are doing as LGBTQ+ persons, we have our own lives, and we are career people. It changed people's perspective …."* **LGBTQ+ interview, Kisumu**

The cumulative power of LGBTQ+ individuals can be seen in their participation in efforts geared toward their social inclusion.

Champions and allies

Our analysis shows that there are LGBTQ+ champions, who are often labeled as activists and human rights defenders.

> *"If there is a lot of abuse and what have you and they [human rights defenders] stand up, they can change and they can influence the policy …."* **Health care provider, Mombasa**

According to participants, champions are role models who defy stigma and persecution and work to advance the social inclusion of LGBTQ+ people from a human rights perspective.

> **An FGD participant in Nairobi reported,** *"… So, if the people we have, we had a test, and the test was when we held the case about the repeal of Section 162 and Section 165. And from the ruling we saw, if we still maintain the spirit that we had, when you are pushing for that … court process, if we strengthen that spirit and … the policy … that community will be strengthened and will benefit. So, it is goodwill from the people who are representing us there: are they doing this for their own selfish benefit, or they are there genuinely for the community to push for the policy? … the inclusion, you see. So, it is upon the leaders we have, those people who are championing the rights and the accommodation, acceptance by society, that we exist, you know. So, the policies are there, but how are we going to strengthen the policies?"*

The allies and champions have positioned themselves uniquely and are strongly supported by grantees. They are knowledgeable on the rights of the LGBTQ+ community, the legal apparatus including the Constitution, and the legislative system. They also have considerable network capital. A key characteristic of being a champion is fearlessness in confronting those in authority on LGBTQ+ issues, including the repealing of Sections 162 and 165 of the Penal Code and protecting human rights. They are people who are seen to care for the social inclusion of LGBTQ+ individuals. Some are internationally recognized, which helps guarantee their safety. They are therefore seen as having power and influence in the LGBTQ+ social inclusion arena.

Members of the general community

Participants reported that the general community is a crucial player in social exclusion and inclusion of LGBTQ+ people, due to prevailing cultural and religious views on same-sex relations.

> *"I can say that the community plays a very big role because even the government gets information from the community. If the community respects this, puts on like this, you behave like this, then the government picks it up very quickly and puts it in their rules. The community: I feel that plays a very big role."* **FGD, Kisumu**

Participants used the example of elections to explain how the public influences policies and laws through the elective system. They noted that the belief that most Kenyans do not think same-sex relations should be acceptable in society gives the public a measure of influence on policy issues regarding sexual and gender minorities. Participants intimated that voters generally select representatives whose beliefs align with theirs through the ballot box. Political candidates who use anti-LGBTQ+ rhetoric gain political mileage against their competitors.

Opinion leaders and influencers

Religious leaders, politicians, and teachers were named as influential leaders. The portrayal by religious leaders of SGMs partly informs the way members of minority groups are treated in society. While many religious leaders do not agree that same-sex relations should be allowed in society, some churches affirm the existence of SGMs in Kenya, like the Cosmopolitan Affirming Community, among others. LGBTQ+ individuals, including CSO representatives, understood religious leaders to be influential in society. The negative utterances of these leaders influence the views of the larger community toward LGBTQ+ people.

> **An IDI participant in Mombasa noted,** *"They have played a big role in misleading people, yeah, because instead of making people understand like these people are also human beings, they deserve their rights … they change the narrative to make sure that the bigger community sees this LGBTQ+ community as the evil one. Yeah, they have played a big role in misleading people."*

However, it was also reported that this category of people can also be a great influence for social inclusion of LGBTQ+ people among their congregation.

> *"When leaders of the church talk, everyone listens, even the president, who is the topmost person. So, if we come up with anything like the leaders of the church to talk about something, maybe things concerning gay people. … I think even the leaders of the community will also have that power, they will get that strength. They will say, okay, if the leaders of the church can stand out and say this, we can also talk about it. Because it is their role, we have sent them to the Parliament to represent our pain of what we are going through; we know what we are going through."* **FGD, Nairobi**

In some churches, religious leaders preach against same-sex relations. Church leaders may also excommunicate LGBTQ+ people, insisting that their attendance offends the congregation. A former Sunday school teacher shared how she stopped participating in church.

> *"Religion [laughs], the political leaders. I was also a victim once in a certain church. I was a Sunday school teacher. I was told, 'You will teach children bad manners.' You are also a parent, so how will you go teach bad manners? You can't teach, just because you are a lesbian?"* **FGD, Kisumu**

With sensitization, politicians can refrain from the negative rhetoric that may incite violence against sexual and gender minorities. Participants reported a positive sensitization outcome, describing how a top political figure in Kenya who used to talk very negatively about LGBTQ+ people stopped doing so.

The media

Media coverage on sexual and gender minorities can affect public opinion and responses to social inclusion and exclusion. Information, images, and videos used to communicate issues around SGM play a powerful role in shaping perceptions on the LGBTQ+ community.

> *"… even the general public listens to the media, so the stories they portray out there could portray LGBTQ++ in [a] good light or in [a] bad light. So, what the public gets from the media is what they use to judge the LGBTQ+ people."* **FGD, Kisumu**

Mainstream media, i.e., print, television, and radio, are the leading sources of news in Kenya. The Kenya Broadcasting Corporation and Kenya News Agency are state-controlled public institutions that typically represent the government's interests. Private media houses are business oriented. They represent the proprietors' interests, which are primarily about protecting shareholder value. They have to sell their product and strategically focus on news and programs that attract money. Media houses have the power to shape news coverage, and they do so in a way that will generate revenue for them. A news reporter explained how their sales dropped drastically when they published an article focused on LGBTQ+ people.

> *"We do not publish articles that will make losses to the company; it is a business, and we need money to run it."*

Such articles that result in declining sales are dropped. If they are published, they are integrated into other subjects, such as HIV, school expulsion, or violence.

Stakeholder mapping and analysis

As shown in Figure 1, stakeholders are categorized as follows: The first category includes those with high interest and that wield high influence. These are important players in the LGBTQ+ agenda and should be fully engaged and closely managed. Included here are government agencies like the Ministry of Health, NASCOP, Kenya National Commission on Human Rights (KNCHR), National Syndemic Diseases Control Council (NSDCC), and the Judiciary. Others in this category include donor partners, UN agencies, human rights defenders, CSOs and CBOs, and research institutions.

The second category of stakeholders is those with low interest and high influence. These stakeholders need to be kept informed and, to the extent possible, satisfied even though they are not particularly interested in LGBTQ+ issues; they command considerable influence and can use it to oppose an LGBTQ+ agenda. Efforts need to be made to draw them into supporting the rights of LGBTQ+ people. Included here are government institutions such as Parliament, Ministry of Education, county governments, National Gender and Equality Commission (NGEC), law enforcement agencies, local administration, and educational institutions. Others include the general public, cultural leaders, families, and religious leaders.

The third category of stakeholders includes those people with low influence but high interest. These stakeholders should be adequately informed and engaged toward increasing their influence in eliminating discrimination and exclusion of LGBTQ+ people. They include the LGBTQ+ community, LGBTQ+ activists, and health workers.

The fourth category is stakeholders with low influence but also limited interest in an LGBTQ+ agenda. Minimal effort and attention should be paid to this group of stakeholders. It is, however, important to monitor whether their levels of interest or influence change. Only the Commission on Administrative Justice (Ombudsman) belongs to this category.

The motivators

So far, we have traced the context within which the LGBTQ+ community is embedded in Kenya and the various actors involved. These different stakeholders have their various reasons to support or not support social inclusion. In this section, we highlight the motivations and interactions of these key actors.

Incentives

Economic benefits are a key incentive that drive the behavior of the players in this arena. With the exception of donors, most of the actors and agents are motivated by money. An interviewee speculated that financial support for LGBTQ+ work is massive: "… sections of society stigmatize them due to the misconception that LGBTQ+ people and organizations get a lot of funds from the West."

On the part of the government, attracting HIV funding was one of its interests. Many of the CSOs working in precarious contexts get involved in this work for reasons other than altruism. From a programmatic perspective, CSOs need money to run their organizations and provide services.

KENYA SGM STAKEHOLDER MAP 2023
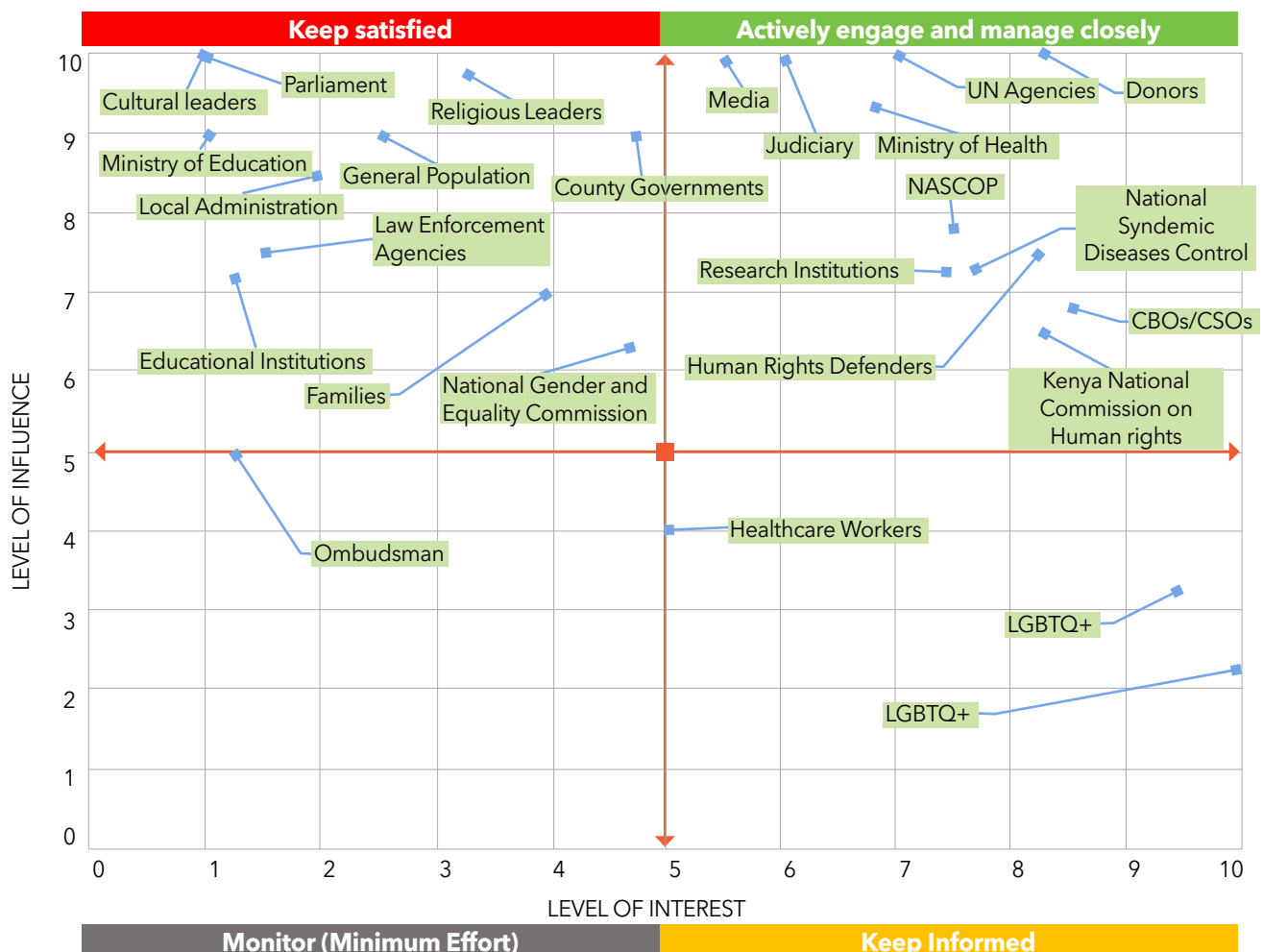
Power

The urge to pursue power is closely connected to money. Power as a motive has been defined as the desire to have an impact on other people, to affect their behavior or emotions. The government, politicians, religious leaders, development partners, the media, and civil society all want to control people to some extent. They want to control not only what people do but also how they do it. While there are ethical implications with power as a motivator, including the longing for dominance, coercion, or aggression, the desire to exercise control over others remains a powerful motivator [4]. The government's power emanates from the Constitution and the Penal Code. Government sectors such as education, public service, and labor have power to exclude LGBTQ+ people based on unwritten laws. For donors, the power over LGBTQ+ CSOs is monetary.

Altruism

A more internal motivator that is also closely connected to money and power is the voluntary will to help others at a risk or sacrifice to oneself, with no external reward. The altruistic nature of some civil society actors and development partners becomes visible when pushing for the inclusion of sexual and gender minorities. Some politicians have come out in support of LGBTQ+ rights at the risk of losing their political standing with their political party and with the public. Some study participants noted that during their moments of need, they were assisted by law enforcement officers who only assisted them because they were concerned about their welfare. Altruism is also linked to cultural, humanistic, and religious beliefs, values, and norms.

> *"Yeah, they have really played a big role, especially in making sure that everyone has a right as a human being. Also, some leaders of the LGBTQ+ organizations have played a big role in changing people's minds and also inspiring the young generation."* **FGD, Kisumu**

Order

A final motivator that ties all the others together is the drive to establish order, routine, and structure in the society. This is true for those members of the public whose lives need structure to be productive. The government is expected to establish and maintain order to work effectively. Order is necessary for peaceful co-existence in society, hence the push by all the agents and actors toward it. It builds a sense of belonging and connection with others. As a motivator for exclusion of sexual and gender minorities, it brings together those who believe that non-heteronormative sexualities and gender are intrinsically "bad." As a motivator for inclusion of SGMs, it brings together those who believe that alternative sexualities and genders are part of society and should be accepted.

Weaknesses of CSOs: Money and power

> *"They [CSOs] have been a disappointment because those who start them keep getting into conflicts with each other. Have you ever wondered why such initiatives never last? And I noticed something: many initiatives have usually started at the same time, and those who started them behaved as if they were competing. We do not need many of them because … we are not that many, and even if we were, there is no need to divide us."* **LGBTQ+ FGD, Mombasa**
>
> *"We know of several organizations that are just set up because funds are trickling down for LGBTQ+ programming, and so you find that most of these organizations, they are not there to drive the agenda of inclusion: as long as the money is there, it is funded, that is all."* **FGD, Kisumu**

In spite of increased funding base and visibility, the LGBTQ+-led organizations were not without inherent contradictions and conflicts, and the exercise of power which some LGBTQ+ groups and individuals felt left out or subordinated. While they acknowledged the significant role played by CSOs in working for the social inclusion of LGBTQ+ individuals, they also fault these organizations as conduits for donor funding for personal interests. The donor community supporting CSO organizing as a strategy for advocacy rashly encouraged the formation of a movement. Unbeknownst to the donors, the organizing would be hurriedly formed to siphon money. Upon the realization of availability of funding, according to a key informant. There were no checks and balances or structures for accountability. They abused their powers. Funds were embezzled. The movement failed.

While the formation of movements was noted to provide a powerful platform for CSOs, participants indicated tense relationships between organizations rooted in personal interests and a growth of LGBTQ+ moguls in organizations rooted in weak structures that encourage people to abuse power:

> *"Now, we left what we came with for interest of the LGBTQ+ community at heart, and we focused on money. Someone looks at [if] I have that money, if I get two million Kenya shillings, I will buy a new car, I will get a holiday in Dubai, I will get any cute boy I want, I will get anything I want. So, we focus on money. We focused on interests. … This person has left the LGBTQ+I community alone because he is serving his personal interest, yeah. That is what is affecting our community: every organization diverted to personal interests, because when you look at all the leaders of these organizations, today you see him posting he is in America, tomorrow he is in Amsterdam, another one is in Mombasa with a small boy, another one is somewhere, we all see this. We all see this on social media going on and then you ask yourself, 'When does this person work?' because we have so many problems accumulating day [to] day that the LGBTQ+I [community] is facing. And they get funding because of the LGBTQ+Q community. They use the LGBTQ+ numbers [population] to get funding. So, we lack people of goodwill to fight for exactly what the community should be enjoying."* **FGD, Nairobi**

Participants in a focus group discussions also noted how there has been "unfair" competition among the organizations fighting for donor funds, resulting in poor relationships, which sometimes creates a disruptive work environment. In addition, it was reported that some "donors" are at the heart of unhealthy competition and divisions as they use CSOs to drive their agenda. While these organizations are important, they are sometimes unable to work together to resolve the issues faced by the LGBTQ+ community, including their social exclusion.

> *"For me, what I can say: I think organizations have been there for quite some time, and when they started, they started off very well, with a strong common agenda, but it reached a point [where] people lost focus, because it is evident [that] even these organizations fight for donor funding, they fight each other. These organizations are fighting, that one [is] fighting, and they are scrambling, they want to get that funding, they need to get this funding, and they are like … you will find now probably an organization writing to a donor about another organization: you know, such kind of thing … I know somebody who reported that person and said, "No, do not give those people funds, because I know about those people, they do this and this." So, you find that … he knows he had already applied but again he talks badly about you to the same donor."* **FGD, Mombasa**

Participants further explained how conflict within the local CSOs is all about funding.

> *"MSM want to be themselves and MSM alone, female sex workers want to be themselves, male sex workers want to be a specific group, the trans community want to be in a specific group, yeah, and then all these groups separately applying for funding from one donor do the same thing, and then how they will outdo each other. They must tarnish each other's names so that they won't get that funding, and that is the only way. And now the conflict goes on. Not long ago, trans people took MSM to court so that they do not share the funding. It is evident these organizations fight for donor funding, they fight each other. These organizations are fighting, they are scrambling, they want to get that funding, they need to get this funding."* **FGD, Nairobi**

Competition between the CSOs on the issue of government support for social exclusion showed a lack of trust and a lack of concerted efforts. The LGBTQ+ community was not aware that the government interest in LGBTQ+ issues was limited to HIV: i.e., their interest was to control the spread of HIV. Participants reported that the prominence of HIV meant that other diseases, such as STIs and non-communicable diseases, and issues around their rights were not of interest to the government. In discussing government support around social exclusion, a key informant said, "… so, the government or the State doesn't support it fully, but in terms of health programming, it is kind of privileged. You talk about the rights of LGBTQ+ in [a] health perspective, but in terms of social inclusion, it is still a very big challenge."

Regarding the relationship between CSOs, NACC, and NASCOP, LGBTQ+ individuals and some of the organizations perpetually delay salaries of wages, exposing staff to being locked out of their houses. Complaining or demanding pay could also lead to being excluded from projects or losing an income. "What can you do? You cannot open your mouth and talk about it. The moment you talk or gossip about it, you are fired. So, you keep quiet, yet you have been locked out by the landlord, who wants their money," explained an in-depth interviewee in Nairobi.

CSO representatives explained the contradictory relationships between the CSOs on one side and NACC and NASCOP on the other. The CSOs advocating for social inclusion of LGBTQ+ people anticipated reciprocity in terms of support from some of the policymakers they worked with in HIV interventions in advancing decriminalization of a same-sex case [the famous repeal of Sections 165/162 of the Penal Code]. Policymakers, on the other hand, had different ideas on the relationship of NACC and NASCOP with the CSOs, which they limited to HIV prevention efforts. The available funding to NACC and NASCOP is skewed toward HIV, while issues like litigation and advocacy, which are extremely crucial for advancing the inclusion of the LGBTQ+ community as a whole, are not funded as much.

> *"Yeah, the funding around litigation and advocacy is very limited; it is so small, so major funding goes to HIV and STIs."* **FGD, Mombasa**

A weak representation of LGBTQ+ communities was registered. While there was representation of MSM and sex workers at NACC and the Key Population Technical Working Group, participants reported a lack of meaningful representation of the LGBTQ+ community in the policymaking space. The inclusion of LGBTQ+ members in such forums is usually ceremonial: their views are not taken seriously, and they are excluded from important decisions taken about them.

> *"I do not think we are usually included in policy making. Like, the politicians just do it on their own. And even if we are included, maybe you are just included as a token, but our views are not taken seriously, and they are not included in the policies. They are just developed."* **LGBTQ+ IDI, Kisumu**

Limited resources and funds

Policy reform requires mass advocacy mobilization. While significant funding has accompanied the HIV response among key populations, including MSM, our sectoral analysis showed that the advocacy activities by LGBTQ+-led organizations lack vital resources to fully engage with key stakeholders and decision-makers.

> *"There are so many limitations, by the way. So, one of the biggest limitations to even knocking on these doors is resources. Like, everywhere, every door you have to open, you have to grease by inches and stuff, you know. So, resources are needed but … Western Kenya Forum works in eight counties within Western Kenya. So, it is a big area of coverage. One thing that we would like to do is to mentor organizations within this area to actually carry out their own advocacy. To organize at those levels. So, like, getting to … organizing has been a problem. Bringing these organizations, like, various persons, together so that there's a coordinated mechanism to that is a problem, and I think most of these challenges actually revolve around resources, limitation on resources."* **Sector analysis, Kisumu**

However, challenges in access to health care remain. While HIV brought gay, bisexual, and transgender people into the spotlight, in addition to improving HIV interventions and related services in public health facilities, the fear of seeking services from public health facilities remains.

> *"On health-seeking behavior, I am forced to not pose as a LGBTQ+ individual, for me to be able to access the health services."* **IDI, Kisumu**

Windows of opportunities

There are, however, reasons for optimism. Never before have the human rights of LGBTQ++ individuals been discussed so publicly and in court. HIV has offered a significant window of opportunity that has opened up space for the LGBTQ+ community. CSOs working in HIV and human rights interventions have piggybacked on this opening, among several other opportunities. County governments present a window to formulate contextualized policies and laws. The PEA shows one way that this could happen, with Kisumu County's inclusion of transgender and intersex people in their strategic health plan. Other areas of interest for county governments include security, education, public service, and labor.

The Judiciary also offers opportunities for social inclusion. This study has examined progressive instances of jurisprudence that have seen various milestones being achieved through the court system. The progressive character of the Judiciary is located in their independence: that is, their adherence to their duty to interpret the law free from the influence of the other arms of government (the Executive and Parliament) or societal beliefs. This perspective on the Judiciary's independence seems to have increased trust in the judicial system and can be utilized to push for social inclusion of LGBTQ+ people in Kenya. The presence of LGBTQ+ individuals in the Judiciary is a significant opportunity. Availability of funding for HIV interventions and litigation provides yet another window of opportunity.

> *"We cannot all do things the same way"*

The PEA shows that in dealing with stigma and discrimination, sector structures have been targeted. Through sensitization, religious groups, health providers, and law enforcement officers are becoming more tolerant of LGBTQ+ individuals. Religious leaders alluded to their power to influence society.

> *"… because of the position that I have as the man of God [pastor], okay, they were able to listen to me."*
> **Opinion leader, Kisumu**

Rebuilding movement

The "Free to be ME" project is an attempt by HIVOS to rebuild a vibrant LGBTQ+ movement through Community of Action, which focuses on meaningful involvement of LGBTQ+ people and ends tokenism. This would be a movement that is capable of lobbying and advocating for not just human rights but also economic rights, as well as winning public support.

Conclusion and Recommendations

The interaction of actors and motivators

The study has raised important insights into the social inclusion and exclusion of LGBTQ+ people in Kenya. We have highlighted several problematic policies and laws as well as relations between the state, society, and the LGBTQ+ individuals. The rules of the game define the way the game is played through time. They do so because they make up the incentive structure of a society. The Constitution is the supreme law in Kenyan society. It was promulgated in 2010 following an extensive review process that involved numerous consultations with the public, civil society, and external actors. As such, the Constitution represents the will of Kenyan society.

In considering the exclusion and inclusion of SGMs, it is important to note that this population is a minority group which can be overshadowed by the majority, making the minority powerless. While SGMs are not specifically mentioned in the 1992 United Nations Minorities Declaration, Francesco Capotorti defines "minority" as a "group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."

Sexual and gender minorities are numerically inferior to the rest of the Kenyan population and are in a non-dominant position. This grants them less power to inform policy than the rest of the population. However, it offers them incentive to push for recognition of their existence and the fulfillment of their rights as citizens of the country, as defined in Chapter 4 of the Constitution of Kenya.

In dealing with LGBTQ+ issues, the power lies with the people; the will of the majority has shaped and continues to shape policy in Kenya. That said, society's perceptions of sexual and gender minorities are not only influenced by the population's belief system and culture: they are also shaped by politics, economic incentives, religious leaders, and the media. The altruistic character of some of the key agents and actors mentioned in this study has been neglected when considering the inclusion or exclusion of sexual and gender minorities. Most Kenyans actively consider the welfare of others, and this spirit can be tapped into when looking at the relationships between the motivators for different behaviors by actors.

Sexual and gender minorities are disadvantaged in terms of access to education and power. While subsets of this population group do not face these issues due to generational wealth, class privilege, and their residence in more urban and accepting spaces, many of them are economically disadvantaged. The state and, by extension, the public would benefit by ensuring that sexual and gender minorities are treated equally. This will not only improve the country's economy but also ensure that social order is maintained. Failure to ensure equal treatment for SGM could result in an environment that is rife with tokenism or savior-ism from development partners.

At the heart of the relationship between structure and value systems are the ideas about what constitutes Kenyan society. A society that went through years of colonial rule and emerged as a sovereign state. A society whose people face many intersecting struggles, including corrupt leaders, poverty, unemployment, and lack of security, among other challenges. The ideas that form this society and which have been discussed in this study are born from a history of collective belief systems. These are the ideas that inform the exclusion or inclusion of any minority group, including sexual and gender minorities in Kenya.

Our 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.

Similarly, the funding from development partners following the epidemiological study findings that HIV prevalence in Kenya had stagnated at

5.6%

We have highlighted the lived experiences of sexual and gender minorities in society and the state. The study reveals that the struggle for the social inclusion of sexual and gender minorities in Kenya is a complex process, one whose outcome cannot be reliably predicted. There is progress as well as backlash. Many concerns have been raised about the government's commitment to social inclusion. The Constitution of Kenya emphasizes inclusivity and equal rights. However, the Penal Code seems to drive social exclusion, and this is reinforced by the dominant belief system. The government sector practices further highlight the social exclusion of SGMs. However, despite the concerns, by examining the relationships between the Government of Kenya and international development partners and the local CSOs regarding HIV interventions, all players including the Government of Kenya continues to matter in social inclusion and exclusion of the LGBTQ+ individuals.

While some positive changes are seen regarding acceptance of LGBTQ+ over time, as other scholarship has shown, negative attitudes persist and continue to drive the exclusion of LGBTQ+ people in sub-Saharan Africa (SSA). The negative attitudes are in part dependent upon the religious and cultural belief or value system. Same-sex relations challenge the dominant heteronormative and religious cultures. While same-sex relations have the potential to destabilize these beliefs and culture, they require the difficult process of confronting personal belief systems. The analysis reveals the social and economic consequences of negative attitudes. The unrecognized internal displacement of the LGBTQ+ persons drive the sex work economy for survival. Most LGBTQ+ people are on the move, either as a social navigation strategy or when they are threatened or ostracized. Unlike other countries, like Tanzania, where they get social support from Bibi's homes, internally displaced LGBTQ+ persons in Kenya lack social support when on the move. Sex work, which is a health danger to them, is the primary survival strategy. The social inclusion of LGBTQ+ people in Kenya therefore requires a fundamental change in attitudes and involves the government developing a strategic plan on social inclusion. There is a need for a strong and meaningful cooperation among key actors to critically reflect on and deconstruct notions of social inclusion and exclusion and how to confront the belief system. Our 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. Specifically, CSOs need to rebuild trust in the government and its various agencies: that it will support their cause (e.g., by providing evidence in court for the decriminalization case), even as trust in the Judiciary grows.

Overall, all key actors in the game of social inclusion of LGBTQ+ people are important. However, they vary in influencing power and interests. The stakeholder analysis shows that their social inclusion influences dynamics in four broad categories: high interest with high influence, low interest with high influence; low influence with high interest; and low influence with limited interest in an LGBTQ+ agenda (cf. stakeholder analysis).

We have also highlighted the problematic interests between the state and LGBTQ+ CSOs, INGOs and LGBTQ+ CSOs, and LGBTQ+ CSOs and donors. Local LGBTQ+-led organizations expressed concern about the problematic relations with the government agencies. Despite the existence of Sections 162 and 165 of the Penal Code, concerns about HIV management brought about a convergence in the interests of the state and LGBTQ+-led organizations creating an illusionary window of hope for decriminalizing same-sex acts and freedom. The Judiciary has shown independence. Despite the loss of the repeal of Sections 162 and 165 of the Penal Code, participants applaud the Judiciary as their hope to social inclusion; at the same time, they blamed the loss of the case on lack of unity among CSOs and the government agencies [NACC and NASCOP], which they believed refused to provide the HIV evidence. Similarly, the funding from development partners following the epidemiological study findings that HIV prevalence in Kenya had stagnated at 5.6% put pressure on the Kenyan

government to acknowledge LGBTQ+ people, opening up funding flows for LGBTQ+ activities targeting the general public.

The analysis reveals weaknesses in organizing social inclusion efforts. While playing a key role in efforts toward social inclusion of SGMs, the interests of CSOs are often fragmented between personal gain and commitment to a common goal. Nonetheless, concerns have been raised around misappropriation of funds, overlapping efforts, and competition that can stall or reverse momentum and progress on social exclusion efforts. This is not unique to LGBTQ+ CSOs: it is also seen in HIV interventions for the general community. LGBTQ+ CSOs need to examine potential areas of competition, overlap, and contestation. Concerted efforts through lobbying strategies that target decision-making authorities are needed.All social inclusion actors should carefully prepare for the future if they are to remain active. With considerable resources directed toward HIV interventions, development partners and INGOs should question whether a new and dynamic engagement with CSOs is needed or whether to strengthen existing engagement strategies. Either way, these strategies should take into account the effective functioning of actors and strive to build structures with financial power and autonomy to enable bargaining with other partners on a more equal basis. Similarly, CSOs should develop credible structures geared toward a common goal. Leadership of these structures is critical in working toward greater transparency in society. The CSOs should work intentionally toward meaningful involvement with partners such as government and development agencies. They should also invest in pressure tactics and the cultivation of meaningful networks of proactive allies and supporters.

Conclusion and Recommendations

»✦ Overall, all key actors in the game of social inclusion of LGBTQ+ people are important. However, they have varied power and influence dynamics: high interest with high influence; low interest with high influence; low influence with high interest; and low influence with limited interest in an LGBTQ+ agenda.

»✦ Building strong structures and establishing mechanisms to streamline the coordination of efforts by CSOs is critical to strengthen local LGBTQ+ organizing. Development and transnational partners should also pay attention to the politics of interests and other related issues, such as socioeconomic development and security for LGBTQ+ people.

»✦ Strengthen CSOs, including accountability, and invest in lobbying of the national Parliament, county governments, and related government departments on the social inclusion of LGBTQ+ people.

»✦ The expansion or intensification of efforts to create awareness among the public and to sensitize opinion leaders and service providers on human rights perspectives around sexual and gender minorities is needed. This would also include raising awareness on the benefits of social inclusion, in contrast to the outcomes of social exclusion. Social movements are critical. Social movements play central roles in driving social change. It is essential to increase their strength, diversity, geographic/linguistic coverage, and intersectional approaches. Organized civil society groups, activists working alone and with others, different movements and networks are all important actors to drive and other pathways to change. Those working across the spectrum of or sexual and gender minority issues; those working for rights and inclusion of individual components of that broader movement (such as for trans people or lesbian/ bi/queer women); and the many other movement that intersect with LGBTIQ+ issues including: the feminist movement, movements for decolonization among others. Development and transnational partners should pay attention to the politics of interests and other issues, such as social economic development, and should review their engagement in social inclusion efforts.

»✦ 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.

Conclusion and Recommendations

»✈ Increase current awareness efforts on sexual orientation and gender diversity and on the benefits of inclusion of sexual and gender minorities and human rights among the general public, opinion leaders, and service providers. Investment in training opinion leaders and service providers on social norms is critical.

»✈ A redefinition of the relationship between government and LGBTQ+-led organizations, and the roles and collaboration relationships between international NGOs and CSOs, as well within CSOs, is needed to streamline advocacy and policy engagement.

»✈ To encourage resilience in the LGBTQ+ organizations, strong support is needed for improving LGBTQ+-led organizations' capacity in project monitoring and evaluations, co-creation and co-designing, and documentation of processes. Documenting best practices and cross-learning should be encouraged.

»✈ Where financial systems are unstable, financial management of movements should be delegated to financial institutions such as auditing firms.

»✈ Legal reform on decriminalization of sexual orientation should be separated from sodomy or unconsented same-sex behaviors.

»✈ Developing opportunities for interaction between local LGBTQ+-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.

»✈ Government and civil society organizations should implement programs that raise community awareness through dialogues with community members to discuss SOGIE issues to find solutions. Issues of concern should include discrimination, stigma, education, economic opportunities, health, and general social inclusion:

  • Community dialogue, which brings together LGBT and non-LGBT people for open discussions, can be a viable pathway to creating awareness.

  • 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.

»✈ Support Evidence –based initiatives. 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. More qualitative identity-specific research is needed on lesbians, transgender people, and bisexuals, and on socio-class differences. With the rural area producing the most internally displaced LGBTQ+ persons, expanding PEA to other counties, including rural communities, will provide insights into geographic insights for programming.

Observations from validation workshops

»➔ There was general acceptance that the findings resonated with the participants and the community at large. The lack of a unified approach by LGBTQ+ organizations and individuals was raised. Not only are LGBTQ+ persons discriminated against, facing homophobia, biphobia, lesbophobia, or transphobia, but they also experience discrimination from members of the LGBTQ+ 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].

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