



**National Gay and Lesbian Human Rights Commission**  
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**Tel: 0204400525**  
**Legal Aid Report 2016**  
**January- December 2017**

## **About Us**

The National Gay and Lesbian Human Rights Commission (NGLHRC) is an independent human rights institution made up of human rights lawyers and supporting staff whose mission is to achieve legal and policy reforms towards equality and the full inclusion of sexual and gender minorities in Kenya. The bastion of our work is providing free legal aid/access to justice for sexual and gender minorities in Kenya which is advanced mainly through strategic litigation and targeted advocacy. We envision a country that recognizes and protects the rights of sexual and gender minorities to the fullest extent.

The NGLHRC was founded by six young human rights advocates who identified a need for a national legal aid mechanism to prevent and respond to discrimination on account of real or presumed sexual orientation and gender identity. Our founders believed that legal vigilance against discrimination when complemented with public education could be a catalyst for social change. Their methodology was informed by their experiences as lawyers and activists—and an analysis of the Kenyan, regional and international political, cultural, social and economic spheres and how they interact with gender, sexuality and access to power/resources and equal rights.

## **Executive Summary: A Brief Overview of the Legal Aid Program**

The NGLHRC legal aid center responds to and seeks redress to violations against all persons on ground of their sexual orientation and/or gender identity whether real or imputed. NGLHRC provides free legal aid, referrals, documentation, intervention, alternative dispute resolution and direct legal representation. We also provide bail and bond for our clients based on a (most at) need analysis. Additionally, we provide urgent response and fact finding in some cases and engage in strategic litigation toward equality and justice for LGBTIQ persons in Kenya.

The Legal Aid Clinic has dealt with over 1500 cases since the inception of its Legal Aid Program in 2014. Of these, about 34% of cases reported are through allies and referrals, both in Nairobi and out of town. In 2014, a total of 344 cases were reported, approximately 278 in 2015, 193 in 2016 and 433 cases in 2017.

The Incidences the Commission attends to are categorized as follows:

1. Blackmail & Extortion



2. Violence
  - a) Violence in Institutions
  - b) Sexual Assault
  - c) Physical Assault
  - d) Verbal Abuse
  - e) Threats of Violence
3. Murder
4. Suicide/ Attempted Suicide
5. Cyber Bullying
6. Social Exclusion
  - a) Denial of services
  - b) Denial of access to premises
  - c) Disinheritance/disowning
  - d) Custody of children
7. Eviction from Rental property
8. Dismissal from Employment
9. Expulsion from School
10. Targeted Criminal Prosecutions
11. Forced Migration
12. Forced Internal Relocation

Consistently the highest number of reported incidences is of the nature of some form of violence with over 200 cases having been reported. Along that vein, Blackmail and Extortion cases have been on a steady rise since 2014. There was a sharp spike in forced migration cases that was attributable to the



tenuous situation of LGBTIQ persons in Uganda following the tabling of the Anti-Homosexuality Bill in the Ugandan Parliament in 2014 and the consequent rise in homophobia and violence against sexual minorities in Uganda. Another constant pattern has been the high number of male gay/bisexual identifying clients as compared to other sexual and gender identities. In 2015 & 2016, there was a steady increase in reporting by LBQ identifying persons. There however, remains a general unwillingness to seek legal redress for violations by all clients, particularly amongst LBQ clients. Similarly there is still a very low reporting rate by complaints denoting the lack of the trust in the police and judiciary by the LGBTIQ constituency in Kenya. In 2016, a notable pattern in the cases reported was an increase in violations against transgender and gender non-conforming persons as well as targeting of ITGNC organizing.

The Cases reported since 2014 have been from a multitude of areas in the country and include: Nairobi, Turkana, Kakuma Refugee Camp, Embu, Meru, Nyeri, Mombasa, Garissa, Nairobi, Kisii, Kericho, Nakuru, Kisumu, Kwale, Eldoret, Thika, Kiambu & Lamu.

#### TRENDS IN 2017

Increased blackmail cases especially via online dating applications such as Grindr & Hornet

Increased threats to life & physical assault of LGBTIQ refugees especially around the election period due to political tensions and instability

Increased vulnerability of LBQ persons with more instances of being 'outed' and the lack of economic agency to ensure their own protection

Low reporting of violations especially in the LBQ community

Continued interference by state actors in civil society organizations

Increased reports of homelessness and loss of economic dignity

State officials continue to act ultra vires and continue to tokenize the anti-homosexuality lobby

#### IDENTIFYING NEEDS

In 2017, it became clear that the LBQ population remains grossly underrepresented with many instances of violence going unreported. As a particularly vulnerable segment of the LGBTQIA+ population, there is need to reach out to their communities regularly to encourage reporting, notify them of the presence of allies and advocates for their rights, as well as empower them through paralegal trainings & identify



needs through community consults. (Hence the need for more camps such as the Uzima camp & More BW sessions outside of Nairobi)

With blackmail and extortion incidences on the rise, there is need for police interventions seeing as a significant number within the force form part of the blackmail cartels and aid the perpetrators. Creation of resource guides for the community providing information on how to react in situations of blackmail, who to reach out to in those instances, how to preserve evidence for effective reporting, their rights and the law, is crucial to effectively sensitize & empower the community. Partnerships with dating sites to raise awareness on their use as a platform on which perpetrators identify & meet unsuspecting victims, is also key.

To bolster our safety & security response work, a relocation fund is required. Over the last 10 months, over three dozen persons whose personal safety had been threatened repeatedly urgently required relocation. The ability to help the victims find refuge in spaces where their lives/property/dependents are not constantly at risk would, undoubtedly, prove invaluable in improving the quality of their lives. With their increased vulnerability & high prevalence of violence, LGBTI refugees and LBQ persons would be the greatest beneficiaries of this fund.

### Tabulating the Data

Series	Nature of incidence	No. of Incidences	No. reported to the Police and/or referred to Partners	Status of case	Perpetrator	Notes

1.1	Blackmail and Extortion	72- official verified number is 40 but that does include partner referrals /data shared. A more likely estimation would be between 70 and 105 cases.	18	6 cases under investigation  1 arrests  1 arraignment & charge, with the accused absconding after bail was issued	All Non-State	Most Blackmail & Extortion cases occur on social media platforms and dating apps such as Grindr, Hornet & Gay Romeo  Orchestration by organized gangs of blackmailers work with the police who detain and threaten victims  An increase in the number of LBQ Blackmail & Extortion cases, mostly occurring in lesbian bars such as Razors and Little Temple
1.2	Threat to Kidnap	3	2	No arrests	Non-state	Clients were threatened by their families because they found out their sexual orientation
2.0	Violence					

2.1.1	Physical assault	36	30	No arrests  All cases were referred to partners such as the UNHCR, HIAS etc. for interventions such as relocation and psychosocial support	All Non state	A majority of the cases were hate crimes as the perpetrators were unknown to the victims and the violations were primarily in the environs of the victims
2.1.2	Intimate Partner Violence	15	1	Case reported but later withdrawn	All Non-state	A general trend exists in IPV where victims show a general reluctance to report violations to the police
2.2	Verbal assault & Harassment	7	5	No arrests	All Non-state	Most such incidences occur around victims homes, places of work and common social spaces
<b>Series</b>	<b>Nature of incidence</b>	<b>No. of Incidences</b>	<b>No. reported to the Police</b>	<b>Status of case</b>	<b>Perpetrator</b>	<b>Notes</b>



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2.3	Sexual violence	25	18	2 arrests	Non-state	The arrested persons were 2 queer men accused of defilement and rape  4 cases of sexual violence resulted in HIV infections
2.3.2	Gang Rape	1	0	No arrests	Non-state	The violation occurred to a minor who was unwilling to report the case to the police
2.4	Threats of violence	45	1	No arrests	Non-state	Most threats of violence are targeted toward vulnerable LGBTIQ refugees

3.0	<p>Cyber bullying:</p> <p>There may be an overlap in these numbers because they are factored in under Blackmail and Extortion cases</p>	47	0	Media advocacy campaigns to educate and sensitize the community on cyber bullying and how to engage safely on the internet	State & Non State	<p>Primarily through blackmail &amp; extortion on dating apps such as Grindr</p> <p>Reports of high ranking state officers such as Ezekiel Mutua, head of the Kenya Film Classification Board, trolling LGBTIQ persons engaging them on social media</p>
4.1	Murder	3	3	<p>1 Arrest</p> <p>The case is ongoing in the Kisii law courts</p>	Family & Community	<p>Matter kept quiet and garnered no publicity</p> <p>Murder was perpetrated against 2 intersex persons and 1 female sex worker</p>
4.2	Suicide/ Attempts	1	0	No arrest	Self	Referrals for psycho-social support made



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Series	Nature of incidence	No. of Incidences	No. reported to the Police	Status of case	Perpetrator	Notes
5.1	Eviction from rental property	64	1	No arrests	Non-state	<p>A large number of reports made by refugees and asylum seekers within urban areas and occurred either as a result of homophobic landlords or neighbors or defaulting on rent</p> <p>A lack of capacity of LGBTIQ refugees to sustain themselves through economic livelihoods is apparent</p> <p>In a number of cases, an agreement was negotiated with landlords to reimburse the evicted persons</p>



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5.2	Dismissal from employment	3	1	No arrests	Non-state	<p>This case was filed at the Labor Relations Court and is ongoing</p> <p>Several joint advocacy programs on diversity and inclusion in the workplace, including the respondent company in the case, have been carried out.</p>



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5.3	Expulsion from schools	0	0	N/A	Non-state	<p>-There remains a general reluctance by partners and clients alike to record and report cases on expulsions and suspensions respectively from schools of students suspected to be LGBTIQ.</p> <p>-This is attributable primarily to the sensationalization in the media of queer minorities and the ongoing narrative of 'conversion and recruitment' by 'the homosexuals'</p> <p>-Students are often subjected to forced counselling</p>
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5.4	Forced Institutionalization	5	0	No follow up	Non State	2 cases involved minors-2 students accused of being lesbians in secondary school  Persons reporting cases of such a nature are often wary of revealing more information as they fear backlash from any consequent intervention
6.1	Unlawful/Arbitrary arrest and detention	10	1	No follow up	All State	Most incidences occurred during the tumultuous Election period from August to October
6.2	Targeted criminal prosecution	1	1	N/A	State	The state refused to drop charges against accused despite an overwhelming lack of evidence
7.0	Forced Relocation					

7.1	Internal Relocation	18	0	No follow up	State	Internal relocation has proved in some cases to only be a temporary solution
7.2	Homelessness and/or loss of Economic Dignity	107	0	Referral to allied partners such as the UNHCR	State & Non State	Most of these cases involve LGBTIQ refugees whose applications for refugee status have been deliberately delayed by the Kenyan Government frustrating any attempts to successfully seek out livelihoods. Partner organizations also have limited capacity to provide the overwhelming number of refugees in the country with sustained financial aid
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7.2	Refugee/ Asylum seeking	Cumulati ve Data Unavaila ble	0		State	There remain thousands of LGBTIQ refugees in Kenya who have spent years waiting for the government to process their applications for refugee status
		Half the cases handled by the legal aid clinic dealt with refugees				
8.0	Social exclusion					
8.1	Denial of services	0	0	No follow up	State & Non state	A research project undertaken in early 2017 revealed a trend in denial of health services to members of the LGBTIQ community. However, these cases were not verified.

8.2	Denial of access to premises	0	0	No follow up	Non-state	A form of denial of access to premises is refusal to access shared sanitation facilities of LGBTIQ persons in hostile home environments. An escalation of these cases often results in forced evictions
8.3	Disinheritance/ disowning	0	0	N/A	Non-state	N/A
9.1	Custody of children/ Adoption	1	0	N/A	Non-state	Lesbian couple case: the non-biological parent wished to adopt the child, no legal recourse available
9.2	Divorce on the grounds of queer sexual orientation	1	0	Filed a response to the Divorce petition and provided legal representation in the case	Non-State	Case successfully concluded, however, most cases end in blackmail and extortion of the outed spouse