

## **LEGAL AID BRIEF**

### **Executive Summary**

The NGLHRC Legal Aid Centre responds to and seeks redress to violations against all persons on grounds 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 2000 cases since its inception 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, 433 cases in 2017 and 516 in 2018 and 130 cases as of June of 2019. The incidences the Commission attends to are categorized as follows

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- Blackmail & Extortion
- Violence
- Violence in Institutions
- Sexual Assault
- Physical Assault
- Verbal Abuse
- Threats of Violence
- Intimate Partner Violence
- Robbery with Violence & Burglary

### **Violation of rights**

- Forced Anal Testing
- Forced sex trade
- Torture
- Unlawful arbitrary arrest & Detention
- Forced Migration
- Eviction from rental property
- Dismissal from Employment

- Police harassment & brutality
- Forced Internal Relocation
- Malicious damage of property
- Forced correctional Surgery from an intersex Minor
- Stalking
- Murder
- Suicide/ Attempted Suicide
- Cyber Bullying
- Social Exclusion
  1. Denial of services
  2. Denial of access to premises
  3. Disinheritance/disowning
  4. Custody of children
- Expulsion from School
- Targeted Criminal Prosecutions
- Deportation
- Refugee Asylum claims & Resettlement
- Child abuse
- Unemployment
- Legal processes Assistance
- Change of name
- Adoption of Children
- Registration of LGBTQ organizations

The highest number of cases received were of different forms of violence including physical, sexual, emotional and verbal. Blackmail and Extortion cases had been on a steady rise since 2014 but this has considerably reduced and may be attributed to increased sensitization on personal safety mechanisms and utilization of security alerts on some of the dating/social digital applications. Most of the cases we received were from interactions on these applications.

There was a sharp spike in forced migration cases as a result of 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. Many of the affected and at risk people fled to Kenya. Migrants and asylum seekers from neighbouring countries such as Burundi and Tanzania continue to increase with Uganda holding the highest number.

NGLHRC has consistently seen a 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. The trend remained in 2018 with more reports from LBQ identifying persons being recorded by the Commission.

There remains considerable reluctance by clients to seek legal redress for violations against them. Clients have reported that they lack trust in the authorities and the judiciary. Harassment by police majorly influences the attitude of LGBTIQ persons towards reporting violations to police or requesting for investigations.

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, Migori, Kwale, Eldoret, Thika, Kiambu & Lamu.

### **TRENDS IN 2018 & 2019**

- Reduced blackmail cases especially via online dating applications such as Grindr & Hornet in comparison to previous years.
- Increased threats to life & physical assault of LGBTIQ refugees especially around from homophobic neighbours and landlords.
- Relatively lower but improved reporting of violations especially in the LBQ community compared to GBQ
- Increased reports of homelessness and loss of economic dignity especially for LGBTIQ+ refugees settled in Kenya
- Increased instances of migration for LGBTIQ+ refugees and asylum seekers from refugee camps (Kakuma and Dadaab) to urban dwellings.
- Increased claim of forced relocation or eviction
- State officials continue to act ultra vires and continue to tokenize the anti-homosexuality lobby
- An alarming increase in Intimate Partner Violence cases. Majority of the LGBTIQ constituency are unwilling to report these cases due to the nature of the relationships this is coupled with the criminalisation of same sex acts in the penal code.
- Increased cases on cyber bullying. This is among the leading cause of mental health issues within the LGBTIQ community.
- Notably, there has been an influx of fake reports received and they were determined to be a ploy for financial help. Of the 5 threats of murder cases that were reported in 2018, only one was determined to be true after fact finding and verification.
- NGLHRC has also seen media reports and received direct reports of high school students facing expulsion as a result of their real or purported sexual orientation and identity. Unfortunately, it is not possible to intervene in such cases as most of the students are not of the age of majority. NGLHRC's mandate only provides services to adults. Furthermore, queer organizing has been stereotyped by the public and state as recruitment; hence making it impossible to intervene in issues involving LGBTIQ+ minors.

- NGLHRC Legal aid desk has been in receipt of two deportation cases, specifically from the United Kingdom and Canada. The reasoning was that Kenya is at low-risk country for insecurity and discrimination compared to other African countries. This is a misguided notion. Following the court's ruling on criminalization of same sex acts, the LGBTIQ community is more prone to impending insecurity and discrimination among other human rights violations. In this regard, the International Laws and treaties on refugee forbid, discrimination of refugees based on their sexual orientation and condemns any act of refoulement.
- There has been a drastic reduction in cases to do with forced anal testing. Following NGLHRC successful litigation in Petition 56 of 2016, the court banned use of forced anal testing as a means of establishing the offence under section 162 of the Penal Code, Cap 63, and Laws of Kenya.

### **IDENTIFYING NEEDS**

- The reporting by LBQ generally remains low and therefore there is a need to strengthening platforms to build trust and confidence and promote reporting/redress for violations. Because Womxn is one such platform.
- With blackmail and extortion incidences still high, there is a need for the publication of more resource guides and more paralegal and civic training to target individuals that actively engage on dating via social media and dating apps.
- Despite the court ban on forced anal testing, cases of threats of forced anal testing have been reported. In this regards, it is important that the LGBTIQ community are sensitized on their rights to dignity and privacy. Law enforcers and medical personnel should also be sensitized on the same.
- Further, owing to the new trends in cyber bullying cases; reported and unreported, it is necessary to develop IEC materials to address and educate the community on ways to minimize, report, deal with and overcome this.
- To bolster our safety & security response work, the relocation fund needs to be expanded. There is need to have increased funding for direct representation of LGBTIQ+ persons in court.
- There remains a need to make provisions for economic stabilization funds geared towards helping clients lead more stable lives or to help them start an economically viable life after relocation/destabilizing incident.
- There is a need to make financial provision to cater for transport allowances for accused persons, persons under the Commission's protection, and transport reimbursement for clients who cannot make it to the legal aid centre but who are in need of legal assistance.
- There is need to have NGLHRC's clients undergo voluntary psychosocial and counselling services. This is due to the numerous traumatic cases NGLHRC receives and records, requests from clients to seek counselling services for PTSD,

among other issues. We note that counselling services are expensive and we serve a community that isn't able to raise funds for continuous and consistent counselling services.

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<b>Series</b>	<b>Number of Incidents</b>	<b>No. Reported to the police/or referred to by partners</b>	<b>Status of Case</b>	<b>Perpetrators/ Notes</b>
<b>1.1 Blackmail and Extortion</b>	18	8	6 cases under investigation	1 arrest All Non- State Most Blackmail & Extortion cases occur on social media platforms and dating apps such as Grindr, Hornet & Gay Romeo
<b>1.2 Threat to Kidnap</b>	5	3	All under investigation	Non-state Clients were threatened
<b>2.0 Violence</b>				
<b>2.1.1 Physical assault</b>	69	24	Some arrest was made	All cases were referred to partners such as the UNHCR, All Non state A majority of the cases were hate crimes as the perpetrators were

				unknown to the victims and the
<b>2.1.2 Intimate Partner Violence</b>	6	4	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. Orchestration by organized with the accused absconding after bail was issued gangs of blackmailers work with the police who detain and threaten victims an increase in the number of LBQ Blackmail & Extortion
<b>2.2 Verbal assault &amp; Harassment</b>	17	0	No Arrest	All Non-state Most such incidences occur around victims homes, places of work and common social spaces  cases, mostly occurring in lesbian bars such as Razors and Little Temple

<b>2.3 Sexual violence</b>	8	4	2 arrest	Non-state Most cases are undergoing investigations by their families because they found out their sexual orientation
<b>2.3.2 Gang Rape</b>	21	14	8 arrest	Non-state Most of the victims are reluctant to report. The matter to the police stations due to criminalization of Same sex intimacies.
<b>2.4 Threats of violence</b>	21	7	No arrest	Non-state Most threats of violence are targeted toward vulnerable LGBTIQ refugees HIAS etc. for interventions violations were primarily in such as relocation and psychosocial support the environs of the victims
<b>3.0 Cyber bullying</b>	1	0	No arrest	Media advocacy campaigns to educate and sensitize the community on cyber bullying and how to engage safely on the internet State & Non-State

				Primarily through blackmail & extortion on dating apps such as Grindr Reports of high-ranking state officers engaging in misinformation of the public on matters SOGIE, trolling LGBTIQ persons attacking them on social media
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Series	Nature of incidence	No. reported to the Police and/or referred to Partners	Status of case	Perpetrator	Notes
<b>4.1 Murder</b>	6	3	1 arrest	Non-state	the investigations on most reported cases are currently ongoing
<b>4.2 Suicide/Attempts</b>	1	0	No Arrest	Self	Referrals for psycho-social support made



<b>5.1 Eviction from rental property</b>	38	1	No Arrest	Non-State	<p>We received a further 60 reports of refugees and asylum seekers within urban areas and occurred either as a result of homophobic landlords or neighbours.</p> <p>A lack of capacity of LGBTIQ refugees to sustain themselves through economic livelihoods is apparent.</p> <p>In two instances, agreements were negotiated with landlords to reimburse the evicted persons</p>
<b>5.2 Dismissal from employment</b>	3	1	No Arrest	Non-State	<p>This case was filed at the Labour 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>
<b>5.3 Expulsion</b>	1	0	N/A	Non-State	<p>There remains a general schools reluctance by partners and clients alike to record and report cases on expulsions and suspensions respectively from schools of students suspected to be LGBTIQ. This is attributable primarily to the sensationalization in the media of queer minorities and the ongoing</p> <p>Of the 5 cases reported in 2018, 4 turned out to be falsified reports. narrative of 'conversion and recruitment' by 'the homosexuals'</p>

<b>5.4 Forced Institution alization in mental institutions</b>	4	0	These cases were reported by a nurse in Mathari Mental Hospital of some girls who were institutionalized by their families after having been lesbian.	Non-State	<p>- Students are often subjected to forced counselling 4 cases involved students accused of being lesbians in secondary school Persons reporting cases of</p> <p>There was no follow up as all cases involved minors. One case involved a girl who was institutionalized when she was a minor and turned 18 when in Mathari Mental hospital such a nature is often wary of revealing more information as they fear backlash from any consequent intervention</p>
<b>6.1 Unlawful/Arbitrary arrest and detention</b>	29	3	No Follow up	All-state	<p>6 persons released, 1</p> <p>Case is ongoing in court</p>
<b>6.2 Targeted criminal prosecution</b>	1	1	N/A	State	The ODPP charged a client with rape even after he had reported that he was being by the complainant in the rape case. The alleged complainant has since withdrawn the case,

					but the ODPP continues with the prosecution to date.
<b>7.0 Forced Relocation</b>					
<b>7.1 Internal Relocation</b>	18	0	No Follow up	State	Internal relocation has proved in some cases to only be a temporary
<b>7.2 Refugee/Asylum seeking</b>	67	4	Most cases were referred to HIAS AND UNHCR	State and Non-State	There remain thousands of LGBTIQ refugees in Kenya who have spent years waiting for the government to process their applications for refugee status
<b>8.0 Social exclusion</b>					
<b>8.1 Denial of services</b>	0	0	No Follow up	State and 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.
<b>8.2 Denial of access to premises</b>	0	0	N/A	Non-State	N/A
<b>8.3 Disinheritance/ disowning</b>	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

<b>9.1 Custody of children/A doption</b>	1	0	N/A	Non-State	Lesbian couple case: the non-biological parent wished to adopt the child, no legal recourse available
<b>9.2 Divorce on the grounds of queer sexual orientation</b>	0	0	N/A	Non-State	