



National Gay and Lesbian Human Rights Commission

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July 2019/July 2020 Legal Aid Report

Executive Summary: A Brief Overview of the Legal Aid Program

NGLHRC commenced its Legal Aid program in 2012 when the founders noted the gap and need for access to justice for the LGBTQ+ Citizenry in Kenya. Being the only organization that employed the expertise of lawyers who would offer free legal aid services to our queer community, this was to fill the vacuum that had been there before and to advocate for the promotion, protection & fulfillment of every person's human rights as envisioned by the then promulgated constitution of 2010. A constitution that brought with it hope and the validation of equality and non-discrimination of human rights regardless of one's sexual orientation, gender identity, expression and sex characteristics, we visualized a society where all persons are equal. NGLHRC's Legal Aid Center 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.

In the years that followed (2013-2014), NGLHRC's lawyers; with the enthusiasm and zeal to emulate what's written in the law, continued to handle cases from our community. Legal officers would meet clients in parks, restaurants and other public areas as we



did not have an office where these client meetings would be undertaken. In mid 2014, after numerous fundraising efforts, we were able to secure a Legal Aid centre where NGLHRC Legal Aid lawyers and clients would meet and discuss the client cases in private. This was particularly necessary at that time the Republic of Uganda had enacted into law, the Anti Homosexuality Act; which led to LGBTIQ+ persons fleeing Uganda for fear of persecution, seeking asylum and refuge in Kenya. In 2015, Kenya tried to push for enactment of the Anti- Homosexuality Bill which failed at the Committee stage.

In late 2016, it was noted at the Legal Aid office, that we were only able to access clients who were situated in Nairobi and its environs. From this, Community Mobile Legal Aid Outreaches were launched to fill the gap of limited access to justice due to geographical positioning of our clients. These outreaches saw Legal Officers set up shop in different towns at our partners offices. The outreaches probed different types of cases that were not reported in Nairobi including disinheritance of property, forced marriages among other dire issues.

During the course of 2019-2020, NGLHRC's legal team has been managed and efficiently run by four competent lawyers assisted by a certified Psychologist who have tirelessly endeavoured to ensure that clients and cases that are reported at the Legal Aid Center are completed in a timely manner, clients are given full support that is needed or recommended to them.

The Legal team has received reports of Between July 2019 and July 2020, NGLHRC received 329 reports of violations through its legal aid clinic. Violations were reported from out of town and from overseas. NGLHRC was able to intervene through phone conversations, referrals, activating trained paralegals, thirty six of whom have reported and referred cases to the Legal Aid Lawyers



in the locale. The said cases were reported from Nairobi, Kisumu, Mombasa, Kwale, Machakos, Kisii, Tharaka Nithi, Uasin Gishu, Kilifi, Migori, Meru, Nyeri, Garissa, Lodwar, Kiambu, Trans Nzoia, Nakuru, Kakamega, Homabay Counties as well as Uganda, Iraq and Saudi Arabia.

The nature of cases the Commission attends to are categorized as follows:

Statutory Offences

- Blackmail & Extortion
- Fraud
- Misrepresentation
- Harassment
- Theft
- Inheritance of property
- Failure to pay debts owed
- 'Unnatural offences'
- Indecent acts with an adult
- Causing bodily harm by dangerous driving
- Embezzlement of company funds
- Child Endangerment



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- Stalking
- Being Idle & Disorderly
- Indecent Acts in view of a Child

Violation & Breach of Human Rights

- Conversion Therapy
- Mob Justice
- Sexual Harassment
- Physical Assault
- Rape
- Verbal Assault
- Threats of Assault
- Intimate Partner Violence & Gender Based Violence
- Robbery with Violence
- Forced Anal Testing
- Unlawful arbitrary arrest & Detention
- Unlawful termination of Employment
- Police Extortion, harassment, targeted police raids & brutality



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- Arbitrary arrest
- Malicious damage of property
- Murder
- Suicide/ Threats to commit Suicide
- Cyber Bullying
- Discrimination & Stigma
- Wrongful Prosecution
- Child in need of care & Protection

Security

- Insecurity
- Homelessness
- Threats to be outed
- Eviction from home & offices
- Kidnapping
- Eviction from offices & rental property

Family

- Rejection by family
- Disownment



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- Minor in need of care and protection

Assistance, Legal Assistance & Inquiries

- Change of name
- Registration of LGBTQ organizations
- Financial Aid/ assistance
- Medical Assistance
- Educational Assistance
- Intention to sue state institutions for breach of human rights

The highest number of cases reported at the Legal Aid Centre were of different forms of violence including sexual, physical, emotional and verbal. Blackmail and Extortion cases have rapidly risen as well over the past few years especially in dating sites, however a lot of sensitization on personalized safety mechanisms and utilization of security alerts on some of the dating/social digital applications have been conducted to ensure reduction of these cases. Additionally, Cases of cyberbullying have been quite rampant. The Commission has conducted sensitization on the same to curb these cases.



Notably, Cases of conversion therapy have worryingly increased compared to the previous years with the affected clients, based abroad, reporting being coerced to return home in Kenya only to end up tortured and abused due to their SOGIESC status in abid to ‘convert’ their orientation.

The number of refugees seeking asylum in Kenya keep rising especially with the existence of The Anti-Homosexuality Act in the Republic of Uganda that has seen numerous Ugandans flee the country seeking refuge in Kenya. Kenya equally hosts refugees from neighbouring countries such as Tanzania, Burundi, Somalia and Congo.

NGLHRC over the years has been serving LGBQ persons as with the trends varying from either LBQ persons and male/bisexual identifying persons as compared to other gender and sexual 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 the trend remained consistent in 2019 as well.

Despite the sensitization and advocacy campaigns consistently conducted there is still high reluctance towards reporting cases of human rights violations by queer persons to the police due to the fear of getting arrested and having to explain the nature of their relationships and identities. Oftentimes, clients have stated that they lack trust in the judiciary and the authorities, especially due to the harassment often accorded to LGBTQ+ persons by the police. However numerous sensitization and advocacy training have been conducted to various stakeholders to ensure LGBTQ+ persons have confidence in the judiciary and authorities to ensure access to justice to all.



TRENDS IN 2019/2020

- Cases of blackmail and extortion continue to be reported. We note that cases of Blackmail and extortion are reported by clients who experience intimate partner violence from their partners.
- Eviction from rental properties due to lack of rent has risen especially between March and July due to Covid-19 that has led to lack of jobs and laying off of many persons. Most of LGBTQ+ citizenry rely on manual labor and day to day jobs that earned them wages daily that are not available amidst of this pandemic
- Increased cases of conversion therapy on LGBTQ+ persons based abroad.
- Increased inquiries on therapists/psychologists
- Lack of jobs and economic dignity for LGBTQ+ refugees due to lack of work permits as well as being stereotyped in the community.
- Cases of intimate partner violence have risen especially with the government directives on quarantine and cessation of movement that had been put in place since April and lapsed on 6th July 2020. However most of these cases are unreported to the police due to the fear of having to disclose the nature of their relationship.
- Cyberbullying cases have equally been on a steady rise since 2019 with some perpetrators being known while some unknown to the clients.
- Murder and suicide cases have rampantly risen especially among gay/bisexual males since 2019.
- Instances of threats to life, physical and verbal assault have been numerous with perpetrators being known and unknown to the clients.



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- Corrective rape cases have steadily risen among LGBQ+ persons with most perpetrators being people close to the survivors.
- Increased instances of migration for LGBTQ+ refugees and asylum seekers from refugee camps (Kakuma and Dadaab) to urban dwellings who perceive the urban setting to be more promising.
- Increased claims of forced internal relocation and evictions.
- State officials have continuously acted ultra vires by arbitrarily arresting LGBTQ+ persons without charging and arraigning them in court and threatening them with section 162 of The Penal Code.
- There has been an increase in the number of cases on Financial aid however some of these cases tend to be fabricated.
- Increase in attacks on LGBTQ+ refugees in Kakuma by locals and other refugees.
- There have been a few media reports on LGBQ+ persons arrested on the grounds of repeal 162.
- 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, cases of forced anal examinations were not reported. However, in 2019/2020, the legal team has received a few cases of forced anal examinations that are conducted by the state.
- There has been quite a number of inquiries on LGBQ+ person seeking legal advise on their intention to get married in other countries that allow same-sex marriages.
- There has been a steady rise on the number of times refugees have instituted petitions to sue the government and government bodies in a bid to seek equality and justice.
- Most of our refugee clients are repeat clients who often do not get permanent solutions to some of the issues they are seeking assistance on.



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- There has been an increase in the number of refugees seeking to appeal after their resettlement process has been denied.
- We have received requests from persons who are not LGBTQ+ seeking psychosocial support.
- There has been an increase in the number of new CBOs coming up.
- There has been a steady increase in the number of cases of threats and threats to assault from one of the partner's family members in intimate partner relationships among LGBTQ+ persons.

IDENTIFYING NEEDS

- 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 in dating via social media and dating apps.
- There is a need to continuously carry out sensitization and advocacy training on various stakeholders such as the police, judiciary, health workers as well as parents on the need to protect and uphold the rights of LGBTQ+ persons.
- There needs to have more queer friendly therapists as a lot of LGBTQ+ citizenry are succumbing to mental issues.
- 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 reinforce our safety & security response work, the relocation fund needs to be expanded especially with the ongoing pandemic there has been numerous evictions due to rent arrears and insecurity. There is need to have increased funding for direct representation of LGBTQ+ persons in court.
- There remains a need to make provisions for income generating activities to ensure our clients have economic dignity and lead more stable lives after relocation.



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- There is need to improve on our online database for documentation of cases.
- Paralegals who continuously refer us to cases from different counties require stipends to do the work, or for purposes of their general protection and appreciation
- Need to have psychosocial support for paralegals.
- Need for digital literacy
- Need for more funding to carry out our legal aid clinic diligently.
- More LGBTQ+ folks have experienced economic distress due to the pandemic and state sanctioned economic crimes.

LEGAL AID BRIEF

Series	Nature of Incidents	Number of Incidents	No. Reported to the police/or referred to by partners	Status of Case	Perpetrators/Notes
1.0	Blackmail and Extortion	16	11	Cases under investigation	Some cases were from dating sites while some were police extortion cases with reports of police scheming with the perpetrators



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					Some Clients were unwilling to pursue the cases further for fear of being persecuted under sections 162 & 165 Penal Code.
1.1	Fraud	1	1	Case Ongoing	Perpetrator was known to the client
1.2	Misrepresentation	2	2	Cases closed	Clients met persons who misrepresented themselves on dating sites
2.0	Assault				
2.1	Physical Assault	24	21	Perpetrators in five cases were arrested Twenty two cases are under investigation	Some perpetrators were known to the clients while some unknown to them. Some cases of assault are coupled with instances of IPV



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2.2	Verbal Assault	7	4	Cases closed	Perpetrators are unknown to the clients, often they shun away from reporting. Most instances of the verbal assault emanated from the homophobic members of the general public due to clients' SOGIESC status
2.3	Threats of Assault	1	1	Case Closed	Perpetrators were known to the client
3.0	Violence				



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3.1	Intimate Partner Violence/ Gender Based Violence	11	8	Three case closed, the others under investigation	Often go unreported due to the fear of having to disclose the nature of the relationship while seeking legal redress. The Commission referred most clients to the in-house therapist in order to break the chain of abuse and enable the clients seek legal redress.
3.2	Stalking	1	0	Case ongoing	Client is afraid of pursuing the matter due to repercussions they fear may arise from the perpetrator's prosecution.
3.3	Mob Justice	1	1	Case Closed	The Mob Justice was occasioned as hate crime. Perpetrators were the general public (Boda Boda Riders)
3.4	Robbery with	3	3	Cases Ongoing	Perpetrators were unknown to the clients.



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	Violence				
4.0	Rape	7	3	Ongoing investigation	Clients sexually assaulted by persons known to them in a bid to 'correct' them Some ought not to report due to lack of trust in the process
5.0	Harassment	1	1	Case Closed	Perpetrator was unknown to the client. The Client was harassed due to their SOGIE-SC status
5.1	Sexual Harassment	4	3	Cases ongoing.	Perpetrators were known to the clients
6.0	Murder	3	3	Cases under investigation & ongoing in the courts of law.	Perpetrators known to the deceased



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6.1	Threats to Life	4	4	Two Cases Closed. Two cases ongoing	Perpetrators were known to the clients with some being family members and others being the clients' partners
6.2	Suicide	1	1	Case closed	Client succumbed to suicide due to mental health issues and lack of finance to sustain himself that was not addressed in good time
6.3	Threats to commit Suicide	1	1	Case Closed	The case rooted from the clients mental health issues.
7.0	Cyber Bullying	3	3	Cases closed	Two perpetrators were known to clients. One perpetrator was a stranger to the client. A queer organization was heavily trolled on twitter for over their operations by the general public.



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8.0	Assistance				
8.1	Financial Aid/Assistance	29	28	Cases referred to partners	Most of these cases were reported by the refugee societies while some were due to the economic constraints caused by Covid-19 Pandemic. Some Clients presented false information to gain assistance.
8.2	Medical Assistance	5	5	Ongoing	Referred to Hoymas and other queer friendly medical facilities/ Centers
8.3	Educational Assistance	1	1	Case referred to Partner and Closed	Client received educational assistance from partner for vocational training.



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9.0	Security				
9.1	Insecurity	78	75	15 cases closed, 60 cases ongoing	Most cases referred to various partners to aid in client relocations, while 15 were relocated to safer locations by NGLHRC. Two clients presented false information as to their security situation.
9.2	Homelessness	14	12	Clients successfully relocated and Cases Closed	Clients were rendered homeless due to family rejection, disownment, IPV & economic hurdles due to loss of livelihood from the effects of the COVID-19 Pandemic. Internal relocation has proved in some cases to only be a temporary solution
9.3	Threats to be outed	3	0	Cases Closed	Perpetrators were well known to the clients.
9.4	Eviction from	12	5	Cases Closed	Reports of forced evictions due to clients'



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	Homes & Offices				SOGIE-SC status Clients resettled by NGLHRC
9.5	Kidnapping	1	No arrest	Case Ongoing	Perpetrator was known to the client
10.0	Conversion Therapy	2	2	Cases ongoing	Referred to partners to aid clients' relocation
11.0	Property				
11.1	Destruction of Property	3	3	One case closed. Two under investigation.	These instances were as a result of homophobia and intimate partner violence
11.2	Theft	8	5	Cases under investigation and ongoing in the courts of law	Perpetrators were persons unknown to the clients. Some clients opted to stop pursuing the cases.



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11.3	Inheritance of Property	1	0	Case ongoing	Clients in this matter faced discrimination due to their gender and outdated traditional norms roped to inheritance.
11.4	Failure to Pay debts owed	1	0	Case Closed	Perpetrator was known to the client
12.0	Family				
12.1	Rejection by Family	4	1	Cases ongoing	Caused by homophobia from family members. Clients referred to NGLHRC's in house therapist
12.2	Disownment	5	4	Cases ongoing	Reports of disownment by family members due to clients SOGIE-SC status or being outed by close friends
12.3	Minor in Need of	1	1	Case pending	Perpetrators were the state who arbitrarily



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	Care and Protection				detained a transgender child
12.4	Child endangerment	1	0	Case ongoing	The Child in question was one of the accused persons' child
13.0	Discrimination and Stigma	8	0	Ongoing investigations	Caused by homophobia from family, neighbours, colleagues and persons unknown to clients.
14.0	Police Misconduct & Violation of Clients' rights				
14.2	Arbitrary Arrests	5	3	One case closed. Three cases ongoing. Complaints filed with IPOA	Police arrested the clients and unlawfully detained them while threatening them with section 162 of The Penal Code



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					<p>Reports of police coercion for incriminating information & threats of persecution</p> <p>Legal Opinions were sent to the client's to inform them of the nature of their cases and legal options and stakes available</p>
14.3	Police Extortion	3	0	Cases ongoing	<p>Reports of Police threatening clients with persecution under sections 162 & 165 of the Penal Code and soliciting for heavy bribes.</p> <p>Reports of Police colluding with some members of the MSM communities to Blackmail & Extort other members from the gay communities with threats of being arrests and being outed</p>
14.4	Police Raid on	1	1	Case closed	Clients relocated to a different location after the



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	Offices				raid. Reports of targeted raids by Police.
14.5	Wrongful prosecution	1	0	Case ongoing	Perpetrator was the State. Reports of fabricated Charges.
14.6	Being idle and disorderly	2	0	Cases ongoing	These were additional charges presented against clients who were charged in court under sections 162 PC and sections 11A SOA.
15.0	Decriminalization of Same Sex relations				
15.1	Unnatural Offences	4	4	Cases ongoing in the courts of law	Prosecution reframed charges from sections 162 & 165 of the Penal Code, Laws of Kenya to Sexual Offences Act for lack of probable evidence to prosecute under former sections.



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15.2	Forced Anal Testing	2	0	Cases ongoing	Reports of some state officers unaware of the order banning forced anal testing.
15.3	Indecent Acts with an Adult	1	1	Case Ongoing in Court	Client initially arrested under sections 162 & 165 of the Penal Code.
15.4	Indecent Acts in view of a Child	2	0	Case Ongoing in Court	Clients initially arrested under sections 162 & 165 of the Penal Code.
16.0	Inquiries				
16.1	Inquiry on Therapy	6	6	Ongoing	Caused by mental health issues, clients referred to in house therapists as well as therapists from partners



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16.2	Legal Inquiries & Assistance	19	19	Cases closed	Clients sought general legal inquiry on issues such as adoption, marriage, child custody and name change
16.3	Request for deed poll	3	0	Cases Closed	Clients sought to have their name changed due to their SOGIE-SC status. Clients sent legal opinions showing procedures of change of name in Kenya.
16.4	CSO Registration	2	0	Cases Closed	CBO's successfully registered
16.5	Requests for sensitization training	1	1	Request attended to.	The Commission conducted the said sensitization training that saw 43 Paralegals Trained
17.0	Defamation & Slander	2	0	Cases Ongoing	Perpetrators were known to the clients



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18.0	Discrimination				
18.1	Discrimination & Stigma	8	0	Cases Closed	Reports of discrimination and societal stigma due to SOGIE-SC status
18.2	Unlawful Termination of Employment	2	2	Cases ongoing	Employment discrimination & termination due to clients' SOGIESC status
19.0	Causing harm by dangerous driving	1	1	Case ongoing in the court of law.	Perpetrator arrested, arraigned in court and court trial ongoing
20.0	Kenyans seeking Asylum	1	1	Case Ongoing	Report of stigma & Discrimination due to SOGIE-SC status



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21.0	Embezzlement of Company Funds	1	1	Fact finding Conducted and case closed	Client presented false information
22.0	Intention to Sue State Institutions for breach of rights	2	2	Cases Ongoing	Legal opinions drafted and sent to clients

Compiled by the Legal Department



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