

**NATIONAL GAY & LESBIAN  
HUMAN RIGHTS COMMISSION**

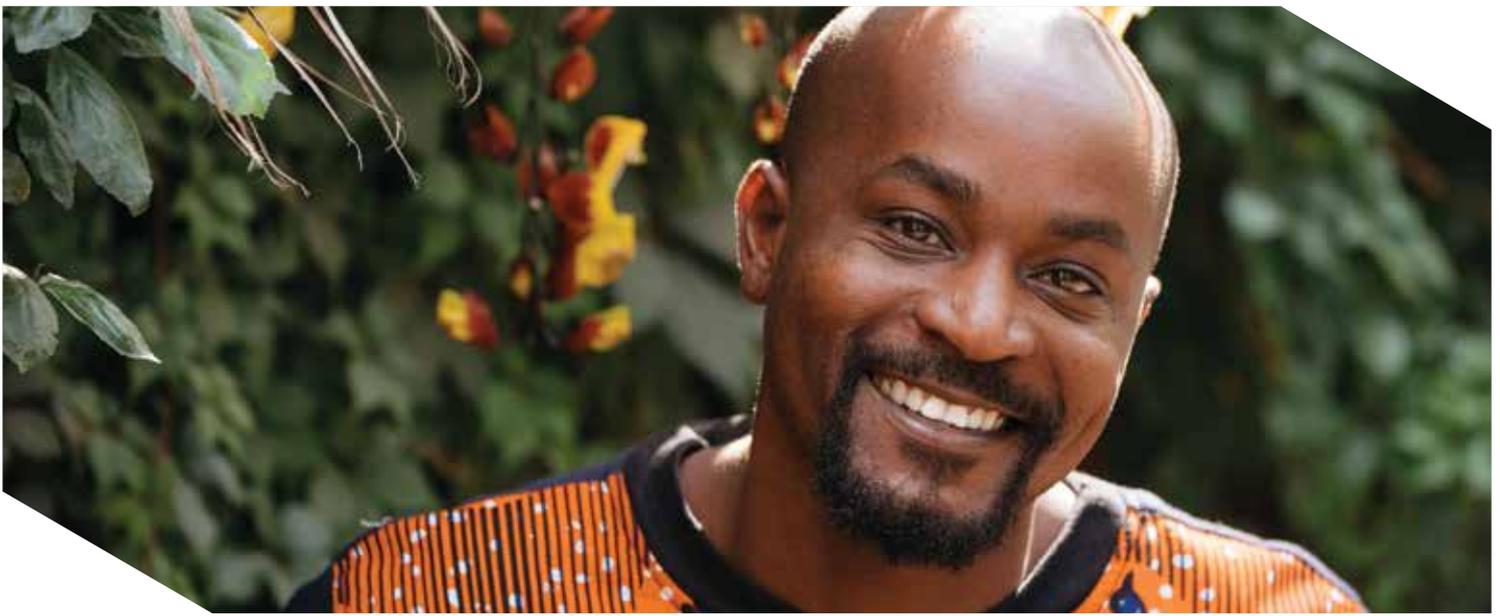
2016 ANNUAL REPORT



**National Gay and Lesbian Human  
Rights Commission (NGLHRC)**

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## MESSAGE FROM OUR EXECUTIVE DIRECTOR

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Dear Friends,

We would like to give a heartfelt thanks to our community of allies and partners for their continued support in 2016. We remain humbled and inspired by your votes of confidence in our work. When we started in 2012, we were six young legal advocates who believed that our duties as lawyers required that we bend society's moral arc towards justice. We founded the National Gay and Lesbian Human Rights Commission (NGLHRC) believing that legal vigilance against discrimination on the basis of sexual orientation and gender identity, when complemented with public education, could be a catalyst for social change.

In March 2013, we officially began our work and opened the first public legal aid clinic for sexual and gender minorities in Kenya. Our clinic, which provides a coordinated national legal aid response mechanism for rights violations, currently serves 300-350 clients a year. We have since expanded our programming to meet the wide-ranging needs of Kenya's LGBTIQ community. From civic education and training to hosting monthly forums for LGBTQ women to incremental litigation towards legal equality, NGLHRC is helping to pave the way for the full enjoyment of rights by lesbian, queer, bisexual, trans\* and gender nonconforming persons in Kenya. But our work is not without its challenges, and 2016 was a year that challenged us—as an organization and a community.

In June, NGLHRC lost its case in the Mombasa High Court challenging the use of forced anal testing in determining sexual orientation. Meanwhile, the NGOs Coordination Board continued to defy a court judgement to register NGLHRC. We continued to combat homophobic propaganda from religious, political and other public figures, and increases in legal fees, an ever growing client load and legal bills, and general inflation stretched NGLHRC financially. Within our regional communities, we saw increased surveillance of queer and trans\* organizing

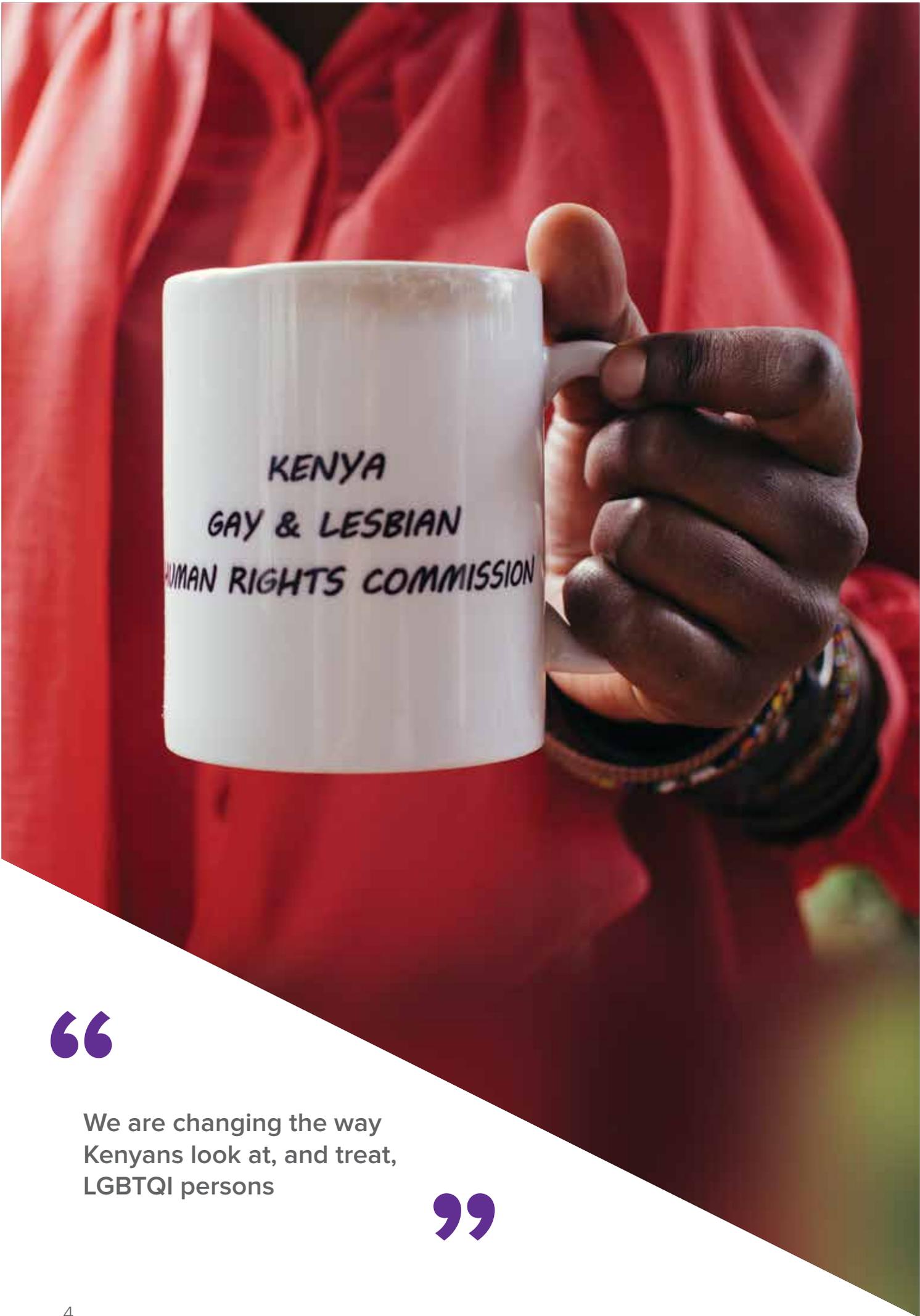
and the increased arrests of trans\* persons. Conflicts in DR Congo, South Sudan, Somalia and the state of emergency in Ethiopia also led to increases in the queer refugee community in Kenya—who face homophobic and xenophobic attacks as well as greater threat of repatriation as border controls tighten across the globe.

But in the midst of these challenges, NGLHRC recognizes its victories. As a community we are thriving through freedom of association, we continue to provide client representation in individual cases of violations throughout the country—putting violators behind bars and increasing effective reporting, documentation and referrals within the national LGBTIQ movement. We agitate in the public sphere for the right to LGBTIQ inclusion, through civic protests, public lectures and media engagement. In December, we also launched our website ([nglhrc.com](http://nglhrc.com)) that will serve as a resource for many in the community seeking services or resources.

As a team, NGLHRC is surrounded by the love and support of our family, allies, and partners who reaffirm our commitment to our work. We recognize our role in an existing movement for human rights and justice, joining others working towards the protection of LGBTIQ persons, women, refugees, sex workers and other civil liberties. Without this larger movement, many of whom are our partners, our work would not be possible. We thank you for your work and courage.

As NGLHRC looks to the future, with a dedicated and well trained staff at our helm, we are energized to continue to lead the fight for the Queer community's legal rights to protection, dignity, and freedom.

Eric Gitari  
January 2017



“

We are changing the way  
Kenyans look at, and treat,  
LGBTQI persons

”



## OUR STORY

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Founded by six young legal advocates, The National Gay and Lesbian Human Rights Commission (NGLHRC) announced its foundation at its inaugural Gay and Lesbian Awards in December 2012. Held in Nairobi's City Hall, the Awards affirmed the Kenyanness of the LGBTIQ community while demanding for their inclusion in public and social organizing spaces. Since then, NGLHRC has been encouraging diversity and agitating for public dialogue on sex, sexuality, gender and nonconformity.

Since 2013, we have been the go-to organization for LGBTIQ legal aid, including security response. We provide a greatly needed national legal aid response mechanism to help prevent and respond to discrimination on account of real or presumed sexual orientation or gender identity. We also engage in civic and public education on LGBTIQ identity, needs and rights as we push for the full inclusion of LGBTIQ individuals and communities in Kenyan society. Through unique partnerships, targeted trainings and a responsive staff, NGLHRC's services and resources are available to LGBTIQ individuals wherever they may be; in every city, town, rural area, and county in Kenya.



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NGLHRC’s vision calls our generation to bear our duty to justice with passion and courage

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## MISSION

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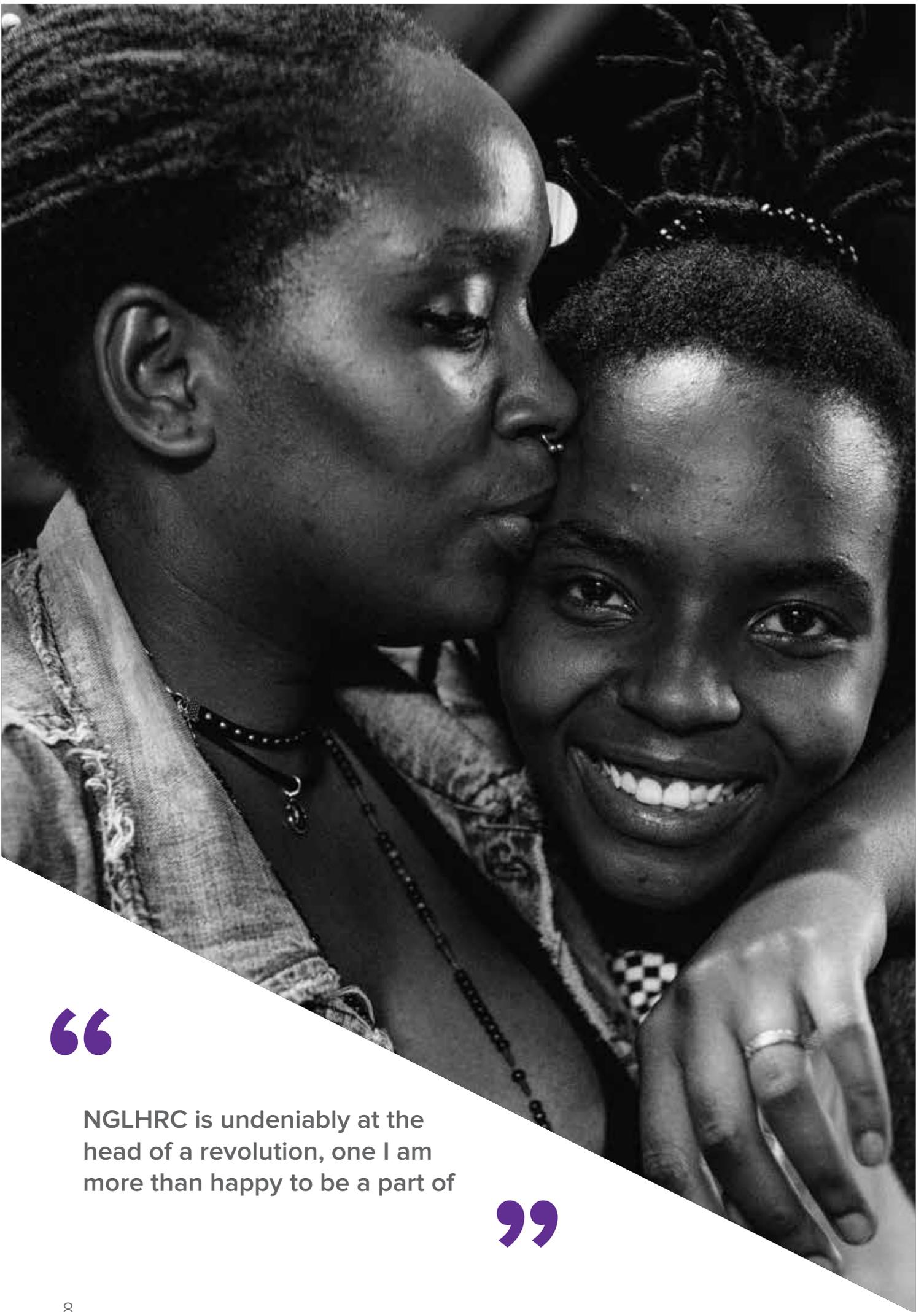
Our mission is to promote and protect the equality and inclusion of LGBTIQ individuals and communities in Kenya, and advance their meaningful participation in society.

## OBJECTIVES:

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NGLHRC's key objectives are:

1. To achieve legal reforms towards equality and full inclusion of sexual and gender minorities through strategic litigation, legal clinics, research and documentation and urgent action missions.
2. To seek human rights centered governance and accountability through engagement and policy advocacy with state organs, state officers and public officers.
3. To promote freedom of expression and association by building LGBTIQ movement and culture in Kenya through activities and calendar events.
4. To encourage political and civic participation of LGBTIQ individuals and communities in Kenya through dialogue, lobbying, civic education and technical support of LGBTIQ individuals and LGBTIQ political aspirants.
5. To advance equal participation and inclusion of LGBTIQ individuals in society through active and innovative media advocacy and public dialogue that challenges homophobia and transphobia.



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NGLHRC is undeniably at the head of a revolution, one I am more than happy to be a part of

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## ORGANIZATION OVERVIEW

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NGLHRC is managed by an energized and competent core staff that includes three lawyers: Mr Eric Gitari (Executive Director), Ms. Njeri Gateru (Head of Legal Affairs), and Ms. Imani Kimiri (Security Officer). Mrs. Claire Fleming serves as our Finance Consultant in a volunteer role. In 2016, NGLHRC grew its staff: with the support of the Heinrich Böll Stiftung Foundation, we hired an Accounting Officer, Ms. Annet Njoki, Ms. Cori Arudi joined our team as Office Administrator and we hired a Media and Communications Consultant, Ms. Kari Mugo. NGLHRC also hosts interns and volunteers to help in delivering our programmes. In 2016, we had two student volunteers interning with us from the University of Nairobi Law School; Faith Gaitho and Chan Mubanga.

Our work is overseen by a seven-person Advisory Board that meets quarterly to monitor and review our programmes including books of account. Our 2016 Advisory Board is made up of: Mr. George Gachara, Mr. David Kuria, Ms. Muthoni Njogu, Ms. Beryl Ogutu, Mr. John Mathenge, Ms. Louiza Kabiru and Mr. Binyavanga Wainaina. Together, our staff, volunteers, and board represent a diversity of national backgrounds, expertise and gender balance.



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I work at NGLHRC because I believe in a universe of equals.

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## OUR PARTNERS AND DONORS

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NGLHRC thanks first and foremost its dedicated staff and volunteers who work day in and day out to accomplish our mission. We are also thankful to our Advisory Board, partner organizations and members of the public who continue to believe in our vision of a fair and inclusive society for all individuals. 2016 was a year that strained NGLHRC's financial reserves and we are thankful for our institutional donors and every individual who donated, in kind and monetarily, over the last year.

### Our 2016 Partners

- International Bar Association
- Council for Global Equality
- Stonewall UK
- Katiba Institute
- HIAS
- Human Dignity Trust
- Human Rights Watch
- Amnesty International
- U.S Department of State
- Equal Rights Trust
- University of California Los Angeles (UCLA)
- The Fellowship Global
- The Nest Collective
- Kenya National Commission on Human Rights (KNHCR)
- United Nations High Commission for Refugees (UNHCR)
- Kenya Human Rights Commission
- AFRA Kenya
- PEMA Kenya
- MUHURI (Mombasa)
- Eagles for Life (Kisii)
- Minority Women in Action
- Initiative for Equality and Non-Discrimination
- Sexual Minorities Uganda

### Our 2016 Donors

- Astraea Lesbian Foundation for Justice
  - COC Netherlands
  - Diakonia
  - East African Sexual Health and Right Initiative (UHAI-EASHRI)
  - Heinrich Böll Stiftung Foundation (HBF)
  - HIVOS
  - Open Society Foundations
  - PITCH Project
  - The European Union
  - Tides Foundation
  - United Nations Office for Project Services (UNOPS)
  - The Canadian High Commission in Nairobi
- and
- hundreds of individuals who send us their donations



KENYA  
GAY & LESBIAN  
HUMAN RIGHTS COMMISSION

“

NGLHRC is an organization with a bold agenda and its fair share of resistance, but such is the nature of fighting for worthy causes

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## OUR PROGRAMMES AND SERVICES

## OUR PROGRAMMES AND SERVICES

NGLHRC works to ensure that members of Kenya's LGBTIQ community:

1. can live free and equal lives, and,
2. are treated with dignity and rights within their community and respective counties

We do this through four main programmes; a Legal Aid Centre, Paralegal Trainings and Civic Education, Advocacy and Engagement, and Because Womxn.

### Paralegal Training and Civic Education

NGLHRC conducts countrywide annual civic education and paralegal trainings for sexual and gender minorities, civic educators and paralegals. Through our trainings we are able to enhance access to justice and bring to life the constitutional right of public participation of LGBTIQ individuals living in Kenya.

Thanks to our paralegal trainings, NGLHRC is developing a robust list of legal allies who are able to directly respond to legal distress on the ground, make referrals to NGLHRC where our intervention is needed, and trust us to pursue justice in cases of rights violations. Through our civic education efforts, we are increasing the ability of LGBTIQ individuals to self-represent before police and other state agents; encouraging their citizen power to demand respect for rights; and their civic participation through voting, running for office, or demanding accountability from appointed and elected officials. In 2016, we provided paralegal trainings in nine locations across Kenya, training 258 paralegals and 520 civic educators. We also trained over 40 police officers and court users' committee members on the justice challenges and needs of the LGBTIQ persons.

### Advocacy and Engagement

NGLHRC recognizes that stigma, discrimination, harassment and violence towards the LGBTIQ community comes mostly from ordinary citizens. Through advocacy and public engagement, we are changing prevailing attitudes on diversity in Kenya. We occupy public media spaces to bust myths and stereotypes on LGBTIQ identity and advocate for equality; we lobby officers from all three

arms of government; give lectures in universities in Kenya and submit reports on the state of LGBTIQ rights in Kenya to international bodies such as the UN Human Rights Council and the African Commission on Human and People's Rights, among other advocacy efforts.

In 2016, we had political lobbying meetings with the Attorney General, the Parliamentary Human Rights Caucus, the office of the Director of Public Prosecutions (DPP) and the Court Users Committees in Nairobi, Mombasa and Kwale. As one of the African LGBTIQ institutions involved in the ground work that led to the adoption of the Resolution Against Violence On Grounds Of Real Or Perceived Sexual Orientation And Gender Identity at the African Commission on Human and People's Rights, we have been working closely to monitor implementation of this resolution. Through sensitization trainings, lobbying and constant meetings with respective state organs, NGLHRC has noticed softened resistance to equality and we are keen to continue engaging on this in 2017 which is an election year.

### Because Womxn

As with other social issues, NGLHRC finds that discrimination and violence against LGBTIQ individuals affects lesbian, bisexual, queer, trans\* diverse and gender nonconforming persons differently because of patriarchy and sexism. We hold monthly forums in Nairobi to address the unique needs of lesbian, bisexual, queer women and non-binary persons. Our forums increase civic awareness and create a space for discussion and programming around the safety and security, health and wellness of LGBTQ women.

In 2016, Because Womxn engaged with over 200 women in our monthly forums, discussing topics ranging from Decolonizing Sex to Self Defense to Self Care Practices. Thanks to this programming—and other efforts—we have noted increased reporting of violations within this bracket and an improved understanding of the law with regard to Kenyan queer citizenry. In 2017, NGLHRC looks forward to replicating the successes of its Nairobi forum across three regional towns (Mombasa, Kisumu and Eldoret) where queer women or women who are perceived to be nonconforming are facing increasing attacks and evictions.



## LEGAL AID CLINIC

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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. We also provide urgent response and fact finding in some cases and engage in strategic litigation toward equality and justice for LGBTIQ persons in Kenya.

In 2016, NGLHRC received 193 reports of violations through its legal aid clinic and 78 cases through its allies and referral mechanisms. 207 of these violations were reported in and around Nairobi. Violations were reported from out of town and the NGLHRC was able to intervene through phone conversations, referrals, activating trained paralegals in the locale as well as relying on the goodwill of the partnerships that have been cultivated with the judiciary and police in different counties. These cases were attended to in Kwale, Nyeri, Eldoret, Nakuru, Lamu, Kisumu, Kisii, Malindi, Mombasa and Kiambu.

Some of the notable spikes in this analysis are the increased number of violations against transgender and gender non-conforming persons as well as targeting of ITGNC organizing. Additionally, there is a steady increase of reports from our lesbian, bisexual and queer constituency. One of the more notable constants in this analysis is the high number of male gay/bisexual identified clients as compared with other sexual and gender identities. 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 cases where the violations are actually reported, there are very little prospects of completing investigations, arrests and arraignment in court. Even in the rare cases where the trial process is begun, there is a large likelihood of interference by both state and non-state actors leading to withdrawal of the matter. This is also reinforced by the general lack of goodwill within the justice system to pursue redress for LGBTIQ complainants.



## LEGAL AID BRIEF

Series	Nature of incidence	Number of Incidences	Number reported to the Police	Status of case	Perpetrator	Notes
1.0	Blackmail and Extortion	38	14	9 cases under investigation  3 arrests  1 perpetrator charged with theft  2 cases not issued with O.B number	State: 6  Non-state: 31	36 of the complainants were male  1 female client  Reports of police working with blackmailers to detain and threaten clients
2.0	Violence					
2.1	Physical assault	31	6	2 arrests  Charges dropped before arraignment in court	State: 9  Non-state: 22	1 report of castration where a client was attacked assaulted so badly he lost use of one of his testicles  7 reports of intimate partner violence  1 report of attack by city council officers
2.2	Verbal assault	33	2	No arrests		1 report of repeated verbal abuse by a senior manager at client's place of work upon discovery of their sexual orientation.  Client unwilling to report to police or pursue further action
2.3	Sexual violence	11	3	2 arrests	Non-state	Report of assailant taking and distributing pictures of the unconscious victim within the college campus they both attend

# LEGAL AID BRIEF

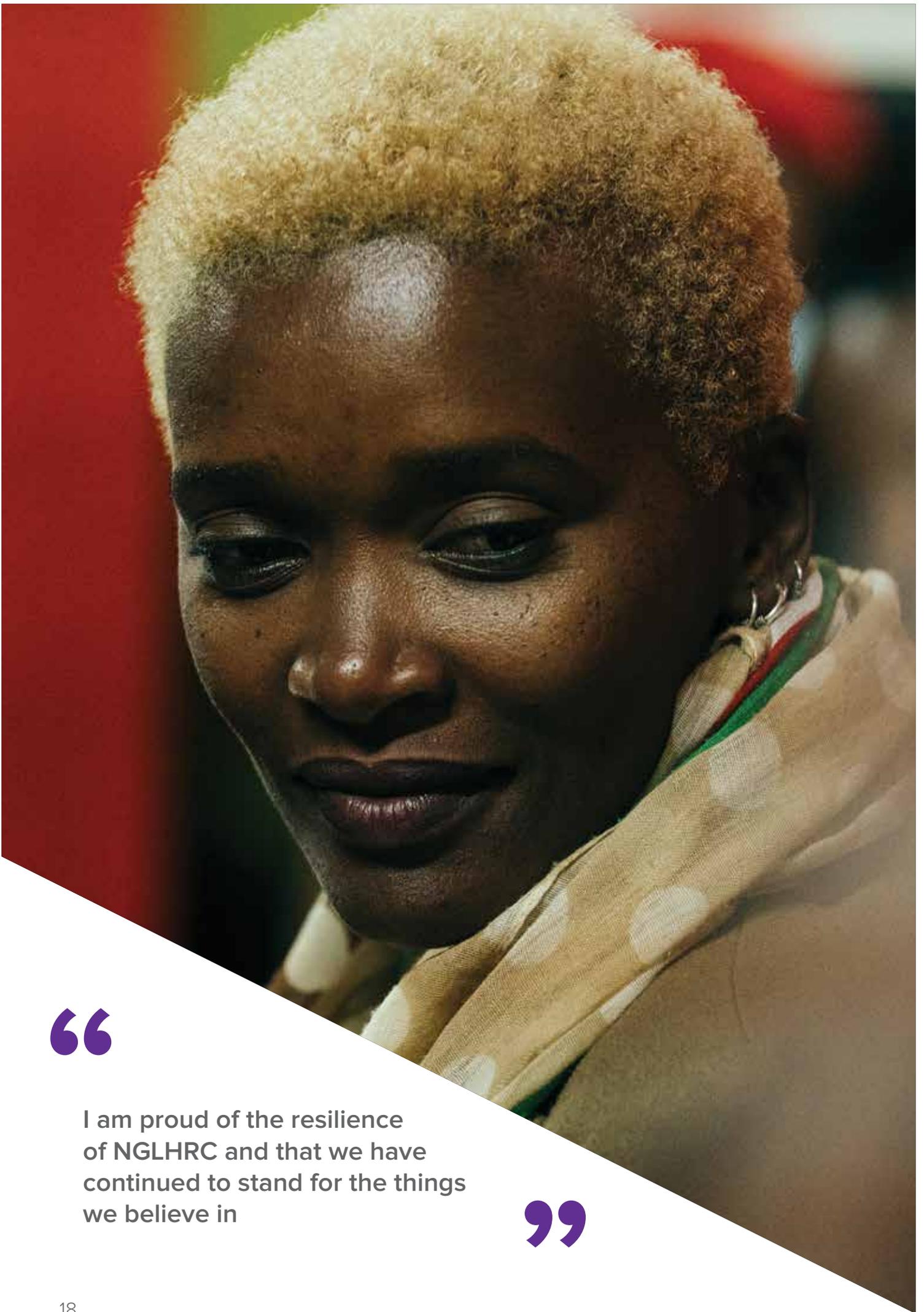
## LEGAL AID BRIEF (CONTINUED)

Series	Nature of incidence	Number of Incidences	Number reported to the Police	Status of case	Perpetrator	Notes
2.4	Threats of violence	18	1	No arrests	Non-state	2 clients reported threats from intimate partners on matters related to HIV status  Reports of assailants brandishing a gun at clients and threatening to kill them
3.0	Cyber bullying	47	1	Perpetrator summoned to the police station.  Matter resolved and charges dropped	State: (state officer) 4  Non-state:13	Reports of high ranking state officers trolling LGBTIQ persons engaging them on social media
4.1	Murder	1	1	No arrests	Unknown	Matter featured on mainstream media highlighting CCTV footage showing the alleged perpetrators.  No follow up available
4.2	Suicide/Attempts	2	0		N/A	Referrals for psycho-social made
5.1	Eviction from rental property	18	0	No arrests	Non-state	A large number of reports made by refugees and asylum seekers within urban areas
5.2	Dismissal from employment	2	0	No arrests	Non-state	One client engaging in alternative dispute resolution as had been in prescribed in contract
5.3	Expulsion from schools	2	2	N/A	Non-state	Both students had been attacked and seriously injured by fellow students before the intervention of the school administration  No action was taken against the assailants

# LEGAL AID BRIEF

## LEGAL AID BRIEF (CONTINUED)

Series	Nature of incidence	Number of Incidences	Number reported to the Police	Status of case	Perpetrator	Notes
6.1	Unlawful arrest and detention	19	3 reports to IPOA	No response from IPOA	State	Complaints forwarded to the office of the Ombudsman
6.2	Targeted criminal prosecution	2	0	1 charge dropped 1 client acquitted	State	Charges dropped when the law on which the prosecution relied was deemed unconstitutional
7.0	Forced Relocation					
7.1	Internal Relocation	3	3	Clients referred to allied organizations	Non-state	Internal relocation has proved in some cases to only be a temporary solution
7.2	Refugee/Asylum	Cumulative Data Unavailable Only 9 reports received by NGLHRC				
8.0	Social exclusion					
8.1	Denial of services	6	0	2 clients complained to senior management in the institutions	1 state (institution)	
8.2	Denial of access to premises	24	0	10 clients complained to management	Non-state	
8.3	Disinheritance/disowning	3	0	1 ADR intervention	Non-state	NGLHRC facilitated dialogue between client and family and matter was resolved albeit with conditions
9.1	Custody of children	2	1	No action taken by police	Non-state	Clients complained of families/spouses denting the access to/custody of their children upon discovery of their sexual orientation.



“

I am proud of the resilience of NGLHRC and that we have continued to stand for the things we believe in

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# LITIGATION

## LITIGATION

Building on Kenya’s 2010 Constitution, which transitioned Kenya into an open and democratic society based on human dignity, equality, equity and freedom, NGLHRC engages in incremental litigation to make the case that the new constitution protects all citizens in Kenya regardless of their sexual orientation and gender identity. 2016 updates on each of our litigation cases follow:

### PETITION 440 OF 2013: FREEDOM OF ASSOCIATION UNDER ARTICLE 36 OF THE CONSTITUTION OF KENYA

**Background:** This case regards the registration of NGLHRC as a non profit organisation, which had been denied by the NGOs Coordination Board. In April 2015, a three judge bench of the Constitutional Division of the High Court in Nairobi unanimously ruled that sexual orientation is protected from discrimination in the constitution of Kenya and ordered that NGLHRC be registered. The Court further found that gays and lesbians are persons guaranteed of equal constitutional protection like every other Kenyan. The NGOs Coordination Board has since refused to allow NGLHRC to register with the words ‘Gay’ and ‘Lesbian’ in its organisation name.

**Update:** In 2016, NGLHRC had five scheduled hearings at the Court of Appeal that were not held. Reasons given were that the Court needed more time to appreciate the depth and complexity of the constitutional questions that the appeal raises. We have secured orders from the president of the Court of Appeal to have this matter heard in priority in 2017.

### PETITION 51 OF 2015: FREEDOM FROM CRUEL, INHUMAN AND DEGRADING TREATMENT UNDER ARTICLE 25 OF THE CONSTITUTION OF KENYA

**Background:** This case regards a February 2015 incident involving our clients in Kwale County. Acting upon rumours that our clients might be gay, state police arrested two of our clients on suspicion that they might have engaged in ‘carnal knowledge against the order of nature and indecent acts between adults’ (in violation of the Sexual Offences Act of the Laws of Kenya). The two men were subjected to forced HIV testing and anal examination under a

magistrates order to ascertain whether they might have engaged in anal sex—consensually and in private. They were later charged with ‘carnal knowledge against the order of nature and indecent acts between adults’ among other charges.

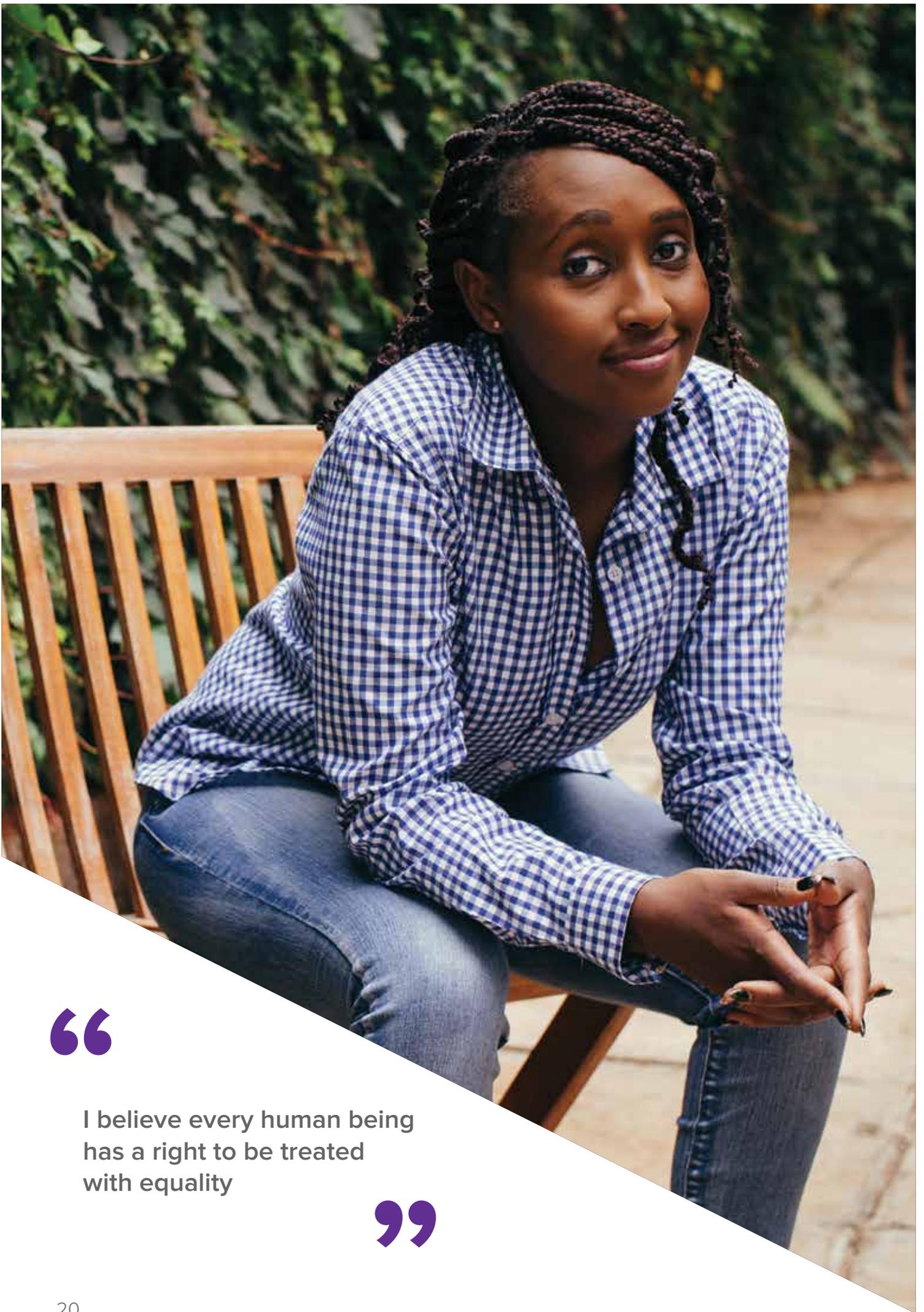
This Petition sought to question whether it was constitutional to subject the two males to anal examination and whether the results of the examination can be admitted as evidence when constitutional rights to dignity, fair trial, and privacy were breached in acquiring that evidence.

**Update:** In June 2016, the Mombasa High Court ruled that the use of anal testing to determine sexual orientation was in line with the law of the land and hence the evidence was constitutional, with the judge ruling that the issues raised were of a criminal matter. NGLHRC fears that this sets a dangerous precedent where the practice of forced anal testing can be visited on anyone based on suspicion or rumours (as was the case in this matter before the Court) that you are gay. NGLHRC appealed the High Court’s discriminatory judgment. Hearings are scheduled for 2017 on the matter. Meanwhile, the criminal case against our clients continues at the Kwale Law Courts where they face the possibility of a 14 year jail term each. Hearings are scheduled for February 2017.

### PETITION 150 OF 2016. EQUALITY AND NON DISCRIMINATION UNDER ARTICLE 27 OF THE CONSTITUTION

**Background:** Filed in April 2015, this case challenges sections 162 (a) and (c), 163 and 165 of the Penal Code of Kenya which outlaw ‘carnal knowledge against the order of nature and indecent acts between males whether in public or private’. NGLHRC has noted that these sections continue to be used to justify and excuse discrimination and violence towards persons on account of their real or perceived sexual orientation and gender identity and expression, against Chapter Four of the Constitution of Kenya. NGLHRC has gone to court with six human rights defenders (the petitioners), the Kenya National Commission on Human Rights and Katiba Institute to resolve this conflict of laws.

**Update:** NGLHRC had two scheduled hearings regarding the matter in 2016, however each of the hearings were postponed at the Court’s request. NGLHRC will continue to seek to have sections 162 (a) and (c), 163 and 165 of the Penal code declared unconstitutional; or null and void.



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I believe every human being has a right to be treated with equality

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## FINANCIAL INFORMATION

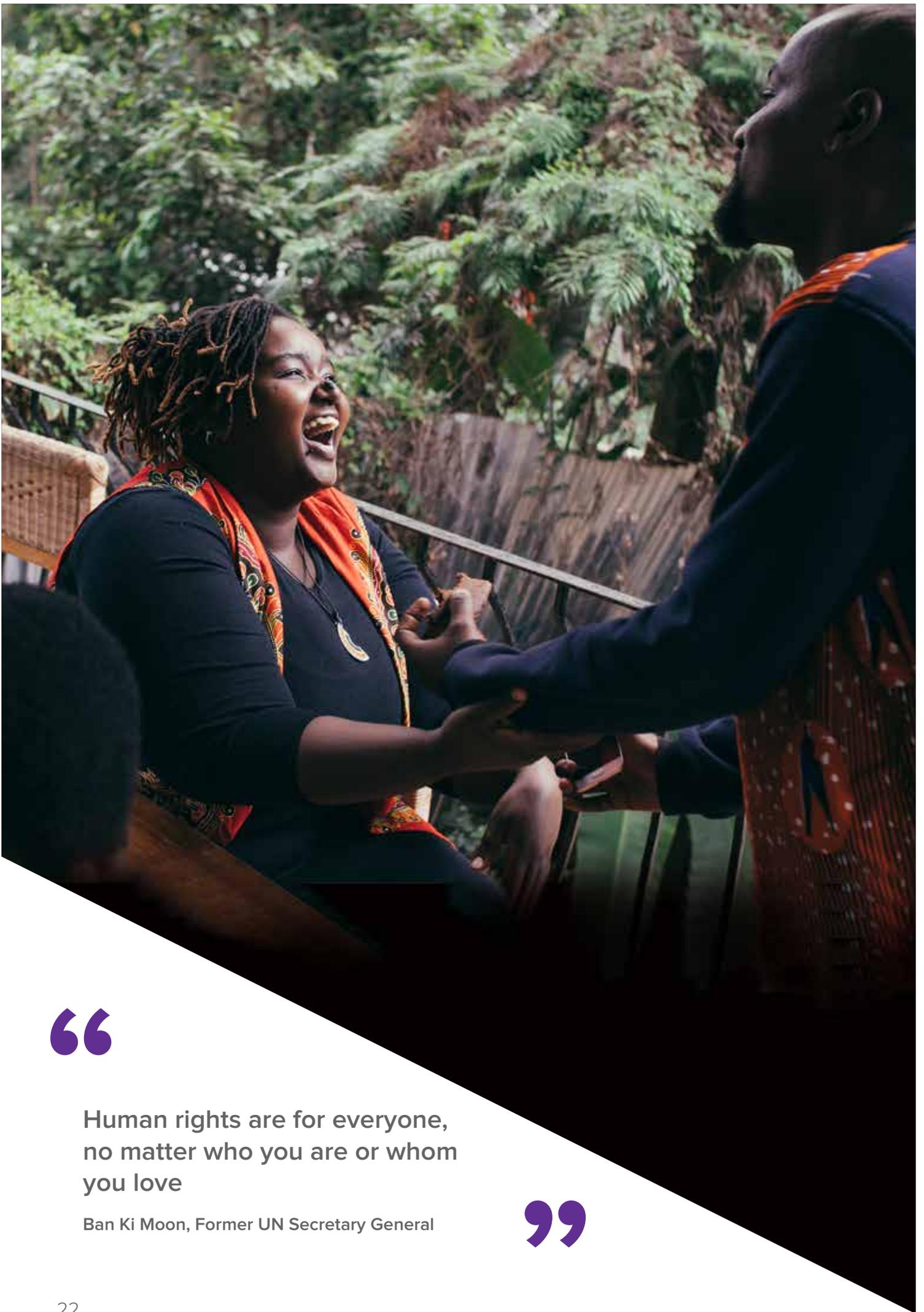
As a young organisation, NGLHRC continues to work on strengthening our financial structures. In 2016, we saw our cost of operation balloon due to soaring legal costs, growing client needs and general inflation. NGLHRC has taken steps to set up an institutional reserve fund policy to cure starvation cycles and allow us to come to the support of our clients whenever needed

### Statement of Financial resources for the year ended 31 December 2016

Ksh	Unrestricted	Restricted	Total
<b>Incoming resources</b>			
Donor funding	5,945,744	8,890,910	14,836,654
Individual Donations	1,139,493		1,139,493
<b>Total Incoming resources</b>	<b>7,085,237</b>	<b>8,890,910</b>	<b>15,976,147</b>
Core Programme costs			8,106,479
Other operating costs			2,121,078
Total resources expended			<b>10,227,557</b>
<b>Net movement in funds for the year</b>			<b>5,748,590</b>

### Balance Sheet as at 31.12.2016

	Ksh
<b>Current Assets</b>	
Cash	13,200,931
Other debtors and prepayments	360,000
	<b>13,560,931</b>
Provisions	(150,000)
<b>Net Current Assets</b>	<b>13,410,931</b>
<b>Funds</b>	
Unrestricted Funds	(5,748,590)
Restricted Funds	(7,662,341)
	<b>(13,410,931)</b>



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Human rights are for everyone,  
no matter who you are or whom  
you love

Ban Ki Moon, Former UN Secretary General

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## HOW YOU CAN GET INVOLVED

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1. Become a Partner; join other individuals and organisations who partner with us to deliver programmes, make referrals, organise events and protests, host private fundraisers and plan social gatherings.
2. Volunteer; NGLHRC relies on volunteers to complement the work of our core staff; from event planning and execution to research and programme development, there are many ways to get involved.
3. Attend an Event; we regularly hosts events that bring the community together. Whether you identify as LGBTIQ or want to learn how you can be a better ally, contact us to learn more about being part of the NGLHRC community.
4. Be a Resource; Stay informed on the state of rights for LGBTIQ persons by signing up for our newsletter on our website ([nglhrc.com](http://nglhrc.com)) or keeping up with us on Facebook or Twitter. Visit our website for Frequently Asked Questions on being LGBTIQ in Kenya, Safety Alerts and Tips, NGLHRC publications and reports and updates on all our legal cases.
5. Speak Up; Too often, the rights and dignity of LGBTIQ and gender nonconforming persons are trampled on not by state actors, but regular citizens. NGLHRC believes that we all have a duty and a responsibility to speak up when this happens. Homophobia is not harmless or funny, when you see something, say something. Share you story and that of the LGBTIQ people you know—change perceptions and bust myths.



# Thank You

Contact Information: National Gay and Lesbian Human Rights Commission (NGLHRC)

## **Mailing Address**

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