



KENYA: “JUSTICE LIKE ANY OTHER PERSON”

HATE CRIMES AND DISCRIMINATION AGAINST LGBTI REFUGEES

NGLHRC NATIONAL
GAY & LESBIAN
HUMAN RIGHTS
COMMISSION

**AMNESTY
INTERNATIONAL** 

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Cover photo: *LGBTI refugees living in the Kakuma refugee camp, Northern Kenya. 23 February, 2023.*
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GLOSSARY

WORD	DESCRIPTION
ACHPR	African Commission on Human and Peoples' Rights.
AFRICAN CHARTER	African Charter on Human and People's Rights.
BISEXUAL	sexual orientation of a person who is sexually and romantically attracted to both women and men, or to more than one gender.
BODA-BODA	slang to describe bicycle or motorcycle used as a taxi for carrying goods or passengers.
DRS	Department of Refugees Services within the Kenyan Ministry of Interior, in charge of refugee operations.
DURABLE SOLUTIONS	any means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to live normal lives. The United Nations Refugee Agency, UNHCR, promotes three durable solutions for refugees as part of its core mandate: voluntary repatriation; local integration; and resettlement.
GAY	synonym in many parts of the world for homosexual; used in this report to refer to the sexual orientation of a man whose primary sexual and romantic attraction is to men.
GENDER EXPRESSION	how individuals express their gender identity. This may or may not include dress, make-up, speech, mannerisms and/or surgical or hormonal treatment.
GENDER IDENTITY	a person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender.
HRC	Human Rights Council.
ICCPR	International Covenant on Civil and Political Rights.
ICESCR	International Covenant on Economic, Social and Cultural Rights.
INGO	international non-governmental organization.
HATE CRIMES	crimes that target people because of their real or perceived links to a group defined by characteristics such as age, disability, ethnicity, gender, gender identity, race, sexual orientation and social or economic status. They constitute a form of discrimination because the target is chosen on the basis of personal characteristics that constitute protected grounds under international human rights law.

WORD	DESCRIPTION
HOMOPHOBIA	fear of, contempt of, or hostility towards, lesbian women, gay men or bisexual people, or people who are perceived to be lesbian, gay or bisexual.
INTERSEX	used to refer to a person who possesses genital, chromosomal or hormonal characteristics which do not correspond to the given standard for male or female categories regarding sexual or reproductive anatomy. Intersexuality may take different forms and cover a wide range of conditions and experiences of gender.
LESBIAN	used to refer to women who are primarily attracted to and who form relationships and have sexual relations with other women.
LGBTI PEOPLE	lesbian, gay, bisexual, transgender and intersex people.
NGO	non-governmental organization.
NON-BINARY	used to describe a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer, gender diverse or gender-fluid.
NON-REFOULEMENT	obligation under international law that prohibits states from transferring individuals to any country or jurisdiction where they would be at real risk of a serious human rights violation.
OB NUMBER	the reference number in the Occurrence Book in which Kenya's police officers record incidents reported at police stations.
OCS	Officer Commanding Station.
RAS	Refugee Affairs Secretariat. In February 2022, RAS became the Department of Refugees Services, DRS (see above).
RESETTLEMENT	the transfer of refugees from an asylum country to another state, that has agreed to admit them and ultimately grant them permanent residence. The United Nations (UN) Refugee Agency, UNHCR, is mandated by its Statute and the UN General Assembly Resolutions to undertake resettlement as one of the three durable solutions.
SEXUAL ORIENTATION	a person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
SHOGA	a Swahili derogatory slang term for "gay" or "lesbian".
TRANSGENDER OR TRANS	used to refer to individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. A transgender woman is a woman who was assigned the "male" sex at birth but identifies as a woman; a transgender man is a man who was assigned the "female" sex at birth but identifies as a man. Not all transgender individuals identify as a man or a woman - the term "transgender" includes members of third genders, as well as individuals who identify as more than one gender or no gender at all. Transgender individuals may or may not choose to undergo some, or all, possible forms of gender-affirming interventions.
UNHCR	United Nations High Commissioner for Refugees, also known as the United Nations Refugee Agency.

EXECUTIVE SUMMARY

“I came to Kenya because I had no freedom and security in my country. The culture and the law there did not allow me to stay. I was attacked many times and my life was at risk, so I left. My mum is the one who helped me escape. I thought I would be free here, but I have not found any solution. I just want to be safe.”

Mercy, a lesbian woman, Kakuma town, 7 September 2021.

This joint report by the National Gay and Lesbian Human Rights Commission (NGLHRC) and Amnesty International documents the extremely dangerous situation of hate crimes, discrimination and other human rights violations suffered by lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers and refugees in Kenya, specifically those living in Kakuma refugee camp, between 2018 and February 2023.

Kenya is the only country in the East and Horn of Africa that offers asylum to individuals who seek protection because of their sexual orientation, gender identity and/or expression and sex characteristics. Across this region, the criminalization of same-sex sexual practices and relationships; legislation targeting LGBTI people; and cultural and religious traditions continue to force LGBTI people to flee. Many flee to Kenya because of its geographical proximity. However, national legislation in Kenya criminalises same-sex sexual relations and abuse of the rights of LGBTI people is widespread.

The findings detailed in the report show that LGBTI asylum seekers and refugees in Kenya face intersectional discrimination and violence based on their identity as asylum seekers or refugees and their sexual orientation, gender identity and/or expression, and sex characteristics (SOGIESC). They experience discriminatory practices and homophobic and transphobic attitudes from government officials, the police and other service providers, in a social climate characterised by prejudice and discrimination. These are reflected in the homophobic behaviour of officials during registration; delayed refugee status determination; harassment and discriminatory violence, including violent homophobic attacks, threats and intimidation; and extremely limited opportunities for durable solutions such as local integration and third-country resettlement.

In particular, the evidence gathered in this report reveals an extremely dangerous situation for LGBTI asylum seekers and refugees in the Kakuma refugee camp complex, with hate crimes

occurring at alarming rates, generalised impunity for perpetrators and inaction on the part of the authorities, against a background of widespread marginalisation and discrimination. LGBTI individuals in Kakuma camp have suffered physical and sexual violence and other serious human rights abuses, including violations of their right to be free from torture and ill-treatment, because of their sexual orientation, gender identity and/or expression, or sexual characteristics. Perpetrators of violence and intimidation targeting LGBTI individuals can commit their crimes with almost total impunity, enabled by the lack of adequate responses from the police. Such hate crimes are a criminal manifestation of the discrimination LGBTI refugees and asylum seekers face. Hate crimes also have a pernicious and long-lasting impact on survivors and communities and require a coherent and thorough response from policy makers, law enforcement officials and the criminal justice system.

Most of the refugees and asylum seekers interviewed reported having suffered assaults, threats and intimidation in Kakuma camp, most of them more than once, because of their sexual orientation, gender identity and/or expression and sex characteristics. In all cases, the attackers referred to their targets' sexual orientation, gender identity and/or expression and sex characteristics either directly, often using derogatory terms for "gay" or "lesbian", or indirectly, for example asking them to kiss a person of the same sex or claiming them to be a "curse", that is bringing harm to the camp. Some attacks have targeted specific blocks in the camp, where members of the LGBTI community are known to live together.

The testimonies collected in this report point to systematic and pervasive inaction by police in Kakuma refugee camp to effectively, promptly, independently and thoroughly investigate allegations of hate crimes reported by LGBTI asylum seekers and refugees. The interviewees reported most of these episodes to the police. Police officers recorded the incident in the Occurrence Book and provided a reference number, known as an OB number. However, in only one case known to the researchers the police followed up on the report. In all other cases, the police did not provide any information about the investigations or other types of follow-up. In some cases, the interviewee reported incidents to the police while they were occurring, or provided information that could identify the alleged perpetrator, but the police did not intervene to stop the incident and did not identify any suspect.

Sharon, a transgender woman, expressed her lack of confidence in the police when describing some of the several episodes of violence and intimidation she suffered at various points during 2019-2020:

"One morning I was going from Kakuma camp to town with another transgender refugee who I met in the camp. Four people approached us and told us to kiss each other in front of them, threatening to beat us.

Another day three people found me walking around the camp and started throwing jabs on my face and kicking me, saying that I am a curse to the rain in Kakuma. They beat me on the eye, and it got swollen. My nose was also swollen.

Another day my boyfriend came to visit me but my neighbours in the block were not happy to see him there. They threatened to kill me. They said we teach their children bad manners. I had to leave my house.

I have been reporting all these incidents to the police station all the times, and there is no need to go to the police station again. Nothing will happen to [the perpetrators]."

Following violent incidents in Kakuma camp, the police reportedly increased police patrols as a measure to increase the security of the LGBTI community. However, in a context where LGBTI people are criminalized, increasing police patrols or resources is not sufficient if there are no other measures in place to tackle systemic homophobia and transphobia, including within the police itself. Our research also collected testimonies of LGBTI asylum seekers and refugees who have faced overt discrimination while reporting to the police the incidents that happen to them.

Additionally, Kenyan police and other authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism, while LGBTI refugees detained in relation to protests about the treatment of LGBTI people in Kakuma camp have described being subjected to serious abuses in detention, including being intentionally exposed to rape and sexual violence by other detainees.

Most of the asylum seekers and refugees interviewed are seeking protection in Kenya because of their sexual orientation, gender identity and/or expression and sex characteristics. Others are seeking protection on other grounds, including because they do not want to be identified as LGBTI people. Several of the LGBTI asylum seekers who registered with the Department of Refugees Services within the Kenyan Ministry of Interior (DRS, previously Refugee Affairs Secretariat, RAS) in Nairobi and Kakuma described experiencing homophobic behaviour during the registration process, including officers making it difficult for them to disclose their sexual orientation, gender identity and/or expression and sex characteristics.

Because of these issues, some of them did not consider it safe to make such disclosures at the beginning of the registration process, which had a negative knock-on effect throughout the asylum process and limited access to specialised support. Some LGBTI interviewees said they feared the consequences of self-disclosure because same-sex relations are criminalized in Kenya, and they did not know what the officers would do with the information. Some of those who decided to disclose their sexual orientation, gender identity and/or expression and sex characteristics during the registration process said officers giggled or made homophobic comments, including using the term “shoga” (a Swahili derogatory slang term for “gay” or “lesbian”).

Most of the LGBTI asylum seekers interviewed for this report said they had been waiting for years for their refugee status determination interview. Against the background of lengthy refugee status determination procedures for all asylum seekers, Amnesty International and NGLHRC received credible reports that the refugee status determination process for LGBTI asylum seekers has been specifically delayed for reasons associated with their sexual orientation, gender identity and/or expression and/or sex characteristics. Until a few years ago, LGBTI individuals were fast-tracked through the process because they were considered “at risk” under the 2009 Refugees Regulations. According to one source, in recent years, when the number of those claiming asylum because of their sexual orientation, gender identity and/or expression and sex characteristics increased, the RAS/DRS considered that the fast-tracking was a pull factor for other LGBTI individuals in the region and began to deliberately slow the process.

Delays in refugee status determination procedures increase the risk of LGBTI individuals needing specific health or other services “falling through the cracks”, that is, not being properly identified or referred to specialized services. Additionally, delays in refugee status determination hold up prospects of resettlement, a durable solution traditionally only available to recognised refugees. Coupled with Kenya’s encampment policy – which requires refugees to live in camps with limited freedom of movement – limited resettlement options force LGBTI individuals to stay in unsafe camps, increasing their risk of experiencing violence.

Amnesty International and NGLHRC are also concerned that Section 19(2) of the 2021 Refugees Act allows the government to expel refugees and asylum seekers on grounds of “public order” or “public morality”. Using the provision to expel LGBTI asylum seekers or refugees would be in violation of Kenya’s international law obligations under the principle of *non-refoulement* and the prohibition of discrimination on grounds of sexual orientation, gender identity and/or expression and sex characteristics.

The Kenyan government has a responsibility to uphold the rights to life, security of person, freedom from torture or cruel, inhuman or degrading treatment, and freedom from non-discrimination of everyone, including LGBTI people. The systematic and pervasive failure to prevent violence and provide justice for hate crimes against LGBTI asylum seekers and refugees, as well as episodes of direct discrimination and intimidation, compounded with the

criminalization of same-sex sexual conduct among adults, raise concerns about institutional homophobia and transphobia within the police and other state institutions. Similarly, episodes of homophobia during the registration process; reports of intentional delays in the refugee status determination process for LGBTI asylum-seekers; and concerns about the impact on LGBTI individuals of Section 19(2) of the new Refugees Act hamper access to a fair and effective asylum procedure and raise serious concerns regarding entrenched homophobia and transphobia within the Kenyan asylum system.

Based on these findings, Amnesty International and NGLHRC conclude that the Kakuma refugee camp complex is not safe for LGBTI asylum seekers and refugees. While some LGBTI individuals have benefitted from relocation to Nairobi, this measure cannot currently provide a comprehensive solution to the dangers of Kakuma refugee camp, as it is allowed only in most exceptional cases, following an opaque selection process and unclear criteria. Overall, Amnesty International and NGLHRC believe that Kenya's encampment policy makes the prospect of local integration as a durable solution impossible for LGBTI refugees.

NGLHRC and Amnesty International are calling on the Kenyan government to urgently ensure the physical and psychological safety of all LGBTI asylum seekers and refugees in the Kakuma refugee camp complex, discussing and agreeing with affected individuals and the wider LGBTI community all necessary measures to prevent and effectively respond to hate crimes; prevent and effectively respond to other forms of discrimination; reduce and ultimately eliminate the reliance on camp settings to provide services to asylum seekers and refugees. This may require amendments or suspensions of the encampment policy and temporary or permanent relocation to Nairobi or other urban areas.

NGLHRC and Amnesty International also recommend third countries to increase pledges for resettlement and complementary pathways, and to establish or enhance flexible alternative pathways for LGBTI asylum seekers and refugees in Kenya that need safety in a third country but do not qualify for traditional resettlement or other pathways.

METHODOLOGY

Researchers from NGLHRC and Amnesty International have been monitoring the situation of LGBTI asylum seekers and refugees in Kenya since 2018. They interviewed 38 LGBTI individuals who were living in Kakuma camp at the time of the interview or had been living there at the time of the incidents they reported. In September 2021, they conducted field research in Turkana County, including Kakuma town centre,¹ where they met 36 LGBTI asylum seekers.² The researchers then conducted follow-up interviews and interviews with new interviewees between September 2021 and February 2023, speaking on the phone and exchanging messages via a secure app. In Nairobi, the team interviewed four LGBTI asylum seekers and refugees who had been relocated or self-relocated from Kakuma refugee camp for security and medical reasons.³ In total, they interviewed 41 LGBTI individuals, 39 adults and two children.

These 41 interviewees included 22 people who identified as gay men (pronouns he/his); eight people who identified as lesbian women or girls (pronouns she/her); three people who

¹ The researchers did not enter the Kakuma refugee camp complex because the Kenyan Refugee Affairs Secretariat (RAS) had not granted access, citing restrictions imposed in relation to the Covid-19 situation.

² The researchers worked closely with fixers in Kakuma and Nairobi who helped them randomly select individuals who identified as LGBTI people. Some humanitarian organizations working within the complex of Kakuma refugee camp also referred the researchers to individuals who had suffered violations. In addition, interviewees shared contact details of other individuals they knew in the community. The researchers from both organizations conducted face-to-face and phone interviews in Swahili and English or, when necessary, using a translator. The interviewees were asked if they were comfortable with a translator and in some instances, the interviewee identified the translator they preferred.

³ Some interviewees had self-relocated and others had been relocated with the support of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations.

identified as bisexual men (pronouns he/his); three people who identified as transgender women (she/her); one person who identified as bisexual woman (she/her); one person who identified as LGBTIQ (lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning) (pronouns they/them); and three people who did not self-identify.⁴ Twelve of the 41 interviewees are from Burundi, nine from Uganda, six from Sudan, five from the Democratic Republic of the Congo, one each from Rwanda, South Sudan and Ethiopia, two from countries in the Middle East and Asia that are not mentioned to avoid identification; four people did not provide their country of origin. Most of the individuals interviewed are seeking protection in Kenya because of their sexual orientation, gender identity and/or expression and sex characteristics. Others are seeking protection on other grounds, including because they do not want to be identified as LGBTI people. Some of the interviewees arrived in Kenya when they were children and are registered as refugees as part of their original family unit. Those interviewees who were living in the Kakuma refugee camp complex at the time of the interview or at the time of the incidents they reported were staying in different refugee camps within the Kakuma complex (including Kakuma 1, Kakuma 2 and Kakuma 3) as well as various blocks within the Kalobeyi settlement on the outskirts of Kakuma.⁵ To protect the interviewees' security and identity, this report uses pseudonyms and omits any identifying detail, including references to specific places.

In addition to interviews with LGBTI asylum seekers and refugees, the researchers held discussions with leaders of different refugee-led organizations working in Kakuma refugee camp and Nairobi, including people from LGBTI refugee-led organizations. The refugees and asylum seekers interviewed had been in Kenya for different periods, ranging from over 10 years to a few weeks or months.

In December 2022 Amnesty International and NGLHRC held a workshop in Nairobi, during which the findings of this report, its recommendations and campaigning activities were discussed with a group of 20 LGBTI asylum seekers and refugees, including 5 living in Kakuma camp and 15 living in the Nairobi area.⁶ Four of them had already been interviewed individually.

During their visit to Turkana County in September 2021, the researchers held meetings with government actors, including the Turkana County government and the Kakuma County Security Commander in Turkana town. The team also held meetings with civil society actors in Turkana County. The researchers also discussed the general LGBTI situation in Kenya with officers of organizations involved in humanitarian assistance, including the UN Refugee Agency, UNHCR, with Kenyan civil society and LGBTI organizations.

As part of their desk research, the researchers reviewed relevant national laws and policy documents, as well as media reports, academic articles and reports and guidelines by international organizations and non-governmental organizations. The most relevant among these documents are referred to in this report's footnotes.

All along the course of this project, NGLHRC and Amnesty International have striven to create an open and constructive dialogue with the Kenyan authorities on this report's findings and recommendations. Between May and June 2022, the researchers made several attempts to contact the Officer Commanding Station (OCS) in charge of Kakuma police station by phone, text message and a secure app, to discuss part of the findings of this report. However, they received no response. On four occasions between May and June 2022, Amnesty International requested a meeting with the Kenyan Commissioner of Refugees and the head of the

⁴ The terms used to describe an individual's sexual orientation, gender identity and/or expression and sex characteristics reflect the self-identification of the interviewee.

⁵ The Kakuma refugee camp complex includes Kakuma Camp, which is divided into four (Kakuma 1, 2, 3 and 4) and the Kalobeyi Integrated Settlement, comprising of three villages: Village 1, 2 and 3. See: UNHCR, *Kakuma Refugee Camp and Kalobeyi Integrated Settlement*, <https://www.unhcr.org/ke/kakuma-refugee-camp>.

⁶ The group was composed of eight participants from Uganda, five participants from the Democratic Republic of Congo and seven participants cumulatively from Sudan, Burundi and Rwanda.

Department of Refugees Services (DRS) within the Kenyan Ministry of Interior to discuss the situation of LGBTI refugees in Kenya. There was no response.

Unless otherwise stated, the information in this report is updated as of February 2023.

1. INTRODUCTION: REFUGEES IN KENYA

Kenya currently hosts over 550,000 refugees and asylum seekers, the majority of whom are from Somalia, South Sudan, the Democratic Republic of the Congo (DRC) and Ethiopia. Others have sought sanctuary from countries that include Burundi, Sudan, Eritrea and Uganda.⁷ Most of those who have fled persecution from other African countries have stayed in Kenya for decades.

Prior to the amended Refugees Act of 2021, the authorities have imposed a strict encampment policy, requiring refugees and asylum seekers to live in camps with limited freedom of movement (see below). Over 80% of refugees and asylum seekers currently live in refugee camps, namely the Kakuma refugee camp complex in Turkana County in the north-west of the country, with a population of about 200,000 people,⁸ and the Dadaab refugee camp complex in Garissa County in the east of the country, with a population of about 220,000 people.⁹

1.1 THREATS OF CAMP CLOSURES AND LACK OF DURABLE SOLUTIONS

In April 2021, Kenyan authorities, who are ultimately responsible for taking decisions regarding camp management, called on UNHCR, the United Nations Refugee Agency, to develop a plan to close the Kakuma and Dadaab camps by June 2022.¹⁰ At the time of writing, there had been no official communication on the proposed closures. On 16 December 2022, in contradiction to the plans to close the refugee camps, the Cabinet Secretary for Interior and National Administration issued a government notice establishing two new refugee camps within the Dadaab refugee camp complex, to accommodate new arrivals.¹¹

This was not the first time the government threatened to close a refugee camp. On 6 May 2016, it announced it would close the Dadaab camp by 30 November 2016¹² and in 2019, it said it would close Dadaab camp within six months.¹³ Although in 2021 the High Court of

⁷ UNHCR, *Refugee Data Finder*, data updated mid-2022, <https://www.unhcr.org/refugee-statistics/download?url=Hel1cL>.

⁸ UNHCR, *Kakuma Refugee Camp and Kalobeyei Integrated Settlement*, <https://www.unhcr.org/ke/kakuma-refugee-camp>.

⁹ UNHCR, *Dadaab Refugee Complex*, <https://www.unhcr.org/ke/dadaab-refugee-complex>.

¹⁰ Al Jazeera, “Kenya says Dadaab, Kakuma refugee camps to close next year”, 29 April 2021, <https://www.aljazeera.com/news/2021/4/29/kenya-says-dadaab-kakuma-refugee-camps-to-close-next-year>.

¹¹ The Kenya Gazette, Vol CXXIV – No.278, on file at Amnesty International.

¹² Amnesty International, *Kenya: Nowhere Else to Go: Forced Returns of Somali Refugees from Dadaab Refugee Camp* (Index: AFR 32/5118/2016), 14 November 2016, [amnesty.org/en/documents/afr32/5118/2016/en/](https://www.amnesty.org/en/documents/afr32/5118/2016/en/)

¹³ Amnesty International, “Kenya must not force refugees back to Somalia by closing the Dadaab camp”, 26 March 2019, [amnesty.org/en/latest/news/2019/03/kenya-must-not-force-refugees-back-to-somalia-by-closing-dadaab-camp/](https://www.amnesty.org/en/latest/news/2019/03/kenya-must-not-force-refugees-back-to-somalia-by-closing-dadaab-camp/)

Kenya temporarily stopped the closure of the camps,¹⁴ refugees have expressed fear of being forced to return to the countries from which they fled.¹⁵

The government of Kenya has linked the closure of the camps to both national security concerns and the long-term failure of the international community to share responsibility and support Kenya in hosting the refugees.¹⁶ United Nations (UN) humanitarian appeals for Kenya are consistently and often severely underfunded. In March 2021, UNHCR and the World Food Programme (WFP) declared that they had “never had such a terrible funding situation for refugees” in East Africa, WFP having reduced food rations for 417,000 camp-based refugees by 40% for lack of funding.¹⁷ According to UNHCR, Kenya had a funding gap of 49% as of October 2022.¹⁸ The encampment policy and limited freedom of movement contribute to refugees’ limited access to ways of earning a livelihood and their reliance on humanitarian aid.

Both Kakuma and Dadaab refugee camps suffer from a precarious security situation, with high levels of reported crime, including armed robberies, thefts, rapes and killings.¹⁹

All in all, access to durable solutions to the plight of refugees in Kenya seem evasive. While repatriation remains impossible in most cases and the authorities’ encampment policy makes the prospects of local integration extremely uncertain, the resettlement needs remain greater than the spaces available globally and only small numbers of refugees can be resettled (see chart below: *Resettlement from Kenya – Submissions and departures, 2020 to September 2022*).

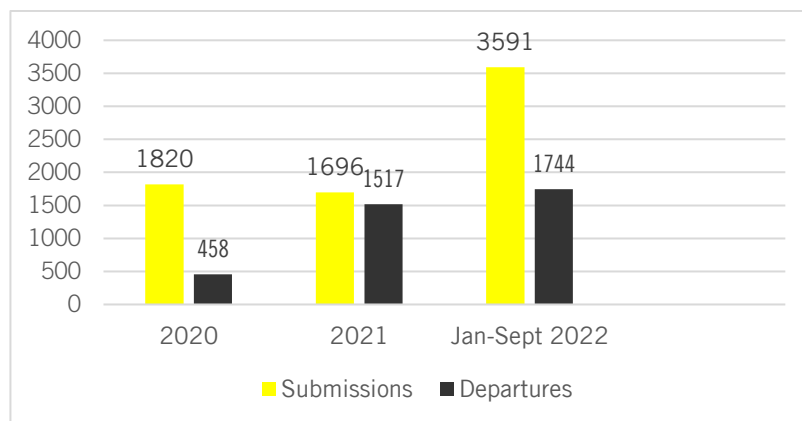


Chart: Resettlement from Kenya – Submissions and departures, 2020 to September 2022

Source: UNHCR²⁰

¹⁴ VOA, “Kenya Court Suspends Move to Close 2 Refugee Camps”, 9 April 2021, voanews.com/africa/kenya-court-suspends-move-close-2-refugee-camps

¹⁵ VOA, “Hared Kenya’s Plan to Close Two Camps Worries Refugees”, 2 April 2021, voanews.com/africa/kenyas-plan-close-two-camps-worries-refugees

¹⁶ Reuters, “Kenya tells U.N. it will shut two camps with 410,000 refugees by June 2022”, 29 April 2021, <https://www.reuters.com/world/africa/kenya-tells-un-it-will-shut-two-camps-with-410000-refugees-by-june-2022-2021-04-29/>

¹⁷ UNHCR, WFP, “UNHCR appeal for funding for over 3 million refugees hit by ration cuts in Eastern Africa”, 2 March 2021, [unhcr.org/news/press/2021/3/603dec5f4/wfp-unhcr-appeal-funding-3-million-refugees-hit-ration-cuts-eastern-africa.html](https://www.unhcr.org/news/press/2021/3/603dec5f4/wfp-unhcr-appeal-funding-3-million-refugees-hit-ration-cuts-eastern-africa.html)

¹⁸ UNHCR, *Funding Update*, 25 October 2022, <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2022/11/Kenya-Funding-Update-25-October-2022.pdf>

¹⁹ D+C, “Refugee camps: Protecting life and limb”, 29 March 2021, <https://www.dandc.eu/en/article/refugees-kakuma-and-other-camps-face-daily-threats-their-personal-safety>

²⁰ In 2020, UNHCR submitted 1,820 refugees in Kenya to be resettled, but only 458 refugees were resettled in another country. In 2021, UNHCR submitted 1,696 refugees from Kenya and 1,517 departed. Between January and September 2022, 3,591 refugees were submitted for resettlement and 1,744 departed. UNHCR Resettlement Data Finder. 2020 submissions, <https://rsq.unhcr.org/en/#IJH3>; 2020 departures, <https://rsq.unhcr.org/en/#cO7p>. 2021 submissions, <https://rsq.unhcr.org/en/#5tD0>; 2021 departures, <https://rsq.unhcr.org/en/#2pWN>. 2022 submissions, <https://rsq.unhcr.org/en/#w2Mu>; 2022 departures, <https://rsq.unhcr.org/en/#9VJx>.

1.2 MANAGEMENT OF CAMPS

Under the 2021 Refugees Act, the function and management of refugee operations lie with the national government.²¹ The government manages and controls Kakuma and Dadaab refugee operations through the Department of Refugees Services (DRS) within the Kenyan Ministry of Interior, which is headed by a Commissioner for Refugee Affairs. A representative of the Commissioner, known as settlement officer under the 2021 Refugees Act but always referred to as the camp manager, is in charge of each camp.²²

UNHCR, the UN Refugee Agency, acts as an operational support organization for the camps. From about 2016, UNHCR has handed over most refugee protection and assistance operations to the government of Kenya, transitioning from being the sole player in refugee operations and camp management to mostly assisting the government. UNHCR currently provides both financial and technical support to DRS to conduct registration and documentation activities for asylum seekers and refugees;²³ provides technical and financial support to the Kenyan bodies responsible for the refugee status determination process;²⁴ and leads in key livelihood activities and on resettlement identification and processing.²⁵ In other words, the humanitarian response is jointly managed and coordinated by the DRS and UNHCR.

The Kenya Police Service has jurisdiction over the refugee camps and manages the general security situation in the camps and their environs. In collaboration with the refugee community, the police use a “community policing” mechanism that allows refugees to act as community security points in the refugee blocks.²⁶ The police oversee roadblocks that manage traffic going into and out of the camps. They also manage the curfew, and issue permits for events and other such activities. At the same time, a private security company provide additional security and crowd management support in different spaces within the camp, including NGO offices, food distribution centres and reception centres.

1.3 KENYAN REFUGEES LEGISLATION

For part of the period covered by this report, the 2006 Refugees Act guided the policies towards refugees in Kenya.²⁷ This legislation was superseded by the 2021 Refugees Act, which came into force in February 2022.

The 2006 Refugees Act and its 2009 Regulations outlined the procedure for receiving and registering refugees and adjudicating on refugee matters and regulated the protection, assistance and encampment of asylum seekers and refugees.²⁸ The encampment policy, already in place during the early 2000s, became permanent in 2014.²⁹

The 2021 Refugees Act was scheduled to become operational within 90 days of being gazetted on 23 November 2021. However, at the time of the research and report writing, the

²¹ Kenya, Refugees Act 2021, <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2010%20of%202021>.

²² Section 31(3), 2021 Refugees Act.

²³ UNHCR, <https://www.unhcr.org/ke/registration>.

²⁴ UNHCR, <https://www.unhcr.org/ke/refugee-status-determination>.

²⁵ UNHCR, <https://www.unhcr.org/ke/resettlement>.

²⁶ Hanno Brankamp, 2020, Refugees in uniform: community policing as a technology of government in Kakuma refugee camp, Kenya, *Journal of Eastern African Studies*, <doi.org/10.1080/17531055.2020.1725318>

²⁷ The Act also established the Refugee Affairs Secretariat (RAS). Kenya, Refugees Act, 2006, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/RepealedStatutes/RefugeesActNo.13of2006.pdf>.

²⁸ Refugees (Reception, Registration and Adjudication) Regulations, 2009, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4a1c0d782>.

²⁹ With the 2014 Security Laws Amendment Act, the authorities successfully sought to amend the 2006 Refugees Act to make the encampment policy permanent. Republic of Kenya, Kenya Gazette Supplement, Acts, 2014, 22 December 2014, kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws_Amendment_Act_2014.pdf

government had not yet developed the regulations to enforce and guide operationalization of the new law, and stakeholders felt there were gaps in giving effect to its provisions.³⁰

The 2021 Refugees Act includes provisions through which individuals and families may apply for refugee status, and procedures for receiving refugees and asylum seekers. Sections 28 and 29 provide for the rights and duties of refugees in Kenya. Section 28 guarantees the right to legal identification documentation for refugees, and Section 12 states that an applicant should receive a decision on their refugee status within 90 days. These are positive reforms. However, Section 31 entrenches the encampment policy by making it mandatory for refugees and asylum seekers to seek permission to move from designated refugee areas to other locations in Kenya. During the discussions before the adoption of the Act, UNHCR commented:

“Research has shown that previous refugee models – care and maintenance of refugees in camp, parallel service structures [for refugees and the host communities] – are not only responsible for the refugees’ dependency on continued relief but do not adequately take into account the needs of host communities. [...] [T]he protracted situations of the majority of refugees in Kenya can only be adequately addressed through expanded self-reliance of asylum-seekers and refugees (which also requires improved freedom of movement) ... and the gradual transformation of the current camps in integrated settlements where both the refugee and host populations live together and access the same services.”³¹

³⁰ Interview with NGO5, 2022.

³¹ UNHCR, *Comments on the Legislative Proposal: The Refugees Bill, 2019*, 18 October 2019, p12, available at http://www.parliament.go.ke/sites/default/files/2020-05/REPORT%20ON%20REFUGEES%20BILL%2C%202019%20PART%20%20ANNEXURES_compressed.pdf.

2. LGBTI REFUGEES IN KENYA

“I came to Kenya because I had no freedom and security in my country. The culture and the law there did not allow me to stay. I was attacked many times and my life was at risk, so I left. My mum is the one who helped me escape. I thought I would be free here, but I have not found any solution. I just want to be safe.”

Mercy, a lesbian woman, Kakuma town, 7 September 2021.

Kenya is the only country in the East and Horn of Africa that offers asylum to individuals who seek protection because of their sexual orientation, gender identity and/or expression and sex characteristics. Across this region, the criminalization of same-sex sexual practices and relationships; legislation targeting LGBTI people; and cultural and religious traditions continue to force LGBTI people to flee. Many flee to Kenya because of geographical proximity. For example, hundreds of LGBTI individuals fled to Kenya from Uganda after the passage of Uganda’s Anti-Homosexuality Bill in December 2013.³²

Official data on the number of LGBTI asylum seekers and refugees hosted in Kenya is not publicly available. However, according to UNHCR estimates there are about 250-300 LGBTI individuals in Kakuma and Kalobeyi refugee camps in north-west Kenya; about 50 LGBTI individuals are in Dadaab refugee camp in the north-east; and 900-1,000 LGBTI asylum seekers and refugees are residing in urban and peri-urban areas around Kenya.³³

³² Zomorodi, “Responding to LGBT forced migration in East Africa”, *Forced Migration Review* 52, May 2016, p91-93. See also: Amnesty International UK, *Uganda: Amnesty labels new anti-homosexuality bill as 'grave assault on human rights'*, 20 December 2013, <https://www.amnesty.org.uk/press-releases/uganda-amnesty-labels-new-anti-homosexuality-bill-grave-assault-human-rights>. On 1 August 2014, the Constitutional Court of Uganda ruled the Anti-Homosexuality Act invalid on procedural grounds. On 3 May 2021, the Ugandan Parliament passed the Sexual Offences Bill, which sought to criminalize any “sexual act between persons of the same gender,” as well as anal sex between people of any gender. In August 2021, President Museveni rejected the law stating that many provisions in the proposed law were redundant as they were already provided for in existing legislations, like the Penal Code Act.

³³ Interview with UNHCR spokesperson, 19 July 2022. UNHCR, UNHCR Statement on the situation of LGBTIQ+ refugees in Kakuma camp, 25 March 2021, <https://www.unhcr.org/ke/19859-unhcr-statement-on-the-situation-of-lgbtiq-refugees-in-kakuma-camp.html>.

LGBTI asylum seekers and refugees in Kenya encounter multidimensional problems. On one hand, their experience has been marred by the policies that restrict the rights of all refugees, such as the encampment policy and a legislative environment that makes it hard for them to enjoy fully their legal rights and freedoms. Humanitarian assistance programmes that specifically benefit LGBTI refugees compete for the meagre resources available for supporting the more than 550,000 refugees hosted in Kenya. On the other hand, LGBTI asylum seekers and refugees also experience the difficulties encountered by other LGBTI people in Kenya, where cultural stereotypes about sexual orientation and gender identity are exacerbated by the criminalization of same-sex sexual relations. The criminalization of same-sex relations, in particular, significantly influences the attitudes of the general public, the refugee community, public officials and staff of humanitarian organizations (see Box below: *The situation of the LGBTI community in Kenya*).

As a result of their status as asylum seekers or refugees and of their sexual orientation, gender identity and/or expression and sex characteristics, LGBTI asylum seekers and refugees in Kenya are specifically targeted and uniquely affected by the discriminatory practices and homophobic attitudes of government officials and other service providers. These are reflected in homophobic behaviour of officials during registration; delayed refugee status determination; harassment and discriminatory violence, including violent homophobic attacks, threats and intimidation; and extremely limited opportunities for durable solutions such as local integration and third-country resettlement.

The following sections discuss how the barriers to being able to register safely, along with the prolonged delays in the whole refugee status determination process, have increased the risks of violence experienced by LGBTI asylum seekers as they wait for protection. While all asylum seekers in Kenya experience the consequences of delayed registration and refugee status determination, those with an LGBTI profile are particularly affected, raising serious concerns regarding entrenched homophobia and transphobia within the Kenyan asylum system.

THE SITUATION OF THE LGBTI COMMUNITY IN KENYA

Kenyan national legislation criminalizes same-sex relations.³⁴ In 2019, after groups petitioned the High Court arguing that the Penal Code's criminalization of same-sex conduct violates the constitutional rights to equality, non-discrimination, human dignity, security, privacy and health, the court unanimously ruled that Sections 162 and 165 do not violate the Constitution.³⁵ The UN High Commissioner for Human Rights and human rights defenders widely condemned the ruling, especially with regards to equality and non-discrimination.³⁶ The petitioners are appealing the ruling before the Supreme Court.

Abuse of the rights of LGBTI people is widespread and well documented, including physical violence, death threats, harassment by state officials, stigma, expulsion from educational institutions, blackmail, extortion, poor access to health care and medical research abuse.³⁷

In 2021 Erica Chandra, a transgender woman, was found murdered in the Westlands district of Nairobi and Joash Mosoti, a gay man was found tortured and strangled to death in Mombasa. In April 2022, the murder of Sheila Adhiambo Lumumba, a non-binary lesbian, triggered the trauma of these cases. After public outrage on the murder, a suspect was arrested and is facing trial. A month later Rose Mbesa, an intersex person, was raped and killed.³⁸ No one has yet been arrested so far and the authorities have not released information on the progress of investigations. In January 2023, the killing of LGBTI activist Edwin Chiloba made international news.³⁹

Political and religious leaders have entrenched the climate of impunity for crimes against LGBTI people by openly opposing and verbally attacking their rights. In February 2022, for example, the Minister of Education suggested that LGBTI students be barred from boarding schools.⁴⁰

In April 2023 Hon. Peter Kaluma tabled the Family Protection Bill, a wide-ranging bill fashioned on the Uganda Anti-Homosexuality Act, that seeks to criminalise same-sex relations and restrict sexual and reproductive health rights for Kenyans. The Bill allows for the expulsion of refugees and asylum seekers who violated its provisions.⁴¹

International human rights bodies have called on Kenya to decriminalize sexual relations between consenting adults of the same sex and to take steps to end the social stigmatization of homosexuality and ensure that no one faces discrimination in accessing social services because of their sexual orientation or gender identity.⁴²

2.1 REGISTRATION ISSUES

Most of the asylum seekers and refugees interviewed are seeking protection in Kenya because of their sexual orientation, gender identity and/or expression and sex characteristics. Others are seeking protection on other grounds, including because they do not want to be identified as LGBTI people. Most of those currently in Kakuma arrived in Kenya via Nairobi, where they had registered as asylum seekers with the government. Then, in line with Kenya's strict

³⁴ Section 162 of the Penal Code criminalizes "carnal knowledge against the order of nature", with a penalty of 14 years' imprisonment. Section 163 penalizes with seven years' imprisonment attempts to commit the offence set out in Section 162. Section 165 prohibits acts of "gross indecency" between men, or the procurement or attempted procurement of such acts, with five years' imprisonment. The Kenya Penal Code, kenyalaw.org/lex/actview.xml?actid=CAP.%2063

³⁵ Human Rights Watch (HRW), *Kenya Court upholds archaic anti-homosexuality-laws*, <https://www.hrw.org/news/2019/05/24/kenya-court-upholds-archaic-anti-homosexuality-laws>

³⁶ United Nations High Commissioner for Human Rights, *Bachelet dismayed by Kenyan High Court Decision upholding criminal sanctions for same-sex relations*, 24 May 2019, <https://www.ohchr.org/en/press-releases/2019/05/bachelet-dismayed-kenyan-high-court-decision-upholding-criminal-sanctions>; Amnesty International Kenya statement on court decision regarding LGBTQ rights, 27 May 2019, <https://www.amnestykenya.org/amnesty-international-kenya-statement-on-court-decision-regarding-lgbtq-rights-24-may-2019/>

³⁷ Aljazeera, "Kenyan queer men risk health amid homophobia in public hospitals", June 2022, <https://www.aljazeera.com/features/2022/6/2/homophobia-in-kenyan-public-hospitals-pushes-queer-men-to-danger>; Kenya Human Rights Commission, *The Outlawed Amongst Us, A Study of the LGBTI Community's Search for Equality and Non-Discrimination in Kenya*, 2011, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html>

³⁸ Nation, "50-year-old intersex woman raped and killed in Trans Nzoia," 5 May 2022, <https://nation.africa/kenya/counties/trans-nzoia/50-year-old-intersex-woman-raped-and-killed-in-trans-nzoia-3805548>

³⁹ The Guardian, "Killing of LGBTQ+ activist prompts outcry over anti-gay attacks in Kenya", 6 January 2023, <https://www.theguardian.com/world/2023/jan/06/killing-lgbtq-activist-edwin-chiloba-outcry-anti-gay-attacks-kenya>

⁴⁰ VOA, *Kenyan LGBT Students Protest Suggestion They be Banned from Boarding Schools*, <https://www.voanews.com/a/kenyan-lgbt-students-protest-suggestion-they-be-banned-from-boarding-schools/6395390.html>

⁴¹ Kenya, *The Family Protection Bill, 2023*, Art. 40, on file with Amnesty International.

⁴² UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fifth periodic reports of Kenya*, UN Doc. E/C.12/KEN/CO/2-5, 6 April 2016, para22.

encampment policy, they were issued with a two-week movement pass to enable them to relocate to the Kakuma refugee camp complex.⁴³

REGISTRATION OF ASYLUM SEEKERS IN KENYA

Until 2021, the RAS operated a registration centre at Shauri Moyo, in eastern Nairobi. However, poor public transport links made accessing the Shauri Moyo centre a challenge. In 2021, the government opened the new General Mathenge Registration Center in Westland suburb, which is now more easily accessible to refugees and asylum seekers.

Access to the Westland centre is by appointment. Asylum seekers are required to call a toll-free phone number, where their details are recorded, and they are scheduled for an interview. The asylum seeker then receives a text message providing the time and date they should attend for registration. New arrivals, including LGBTI asylum seekers, have no registration documents or other regular residence documents during this waiting period. Without these, they cannot access any services and are at risk of arrest, detention and even deportation for being in Kenya “illegally”.

At their registration appointment, DRS officers record new arrivals’ basic biometrics (photos, fingerprints and iris scans) and ask questions about what made the individual leave their country and why they cannot return. Once the registration is completed, DRS issues the documentation necessary to stay in Kenya for the period during which the asylum application will be decided and to get access to services.⁴⁴

Under the 2009 Regulations, reception officers had to ensure that special arrangements were provided during the registration process to assist asylum seekers considered “at risk”.⁴⁵ When dealing with such individuals, officers should take into consideration the gender sensitivity of the case and accelerate the asylum procedure.⁴⁶

UNHCR guidelines, which generally guide procedural standards for the asylum process in Kenya, provide that LGBTI asylum seekers should be informed that they can elect to have interviewers and interpreters of the same sex as themselves and feel comfortable with.⁴⁷

In addition to the challenges faced by all asylum seekers and refugees in Kenya, caused by the shortcomings of the asylum registration and refugee status determination processes, LGBTI asylum seekers and refugees face specific challenges, related to their sexual orientation, gender identity and/or expression and sex characteristics.

Under international standards, institutions involved in the asylum process, such as the RAS/DRS, are required to create a safe environment for self-disclosure for LGBTI refugees.⁴⁸ Yet, several of the LGBTI refugees interviewed who registered with the RAS/DRS in Nairobi and Kakuma described experiencing homophobic behaviour during the registration process, including because officers made it difficult for them to disclose their sexual orientation, gender identity and/or expression and/or sex characteristics. Because of these issues, some of them did not consider it safe to disclose their sexual orientation, gender identity and/or expression or sex characteristics at the beginning of the registration process, which had a negative knock-on effect throughout the asylum process and limited access to specialised support. Some LGBTI interviewees said they feared the consequences of self-disclosure because same-sex relations are criminalized in Kenya and they did not know what the officers would do with the information.⁴⁹ Some of those who decided to disclose their sexual orientation, gender identity and/or expression or sex characteristics during the registration

⁴³ Some of the LGBTI refugees interviewed for this research arrived in Kenya as young children with their families and have lived in Kakuma since. While they are estranged from their families because of the stigma associated with their sexual orientation, gender identity or gender expression, they are still registered on their families’ documents. They reported facing difficulties registering as asylum-seekers in their individual capacity, with negative consequences on their ability to access services in the camp. For example: interview with Kevin, Kakuma town, 9 September 2021.

⁴⁴ UNHCR Kenya, *How do I register my application for asylum*, <https://help.unhcr.org/kenya/applying-for-asylum-in-kenya/how-do-i-register-my-application-for-asylum/>.

⁴⁵ This category included unaccompanied minors, mentally or physically disabled, pregnant women, elderly persons and any other category considered in need of special assistance or protection. Section 7, 2009 Refugees Regulations.

⁴⁶ Sections 7.4 and 30, *ibid*.

⁴⁷ UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, para60, available at: <https://www.refworld.org/docid/50348afc2.html>.

⁴⁸ UNHCR, *Guidelines on International Protection No. 9*, cit., para58.

⁴⁹ For example: interview with Martin, gay man, Kakuma town, 9 September 2021. Phone interview with Isabel, 28 August 2022.

process said officers giggled or made homophobic comments, including using the derogatory term “shoga”.⁵⁰

Joseph, a gay man, told the researchers:

*“During my registration I told the RAS officer I had a document showing the challenges I had faced as a gay man in my country. The officer asked: ‘will the government of Kenya be able to take care of you?’. I was afraid, I thought they would take me back to my country. But that was not the case; the officer was just scaring me because I am an LGBTI person”.*⁵¹

Patrick, a bisexual man, told Amnesty International that in February 2019 the RAS officers who were taking his biometric data for registration did not believe him when he said that he had come to Kenya to seek asylum because he is bisexual. He said the officers claimed that he had come to Kenya to be a businessman and that the story about his sexual orientation was just a ruse to acquire documentation in Kenya. He had to go to the registration office several times before being registered. He said that in the same period, other asylum seekers registered without the delays he faced.⁵²

Sharon, a transgender woman, told the researchers that while she was being registered at Shauri Moyo in July 2019, the DRS officers told her to remove her head cover. She said that they looked surprised how she spoke like a woman but had male features and one officer told the others, “These are the groups that are here to disturb us,” which she understood as referring to LGBTI refugees. She added: “I felt very bad. We did not come here to disturb anyone”.⁵³

Isabel, a transgender woman, said that during registration, she was afraid to reveal more of her gender identity for fear that she would be arrested and detained. As a result, she was issued with a refugee identity document that indicates that she is of male gender, despite her preference to be considered a female.⁵⁴

Some said they were not given the option to choose an interpreter they were comfortable with during the registration process, which made them reveal their sexual orientation, gender identity and/or expression or sex characteristics to people they were not sure would keep it confidential.⁵⁵ Some said interpreters had disclosed their sexual orientation to other refugees.⁵⁶

Fredrick, a gay man, registered at Shauri Moyo in February 2019 after his arrival in Nairobi. He told researchers that he was worried as he could not communicate well in English but he did not want to disclose his sexual orientation to an interpreter of his nationality. He was assigned another refugee from his country of origin to help with translation. At the registration desk, officers asked him about his sexual orientation, saying he looked gay. He didn’t want the translator to know about his sexual orientation, so he denied.⁵⁷

⁵⁰ Interviews with Patrick, Kakuma town, 8 September 2021; Joseph, Kakuma town, 9 September 2021; Sharon, Kakuma town, 10 September 2021.

⁵¹ Interview with Joseph, Kakuma town, 9 September 2021.

⁵² He was eventually registered and given a movement pass to go to Kakuma. Interview with Patrick, Kakuma town, 8 September 2021.

⁵³ Interview with Sharon, Kakuma town, 10 September 2021.

⁵⁴ While she revealed her gender identity at a later date, she thought it is not worth it to change her identity documentations. Phone interview with Isabel, 28 August 2022.

⁵⁵ Interviews with Patrick, Kakuma town, 8 September 2021; Fredrick, Kakuma town, 9 September 2021.

⁵⁶ Interview with Patrick, Kakuma town, 8 September 2021.

⁵⁷ Interview with Fredrick, Kakuma town, 9 September 2021.

SUSPENSION OF REGISTRATION IN KAKUMA CAMP

In December 2018, after an assault against a group of LGBTI refugees prompted UNHCR to relocate about 200 LGBTI refugees to Nairobi (see below), the RAS temporarily stopped registering LGBTI refugees in Kakuma camp. A public notice bearing an RAS stamp and dated February 2019 stated: "We no longer handle LGBTQ cases as from 21st December 2018. You are hereby referred to UNHCR for assistance. By: RAS management".⁵⁸

RAS officially reopened registration after a few months. In the meantime, some LGBTI refugees said they stayed in Kakuma without registration documents for months, which meant they could not access services, including food and specialised health support. Judy, a transgender woman, said she arrived in Kakuma in October 2019 and was taken to the reception centre. A RAS officer told her that they were no longer taking LGBTQ cases in Kakuma. As a result, she stayed in the camp's reception area for about three months without documentation and she was only registered after protesting outside the gate of the UNHCR compound.

An additional problem is that the refugee database used in RAS/DRS registration points only recognises male or female as genders. As a result, the database cannot record the gender profile of non-binary LGBTI refugees.

2.2 DELAYED REFUGEE STATUS DETERMINATION AND ITS CONSEQUENCES

Most LGBTI refugees interviewed for this report said they had been waiting for years for their refugee status determination interview. Thirty-one of those interviewed had been registered in Kenya for over two years at the time of the interview and their refugee status had still not been determined.⁵⁹

This is, in part, a reflection of a general problem affecting all people seeking asylum in Kenya. The waiting period for interview and decision in the refugee status determination process is long for all refugees, which has led to a backlog of cases, causing further delays.⁶⁰ As of October 2022, over 67,000 asylum applications were pending in the refugee status determination process.⁶¹ This number excludes the over 80,000 asylum seekers who recently arrived in Dadaab refugee camp and should undergo registration and refugee status determination.⁶²

Observers have mentioned several reasons for these delays. According to a source, they were originally caused by delays in the operations of a technical advisory committee composed of RAS and UNHCR staff and established by RAS to advise the Commissioner of Refugees on cases considered to be eligible for refugee status.⁶³ The DRS justified the delays mentioning a lack of financial resources necessary to hire a sufficient number of RSD officers.⁶⁴ More recently, delays in the operations of an Eligibility Panel, established under the 2021 Refugee

⁵⁸ Document with RAS stamp, February 2019, on file with Amnesty International.

⁵⁹ In September 2021, Judy, a transgender woman who arrived in Kenya in 2019, still had no information about when and how she will be called for refugee status determination interview. She said she had often called the UNHCR hotline but was told that 2019 arrivals are not being processed yet. Interview with Judy, Kakuma town, 9 September 2021. Likewise, Isabel told the researchers that DRS officials have told her that she will have to wait as she arrived in 2020 and the DRS had not yet started working on LGBTI people who arrived in 2019. Interview with Isabel, Kakuma town, 11 September 2021.

⁶⁰ According to UNHCR, by 31 December 2020 there was a backlog of 26,695 cases that had not yet received an RSD decision. UNHCR, *Kenya - Refugees and asylum seekers in urban areas*, 2020, <https://reporting.unhcr.org/node/15535>.

⁶¹ UNHCR, KENYA Registered refugees and asylum-seekers, 31 October 2022, <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2022/11/Kenya-Refugee-Population-Statistics-Package-31-October-2022.pdf>

⁶² UNHCR, Drought and conflict force 80,000 to flee Somalia for Kenya's Dadaab refugee camps, 6 December 2022, <https://www.unhcr.org/news/briefing/2022/12/638f13ae4/drought-conflict-force-80000-flee-somalia-kenyas-dadaab-refugee-camps.html>

⁶³ Interview with NGO6, 2022.

⁶⁴ Interview with DRS, 16 April 2022.

Act to review recommendations made on refugee status determination,⁶⁵ exacerbated the existing backlog.⁶⁶

Against the background of lengthy refugee status determination procedures for all asylum seekers, Amnesty International and NGLHRC received credible reports that the refugee status determination process for LGBTI asylum seekers has been specifically delayed for reasons associated with their sexual orientation, gender identity and/or expression and sex characteristics. According to one source, while until about 2018, LGBTI individuals were fast-tracked through the process because they were considered “at risk” under the 2009 Regulations. In the following years, when the number of those claiming asylum because of their sexual orientation, gender identity and/or expression and sex characteristics increased, the RAS/DRS considered that the fast-tracking was a pull factor for other LGBTI individuals in the region to head to Kenya and began to deliberately slow the process for determining refugee status for LGBTI asylum seekers.⁶⁷

Delays in refugee status determination procedures increase the risk of LGBTI individuals needing specific health or other services “falling through the cracks”, i.e. not being properly identified nor referred to specialized services, especially when these individuals have not revealed their sexual orientation, gender identity and/or expression and sex characteristics during registration.⁶⁸ Additionally, delays in refugee status determination hold up prospects of resettlement, a durable solution traditionally only available to recognised refugees (see below). Coupled with the encampment policy, this forces LGBTI individuals to stay in unsafe camps, increasing their risk of experiencing violence.⁶⁹

2.3 CONSEQUENCES OF THE 2021 REFUGEES ACT

Amnesty International and NGLHRC welcome several provisions of the new refugee legislation and regulations, that set the tone of a new operational style and structure for refugee management in Kenya. However, the new Family Protection Bill, 2023 seems set to further undermine its potential for LGBTI refugees.

One provision of the 2021 Refugees Act, read together with the new Bill, is of particular concern, as it may be used to target LGBTI refugees. Section 19(2) of the Refugees Act states that

“a refugee or an asylum seeker engaging in a conduct that is in breach or is likely to result in breach of public order or contrary to public morality under the law irrespective of whether the conduct is linked to his claim for asylum or not, may be expelled from Kenya by an order of the Cabinet Secretary.”⁷⁰

Amnesty International and other civil society organizations raised concerns about this provision already during the legislative process for the 2021 Refugees Act.⁷¹ In that occasion,

⁶⁵ Kenya, 2021 Refugee Act, cit., Section 13.

⁶⁶ A Refugee Status Eligibility Panel meeting (RSEP/04/2022) was held in July 2022. A total of 1021 individuals were presented to the Panel from Nairobi and Kakuma. The cases presented in the Panel were endorsed by the Commissioner on 27 July 2022. https://www.unhcr.org/ke/wp-content/uploads/sites/2/2022/09/UNHCR_Kenya_Urban_July_2022_Operational_Updates.pdf.

⁶⁷ Interview with NGO7, 2022.

⁶⁸ Interview with NGO6, 2022.

⁶⁹ Linda, a bisexual woman who has experienced violence in Kakuma camp (see below), told researchers that her biggest problem is that she continues to face insecurity in the camp while not having any idea if and when she might be granted refugee status. She arrived in December 2019 and still has not had her eligibility interview. Interview with Linda, Kakuma town, 9 September 2021.

⁷⁰ Kenya, 2021 Refugees Act, Section 19(2).

⁷¹ Amnesty International, *Memorandum on the Refugees Bill 2019 presented to the Departmental Committee on Administration and National Security*, 17 October 2019, available at http://www.parliament.go.ke/sites/default/files/2020-05/REPORT%20ON%20REFUGEES%20BILL%2C%202019%20PART%20%20ANNEXURES_compressed.pdf.

UNHCR commented that its implementation “would lead to a violation of the *non-refoulement* principle”.⁷²

Amnesty International and NGLHRC reiterate their concerns about Section 19(2) of the 2021 Refugees Act, as using the provision to expel LGBTI asylum seekers or refugees would be in violation of Kenya’s international law obligations under the principle of *non-refoulement* and the prohibition of discrimination on grounds of sexual orientation, gender identity and/or expression and sex characteristics. Although the two organizations are not aware of cases in which Kenyan authorities applied the provision to expel LGBTI refugees, some LGBTI refugees have reported receiving threats of expulsions linked to their activism (see below).

⁷² UNHCR, *Comments on the Legislative Proposal: The Refugees Bill, 2019*, 18 October 2019, p10, available at http://www.parliament.go.ke/sites/default/files/2020-05/REPORT%20ON%20REFUGEES%20BILL%2C%202019%20PART%202%20ANNEXURES_compressed.pdf.

3. VIOLENCE AGAINST LGBTI REFUGEES

“This is hurting us, there’s a victim who is dead and they do not arrest those who threaten us. This is traumatizing. I would rather die because of the sword of my family than the people here in the camp. We want a solution.”

Isabel, phone interview, 24 August 2021.

LGBTI refugees and asylum seekers in Kakuma refugee camp have suffered physical and sexual violence and other serious human rights abuses, including violations of their right to be free from torture and ill-treatment because of their sexual orientation, gender identity and/or expression and sex characteristics.

Of the 38 LGBTI people interviewed who were living in Kakuma camp at the time of the interview or had been living there at the time of the incidents they reported, 31 reported having suffered violent attacks, threats or intimidation, reporting at least 56 episodes targeting LGBTI people, individually or as a group. The information collected by Amnesty International and NGLHRC confirms similar findings by other organizations. According to a 2021 report by the Organization for Refuge, Asylum & Migration (ORAM) and Rainbow Railroad, 83% of the LGBTI refugees interviewed in Kakuma refugee camp said they had been physically assaulted and 26% said they had been sexually assaulted.⁷³

Violence against the LGBTI community in Kakuma camp is due in part to hostility and prejudice in the wider refugee population, as most refugees in the camp are from cultural and religious backgrounds that are non-accepting of LGBTI persons (see below: *Pervasive discrimination and abuses in the camp*). At the same time, the discrimination and abuses against LGBTI individuals are exacerbated by the state’s lack of effort to apprehend perpetrators or tackle deeply entrenched homophobia and transphobia. Perpetrators of violence and intimidation targeting LGBTI individuals can commit their crimes with almost

⁷³ The study interviewed fifty-eight LGBTIQ+ asylum seekers from nine different countries. Organization for Refuge, Asylum and Migration (ORAM) and Rainbow Railroad, *The challenges facing LGBTIQ+ refugees in Kakuma refugee camp*, Kenya, October 2021, p23, <https://www.rainbowrailroad.org/the-latest/report-how-civil-society-organizations-governments-and-unhcr-can-create-better-outcomes-for-lgbtqi-refugees-living-in-kakuma-refugee-camp>

total impunity, emboldened by the lack of adequate responses from the police and other relevant duty bearers.

This chapter highlights some of the patterns of violence described to the researchers by LGBTI refugees, as well as the failure of the relevant duty bearers, including the police, to promptly, effectively, transparently and independently investigate incidents reported to them, fulfil the rights of survivors and bring the perpetrators to justice. Researchers also documented other human rights violations at the hands of the police and other state actors, such as intimidation of human rights defenders and violations of their right to be free from torture and ill-treatment.

The Kenyan government is under the obligation to protect life and ensure security for all refugees in Kakuma, including LGBTI refugees, through human rights-compliant law enforcement and community interventions that prevent human rights violations. Its failure to fulfil this obligation has led to impunity for perpetrators and human rights violations for LGBTI refugees, including their rights to physical integrity, freedom from torture and ill-treatment, as well as their right to live without discrimination on grounds of their sexual orientation, gender identity and/or expression or sexual characteristics.

The systematic and pervasive failure to conduct a prompt, thorough, independent and impartial investigation into allegations of hate crimes and gender-based violence against LGBTI people raise concerns on institutional homophobia and transphobia within the police and other state institutions. These concerns confirm a 2011 study of the Kenya Human Rights Commission, which found “a deliberate failure by the [Kenyan] state to protect LGBTI persons from discrimination both in policy and legislation”.⁷⁴

“I met several refugees who were warning me about the challenges of being transgender in Kakuma. The other refugees told me I should not register to come to the camp. But my documents expired. I was afraid I could be arrested and returned to my country, so I decided to come to the camp.”

Sharon, Kakuma town, 10 September 2021.

⁷⁴ Kenya Human Rights Commission, *The Outlawed Among Us*, cit., p2.

A HISTORY OF VIOLENCE

In June 2018, after a Pride event in Kakuma camp, some LGBTI refugees were violently attacked by members of the host community and fellow refugees and the event's organizers received death threats.⁷⁵ In December 2018, local Kenyans and fellow refugees reportedly assaulted a group of LGBTI refugees who were protesting for greater protection outside the UNHCR office. As a result, UNHCR evacuated around 200 LGBTI refugees from Kakuma to Nairobi.⁷⁶

More than 40 LGBTI refugees reported being targeted in two homophobic attacks in Kakuma camp in December 2019 and January 2020.⁷⁷ In April 2020 media reported that a lesbian refugee had been beaten and raped by a gang of eight men who demanded to know "why" she was a lesbian.⁷⁸ A June 2020 video showed a crowd of people attacking LGBTI refugees with stones and sticks.⁷⁹

In September 2020, UNHCR reported that violent confrontations broke out in Kakuma refugee camp between some LGBTI refugees and members of the local community, leaving a female refugee and a young local man with injuries. UNHCR indicated that police responded and reinforced the security in the relevant area.⁸⁰ NGOs expressed concerns about several attacks targeting LGBTI individuals in Kakuma camp between 25 January and 17 February 2021.⁸¹

On 15 March 2021, unknown people attacked a block where LGBTI refugees are known to live, throwing a petrol bomb at their shelters.⁸² Two refugees suffered serious burns and were evacuated to Nairobi for specialist medical care. One of them, Chriton Atuhwera, died on 12 April 2021.⁸³ Amnesty International called on law enforcement agencies to accelerate their investigations into the incident, and for an independent review of the current and proposed UNHCR and RAS protection and safety measures accorded to all refugees, especially minority groups at higher risk of human rights violations and abuses.⁸⁴ In September 2021, the European Parliament adopted a resolution on the situation in Kakuma refugee camp, where it condemned the arson attack, expressed its concern "about the standing threats in Kakuma refugee camp against individuals with an LGBTIQ+ profile" and urged the Kenyan authorities "to continue investigating and to bring full clarity regarding this crime and to hold those responsible to account in accordance with Kenyan law and with respect to international human rights law".⁸⁵

“There is no need to go to the police station again. Nothing will happen.”

Interview with Sharon, Kakuma town, 10 September 2021.

⁷⁵ NBC News, "Following pride event, Kenya's gay refugees fear for their lives", 20 June 2018, <https://www.nbcnews.com/feature/nbc-out/following-pride-event-kenya-s-gay-refugees-fear-their-lives-n885136>

⁷⁶ Reuters, "U.N. moves LGBT+ refugees to safe houses after Kenya camp attacks", 3 December 2018, <https://news.trust.org/item/20181213171702-0m48g/>

⁷⁷ Reuters, "African LGBT+ refugees plead U.N. for safe shelter after Kenya camp attacks", 10 January 2020, <https://news.trust.org/item/20200109162844-dfkeb/>

⁷⁸ Pinknews, "Lesbian refugee in Kenya brutally beaten and raped by 'gang of eight ruthless men'", 28 April 2020, <https://www.pinknews.co.uk/2020/04/28/lesbian-refugee-kenya-kakuma-refugee-camp-nankinga-sophia-beaten-raped/>

⁷⁹ VOA, "Kenya's LGBTQ Refugees Face Threats, Attacks at Kakuma Camp", 13 August 2020, <https://www.voanews.com/africa/kenyas-lgbtq-refugees-face-threats-attacks-kakuma-camp>

⁸⁰ UNHCR, "UNHCR calling for calm after a confrontation between refugees and the local community", 12 September 2020, <https://www.unhcr.org/ke/18787-kakuma-refugee-camp-unhcr-calling-for-calm-after-confrontation-between-refugees-and-the-local-community.html>

⁸¹ Pan Africa ILGA and GIN, *Joint Statement on the Kakuma Incident(s)*, 18 February 2021 <https://panafricailga.org/pan-africa-ilga-and-gin-joint-statement-on-the-kakuma-incidents/>

⁸² Reuters, "U.N. to boost security for LGBT+ refugees after deadly arson attack at Kenya camp", 13 April 2021, <https://news.trust.org/item/20210413133346-n7byk>

⁸³ Ebar, "Death of gay Kakuma refugee spurs LGBTQ Africans' calls for evacuation", 14 April 2021, <https://www.ebar.com/news/news/303961>

⁸⁴ Amnesty International Kenya, *Statement on killing of Chriton Atuhwera*, 13 April 2021.

⁸⁵ European Parliament, *Resolution of 16 September 2021 on the situation in Kakuma refugee camp in Kenya (2021/2874(RSP))*, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0391_EN.html

3.1 VIOLENT ATTACKS, THREATS AND INTIMIDATION

Thirty-one of the refugees and asylum seekers interviewed reported having suffered assaults, threats and intimidation in Kakuma camp, most of them more than once, because of their sexual orientation, gender identity and/or expression and sex characteristics.⁸⁶ In all cases, the attackers referred to their targets' gender identity or sexual orientation either directly, often using derogatory terms for "gay" or "lesbian", or indirectly, for example asking them to kiss a person of the same sex or accusing them of being a "curse," that is bringing harm to the camp. Some attacks have targeted specific blocks in the camp, where members of the LGBTI community are known to live together.⁸⁷

The interviewees reported most of these episodes to the police. Police officers recorded the incident in the Occurrence Book and provided a reference number, known as OB number. However, in only one case known to the researchers the police followed up on the report (see: 3.2 *Impunity for perpetrators of hate crimes*). In all other cases, the police did not provide any information about the investigations or other types of follow-up to the individuals affected. In some cases, the interviewee reported incidents to the police while they were occurring, or provided information that could identify the alleged perpetrator, but the police did not intervene to stop the incident and did not identify any suspect.

Esther, a 41-year-old lesbian woman, reported being raped twice in Kakuma camp. In early 2018 she was attacked by two men carrying knives while she was showering in a plot near the camp gate. One raped her while the other held her down. Later that year she was raped a second time by four men during a burglary at her house, in the presence of her seven-year-old son with whom she was sharing a bed. She told the researchers that she fears most for her kids, who have been harassed because of their mother's sexual orientation: a man grabbed her daughter's breasts and told her that he would rape her so that she doesn't become a lesbian like her mom.⁸⁸

Winnie, a lesbian woman, had a business in the market, where LGBTI friends used to buy. She told the researchers that one day in 2019 she was away from work and left one of her children to take care of the business. A group of people destroyed the stall and injured the child, saying that the LGBTI customers were affecting other businesses. When she went to report the crime, the police told her to look for the attackers and bring them to the police station to be arrested.⁸⁹

Sharon, a transgender woman, expressed her lack of confidence in the police when describing some of the several episodes of violence and intimidation she suffered at various points during 2019-2020:

"One morning I was going from Kakuma camp to town with another transgender refugee who I met in the camp. Four people approached us and told us to kiss each other in front of them, threatening to beat us."

⁸⁶ In addition to the testimonies highlighted in this section and the following ones, the researchers collected the testimonies of four more individuals. The researcher saw OB numbers and photos related to two episodes of physical assaults and one episode of breaking and theft against **Patrick**, a bisexual man, interviewed in Kakuma town on 8 September 2021. **Martin**, a gay man, said that in 2020 a group of camp residents broke into his house and started beating him, calling him "shoga", because they did not want "dirty people" to live in their area. Interview in Kakuma town, 9 September 2021. In July 2021, five camp residents attacked **George**, a gay man, outside his shelter, calling him "shoga" and hitting him with sticks. He reported the crime to the police and obtained a medical examination report from the hospital. Interviewed in Kakuma town, 10 September 2021. **Isabel** said that she was part of a group that was stoned and verbally insulted by other people living in the camp. She said the assailants accused the group of being a reason why there was no rain in Kakuma refugee camp. Interview with Isabel, Kakuma town, 11 September 2021.

⁸⁷ Some interviewees told the researchers that they prefer living together with other members of the LGBTI community, for support and because they believe it is safer. Other interviewees told the researchers that they prefer to live in other areas of the camp, including because they do not want their sexual orientation and/or gender identity to be known.

⁸⁸ As a result of the multiple rapes, she suffers from incontinence and abnormal bleeding. She reported the attacks to a protection organization in the camp, which provided her with support services. Interview with Esther, Kakuma town, 10 September 2021.

⁸⁹ Interview with Winnie, Kakuma town, 10 September 2021.

Another day three people found me walking around the camp and started throwing jabs on my face and kicking me, saying that I am a curse to the rain in Kakuma. They beat me on the eye, and it got swollen. My nose was also swollen.

Another day my boyfriend came to visit me but my neighbours in the block were not happy to see him there. They threatened to kill me. They said we teach their children bad manners. I had to leave my house.

I have been reporting all these incidents to the police station all the times, and there is no need to go to the police station again. Nothing will happen to [the perpetrators].”⁹⁰

Diana, a lesbian woman, arrived in Kakuma camp in December 2019. She was greeted with homophobic abuse from other camp residents, who threatened to beat her and her house mates. The following night, a group of men carrying *pangas* (large, curved knives) and sticks attacked their house with stones, yelling at them to come out of the house. As Diana fled, she was hit by a stone and a stick. She went to the police station and reported the attack. She was given an OB reference number but said that police took no further action.⁹¹

Diana told researchers about seven different episodes between December 2019 and April 2020 during which she suffered violence, threats, or intimidation at the hands of other camp residents. She reported all these incidents to the police and obtained OB reference numbers. In two occasions the police told her to go back to the station, should she see her attackers anywhere again. In May 2020 Diana met two of the men who had attacked her previously, who pushed her on the ground. When she ran to the police station, the police gave her another OB reference number, her eighth one in five months. However, she told researchers that police failed to follow-up on her reports as she had not been provided any further information regarding the outcome of any police investigation. She said that the feeling of unsafety is her greatest concern.⁹²

In January 2020 a group of men living in the camp accosted **Ian**, a gay man, and asked to know why he was there while “all the gays had been taken away” (referring to the transfer of a large group of LGBTI refugees to Nairobi in 2019). They grabbed him, hit him, threw him to the ground and stepped on his left arm. He did not report this because he was afraid that the police would lock him up because he is gay.⁹³

In February 2020, five men attacked **Judy**, a transgender woman, who was going to one of the markets in the camp. One of the men stabbed her left shoulder, leaving her with visible scars. She reported the attack to the police and was given an OB reference number, but police failed to provide her with information about any further action.⁹⁴

Emmanuel, a gay man, described an attack he suffered in April 2020, when his leg was dislocated by a fellow camp resident who pushed him into a ditch after asking him why he was a homosexual. He said he reported the assault to the police and added:

“... once you report, the police do not go beyond the police station to investigate. Once you report nothing will happen to the case. Nobody has been arrested and there is no information from the police.”⁹⁵

In April 2020, a few days after newly arrived LGBTI refugees were allocated shelters in Kakuma camp, an attempted arson attack targeted their block.⁹⁶ **Nelson**, a gay man, was woken up by his neighbour, who had seen two people trying to set fire to the tarpaulin of his

⁹⁰ Interview with Sharon, Kakuma town, 10 September 2021.

⁹¹ Interview with Diana, Kakuma town, 11 September 2021. The OB reference number, including the date of the incident, is on file with Amnesty International.

⁹² Ibid.

⁹³ Interview with Ian, Kakuma town, 8 September 2021.

⁹⁴ Interview with Judy, Kakuma town, 9 September 2021.

⁹⁵ Interview with Emmanuel, Kakuma town, 10 September 2021. Medical records on file with Amnesty International.

⁹⁶ Interview with Charles, Nairobi, 29 January 2022.

shelter. They reported the matter to the police and were given an OB number. The police promised to investigate but did not provide any follow-up.⁹⁷

In June 2020, Nelson was woken up by the sound of knocking on iron sheets and saw a group of men attacking his block with stones, iron bars and sticks. He was chased by some of them and was hit on his legs and head. He regained consciousness in hospital with multiple injuries.⁹⁸ The assailants attacked also **Pauline**, a lesbian woman, hitting her with sticks and stones while calling her “shoga” and telling her that she did not deserve to be in the camp.⁹⁹ The group of LGBTI refugees affected called the police but is not aware of any follow up.

Emmanuel suffered another attack in November 2020, when two other refugees asked him about his sexual orientation, then grabbed him and cut him on the neck with a small knife. Again, he reported the incident to the police, who did not follow up.¹⁰⁰

Anne, a lesbian woman, said she had been attacked and ridiculed several times. During one incident in September 2020, she said that men approached her on a motorbike as she was on her way to the market. They called her “shoga” and hit her with sticks and stones. She had injuries on her face and her left hand and bruises on the leg and she needed hospital treatment. She reported the attack to the police, but she said nothing was done.¹⁰¹

Mercy, a lesbian woman, told the researchers that she was harassed and threatened with rape since the moment she arrived in Kakuma in 2019. Despite repeatedly raising concerns about her safety with the camp management, UNHCR and the police, she was transferred to a part of the camp that she did not consider safe. Two men attacked her and raped her in March 2021, on her way to the market. She obtained medical records and reported the rape to the police, but she was not informed of any follow-up and still does not have a safe place to stay.¹⁰²

“I would still wish to get justice like any other person.”

Harper, Kakuma town, 11 September 2021.

⁹⁷ Interview with Nelson, Kakuma town, 8 September 2021. OB number on file with Amnesty International.

⁹⁸ Ibid. The researchers have reviewed medical documents and pictures showing injuries consistent with the description of the attack.

⁹⁹ Interview with Pauline, Kakuma town, 8 September 2021.

¹⁰⁰ Interview with Emmanuel, Kakuma town, 10 September 2021.

¹⁰¹ Interview with Anne, Kakuma town, 7 September 2021; follow-up phone call, 8 February 2023.

¹⁰² Interview with Mercy, Kakuma town, 7 September 2021.

GENDER-BASED VIOLENCE IN KAKUMA CAMP

Levels of rape and other forms of sexual and gender-based violence in refugee communities in Kakuma camp are generally high. Women and girls, including lesbian, bisexual and transgender women and girls are particularly at risk, with many cases of sexual and gender-based violence occurring at unmanned waterpoints, during firewood collection, or in the home.¹⁰³ In June 2022 Kakuma police authorities stated that the 14 police posts around Kakuma receive around six cases of gender-based violence a day.¹⁰⁴ The total number of cases is probably much higher: while some survivors report the assaults, others do not for fear of stigma and other repercussions.

Kakuma's police station has a gender desk which helps handle sexual and gender-based violence cases that occur in the camps and surrounding areas. UN Women (The United Nations Entity for Gender Equality and the Empowerment of Women) and its implementing partners have established a Gender-Based Violence Support Centre, based in Kakuma hospital, which supplies legal and psychosocial assistance to survivors and provides access to clinical support within 72 hours, counseling, and filling of police reports. The Gender-Based Violence Support Centre receives on average 15-20 cases of rape and physical assault a month, mostly from young girls.¹⁰⁵

Widespread homophobia and transphobia result in LGBTI refugees being also at risk of suffering sexual and gender-based violence. According to the 2021 survey done in Kakuma refugee camp by ORAM and Rainbow Railroad, 26% of the LGBTI refugees interviewed reported having suffered sexual assault.¹⁰⁶ Yet, the LGBTI refugees interviewed for this research who reported having suffered sexual and gender-based violence have not consistently been referred to, or otherwise been able to access, the services available for survivors of gender-based violence.

Several interviewees told Amnesty International and NGLHRC about the 15 March 2021 arson attack that caused the death of Chriton Atuhwera.¹⁰⁷ **Diana** told researchers that she was sleeping outside and woke up screaming: she had been wounded on her left leg.¹⁰⁸ **Isabel**, a transgender woman, told researchers that she was woken up that night by screams from other members of the LGBTI community living in the block. When she went outside, she saw her friend Chriton running away in a ball of flames while screaming for help.¹⁰⁹ The only survivor of the arson attack has burn scars on over 50% of his body, which remain a permanent reminder of the incident. He has to wear long trousers and long sleeve shirts to hide the scars. His pictures spread on the internet and he has received threatening calls from people, including from his country of origin.¹¹⁰ At the time of writing, the police had provided no information on the outcome of its investigations.

In May 2021, a group of men attacked **Fredrick**, a gay man, while he was on a friend's boda-boda and wearing a rainbow mask. They asked him why he was wearing rainbow and why he was gay. They injured one of his eyes, his left hand and a foot. He was still bleeding when he went to the police station to report the attack and was issued with an OB number. He then went to hospital. No police action was taken against his attackers.¹¹¹

In July 2021 **Kevin**, a gay man, found a notice in his shelter, written in English and Swahili, telling LGBTI people to leave the place or they will be attacked. He commented: "I found the letter in the house. Homophobic people know each and every LGBTI person here".¹¹²

¹⁰³ UN Women Africa, *Sexual violence convictions a reality for Kakuma's refugee community*,

<https://africa.unwomen.org/en/stories/news/2022/06/sexual-violence-convictions-a-reality-for-kakumas-refugee-community>

¹⁰⁴ UN Women Africa, "Sexual violence convictions a reality for Kakuma's refugee community", 18 June 2022,

<https://africa.unwomen.org/en/stories/news/2022/06/sexual-violence-convictions-a-reality-for-kakumas-refugee-community>

¹⁰⁵ In 2021, the Centre recorded 12 cases involving boys. UN Women Africa, "Sexual violence convictions a reality for Kakuma's refugee community", 18 June 2022, <https://africa.unwomen.org/en/stories/news/2022/06/sexual-violence-convictions-a-reality-for-kakumas-refugee-community>

¹⁰⁶ Organization for Refuge, Asylum and Migration (ORAM) and Rainbow Railroad, *The challenges facing LGBTIQ+ refugees in Kakuma refugee camp*, Kenya, October 2021, p23, <https://www.rainbowrailroad.org/the-latest/report-how-civil-society-organizations-governments-and-unhcr-can-create-better-outcomes-for-lgbtqi-refugees-living-in-kakuma-refugee-camp>.

¹⁰⁷ Interviews with Pauline, Kakuma town, 8 September 2021; Ian, Kakuma town, 8 September 2021; Isabel, Kakuma town, 11 September 2021; Diana, Kakuma town, 11 September 2021.

¹⁰⁸ Interview with Diana, Kakuma town, 11 September 2021.

¹⁰⁹ Interview with Isabel, Kakuma town, 11 September 2021.

¹¹⁰ Phone interview with the survivor of the March 2021 arson attack, September 2022.

¹¹¹ Interview with Fredrick, Kakuma town, 9 September 2021. The OB reference number, including the date of the incident, is in Amnesty International's record.

¹¹² Interview with Kevin, Kakuma town, 9 September 2021.

3.2 IMPUNITY FOR PERPETRATORS OF HATE CRIMES

The testimonies collected in this report point to systematic and pervasive inaction by police in Kakuma refugee camp to effectively, promptly, independently and thoroughly investigate allegations of hate crimes reported by LGBTI refugees and asylum seekers. This has led to impunity for perpetrators and violations of human rights for LGBTI individuals in Kakuma camp, including their rights to physical integrity, freedom from torture and ill-treatment, as well as their right to live without discrimination on grounds of their sexual orientation, gender identity and/or expression or sexual characteristics.

In only one out of the cases of alleged hate crimes targeting LGBTI people documented for this research did the authorities inform the victim of any follow-up. **Harper**, who self-identifies as LGBTIQ (pronouns they/them), said that in February 2020 one subcontracted security officer attacked them with a metal rod while they were queueing at the reception centre, calling them “shoga” and injuring their chest and back. In August 2020 the alleged assailant was arrested and detained in Kakuma police station. However, justice was not served in Harper’s case. The alleged assailant offered to settle the matter out of court and cover their medical expenses if they withdrew the complaint. Harper was given 10,000 KES (\$80 USD) for their treatment and was promised a further 10,000 KES, which they never received. They told the researchers:

*“There is nothing I can do as a refugee. Homosexuality is criminalized [in Kenya]. But I want to seek justice as a human being. A friend of mine told me that I am refugee, and I am putting someone into jail who is a Kenyan. I am the one who will suffer more. [But] I would still wish to get justice like any other person...”*¹¹³

In all other cases documented for this report, the police did not provide any information about the investigations or other types of follow-up. These findings confirm those of a 2021 report by ORAM and Rainbow Railroad, according to which 88 per cent of the LGBTI refugees interviewed said they were denied assistance by the police when they tried to report violence they suffered in the camp.¹¹⁴

In several of the cases collected by Amnesty International and NGLHRC, LGBTI refugees reported incidents to the police while they were occurring: the police could have stopped, identified and arrested the perpetrators, but didn’t. In other cases, the police could have easily identified the alleged perpetrator based on the information provided by those reporting the crime but didn’t. In some cases, LGBTI refugees have been violently attacked in areas controlled by international humanitarian organizations and staffed by subcontracted security officers. Again, when survivors have reported the incidents, little or no action has been taken by police to hold the perpetrators to account.

Ken, a gay man, said that a group of six subcontracted security officers, including Harper’s alleged assailant, attacked him at the reception centre in January 2020, about a month before the incident suffered by Harper (see above). They locked him in a room and hit and caned him, saying that gay people were a problem at the reception because they do not follow orders. Ken reported the matter to the police, identifying at least one of the security officers. He said

¹¹³ Interview with Harper, Kakuma town, 11 September 2021. OB number and photos of the injuries on file with Amnesty International.

¹¹⁴ Organization for Refuge, Asylum and Migration (ORAM) and Rainbow Railroad, *The challenges facing LGBTIQ+ refugees in Kakuma refugee camp*, Kenya, October 2021, p23, <https://www.rainbowrailroad.org/the-latest/report-how-civil-society-organizations-governments-and-unhcr-can-create-better-outcomes-for-lgbtqi-refugees-living-in-kakuma-refugee-camp>.

the police told him: “You can’t report a Kenyan to the police station”. Ken was given an OB number, but nothing happened subsequently.¹¹⁵

Diana, a lesbian woman, told the researchers that in January 2020, a group of men living in the camp threw stones at her and other LGBTI refugees while they were sleeping outside the reception gate in Kakuma camp. Her left leg was injured. They shouted for help, but the private security officers guarding the reception centre refused to open the gates. The police arrived about 30 minutes later and dispersed the attackers but did not identify them and made no arrests. Diana and others were taken to one of the camp’s hospitals by ambulance. She stayed in hospital overnight. Again, the attack was reported at the police station and an OB number issued, but no action had subsequently been taken.¹¹⁶

Fredrick, a gay man, told researchers that in May 2020 he entered a shop in Kakuma 2. The owner pushed him out saying that “shogas” were not allowed in his shop. Other vendors joined in and started to beat him. He escaped and went straight to the police station and reported the matter. He was given an OB number, but no further action was taken by the police, who could have easily identified the alleged perpetrators.¹¹⁷

Isabel, a transgender woman, shared with police a video of a man intimidating and pointing fingers at a transgender woman. She maintains that the man is well known within the camp. She is however not aware of any follow up by the police.¹¹⁸

Lewis, a bisexual man, shared that in August 2020 refugees from his country of origin saw him with other LGBTI people in the camp. That evening he was summoned by the elders (community leaders) of his country of origin and interrogated about his association with LGBTI people. The elders punished him with caning and a fine. He reported this to the police station. On hearing that his issue involved the elders, the police officers sent him back and told him to sort his issue informally with them.¹¹⁹

The failure by Kenya Police to investigate allegations of violations is itself a breach of international norms and principles Kenya has accessed to and a failure to uphold the principle of non-discrimination (see 5: *National and international legal framework*).

In several statements following violent incidents in Kakuma camp, UNHCR reported that the police had increased police patrols as a measure to increase the security of the LGBTI community.¹²⁰ However, in a context where LGBTI people are highly criminalized, increasing police patrols or resources is not sufficient if there are no other measures in place to tackle systemic homophobia and transphobia, including within the police itself. The testimonies of LGBTI refugees who have faced overt discrimination while reporting to the police the incidents that happen to them in the camp prove this point.

Fredrick reported that, after the beating he suffered in May 2020, unknown gangs attacked him again, in June and August 2020, and that people threw stones at his house. When he reported these crimes to the police, the police taunted him, calling him “shoga” and laughing at him when he was crying out in pain.¹²¹

¹¹⁵ Phone interview with Ken, 20 September 2021. The OB reference number, including the date of the incident, is in Amnesty International’s record. Ken shared pictures with the researchers that showed redness and bruising on his back, hand and thighs, which were consistent with his description of the assault.

¹¹⁶ Interview with Diana, Kakuma town, 11 September 2021. The OB reference number, including the date of the incident, is in Amnesty International’s record.

¹¹⁷ Interview with Fredrick, Kakuma town, 9 September 2021. The OB reference number, including the date of the incident, is in Amnesty International’s record.

¹¹⁸ Phone interview with Isabel, 24 August 2021. The video is on file with Amnesty International.

¹¹⁹ Interview with Lewis, Kakuma town, 10 September 2021.

¹²⁰ For example: UNHCR, *UNHCR deploras tensed situation in Kakuma, renews call for dialogue and peaceful solutions*, 31 August 2020, <https://www.unhcr.org/ke/18723-unhcr-deplores-tensed-situation-in-kakuma-renews-call-for-dialogue-and-peaceful-solutions.html>; UNHCR *Statement on the situation of LGBTIQ+ refugees in Kakuma camp*, 25 March 2021, <https://www.unhcr.org/ke/19859-unhcr-statement-on-the-situation-of-lgbtq-refugees-in-kakuma-camp.html>.

¹²¹ Interview with Fredrick, Kakuma town, 9 September 2021.

Robert, a gay man, said that the police accused him of pretending to be gay when he went to report an attack with stones he suffered in May 2021.¹²²

Joseph, a gay man, told the researchers that in 2020 a police officer took a very valuable item from him. When he went to the police station to have it back, the police officer claimed that LGBTI refugees give the police problems by “telling the world” about their situation in Kakuma; and then asked for 5,000 KES (about \$40 USD), saying that “gay people have rich friends”.¹²³

3.3 INTIMIDATION OF HUMAN RIGHTS DEFENDERS

Several LGBTI refugees have been active both within the camp and through social media, leading protests and sit-ins at UNHCR offices, supporting survivors of violence and voicing the LGBTI community’s concerns. LGBTI refugee rights defenders in Kakuma camp are doubly at risk because of both their identities and their activism. They reported to the researchers several episodes of harassment and intimidation by Kenyan authorities because of their activism.

Pauline, a lesbian woman who used to be a nurse in her country of origin, was providing first aid care to the other members of the LGBTI community who had suffered violent attacks. She told the researchers:

“I was volunteering in the blocks, helping my friends when they were hurt. One day the police called me in and accused me of giving LGBTI people injections [of anesthetic drugs] so that they could cut themselves and say they had been hurt by someone else. But I don’t have that sort of injection.”¹²⁴

Isabel, a transgender woman, told the researchers that a group of four vocal LGBTI activists in Kakuma refugee camp were summoned to a meeting in May 2021 with DRS/RAS and police authorities. She told the researchers that during that meeting DRS/RAS and Kenya police officers ordered them to stop sharing evidence of violence against LGBTI refugees on social media, accusing them of tarnishing the name of Kakuma refugee camp and threatening to deport them back to their country of origin.¹²⁵

In mid-August 2021 LGBTI refugees reported a fire incident caused by petrol thrown at their shelters.¹²⁶ The following day, the police detained Isabel and three other LGBTI refugees, accusing them of having planned the fire incident. The group was released the following day. At the time of writing, no further investigation has been conducted involving them and no charge has been pressed against them. Isabel believes that they have been singled out by the police because of their activities for the LGBTI community in Kakuma.¹²⁷

After the August 2021 fire incident, the Kakuma police also summoned **Geoffrey**, a LGBTI refugee activist who had once stayed in Kakuma and self-relocated to Nairobi. He believes that he was summoned after he posted about the fire incident on social media, tagging international media and human rights organizations.¹²⁸

The researchers saw a letter, dated May 2020, that the then Refugee Affairs Secretariat wrote to **Bernard**, a LGBTI refugee activist, informing him of a decision to withdraw his refugee

¹²² Interview with Robert, Kakuma town, 8 September 2021.

¹²³ Interview with Joseph, Kakuma town, 9 September 2021.

¹²⁴ Interview with Pauline, Kakuma town, 8 September 2021.

¹²⁵ Isabel also shared how in the meeting DRS/RAS and Kenya police officers ridiculed them, saying that they were pretending to cross dress to get sympathy and international funding from social media. Phone interview, 24 August 2021.

¹²⁶ Phone interview with Daniel, 18 August 2021.

¹²⁷ Phone interview with Isabel, Kakuma camp, 24 August 2021.

¹²⁸ Interview with Geoffrey, Nairobi, 2 September 2021.

status under Section 19 of the Refugee Act 2006.¹²⁹ The letter accused the activist of “organizing and taking part” in an unlawful demonstration at UNHCR offices in Nairobi. The letter also claimed that he was the administrator of a Facebook page used to “make statements and utter words that are manifestly against” the prohibition of subversive activities in Kenya’s Penal Code; and as a platform for misinformation.¹³⁰ The Refugee Appeal Board reinstated the activist’s refugee status after he challenged the decision to revoke it.¹³¹

POLICING PROTESTS OF LGBTI REFUGEES IN KAKUMA REFUGEE CAMP AND SERIOUS ABUSES IN DETENTION

LGBTI refugees reported several incidents of excessive use of force and homophobic abuses during the policing of protests in Kakuma refugee camp, at the hands of both the police and private security guards.¹³² For example, **Nelson**, a gay man, told the researchers that in May 2021 the security personnel at the UNHCR compound beat up LGBTI refugees protesting and told them that they weren’t supposed to be there. The police also showed up and teargassed them. Nelson was hit on the head and ended up in hospital.¹³³

Amnesty International and NGLHRC are particularly concerned about reports of serious abuses of LGBTI refugees in detention, after they were arrested in relation to protests about the treatment of LGBTI individuals in Kakuma camp. In particular, the organizations are extremely concerned about the practice of putting LGBTI detainees in the same cell as male detainees,¹³⁴ as well as about the allegations that the police intentionally exposed LGBTI refugee activists to rape and sexual violence by other detainees because of their sexual orientation, gender identity and/or expression and sex characteristics.

Sharon, a transgender woman, told the researchers that she was arrested for sleeping and protesting outside UNHCR offices in Kakuma in November 2019. The police officer placed her in a cell with male detainees. She told researchers: “I was feeling very bad, I have never been in such a place. I was afraid. Other LGBTI people who had been arrested with me protected me from the other prisoners, who wanted to touch my private parts to confirm my identity.” Sharon remained in pre-trial detention for two and a half months. She was placed in a male cell and was constantly afraid of being attacked at night.¹³⁵

In May 2021 several LGBTI refugees were arrested after protesting in front of the UNHCR compound (see Nelson’s testimony above). **Edwin**, a gay man, was charged and taken to prison, where he stayed for two and a half months. He told researchers that the other inmates recognized him, as they had seen on TV news about LGBTI refugees protesting. He said that he was targeted because of this, repeatedly beaten and raped.¹³⁶

In August 2021 police arrested **Isabel** and three other LGBTI refugees, accusing them of faking an arson attack (see above). She told researchers:

“While taking us into the cell, the police was signalling to the other detainees that they were bringing people who pretend to be ladies. When we got into the cell, the other detainees started slapping us. They threatened us with a broken mirror, saying that they wanted to ‘do it’ with us in the way LGBTI people do it. We were forced to ‘do it’ at night. It was a very long night.”¹³⁷

If these allegations were confirmed, this conduct would amount to torture, a serious human rights violation.

¹²⁹ Section 19 of the Refugee Act 2006 (cit.) provided: “The Commissioner may withdraw the refugee status of any person where there are reasonable grounds for regarding that person as a danger to national security or to any community of that country.”

¹³⁰ Letter from Kenya’s Refugee Affairs Secretariat, dated May 2020, on file with Amnesty International.

¹³¹ The Refugee Appeal Board agreed with the appellant that the Commissioner of Refugee Affairs’ revocation of his status was unprocedural and unlawful because the appellant’s actions did not meet the threshold for withdrawal of refugee status on grounds of national security; and because the decision did not meet the Kenyan Constitutional threshold for fair process. Refugee Appeal Board Decision, and the Petitioners application to the Refugee Board on file with Amnesty International.

¹³² Interview with Sharon, Kakuma town, 10 September 2021. In May 2020, the police reportedly used tear gas and batons to disperse a protest by a group of LGBTI refugees outside the UNHCR offices in Kakuma, after the protesters refused to disperse to comply with Kenya’s lockdown orders due to the coronavirus pandemic. Ebar, “Kenya LGBT refugee protest ends with tear gas and batons”, 6 May 2020, ebar.com/news/news/291830

¹³³ Interview with Nelson, Kakuma town, 8 September 2021.

¹³⁴ While the Kenya Police Service Standing Orders recognize that intersex person shall be detained in a separate cell from male and female detainees, it does not have provision or indications on how to detain a transgender person.

¹³⁵ Sharon was charged with “creating disturbance” but denied the charges. Without any legal support or legal aid, she accepted the advice of other detainees and decided to accept the charges to be released on probation. Interview with Sharon, Kakuma town, 10 September 2021.

¹³⁶ Interview with Edwin, Kakuma town, 8 September 2021.

¹³⁷ Phone interview with Isabel, 24 August 2021.

3.4 PERVASIVE DISCRIMINATION AND ABUSES IN THE CAMP

Violence against the LGBTI community in Kakuma camp is due in part to hostility and prejudice in the wider camp population. LGBTI refugees are often harassed, marginalised and ostracised by their own communities of origin, or even by their own family, who consider their sexual orientation and/or gender identity to conflict with religious or cultural values. At the same time, religious and other leaders in the local communities hosting refugees have fuelled the hostility by expressing concerns about having LGBTI refugees in the camps.¹³⁸

Ian, a gay man, reported to the researchers that other refugees from his country of origin first attacked him in 2017, when they discovered his sexual orientation, saying that he was embarrassing them and that their culture cannot tolerate homosexuality. Since then, members of their community constantly harass him.¹³⁹

Other LGBTI refugees reported similar difficulties with the communities of their countries of origin or even with their own families.¹⁴⁰ In July 2019, **James**, a gay man, was beaten unconscious by relatives after they found him in an intimate situation with his partner in Kakuma refugee camp. He woke up in hospital with a serious injury and needed surgery. He did not report the incident to the police. James said his family threatened to kill his partner, so they fled to Nairobi. After a while, however, he was evicted and ended up living on the streets because he could not afford the rent. He was arrested for not having regular documents and taken back to Kakuma camp. He told the researchers:

*“I have lost a lot [because of my sexual orientation]. My friend and community abandoned me. If they know that I am in Kakuma, they will kill me. It has cost me a lot, I have lost everything in life.”*¹⁴¹

Several other refugees reported persistent harassment by the general population of the camp. **Judy**, for example, a transgender woman, said that her neighbors harass her saying that she is a bad example to their children.¹⁴² Harassment does not target only LGBTI refugees, but also their children.¹⁴³

Linda, a bisexual woman, told researchers that in 2020 some young men attacked one of her children, who is about ten years old. They called him “mtoto wa shoga” (child of a “shoga”) and chased him while beating him. The boy returned home upset and shaken. He did not want to go to school, fearing that he would be attacked again, and his mom had to escort him to school every day. Both Linda’s children get bullied at school on account of their mother’s sexual orientation:

*“I teach my children to be quiet when they are taunted because their mum is a ‘shoga’, but it hurts their hearts and mine”.*¹⁴⁴

Discrimination, marginalisation and bullying in school are serious problems for children of LGBTI refugees and children who identify as LGBTI themselves, effectively stopping them from attending.¹⁴⁵ **Olive**, a 16-year-old lesbian girl, told the researchers:

“I am in class eight, but I can’t go to school. I was studying last year but I had to stop. I only went to school three times. On the first day the other students get to know you and like you, but when they discover who you are or who you stay with, they start

¹³⁸ Kakuma and Dadaab Joint Committee on Administration and National Security, meeting minutes available on file with Amnesty International.

¹³⁹ Interview with Ian, Kakuma town, 9 September 2021.

¹⁴⁰ Interviews with Fredrick, Kakuma town, 9 September 2021; Alex, Kakuma town, 9 September 2021; Lewis, Kakuma town, 10 September 2021.

¹⁴¹ Interview with James, Kakuma town, 8 September 2021.

¹⁴² Interview with Judy, Kakuma town, 9 September 2021.

¹⁴³ Interview with Faith, Kakuma town, 8 September 2021.

¹⁴⁴ Interview with Linda, Kakuma town, 9 September 2021.

¹⁴⁵ Interview with Winnie, Kakuma town, 10 September 2021.

*avoiding and abusing you. They called me 'shoga' in school. You can't play together. If you are reading, you can't share a book. Even if you tell the teacher, they say they can offer no help. I left school as I can't continue facing that."*¹⁴⁶

Christine, a 16-year-old queer girl, told the researchers about the marginalisation she faces in the camp because of the way she dresses and because her mother is a lesbian woman. As a result, she cannot continue her studies:

*"I should have started from one [secondary school] in the camp but I cannot join school here. The other girls won't allow me because I look like a boy. I tried going to one of the primary schools in the camp. I was dressed in the girls' uniform but I could not even last a day. The other girls laughed at me and called me 'kijana msichan' (male female). The teachers could not help. I did not go the next day. My form one classmates are now three weeks in school and I have not gone. I know I miss a lot but I can't go. I will face the same problem I faced before."*¹⁴⁷

The harassment and intimidation of LGBTI refugees create barriers that prevent them from accessing camp services and communal areas, such as rations distribution, health clinics, water points, places of worships and shops - a problem they often suffer in silence. Several LGBTI refugees reported having problems accessing the food distribution service, the hospital and the water points, as other camp residents did not want to wait in the line with them.¹⁴⁸

Faith, a lesbian woman, described how other refugees call her a man when she approaches the water point, giggle and point at her, making her feel unwelcome, and tell her to allow others to take water before she does.¹⁴⁹ **Brian**, a gay man, told the researchers that it was common practice for fellow refugees to stop LGBTI individuals collecting water from the communal taps. He explained:

*"You can't disguise and can't hide who you are. The neighbour will know you. The water point is the meeting point... Just by the style you live in, the community can know you. Reaching a water point, your jerry cans are placed aside and they claim you are not entitled to water."*¹⁵⁰

Robert, a gay man, said that he was told he could not enter the mosque (masjid):

*"I went to the mosque. A man there told me that this masjid is not for 'kaumlut', which means LGBTI people. I left and decided I will never come back to the mosque again. They don't welcome me and I don't know who will"*¹⁵¹

Several LGBTI refugees told researchers they had struggled to buy food from shops in Kakuma camp because of their sexual orientation, gender identity and/or expression and sex characteristics.¹⁵² Local NGOs confirmed that LGBTI refugees found it difficult to access water and participate in the activities in the camp.

All in all, several LGBTI refugees spoke about an acute feeling of marginalization, loneliness and isolation. For example, **Faith**, a lesbian woman, told the researchers:

¹⁴⁶ Interview with Olive, Kakuma town, 9 September 2021.

¹⁴⁷ Interview with Christine, Kakuma town, 8 September 2021.

¹⁴⁸ Interviews with Faith, Kakuma town, 8 September 2021; Joseph, Kakuma town, 9 September 2021; Sharon, Kakuma town, 10 September 2021; Simon, Kakuma town, 10 September 2021.

¹⁴⁹ Interview with Faith, Kakuma town, 8 September 2021.

¹⁵⁰ Interview with Brian, Kakuma town, 8 September 2021.

¹⁵¹ Interview with Robert, Kakuma town, 8 September 2021.

¹⁵² Interview with Judy, Kakuma town, 9 September 2021. **Robert** said that most times he tried to buy food, the shop owner would not accept his money as they saw him as an outcast, and so he left empty-handed. Interview with Robert, Kakuma town, 8 September 2021. **Faith** described how other refugees who operate shops in the camp refuse to take money from her because she is a lesbian. She said the shop owners called her "chairlady of lesbians" in the camp and do not allow her to buy anything. Interview with Faith, Kakuma town, 8 September 2021.

“You can't shake a hand to anyone here in the camp. You can't greet anyone. They know you are lesbian, and they are afraid that others may think that they are associated with you.”¹⁵³

Sometimes, the prejudice and the feeling of not being accepted by their neighbours drives people from the shelters they have been assigned, or even from Kakuma camp itself – a dangerous breach of the government's encampment policy.¹⁵⁴

These findings confirm those by other organizations. According to a 2021 report by ORAM and Rainbow Railroad, over 90% of the interviewees reported having been verbally insulted, 83% reported being denied services in shops or markets, 55% reported being denied an opportunity to participate in religious activities; and more than 45% reported having relocated from their allocated shelters to alternative accommodation due to the constant abuses directed at them by neighbors.¹⁵⁵

¹⁵³ Interview with Faith, Kakuma town, 8 September 2021.

¹⁵⁴ Interviews with Sharon, Kakuma town, 10 September 2021; Faith, Kakuma town, 8 September 2021.

¹⁵⁵ ORAM and Rainbow Railroad, *The challenges facing LGBTQI+ refugees in Kakuma refugee camp*, cit., p22.

4. UNAVAILABILITY OF DURABLE SOLUTIONS

4.1 DANGEROUS CAMP, DANGEROUS SELF-PROTECTION STRATEGIES

The evidence gathered in this report reveals an extremely dangerous situation for LGBTI refugees in Kakuma camp, with hate crimes occurring at alarming rates, generalized impunity for perpetrators and inaction on the part of the authorities, against a background of widespread marginalization and discrimination. The findings of this research also reveal that LGBTI individuals in Kakuma camp are targets of homophobic and transphobic violence whether or not they are open about their gender identity and/or sexual orientation. Based on these findings, Amnesty International and NGLHRC conclude that the Kakuma refugee camp complex is not safe for LGBTI refugees.

Several LGBTI refugees reported that the camp manager, some organizations and actors in Kakuma camp and in other locations have recommended that LGBTI refugees keep “a low profile,” and do not reveal their sexual orientation, gender identity and/or expression and sex characteristics to other people in the camp.¹⁵⁶ This advice is often intended to promote the community’s “self-security”.¹⁵⁷ The debate about minimizing the risks of suffering violence is very much alive within the LGBTI refugee community itself.¹⁵⁸ It is, however, dangerously misleading, as the finding of this research show that hate crimes, marginalization and discrimination equally affect all LGBTI refugees, no matter their “profile” or “visibility”. The gravity of the situation in Kakuma camp cannot be addressed by “self-security” measures and requires urgent and decisive action by the Kenyan authorities.

In fact, suggestions that LGBTI refugees in Kakuma need to hide their sexual orientation, gender identity and/or expression or sexual characteristics to improve their chances to be safe may result in victim-blaming and increase the community’s isolation and marginalization.¹⁵⁹ Many interviewees told the researchers that they were, in fact, living in hiding, often not leaving their shelter, for fear of being attacked; or moving from one part of the camp to the

¹⁵⁶ Interviews with Joseph, Kakuma town, 9 September 2021; Kevin, Kakuma town, 9 September 2021; Sharon, Kakuma town, 10 September 2021.

¹⁵⁷ For example: African Human Rights Coalition, *African HRC Advisory to Kakuma LGBTI Refugees at Gate & General Warnings Including Activists*, 9 January 2020, <https://www.africanhrc.org/single-post/2020/01/09/african-hrc-advisory-to-kakuma-lgbti-refugees-at-gate-general-warnings-including-activist>.

¹⁵⁸ An LGBTI refugee leader, based in Nairobi, told the researchers: “Some people are telling LGBTI refugees to be themselves. That can’t be. If you come out as gay in the daylight in Kakuma, you will be killed. It is a tough and weird conversation to have, telling people not to show who they are. It’s a sad conversation to have but we have to talk about this.” Stephen, phone interview, Nairobi, 18 August 2021.

¹⁵⁹ Victim-blaming happens when the victim of a crime is held entirely or partially at fault for the harm they’ve experienced.

other, not to become known among residents as an LGBTI individual. Dennis, a gay man, explained:

*“I try not to know many people. When you give people time to speak to them, they will know you [as an LGBTI individual] and spread the word about you. I hide myself when I move around”.*¹⁶⁰

What is more, many interviewees shared a deep feeling of injustice and trauma about the suggestion of having to hide in Kenya, when they left their countries so that they wouldn't need to hide anymore.¹⁶¹ The UNHCR *Guidelines on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity* explain:

*Being compelled to conceal one's sexual orientation and/or gender identity may also result in significant psychological and other harms. Discriminatory and disapproving attitudes, norms and values may have a serious effect on the mental and physical health of LGBTI individuals and could in particular cases lead to an intolerable predicament amounting to persecution. Feelings of self-denial, anguish, shame, isolation and even self-hatred which may accrue in response an inability to be open about one's sexuality or gender identity are factors to consider, including over the long-term.*¹⁶²

4.2 TEMPORARY RELOCATION TO NAIROBI

As a protection measure from some of the violations LGBTI refugees have been facing in Kakuma camp, UNHCR and the DRS have relocated some LGBTI refugees at risk from Kakuma, mostly to Nairobi and its environs. Under the encampment policy, relocation to Nairobi requires special permission. According to UNHCR, “Requests for permission to stay in the urban area should in principle be made from the camps and in certain situations from Nairobi. Such requests are assessed against set criteria and can be granted or denied”.¹⁶³ In this process, UNHCR and DRS organize the transfer of data from the refugee camps to the urban areas and arrange for a movement pass that allows the individual to move out of the camp. Through a local organization in Nairobi, UNHCR supports the relocated refugee with financial support of Ksh. 6,000 to 10,000 (USD \$50 to \$84) a month, depending on their assessed needs.

Despite these positive plans, the process has been fraught with challenges. Access is the main one, as relocation to Nairobi is allowed only in most exceptional cases, following an opaque selection process and unclear criteria. Additionally, some of the refugees who benefitted from relocation reported problems to renew their documents in Nairobi and to access services, including health care. Because of these challenges, Amnesty International and NGLHRC believe that, as it currently operates, relocation to Nairobi cannot provide a comprehensive solution to the dangers of Kakuma refugee camp.

After locals and fellow refugees assaulted a group of LGBTI refugees protesting outside its offices in December 2018, UNHCR relocated about 200 LGBTI refugees from Kakuma camp to Nairobi.¹⁶⁴ The UN Refugee Agency had evaluated that “the Kakuma context does not provide a safe environment for LGBTI refugees and asylum-seekers,” and that “the LGBTI

¹⁶⁰ Interview with Dennis, Kakuma town, 10 September 2021.

¹⁶¹ Interview with Kevin, Kakuma town, 9 September 2021.

¹⁶² UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, para33, available at: <https://www.refworld.org/docid/50348afc2.html>.

¹⁶³ UNHCR Kenya, *Applying for asylum in Kenya: Frequently Asked Questions*, <https://help.unhcr.org/kenya/applying-for-asylum-in-kenya/frequently-asked-questions/>.

¹⁶⁴ Reuters, “U.N. moves LGBT+ refugees to safe houses after Kenya camp attacks”, 3 December 2018, <https://news.trust.org/item/20181213171702-0m48g/>

refugees who were involved in this incident would be better protected outside Kakuma.”¹⁶⁵ In June 2019, following tensions with the landlord and the host community, Kenyan authorities decided that a group of 74 refugees, including LGBTI refugees, who had been staying in private houses in the outskirts of Nairobi, should be taken to Kakuma refugee camp.¹⁶⁶ UNHCR explained this decision stating that “The policy of the government is that refugees should normally live in camps, and those who don't should have the proper documentation, as well as avoid living in large groups for the host community's and their own security and protection.”¹⁶⁷ Since then, relocation to Nairobi is allowed only in exceptional cases.

Martin, a gay man, told the researchers that he had benefited from the relocation process to Nairobi in 2020, after a group of camp residents attacked him in his shelter. However, the RAS registration centre in Nairobi refused to renew his movement pass, despite his requests. At one point, DRS officers even advised him to travel back to Kakuma to renew his documents. He was frequently arrested for having expired documents, until he was arrested one last time and taken back to Kakuma after seven months in Nairobi.¹⁶⁸

Charles, who survived a life-threatening attack in Kakuma in 2021, was relocated to Nairobi for medical reason and placed into a community safe house run by a refugee led organization. He reported facing challenges to be referred to a medical clinic in Nairobi.¹⁶⁹

4.3 OBSTACLES TO RESETTLEMENT

The discussion above shows that Kenya's encampment policy makes the prospect of local integration as a durable solution impossible for LGBTI refugees. At the same time, other durable solutions are mostly inaccessible or, when available in principle, slow and insufficient.

Like any other refugee in need of resettlement, LGBTI refugees in Kenya who would qualify for resettlement suffer the negative consequences of the limitations of resettlement as a durable solution (insufficient places; slow processing; etc.). The restrictions on travel and other areas imposed by the Covid-19 pandemic have compounded these limitations. Between 2019 and March 2021, UNHCR Kenya submitted about 235 refugees with LGBTI profiles for resettlement, but only 48 percent departed.¹⁷⁰

In addition to the limitations inherent in the resettlement process, the delays in refugee status determination described above also delay the prospects of finding a durable solution, as only officially recognised refugees can be considered for resettlement. While all asylum seekers in Kenya experience the consequences of delayed refugee status determination, those with an LGBTI profile are particularly affected, raising serious concerns regarding entrenched homophobia and transphobia within the Kenyan asylum system.

¹⁶⁵ Quoted *ibid.* Full statement quoted here: <https://www.africanhrc.org/single-post/2018/12/13/unhcr-statement-on-kenyan-police-attack-against-lgbt-in-kakuma>.

¹⁶⁶ In early 2019, the group of LGBTI refugees who had been relocated to Nairobi held several protests and sat in front of UNHCR offices in Nairobi to raise concerns. Part of them were housed in an emergency shelter in Nairobi, which then closed. In May 2019, a protest turned violent when police were called in, leading to the arrest of 22 individuals. Amnesty International (through an LGBTI refugee-led organization) paid bail to some and supported them with legal aid. In June 2019, a large group of LGBTI refugees, who had experienced problems with their landlord and left their communal accommodation, ended up sleeping outside UNHCR offices before being relocated back to Kakuma refugee camp. UNHCR, *UNHCR provides support to refugees ahead of closure of emergency shelter*, 12 Apr 2019 <https://www.unhcr.org/ke/15366-unhcr-provides-support-to-refugees-ahead-of-closure-of-emergency-shelter.html> Reuters, “Scores of LGBT refugees in Kenya slum face homophobic attacks, eviction”, 11 June 2019, <https://news.trust.org/item/20190611194911-473ds>; Reuters, “U.N. urges calm after protests by LGBT refugees in Kenya turn violent”, 16 May 2019, <https://www.reuters.com/article/us-kenya-lgbt-refugees-idUSKCN1SM1CC>. UNHCR, *Statement on the relocation of 74 refugees to Kakuma camp*, 21 June 2019, <https://reliefweb.int/report/kenya/unhcr-statement-relocation-74-refugees-kakuma-camp>.

¹⁶⁷ UNHCR, *Statement on the relocation of 74 refugees to Kakuma camp*, *ibid.*

¹⁶⁸ Interview with Martin, Kakuma town, 9 September 2021.

¹⁶⁹ Interview by App, 3 September 2022.

¹⁷⁰ UNHCR, *Statement about LGBTIQ+ refugees in Kakuma camp*, 25 March 2021, <https://www.unhcr.org/ke/19859-unhcr-statement-on-the-situation-of-lgbtqi-refugees-in-kakuma-camp.html>.

Delayed refugee status determination has negative consequences not only on resettlement prospects, but also on the availability of other pathways to leave Kenya and start a new life in another country. Only those who are registered as refugees after refugee status determination can obtain the exit permit necessary to travel abroad.

Emmanuel, a gay man who arrived in Kenya in 2018, was attacked twice by other refugees in Kakuma camp (see above). He told the researchers that his partner and he were able to secure private sponsorship for refugee resettlement in Canada but could not leave Kenya because of delayed refugee status determination. This traumatised him and his partner.¹⁷¹

¹⁷¹ Interviews with Emmanuel via app, 29 August 2022, 25 January 2023.

5. NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK

The Kenyan government is under the international law obligation to both respect and protect the rights to life and physical integrity, as well as the right not to be discriminated against. Under the obligation to protect, state actors must refrain from directly violating these rights. Also under the obligation to protect, they must address abuses by third parties, including private actors.

5.1 PROTECTION OF ASYLUM SEEKERS AND REFUGEES, INCLUDING LGBTI ASYLUM-SEEKERS AND REFUGEES

Kenya ratified the 1951 Refugee Convention on 16 May 1966, followed by the 1967 Protocol on 13 November 1981, and the 1969 OUA Convention Governing the Specific Aspects of Refugees Problems in Africa in 1992.¹⁷² While the Refugee Convention does not specifically refer to people who seek asylum because of their gender identity and sexual orientation, its application has been expanded to ensure the protection of LGBTI asylum seekers and refugees. LGBTI people who have faced persecution because of their sexual orientation or gender identity have generally been considered for asylum and received international protection on the ground of “membership of a particular social group”.¹⁷³ Principle 23 of the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity states:

Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-

¹⁷² UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, refworld.org/docid/3be01b964.html and Protocol Relating to the Status of Refugees, 31 January 1967, refworld.org/docid/3ae6b3ae4.html; 1969 OUA Convention Governing the Specific Aspects of Refugees Problems in Africa <https://au.int/en/treaties/oua-convention-governing-specific-aspects-refugee-problems-africa>.

¹⁷³ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, refworld.org/docid/50348afc2.html

*founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity.*¹⁷⁴

Kenya committed to enhancing the protection of refugees when adopting the New York Declaration on Refugees and Migrants,¹⁷⁵ which provides that states ensure that their migration procedures and processes are people-centred, sensitive, humane, dignified and gender responsive, and prompt reception of refugees in vulnerable situations. Under the New York Declaration, Kenya is obliged to ensure that there is no discrimination against any refugee based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁷⁶ By adopting the New York Declaration, Kenya acknowledged that shared international responsibility is essential to facilitate the protection of refugees by host countries.¹⁷⁷ Under the Declaration's Comprehensive Refugee Response Framework (CRRF) process,¹⁷⁸ Kenya committed to maintain the protection space for asylum seekers and refugees; support the immediate and ongoing needs of refugees and host communities; and recognize vulnerable refugees, who also include LGBTI refugees.¹⁷⁹

Additionally, the UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity has urged states and other actors involved in refugee protection to recognize the unique vulnerability and the different specific needs of LGBTI asylum seekers and refugees in their response to asylum needs.¹⁸⁰

5.2 PROHIBITION OF DISCRIMINATION ON GROUNDS OF GENDER IDENTITY OR SEXUAL ORIENTATION

NATIONAL LEGAL FRAMEWORK

Kenya's Constitution gives prominence to the principles of equality and non-discrimination. Article 10 sets out values and principles of governance, which include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. Government officials, including RAS officers, are required to abide by and apply these principles while discharging their duties.¹⁸¹ Article 27(1) provides for the rights to equality and freedom from discrimination, and states that everyone is equal before the law and has the right to equal protection and benefit of the law.¹⁸² The broad principles of the Constitution apply to refugees, including LGBTI refugees, in the same way as they do to

¹⁷⁴ Principle 23, Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2006, <http://yogyakartaprinciples.org/principles-en/official-versions-pdf/>

¹⁷⁵ UN General Assembly, New York Declaration for Refugees and Migrants: resolution adopted by the General Assembly, 3 October 2016, A/RES/71/1, <https://www.refworld.org/docid/57ceb74a4.html>

¹⁷⁶ UN General Assembly, New York Declaration for Refugees and Migrants: resolution adopted by the General Assembly, 3 October 2016, A/RES/71/1, <https://www.refworld.org/docid/57ceb74a4.html>

¹⁷⁷ UN General Assembly, New York Declaration for Refugees and Migrants: resolution adopted by the General Assembly, 3 October 2016, A/RES/71/1, [refworld.org/docid/57ceb74a4.html](https://www.refworld.org/docid/57ceb74a4.html)

¹⁷⁸ The CRRF was part of the culmination of the New York Declaration. It called on UNHCR and states to develop a comprehensive process that eases pressure on host countries, enhances self-reliance, expands third country solutions and supports conditions in the country of origin. Kenya was selected as a pilot country to operationalize the new CRRF model; ODI, *The Comprehensive Refugee Response Framework Progress in Kenya*, September 2019, odi.org/documents/6064/12940.pdf

¹⁷⁹ UNHCR, Kenya Comprehensive Refugee Programme 2019-2020, unhcr.org/ke/kenya-comprehensive-refugee-programme

¹⁸⁰ UN rights experts urge more protection for LGBTI refugees, unhcr.org/news/press/2019/7/5d19bdc04/un-rights-experts-urge-protection-lgbti-refugees.html

¹⁸¹ Article 10, Constitution of Kenya, 2010, <http://kenyalaw.org/kl/index.php?id=398>

¹⁸² Article 27, *ibid.*

Kenyan citizens¹⁸³ and the High Court of Kenya has applied the Constitution to protect the rights of refugees.¹⁸⁴

The High Court has also affirmed the right to dignity for every person in Kenya, as provided for in Articles 10 and 28 of the Constitution. In a landmark decision, the High Court ruled that it is important to recognize and protect the rights of transgender people in line with the constitutional principle of non-discrimination.¹⁸⁵

INTERNATIONAL LEGAL FRAMEWORK

The Universal Declaration of Human Rights enshrines the rights to equality and non-discrimination.¹⁸⁶ Discrimination is “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.¹⁸⁷ UN treaty bodies have also entrenched the position that the principles of equality and non-discrimination are applicable to individuals irrespective of nationality or migration status or documentation,¹⁸⁸ as well as their sexual orientation, gender identity and/or expression or sexual characteristics.¹⁸⁹

Kenya is also a state party to the African Charter on Human and Peoples’ Rights, which recognizes that individuals are equal before the law and entitled to protection.¹⁹⁰ It adds that the state must not discriminate against individuals on grounds such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or status.¹⁹¹

Kenya is a state party to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol),¹⁹² which provides for the elimination of all forms of discrimination against women irrespective of their sexual orientation. The protocol calls on states to “support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women” regardless of their sexual orientation.¹⁹³

The African Commission on Human and Peoples’ Rights has also called on Kenya and other African states to take preventative action to stop violations against LGBTI people. At its 55th Ordinary Session in 2014, the Commission adopted Resolution 275 against violence on grounds of sexual orientation or gender identity.¹⁹⁴ This ensures that states have a role to: prevent violence and other human rights violations against LGBTI individuals; provide

¹⁸³ The Constitution provides exemption where certain rights are only available to citizens. These include right to access information held by state and political rights. *Kenya National Commission on Human Rights & another v Attorney General & 3 others*, Petition No. 227 of 2016, Kenya: High Court, 9 February 2017, available at: https://www.refworld.org/cases,KEN_HC,58a19f244.html.

¹⁸⁴ *Kituo Cha Sheria & 8 others v Attorney General*, 2013, eKLR Petition 19 & 115 of 2013, <http://kenyalaw.org/caselaw/cases/view/84157>.

¹⁸⁵ The High Court in 2019 issued an order of mandamus compelling the Kenya National Examination Council to recall the Applicant's KCSE certificate No. 1855399 issued in the name of Ithibu Andrew Mbugua and replace it with one in the name of Audrey Mbugua Ithibu. The replacement certificate will be without a gender mark. Available at <http://kenyalaw.org/caselaw/cases/view/101979/>

¹⁸⁶ Article 1 of the Universal Declaration of Human Rights (UDHR) provides that “all human beings are born free and equal in dignity and rights.” Article 2 declares that “everyone is entitled to all the rights and freedoms set forth in this Declaration.” UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, [un.org/en/about-us/universal-declaration-of-human-rights](http://www.un.org/en/about-us/universal-declaration-of-human-rights)

¹⁸⁷ UN Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, para 7, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FGE%2F6622&Lang=en.

¹⁸⁸ CESCR, General Comment No. 20, para. 30, which provides that “The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”

¹⁸⁹ UN Human Rights Council, *Protection against violence and discrimination based on sexual orientation and gender identity*, Resolution adopted 30 June 2016, A/HRC/RES/32/2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/154/15/PDF/G1615415.pdf?OpenElement>.

¹⁹⁰ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), [refworld.org/docid/3ae6b3630.html](http://www.refworld.org/docid/3ae6b3630.html)

¹⁹¹ Article 2 of the African Charter on Human and Peoples' Rights.

¹⁹² African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 11 July 2003, [refworld.org/docid/3f4b139d4.html](http://www.refworld.org/docid/3f4b139d4.html).

¹⁹³ Maputo Protocol, Article 2(e).

¹⁹⁴ Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014, [achpr.org/sessions/resolutions?id=322](http://www.achpr.org/sessions/resolutions?id=322)

protection against re-occurrence of violence and other human rights violations against LGBTI individuals; guarantee victims/survivors access to justice; investigate and prosecute the perpetrators of violence and other human rights violations against LGBTI individuals; and provide an effective remedy and reparation for the victims/ survivors of violence.¹⁹⁵

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles) affirm that all persons, regardless of their sexual orientation or gender identity, are entitled to full enjoyment of all human rights.¹⁹⁶ While applying human rights laws and principles in Kenya, the state is encouraged to ensure that rights' entitlements should take account of the specific situations and experiences of people of diverse sexual orientations, which covers LGBTI refugees and asylum seekers.

5.3 OBLIGATION TO PROTECT FROM HATE CRIMES

Hate crimes target people because of their real or perceived links to a group defined by characteristics such as age, disability, ethnicity, gender, gender identity, race, sexual orientation and social or economic status. They are a form of discrimination because the target is chosen on the basis of personal characteristics that are protected grounds under international human rights law.

NATIONAL LEGAL FRAMEWORK

Under Kenyan national law, the burning of houses, physical violence, abuse, sexual and gender related violence, are all are criminal acts for which, if properly investigated by the relevant Kenya Police, and the file submitted to the Department of Public Prosecution, the perpetrators could be charged in a court of law.¹⁹⁷

INTERNATIONAL LEGAL FRAMEWORK

Hate crimes implicate several human rights, protected under international and regional law binding on Kenya. In addition to the right to be free from discrimination (see above), these include the right to life, physical integrity, and the right to be free from torture and other ill-treatment.

As a state party to the International Covenant on Civil and Political Rights (ICCPR),¹⁹⁸ Kenya is obliged to protect all persons within its territory or jurisdiction, including members of marginalized groups such as LGBTI refugees.¹⁹⁹ Kenya is also obliged to prevent, properly investigate and prosecute any violence against individuals by state and non-state actors, and ensure victims are provided with redress.²⁰⁰

The International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) requires states parties to guarantee, without discrimination, “[t]he right to security of person

¹⁹⁵ Centre for Human Rights, Resolution 275 What It Means For State And Non-State Actors In Africa, chr.up.ac.za/images/researchunits/sogie/documents/resolution_275/Resolution_275_booklet_ENGLISH_02_WEB.pdf

¹⁹⁶ The Yogyakarta Principles (2007) and the Yogyakarta Principles plus 10 (2017) provide the most authoritative global human rights guidance on protecting the rights of LGBTIQ+ persons, yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB

¹⁹⁷ The Office of the Director of Public Prosecutions (ODPP) is the National Prosecuting Authority in Kenya. The Constitution mandates it to prosecute all criminal cases in the country.

¹⁹⁸ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, refworld.org/docid/3ae6b3aa0.html

¹⁹⁹ ICCPR, Article 2(1) and Article 26. According to Article 2(3)(a) of the ICCPR, state parties must ensure that any person whose rights or freedoms are violated shall have an effective remedy.

²⁰⁰ The UN Human Rights Committee, the body charged with interpreting and monitoring the implementation of the ICCPR, has emphasized that: “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities”. UN Human Rights Committee (HRC), General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para8, available at: <https://www.refworld.org/docid/478b26ae2.html> [accessed 21 May 2022]

and protection by the State against violence or bodily harm, whether inflicted by government officials or by an individual group or institution”.²⁰¹

International law and standards require states to ensure adequate reparation to victims of crime. This should not only include restitution but also compensation, rehabilitation, access to justice and redress. According to Article 2(3)(a) of the ICCPR, state parties must ensure that any person whose rights or freedoms are violated shall have an effective remedy. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law²⁰² and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power²⁰³ call on states to ensure victims of crime have access to the mechanisms of justice and redress; reparation for the harm suffered, including fair and just compensation; and material, medical, psychological and social assistance.

5.4 RIGHT TO FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY AND TO DEFEND RIGHTS

NATIONAL LEGAL FRAMEWORK

The Constitution of Kenya protects the rights to freedom of expression (Article 33), association (Article 36) and peaceful assembly (Article 37) for everyone in Kenya. It therefore protects the right of LGBTI refugees to demonstrate, picket and petition relevant authorities on issues that affect them. In February 2023 Kenya’s Supreme Court confirmed the constitutional right of everyone in Kenya to freedom of association, without discrimination on grounds of sexual orientation.²⁰⁴

INTERNATIONAL LEGAL FRAMEWORK

The enjoyment of the rights to freedom of expression, association and assembly is an essential pre-condition for all those defending human rights. The UN Declaration on Human Rights Defenders (HRDs Declaration), adopted by consensus by all UN Member States including Kenya, recognizes the crucial role played by human rights defenders in the defense and promotion of human rights.²⁰⁵ As their activities often expose them to additional and specific risks, thus requiring measures explicitly for their protection, the Declaration establishes that States bear the ultimate responsibility to protect human rights defenders, to prevent and effectively address allegations of human rights violations and abuses committed against them and related to their human rights work, and to ensure that they can carry out their work in a safe and enabling environment.

Since the HRDs Declaration, numerous international and regional human rights instruments, together with UN resolutions and recommendations by the UN Human Rights Council, independent experts and Treaty Bodies, have further clarified the obligation to protect human rights defenders and additionally, that certain human rights defenders, such as those who defend the rights of women, LGBTI people and refugees and/or who have these identities and characteristics, require specific attention and protection due to the multiple and intersecting

²⁰¹ ICERD, Article 5(b).

²⁰² See the UN Principles and Guidelines, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

²⁰³ A/RES/34/40, available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

²⁰⁴ BBC World, *Kenya wrong to ban LGBT rights groups from registering - Supreme Court*, 24 February 2023, <https://www.bbc.com/news/world-africa-64491276>.

²⁰⁵ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution adopted by the UN General Assembly, 9 December 1998, UN Doc. A/RES/53/144, www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx

forms of discrimination and risk they face and the rights they defend. Criminalization and discrimination of LGBTI people deepens the level of risk faced by these defenders.²⁰⁶

Several countries have adopted specific guidelines on the protection of human rights defenders. The European Union, for example, has issued specific *Guidelines on Human Rights Defenders* which provide practical guidance for the EU and its member states to protect human rights defenders.²⁰⁷ This protection includes relocation and visa support and financing. Countries outside the EU such as Canada, USA, and Switzerland, also have similar guidelines in place.

²⁰⁶ For example, the Special Rapporteur on Human Rights Defenders in Africa raised this concern in relation to the anti-homosexuality Act in Uganda and it is applicable in other countries where LGBTI people are criminalized and stigmatized, <https://www.achpr.org/pressrelease/detail?id=228>.

²⁰⁷ European Union Guidelines on Human Rights Defenders, 21 June 2016, https://www.eeas.europa.eu/eeas/eu-guidelines-human-rights-defenders_en.

CONCLUSION AND RECOMMENDATIONS

The findings detailed in this report show that LGBTI asylum seekers and refugees in Kenya face intersectional discrimination and violence based on their identity as refugees or asylum seekers and their sexual orientation, gender identity and/or expression, and sex characteristics. They experience discriminatory practices and attitudes from government officials, the police and other service providers, in a social climate characterized by prejudice and discrimination. These are reflected in homophobic behaviour of officials during registration; delayed refugee status determination; harassment and discriminatory violence, including violent homophobic attacks, threats and intimidation; and extremely limited opportunities for durable solutions such as local integration and third-country resettlement.

LGBTI asylum seekers and refugees in the Kakuma refugee camp complex have suffered physical and sexual violence and other serious human rights abuses, including violations of their right to be free from torture and ill-treatment, because of their sexual orientation, gender identity and/or expression, or sexual characteristics.

The state's lack of effort to investigate these crimes, apprehend perpetrators or tackle deeply entrenched homophobia and transphobia, violate Kenya's human rights obligations to protect everyone from any form of discrimination, including based on sexual orientation, gender identity and/or expression, and sex characteristics. Perpetrators of violence and intimidation targeting LGBTI refugees and asylum seekers can commit their crimes with almost total impunity, fostered by the lack of adequate responses from the police.

Additionally, Kenyan authorities have harassed and intimidated LGBTI refugee rights defenders because of their activism, as well as committed grave human rights violations against LGBTI refugees in detention after they were arrested in relation to protests about the treatment of LGBTI individuals in Kakuma camp.

Delays in refugee status determination – which particularly affect LGBTI asylum seekers – increase the risk of violence, as they have negative consequences not only on resettlement prospects, but also on the availability of other pathways to leave Kenya and start a new life in another country.

The Kenyan government has a responsibility to uphold the rights to life, security of person, freedom from torture or cruel, inhuman or degrading treatment, freedom from non-discrimination of everyone, including LGBTI people. The systematic and pervasive failure to prevent violence and provide justice for hate crimes, as well as episodes of direct discrimination and intimidation, raise concerns about institutional homophobia and transphobia within the police and other state institutions. Similarly, episodes of homophobia during the registration process; reports of intentional delays in the refugee status determination process for LGBTI asylum-seekers; and concerns about the impact on LGBTI

individuals of Section 19(2) of the new Refugees Act hamper access to a fair and effective asylum procedure and raise serious concerns regarding entrenched homophobia and transphobia within the Kenyan asylum system.

Based on these findings, Amnesty International and NGLHRC conclude that the Kakuma refugee camp complex is not safe for LGBTI asylum seekers and refugees. While some LGBTI individuals have benefitted from relocation to Nairobi, this measure cannot currently provide a comprehensive solution to the dangers of Kakuma refugee camp, as it is allowed only in most exceptional cases, following an opaque selection process and unclear criteria. Overall, Amnesty International and NGLHRC believe that Kenya's encampment policy makes the prospect of local integration as a durable solution impossible for LGBTI refugees.

RECOMMENDATIONS

TO THE GOVERNMENT OF KENYA

- **Urgently ensure the physical and psychological safety of all LGBTI asylum seekers and refugees in the Kakuma refugee camp complex, discussing and agreeing with affected individuals and the wider LGBTI community all necessary measures to**
 - prevent and effectively respond to hate crimes (see below);
 - prevent and effectively respond to other forms of discrimination (see below);
 - reduce and ultimately eliminate the reliance on camp settings to provide services to asylum seekers and refugees. This may require amendments or suspensions of the encampment policy and temporary or permanent relocation to Nairobi or other urban areas.
- **Ensure that LGBTI asylum seekers and refugees fully enjoy their right to a fair and effective asylum procedure and to be protected from *refoulement*. In particular:**
 - Ensure that no person is removed, expelled, extradited or otherwise transferred to any country or jurisdiction where they may be at real risk of serious human rights violations, including on the basis of their sexual orientation, gender identity and/or expression and sex characteristics.
 - Repeal Section 19(2) of the Refugees Act, 2021.
 - Clarify in the new Regulations that the Refugees Act, and specifically the persecution grounds required for the recognition of refugee status, should be interpreted in a gender sensitive manner. In particular, clarify that the ground of “membership of a particular group” should be applied in practice to recognise refugee status or other forms of international protection for LGBTI individuals at risk of serious human rights violations on the basis of their sexual orientation, gender identity and/or expression and sex characteristics.
 - Ensure that LGBTI asylum seekers have access to a speedy, gender sensitive and safe registration process in which they can express and disclose their sexual orientation, gender identity and/or expression and sex characteristics without any fear; and have access to an interpreter of their choice.
 - Prioritise and fast-track refugee status determination procedures for LGBTI asylum seekers and other asylum seekers who may qualify for resettlement and other pathways.

- Modify the refugee database to allow transgender and non-binary refugees to register according to their preferred gender, on the basis of self-identification.
 - Ensure that LGBTI refugees can renew their documents in Nairobi and in other locations outside the Kakuma refugee camp complex.
 - Adopt and enforce gender-sensitive protocols for all governmental agencies and staff involved in the asylum process, including complaints mechanisms for asylum seekers and refugees who suffer discrimination and disciplinary proceedings for those civil servants that discriminate or fail to enforce anti-discrimination standards.
- **Ensure that LGBTI asylum seekers and refugees are protected from hate crimes. In particular:**
 - Draft and introduce into Parliament a legislative proposal aimed at amending the Criminal Code so that crimes perpetrated with any form of discriminatory motive, including sexual orientation, gender identity and/or expression and sex characteristics, are prohibited;
 - Require police to conduct prompt, thorough, independent and impartial investigations into all allegations of crimes committed by private individuals, including those reported by LGBTI refugees. Police must investigate any discriminatory motive, including on grounds of sexual orientation, gender identity and/or expression and sex characteristics, when it is alleged by victims or on their own initiative when there is reason to believe discrimination may have played a role;
 - Establish an independent mechanism to examine all allegations of serious human rights violations by law enforcement officials, including allegations of rape, gender-based violence, torture and ill-treatment and discriminatory violence;
 - Ensure that comprehensive data on hate crimes is collected at all levels, including reporting, investigation, prosecution and sentencing. Data should be disaggregated by protected ground and proactively made publicly accessible (taking into account privacy considerations). This data should also be disaggregated according to whether the perpetrator is a private individual or a state actor.
 - Condemn hate crimes, including those targeting LGBTI asylum seekers and refugees, when they occur and make clear that crimes targeting people for discriminatory reasons, including on grounds of sexual orientation, gender identity and/or expression and sex characteristics, will not be tolerated;
 - Ensure that survivors of hate crimes are treated in an impartial, respectful and professional manner, that they are provided with thorough and prompt information regarding the status of their case, that they are able to be heard in the legal proceedings, including the investigation phase, and that they are provided with necessary legal or psychological support, as appropriate.
 - **Prevent and end discrimination against members of the LGBTI community in the provision of government services. In particular:**
 - Ensure that all LGBTI asylum seekers and refugees have access to humanitarian assistance and services without discrimination, in the Kakuma refugee camp complex, Nairobi or elsewhere.

- **Take concrete steps to address attacks against refugee LGBTI rights defenders, including by:**
 - Explicitly recognizing the legitimacy of all human rights defenders in Kenya and supporting their work,
 - Stopping impunity by leading prompt and effective investigations that bring perpetrators to account, and
 - Preventing any further attacks by passing legislation or establishing protection mechanisms that address the additional risks faced by refugee, women and LGBTI defenders.

TO UNHCR AND OTHER ORGANIZATIONS OPERATING IN THE KAKUMA REFUGEE CAMP COMPLEX

- Ensure that all programming, decision making, protection measures and services for or affecting LGBTI refugees:
 - are based on their full and active participation;
 - are gender-sensitive and respect individual preferences and confidentiality;
 - proactively combat stereotypes, prejudices and other forms of discrimination against LGBTI refugees.
- Work with national counterparts to help ensure that LGBTI refugees are integrated into national support services for survivors of gender-based violence.
- Provide psycho-social and legal support to LGBTI and other refugees who suffer hate crimes.
- Ensure that their staff and contractors, including private security officers, are adequately trained on hate crimes, gender-based violence and LGBTI issues; and that instances of discrimination are adequately addressed within internal conduct review mechanisms or referrals to law-enforcement authorities, as necessary.
- Ensure that the human rights risks specifically faced by LGBTI refugees are expressly considered in program implementations. In particular, ensure that the extremely dangerous situation for LGBTI refugees in Kakuma camp, as detailed in this report, is adequately taken into account when determining the protection needs of LGBTI refugee individuals, including their need for resettlement and alternative pathways.

TO THIRD COUNTRIES OFFERING RESETTLEMENT AND COMPLEMENTARY PATHWAYS

- Increase pledges for resettlement and complementary pathways, including community sponsorship and humanitarian admissions, targeting LGBTI refugees from Kenya as part of a general increase in states' pledges, in accordance with the principle of responsibility sharing.
- Establish or enhance flexible alternative pathways for LGBTI asylum seekers and refugees, human rights defenders and other asylum seekers and refugees in Kenya that are in need of safety in a third country but do not qualify for traditional resettlement or other pathways.
- Work with national counterparts and international organizations to simplify administrative requirements and expedite their departures.

- Those countries who have committed to protect human rights defenders via their diplomatic missions (for example under the *European Union Guidelines on Human Rights Defenders*) should ensure they support human rights defenders at risk in Kenya, including where necessary to access safety elsewhere, either through prompt resettlement schemes or by making available other types of relocation schemes.

TO THIRD COUNTRIES PROVIDING FINANCIAL SUPPORT TO THE HUMANITARIAN ASSISTANCE AND PROTECTION OF REFUGEES IN KENYA, INCLUDING THROUGH UNHCR

- Under the principle of responsibility sharing, provide increased support to Kenya in the form of financial, material and technical assistance to programmes that enhance better protection for minority refugee groups at increased risk of human rights violations or abuses such as LGBTI refugees and human rights defenders.
- Provide support to UNHCR and its implementing partners to increase their capacity to process resettlement cases from Kenya for all refugees who qualify for it, including LGBTI refugees.
- Provide political, financial and material support to the activities of refugee led organizations and individuals that defend the rights of LGBTI refugees in Kenya.

KENYA: “JUSTICE LIKE ANY OTHER PERSON”

HATE CRIMES AND DISCRIMINATION AGAINST LGBTI REFUGEES IN KENYA

This joint report by the National Gay and Lesbian Human Rights Commission and Amnesty International documents the extremely dangerous situation of hate crimes, discrimination and other human rights violations suffered by lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers and refugees in Kenya, specifically those living in Kakuma refugee camp, between 2018 and February 2023.

LGBTI asylum seekers and refugees in Kenya experience discriminatory practices and homophobic and transphobic attitudes from government officials, the police and other service providers, in a social climate characterised by prejudice and discrimination. These are reflected in the homophobic behaviour of officials during registration; delayed refugee status determination; harassment and discriminatory violence, including violent homophobic attacks, threats and intimidation; and extremely limited opportunities for durable solutions such as local integration and third-country resettlement.

Based on these findings, Amnesty International and NGLHRC conclude that the Kakuma refugee camp complex is not safe for LGBTI asylum seekers and refugees.



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