



**University of Nairobi**

**THE ROLE OF CIVIL SOCIETY ORGANIZATIONS IN FRAMING LGBT  
COMMUNITY RIGHTS IN KENYA**

**GITARI ANTONY MUGAMBI**

**C53/85436/2016**

**A RESEARCH PROJECT SUBMITTED TO THE DEPARTMENT OF PHILOSOPHY AND RELIGIOUS  
STUDIES IN PARTIAL FULFILMENT FOR THE REQUIREMENTS OF THE AWARD OF THE  
DEGREE IN MASTER OF ARTS IN HUMAN RIGHTS UNIVERSITY OF NAIROBI**

**AUGUST, 2020**

## **DECLARATION**

This research project is my own original work and has not been presented before for any examination for the award of a degree in any other University.

Sign\_\_\_\_\_

Date\_\_\_\_\_

**GITARI ANTONY MUGAMBI**

**C53/85436/2016**

This research project has been submitted with my approval as a University supervisor:

Sign\_\_\_\_\_

Date\_\_\_\_\_

**Dr. KATHLEEN ANANGWE**

Department of Sociology and Social Work,

University of Nairobi, Kenya.

**Dr. WAMAE W MURIUKI**

Department of Philosophy and Religious Studies,

University of Nairobi, Kenya

Sign\_\_\_\_\_

Date\_\_\_\_\_

## **DEDICATION**

I dedicate this project paper to my parents whose encouragement to pursue higher education continues to inspire me and to my wife and child for enduring my long absence at the expense of family time.

## **ACKNOWLEDGEMENT**

Gratitude goes to my supervisors Dr. Kathleen Anangwe and Dr Wamae W. Muriuki whose constructive criticism and support inspired me to complete this project. To my parents who keep inspiring me to aim higher, I am grateful to my wife for enduring my long absence and for her unwavering support and to my daughter who is the constant reminder that we must always lead by example in life.

Thank You All!

## TABLE OF CONTENTS

<b>DECLARATION</b> .....	2
<b>DEDICATION</b> .....	3
<b>ACKNOWLEDGEMENT</b> .....	4
<b>ABBREVIATIONS AND ACRONYMS</b> .....	8
<b>ABSTRACT</b> .....	10
<b>CHAPTER ONE: INTRODUCTION</b> .....	10
1.1 Introduction .....	11
1.1.1 Background to the Problem .....	13
1.2 Problem Statement.....	17
1.3 Objectives of the Study.....	21
1.4 Research Questions.....	21
1.5 Justification of the study .....	22
1.6 Scope and Limitation of the Study .....	23
<b>CHAPTER TWO: LITERATURE REVIEW</b> .....	24
2.1 Introduction .....	24
2.1.1 Civil Society Organizations and LGBT community Right to Healthcare .....	24
2.1.2 Civil Society Organizations and the LGBTs’ Freedom of Expression .....	26
2.1.3 Civil Society Organizations and LGBTs’ Freedom of Association.....	28
2.2 Theoretical Framework.....	31
2.3 Research Hypotheses .....	33
<b>CHAPTER THREE: METHODOLOGY</b> .....	34
3.1 Introduction .....	34
3.2 Variables .....	34
3.3 Research Design .....	35
3.4 Site Selection.....	35
3.5 Target Population .....	36
3.6 Sampling Technique and Sample Size.....	36
3.7 Data Collection and Analysis .....	37

3.8 Ethical Considerations .....	37
<b>CHAPTER FOUR: DATA ANALYSIS AND INTERPRETATION OFFINDINGS .....</b>	<b>38</b>
4.1 Introduction .....	38
4.2 Demographic Background of the Participants.....	38
4.2.1 FGD Participants .....	38
4.2.2 The Key Informants.....	38
4.3 Theme One: Cultural Prejudices that Pose a Challenge on the Initiatives for Protecting LGBT Rights and how CSOs are navigating them .....	40
4.4. Theme 2. Institutional Mechanisms Aimed at Securing LGBT community Rights and their Convergence with Local Constitution and International Human Rights Expectations .....	45
4.5 Theme 3 Ways Through which CSOs are balancing the observance of the existing Socio-Cultural Realities to Mitigate the Scrutiny, Harassment, and Violence against LGBTs.....	51
4.6 Theme Four: Ways through which CSOs are Addressing Cultural Norms that Inhibit LGBT community Rights .....	54
4.7 Theme Six: Challenges faced by the LGBT Community .....	57
4.8 Discussion .....	62
4.9 Hypotheses Discussion .....	66
<b>CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS .....</b>	<b>68</b>
5.1 Introduction .....	68
5.2 Summary .....	68
5.3 Conclusion.....	70
5.4 Recommendations.....	73

<b>REFERENCES</b> .....	77
<b>APPENDICES</b> .....	1
<b>APPENDIX I: RESEARCH PERMIT</b> .....	1
<b>APPENDIX II: KEY INFORMANT INTERVIEW GUIDE FOR CIVIL SOCIETY ORGANIZATIONS</b> .....	2
<b>APPENDIX III: KEY INFORMANT INTERVIEW GUIDE FOR HOSPITALS</b> .....	3
<b>APPENDIX IV: QUESTIONNAIRE GUIDE FOR MEMBERS OF THE LGBT COMMUNITY</b> .....	6

## **ABBREVIATIONS AND ACRONYMS**

AG	Attorney General
CoK	Constitution of Kenya
CSO	Civil Society Organization
FGD	Focus Group Discussion
GPP	Global Philanthropy Project
HIV	Human Immunodeficiency Virus
HOYMAS	Health Options for Young Men on HIV/AIDS/STI
ICCPR	International Covenant on Civil and Political Rights
IGLHRC	International Gay and Lesbian Human Rights Committee
IGLYO	International Lesbian and Gay Youth Organization
ILGA	International Lesbian and Gay Association
KI	Key Informants
KII	Key Informant Interviews
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
LGBT	Lesbians, Gay, Bisexual, and Transgender community
MSM	Men Having Sex with Men
NGLHRC	National Gay and Lesbian Human Rights Commission
NGO	Non Governmental Organization



PEMA	Persons Aggrieved and Marginalized
TEA	Transgender Education Advocacy
UN	United Nations
UDHR	Universal declaration of Human Rights
VCT	Voluntary Counseling and Testing

## ABSTRACT

Despite the existence of legal provisions in the Kenyan constitution, international instruments and conventions advocating for the universality of human rights, the rights of sexual minorities particularly those of the LGBT community have always been jeopardized by both law enforcement agents as well as their fellow citizens. Globally, the rights of sexual minorities are flouted through oppression, prejudice, hate crimes and overall discrimination, in Kenya this global attitude is replicated in that sexual minorities are considered immoral, unnatural and socially deviant because their sexuality is imagined to be socially constructed. Recent research points out that some gains have been made with regards to strategic litigation as well as advocacy work by selected CSOs which has resulted into wins in various court cases targeting the Key population. This notwithstanding LGBT persons are still discriminated against in many societal spheres. This study therefore explored the ways in which the civil society organizations bridge the disconnect between law and reality by mitigating the effects of prejudice and discrimination expressed in harmful social and cultural practices that exist in the society. With the objective of ensuring that LGBT persons live a dignified life where they can achieve their full potential. The salient objectives of this research is to find out modalities applied by the CSOs in advancing the rights of LGBT community in convergence with the expectations of international regimes and norms and the dictates of the 2010 constitutional dispensation in which CSOs subscribe to as well as scrutinize ways in which the CSOs strike a balance between the existing social cultural realities and the legal provisions in place that protect each and every human being in their quest to promote the rights of the sexual minorities. The research responds to the question on how the CSOs advance the rights of the KP in line with the international conventions as well as the Kenyan constitution despite the existence of harmful cultural practices hindering the same. The study is informed by the Interest theory of human rights advocated for by Jeremy Bentham who asserts that fairness precede goodness. In his arguments Bentham observes that one can only claim a particular right if another person in this case the duty bearer is obliged by law to protect it. This research adopted an exploratory approach which is qualitative in nature to ascertain and gauge impressions from the available data. Primary data was collected from key informants (KIs) who were purposively sampled from the LGBT community through the snowballing technique. Secondary data was also used to augment the findings from the primary data. The researcher interviewed a total of forty-one (41) respondents comprised of seven (7) key informants who head the LGBT programs from the CSOs, two (2) medical professionals from private hospitals, the coordinator of all county health facilities in Nairobi County and fifteen (15) members of the LGBT community who were all male. The researcher also conducted a focus group discussion comprising sixteen (16) participants all male who were selected from a pool of professionals and social workers. The findings in this research points that CSOs have been involved in a deliberate effort to protect the rights of the LGBT community not only in Kenya but globally. These organizations have employed various methods; social medial campaigns, strategic litigations, advocacy, sensitization programs as well as dialogue forums to promote the rights of the Key population. However, they seem to encounter a myriad of challenges and bottlenecks in this course which includes but not limited to; deeply entrenched cultural prejudices, stigma and discrimination towards the LGBT community, reluctance by the ruling orders to implement court orders in favor of the key population. This research concludes by observing that the quest for universality of human rights can only be realized if all the stakeholders commits to the course.

## CHAPTER ONE: INTRODUCTION

### 1.1 Introduction

The underlying principle of universal human rights denotes respect for and defense of diversity along racial, religious, ethnic, sexual, lingual and cultural lines. Lately diversity has become a broad and contested concept in modern political discourses, because it is difficult to discuss matters of human rights while excluding those concerning sexual rights. The emergence of queer theory has only made the debate much more vigorous<sup>1</sup>. In the first two decades of the third millennium AD, debates pertaining to the issue of the desecration of inviolable rights, individual liberties and freedoms, now include the aspect of sexuality. Thus, sexuality has become such a key aspect of modern liberalism that cases of discrimination against sexual preferences are now considered backward and unorthodox by the international community<sup>2</sup>.

There are existing expectations that local governance structures should support the global expectations guarding against sexual discrimination. As such, attention has turned to countries like Kenya which is a signatory to various international instruments that are tailored toward protecting human rights. The 1948 UDHR for instance advances the thesis that all human beings are born free and have a right to dignity and equal treatment<sup>3</sup>. This implies that there is an obligation bequeathed upon Kenya as a polity to uphold the proper standards of human rights as per the stipulation. They are to be enjoyed in accordance with the principle of universality, thus ensuring the total compliance with the spirit of human rights<sup>4</sup>.

---

<sup>1</sup>Nikki S, 2003. *A critical introduction to Queer Theory*. Edinburgh: Edinburgh University Press.

<sup>2</sup>Lukacs, John (2004). "The Triumph and Collapse of Liberalism". *The Chronicle of Higher Education*.

<sup>3</sup>Universal Declaration of Human Rights (UDHR)1948

<sup>4</sup>Human Rights Watch. World Report, 2018.

[https://www.hrw.org/sites/default/files/world\\_report\\_download/201801world\\_report\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf)

However, despite the assertion embodied in the wording of the document, sexual minorities particularly the LGBT community continue to be constant victims of violations of these rights. LGBTs constituents are sexual minorities that are commonly referred to as lesbians, gays, bisexual, and transgender whose quest for justice continues to face numerous hurdles in the society<sup>5</sup>. Recently Kenya has witnessed court battles where sexual minorities are fighting for justice and equality. Specific cases include Eric Gitari vs. the NGO Coordination Board<sup>6</sup> in Kenya which was filed at the High Court and found that Article 36 of the Constitution had been contravened<sup>7</sup> thus the court ordered the NGO Co-ordination Board to register the National Gay and Lesbian Human Rights Commission (NGLHRC). The article grants the members of the citizenry the right to associate irrespective of their sexuality and as a result the Penal Code does not criminalize sexual dealings between members of the same gender, but rather certain carnal acts ‘in contradiction of the imperative of nature’ which are not clearly defined. This Act does not provide for the limiting of one’s freedom of association based solely on their sexuality. It is then the expectation of the Key Population that civil society organizations and other pressure groups will be up in arms in advocating for the protection of sexual minorities.

---

<sup>5</sup> Florian M. Cramwinckel, Daan T. Scheepers, Jojanneke van der Toorn. Interventions to Reduce Blatant and Subtle Sexual Orientation- and Gender Identity Prejudice (SOGIP): Current Knowledge and Future Directions. *Social Issues and Policy Review*, Vol. 12, No. 1, 2018, pp. 183—217.

<sup>6</sup>In this case the argument was that there was no organ recognised by the law protecting the rights of LGBTQs thus the need for its registration. However, the NGO Coordination Board declined to register the organization.

<sup>7</sup>Human Dignity Trust.Criminalization of Homosexuality. 25, October, 2015.

### 1.1.1 Background to the Problem

This research is informed by an existing contradiction on the issue of sexuality. Historically, sexuality is framed by societal and religious norms and beliefs<sup>8</sup> whose traditions tend to consider sexual unions as only appropriate if they are between people of the opposite sex (heterosexual), and thus many societies consider same sex sexual relations to be abnormal behavior which can in some cases be explained as a mental defect<sup>9</sup>. In some communities the same sex relationship is considered unnatural and animalistic as people of the same sex cannot sire children. A number of sociological, psychological and legal studies consider these relationships as a form of deviance and to this extent, the LGBT community is perceived as a deviant minority whose influence and visibility must be checked. Societal myths have established an uncompromising culture where it is believed that homosexuality is a curse from God; that LGBTs persons shall not enter the Kingdom of God; that homosexuality is a curse from ancestors due to unpaid debts. Additionally, there is a myth that homosexuality is a sign of sinful activities performed by either parents or some kin in the family thus individuals suspected of homosexuality should be banished from the community. In this case, society demands conformity of the sexes along the conventional lines<sup>10</sup>.

Many countries particularly those in the Southern Hemisphere maintain harmful cultural practices and laws that prohibit, regulate, or restrict carnal activity amongst consenting adults of

---

<sup>8</sup>Leila J. Rupp, "Toward a Global History of Same-Sex Sexuality", *Journal of the History of Sexuality* 10 (April 2001): 287–302.

<sup>9</sup>Robert L. Kinney, III. Homosexuality and scientific evidence: On suspect anecdotes, antiquated data, and broad generalizations. *Linacre Quarterly*. November, 2015; 82(4): 364–390.

<sup>10</sup> John J. Nijole V "Seing ourselves: Classic Contemporary, and cross cultural readings in sociology" University of Baltimore press

the same sex<sup>11</sup>. Such laws and cultural norms in these countries are used by the police to harass and arrest LGBT persons, which is a desecration of a person's human rights<sup>12</sup>.

The slogan "We are just like everyone else"<sup>13</sup> became a prominent statement for the homosexuals in the years 1950-1969 when the wave of political pluralism took center stage globally. The slogan served to inform society of the rights of LGB community, as well as agitate for the equality of homosexuals and heterosexuals around the world. Discussion on homosexual behavior continues to excite debate in the human rights discipline and in reproductive health circles because of societal norms and standards, political, social and cultural implications<sup>14</sup>. The opponents of LGBT unions have proceeded to base their arguments on the sacredness of the union between men and women as sanctioned by God to constitute marriage<sup>15</sup>. Such sentiment is largely drawn from the Judeo-Christian religious and cultural tradition that informs the foundation of marriages in the society today and extends to shape the discourse on whether by observing the rights of LGBT community persons; the institution of the family is under threat. The opponents of homosexuality argue that the family (a union of consenting adults of opposite sex) is a divine institution created by God, and the assumption should not be challenged whatsoever<sup>16</sup>. Therefore, to belong to LGBT community is considered an unnatural and an abominable act. This conclusion has tended to lead to sexism and homophobia amongst cultural conservatives, who argue that the theocratic view restricts sexual rights resulting in discrimination against LGBTs community. The

---

<sup>11</sup>Crompton, Louis (2003). *Homosexuality and Civilization*. Harvard University Press.

<sup>12</sup>Adamczyk, Amy (2017). *Cross-National Public Opinion about Homosexuality: Examining Attitudes across the Globe*. University of California Press. pp. 3-7.

<sup>13</sup>Fried, Susana T. "Sexuality and Human Rights." *The President and Fellows of Harvard College* (2004): 273-304.

<sup>14</sup>Beth Fernandez. (Ed). *Make It Work: Six steps to effective LGBT human rights advocacy*. Corelio Printing. October 2010.

<sup>15</sup>William N. Eskridge, Jr. A History of Same-Sex Marriage. *Virginia Law Review*. Vol. 79, No. 7, Symposium on Sexual Orientation and the Law (Oct., 1993), pp. 1419-1513

<sup>16</sup>Feldblum, Chai R. "*Moral Conflict and Liberty: Gay Rights and Religion* ." GEORGETOWN LAW Faculty Publications (2006): 61-123.

biggest challenge for LGBT community is the lack of a voice in the society to advance their rights as sexual minorities without being a target of violence, scrutiny and harassment.

Existing historical evidence indicates a trend of labeling LGBTs persons as second class citizens further denying them basic social services based on their sexuality and preferences<sup>17</sup>. Studies have shown that in every region of the world there is a form of mistreatment premised on real or imagined carnal orientation and gender identity<sup>18</sup>. Fundamental human rights violations towards LGBTs community range from torture, killings, psychological abuse, sexual abuse and denial of basic healthcare<sup>19</sup>. However, across the globe there are over 70 countries that have instituted laws against discriminating gay people. The danger of being subjected to all these violations forces this community to live in constant fear of rejection<sup>20</sup>.

In Africa for example, and in Uganda specifically, the anti-homosexuality Act which was commonly known as the anti-gay bill was been passed. The law has increased opportunity for the torture and oppression of the already highly vulnerable sexual minorities. Similarly, The European Court of Human Rights found Russia guilty of desecrating the right to a peaceful assembly when she denied a homosexual man the right to organize a pride march<sup>21</sup>. Such violations have led to several court cases worldwide with the intention of defending the rights of the LGBTs persons<sup>22</sup>.

---

<sup>17</sup>Cornwall, A., Sonia Correa and Susie Jolly. *Development with a body*. London: Zed Books, 2008.

<sup>18</sup> International Council for Not-For-Profit Law: Global Trends in NGO Law. *LGBTI Civil Society Organizations Around the Globe: Challenges, Successes, and Lessons Learned*. Volume 7, Issue 2.

<sup>19</sup>KNHCR. Human Rights: The Elusive Mirage. The Fourth State of Human Rights Report. Post Promulgation 2010-2014.

<sup>20</sup> Courtney E. Finerty. Being Gay in Kenya: The Implications of Kenya's New Constitution for its Anti-Sodomy Laws. *Cornell International Law Journal* Vol. 45. 431-457. (2012)

<sup>21</sup>Human Rights Watch. Russia: European Court Rules Gay Pride Ban Unlawful. Russia Should Allow March and Guarantee Freedom of Assembly. <https://www.hrw.org/news/2010/10/21/russia-european-court-rules-gay-pride-ban-unlawful>

<sup>22</sup>Ghoshal, Neela. For LGBT Rights, 2018 Will Be the Year of the Courts. *The Advocate*. January 2018. <https://www.hrw.org/news/2018/01/24/lgbt-rights-2018-will-be-year-courts>

Kenya is a party to various international regimes that are tailored toward protecting human rights: UDHR, ICCPR, CEDAW, Banjul charter. The 1948 UDHR for instance implores that all persons are born free and have a right to dignity and equal treatment<sup>23</sup>. This implies that there is an obligation bequeathed upon Kenya as a polity to uphold the proper standards of human rights as per the stipulation. They are to be enjoyed in accordance with the principle of universality, thus ensuring the total compliance with the spirit of human rights<sup>24</sup>. However, despite such legal developments sexual minorities are subject of constant victims of violations of their rights. Whereas there exist numerous civil society organizations advocating for the equality of all individuals under the law, the same cannot be said about the safeguarding of the rights of LGBT community however, the rights of LGBT persons continue to be violated despite the existence of such institutions.

---

<sup>23</sup>Universal Declaration of Human Rights (UDHR)1948

<sup>24</sup>Human Rights Watch. World Report, 2018.

[https://www.hrw.org/sites/default/files/world\\_report\\_download/201801world\\_report\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf)



## 1.2 Problem Statement

Globally, efforts towards the protection of LGBT rights have been slow, weak and inconsistent<sup>25</sup>. Local efforts aimed at the implementation of global treaties on the matter have been even slower. The efforts have been mainly through international policies and resolutions with the expectation that individual countries shall institute them in their legal machinery. Whereas the first and second articles of the UDHR sets out to promote the independence and dignity of mankind with the expectation that all individuals are to respect each other and are entitled to certain fundamentals and freedoms irrespective of their creed the LGBT community continues to be treated differently in many parts of the world in general and Kenya in particular.

The UN Human Rights Council approved a resolution in 2011 which voiced great apprehension about the violent deeds upon sexual minorities.<sup>26</sup> This was followed by a resolution in the year 2014 with similar goals of publicizing countries that perpetuated violence towards this group, and giving credit to countries that were making progress on the necessity of the protection of the rights and interests of the LGBT community. Despite these efforts, there has been very little support from the United Nations to individual states pertaining to the fortification of sexual minorities' rights. Concomitant to the foregoing is a perceived lack of a clear advocacy agenda by CSOs in safeguarding the rights of the key population. This has led to their continued violation by several countries across the world, thus going against the UN declaration for universal human rights<sup>27</sup>. These result in LGBT constituents remaining in the closet and in the worst case scenario not

---

<sup>25</sup>Janell L. Carroll. *Sexuality Now: Embracing Diversity*. Wadsworth Publishing.

<sup>26</sup>Human Rights Council resolution 27/32, *Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32 (26 September 2014), available from [undocs.org/A/RES/27/32](http://undocs.org/A/RES/27/32). 2.

<sup>27</sup>Universal Declaration of Human Rights (UDHR)1948

accessing relevant medical services due to fear of prejudice<sup>28</sup> and hence continue to suffer in private.

Article 10 of the Kenyan constitution provides for the values of equity, equality, non-discrimination and social justice as well as the “protection of the marginalized” as the core national values and principles of governance to be used in applying and interpreting and applying the Constitution and statutory laws. This is supported by 20 (4)(a) which postulates that equality and equity are values to be encouraged in the interpretation of the Bill of Rights and Article 21 (3) which creates a duty on state actors to address the needs of vulnerable groups in society. Furthermore, Article 27 of the constitution of Kenya stipulates that every human being is equal before the law and has the right to equal protection and equal benefit of the law and that no person or state shall discriminate directly or indirectly against any person on any ground, including race, health status, disability, religion, sex, pregnancy, marital status, colour, age, belief, ethnic or social origin, culture, dress, language conscience, or birth.

Despite the existence of legal provisions in the Constitution of Kenya 2010 protecting the rights of each and every Kenyan, oppression against this group still persists. This vulnerability tends to increase when men “come out” and are perceived to have betrayed the behavioural tendencies associated with their sexual category through feminine representation or through carnal contact with other men<sup>29</sup>. Whereas there have been major milestones in advancing the rights of LGBT persons in Kenya through conventions and legal machinery, scholarly evidence indicates that violence against them is common and leads to targeted discrimination in the form of verbal

---

<sup>28</sup>Cornwall, A., Correa, S., and Jolly, S. *Development with a Body*. London: Zed Books, 2008.

<sup>29</sup>Adamczyk, Amy (2017). *Cross-National Public Opinion about Homosexuality: Examining Attitudes across the Globe*. University of California Press. pp. 3–7.

abuse, harassment, occasional cases of correctional rape and even murder<sup>30</sup>. This has prevented them from enjoying certain fundamental rights as enshrined in the 2010 constitutional dispensation for instance the right to access health care services as well as the right to belong and express oneself. This is exacerbated by the existence of social constructs around the issue of sexuality that makes society conform to a particular way of life making homosexuality seem immoral and unnatural.

Despite the provisions of Article 36 of the Kenyan Constitution, conceptions of morality have served as a foundation for curtailing the sexual rights of homosexuals. This kind of limitation further contravenes Article 22 of the ICCPR, to which Kenya is party to. The Article is categorical that any restrictions to the right to association must only be curtailed to cases where it is absolutely necessary, taking into consideration the principles of a democratic society<sup>31</sup>. More importantly are the cultural myths and frames that hinder the enjoyment of such constitutional rights. Such social constructs exclude LGBT persons from enjoying their rights as full members of the society. Instead they are required to conform to conventional structures. Thus making the civil society crucial in mitigating such contraventions of the constitution.

Additional research in Kenya has shown that violence targeting this community may take any one or all of the following forms: communal, institutional as well as inter personal. LGBT persons suffer more violence at the hands of recognized institutions such as security forces and other state authorities<sup>32</sup>. The consequence of such violence is that they are prevented from accessing critical services that would help in making safer sexual relationships more difficult.

---

<sup>30</sup>Cornwall, A., Correa, S., and Jolly, S. 2008. *Opp. Cit.*

<sup>31</sup> Kenya National Commission on Human Rights. *The Fourth State of Human Rights Report Post Promulgation 2010 – 2014. Human Rights the Elusive Mirage?*

<sup>32</sup>Cornwall, A., Sonia Correa and Susie Jolly. *Opp. Cit.*

Additionally, this is aggravated by negative reception from family, friends and society at large. Much more ominous is the fact that the same institutions expected to provide justice tend to be the causes of this injustice.

This can often lead to cases of prejudice and discrimination at community level both for the LGBTs and organizations advocating for their rights. Notwithstanding the existence of constitutional provisions advancing the rights of LGBT persons, this community still experience prejudice from various institutions, governmental or nongovernmental, tasked with protecting their rights. The social context of LGBT persons in Kenya continues to be ignored notwithstanding the overwhelming evidence that they have to survive with rights, obligations and responsibilities. This study seeks to explore the discrimination and prejudice experienced by homosexual people in Kenya and the pivotal import of CSOs in challenging norms and myths in advocating for and protecting their rights. From the foregoing, LGBT persons have the right to access healthcare, express themselves and to belong just like every other Kenyan as stipulated in the constitution. However, the practice appears to contradict the law. This study therefore intends to scrutinize the role of CSOs in bridging this gap. It seeks to explore how the civil society navigates the existing cultural norms and myths surrounding LGBTs in society in order to lobby for their protection as per the law.

Specifically, the study will focus on the human rights violations and negative attitudes towards LGBT persons from society. The researcher shall be seeking to find out some of the experiences by LGBT persons in seeking justice and accessing their rights and in particular the right to health care, freedom of association, and freedom of expression. The researcher shall focus on the underlying challenges that the social environment presents to this key population. More importantly, the study shall be seeking to find out the role of folks and entities working to advance

the rights of LGBT community in the face of institutional, religious, and societal prejudice existing against them.

### **1.3 Objectives of the Study**

This study was guided by the following objectives aimed at understanding the institutional mechanisms relating to application cultural norms and myths of sexuality in Kenya:

1. To explore the subjective and objective ways in which CSOs are advancing the rights of LGBT community in convergence with the expectations of international regimes and norms and the dictates of the 2010 constitutional dispensation
2. To examine the ways in which CSOs are balancing the observance of the existing socio-cultural realities to mitigate the scrutiny, harassment and violence against LGBT while promoting the protection their rights at the macro and micro level in Kenya;
3. To identify the mythical and cultural frames that CSOs in Kenya are navigating and explain the extent to which they pose challenges to civil society initiatives in the protection of LGBT rights;

### **1.4 Research Questions**

1. How are civil society organizations advancing the rights of LGBT community in Kenya in convergence with international human rights expectations, and the local constitution?

2. How do civil societies promote LGBT community rights while observing the existing socio-cultural realities to avoid the scrutiny, harassment and violence against LGBT in Kenya?
3. What are the cultural norms and myths framing the society's response to the rights of the LGBT community in Kenya?

### **1.5 Justification of the study**

There are significant bottlenecks affecting sexual minorities in Kenya which range from harassment, torture, police brutality, social exclusion and denial of basic services like healthcare. Such challenges are difficult to address and require the intervention of civil society organizations in order to tackle them. However, despite advancements in human rights in Kenya by CSOs, the rights of LGBT persons remain under-researched. Human Rights discourse on minority rights has tended to focus on democracy and governance ignoring the democratic rights of the categories of people who are being governed. Given this scholarship gap a lacuna in the knowledge of experiences and scope of the rights of sexual minorities has emerged. It was therefore imperative to conduct a study focusing on the role of CSOs in advancing the rights of LGBTs persons in the midst of cultural myths and norms.

This piece of scholarship sought to underwrite the policy framework on sexual minorities once a clearer picture on the role of CSOs in navigating cultural norms that hinder the quest to safeguard the rights of sexual minorities in Kenya is gained. The study aimed at highlighting the role of civil society organizations in navigating the institutional challenges facing sexual minorities and how to align the institutional framework with international standards. Most critically, this

piece of scholarship sought to understand the role of CSOs in unraveling the societal myths and norms surrounding the rights of LGBT persons in Kenya.

This research sought to add value and fill the epistemological gap on how cultural discourses affect the protection of LGBT person's rights; the purpose being to understand the civil society's role in elucidating the subjective and objective roles informing the framing of the key population and how this affects the human rights discourse in Kenya. The Sexual rights of minorities have become an integral element of human rights since they entail the important aspect of experiencing sexual pleasure which is a human necessity. Such freedom is a recipe for social cohesion in the society. In an evolving society, sexual inclusivity helps promote cultural dynamism rather than conflict. Moreover, sexual rights are fundamental vehicles of communication between people. It establishes a respectful way of living by promoting diversity. It therefore becomes paramount in recognizing this fact for the purpose of human rights and fundamental freedoms without which prejudice and inequality become the order.

## **1.6 Scope and Limitation of the Study**

The study was limited to organizations from within Nairobi Kenya because a majority of CSOs dealing with the rights of LGBTs are based in Nairobi. The researcher targeted a total of 7 civil society organizations, interviewed 15 members of the key population, interviewed the coordinator of public hospitals in Nairobi, one medical practitioner from a public hospital and two from a private hospitals and carried out one focus group discussion with the LGBT community. It is noteworthy that the researcher was only able to access male participants for the FGD.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1 Introduction**

In this section I shall review scholarly work revealing the knowledge gaps in the area under investigation. The concept of sexual diversity is not critically understood in Kenya and even those who understand it rarely apply it to effect the necessary change. This has led to prejudices and discrimination originating from cultural norms and myths. This has informed the discourse on human rights thus preventing sexual minorities from expressing themselves freely and enjoying their rights and freedoms. Understanding it better therefore will enable an objective appreciation of the influence of CSOs and specifically the National Gay and Lesbian Human Rights Commission in influencing the way the public view sexual minorities and how they can be tolerant towards them. This will inform our understanding of how CSOs undertake to advocate their constitutional rights to healthcare, right to conscience and opinion as well as the freedom of association.

#### **2.1.1 Civil Society Organizations and the LGBTs' Right to Healthcare**

According to Fried, human rights are universal for the simple reason that each and every human being is born with and also possesses the same right as everyone. This principle should be applied to everyone else regardless of their religion, political affiliation, race, origin, sexual orientation or ethnic background<sup>33</sup>. While this principle points to the nobility of the doctrine of equality, the same cannot be said of its application to the real world situations of minority groups

---

<sup>33</sup>Fried, Susana T. "Sexuality and Human Rights." *The President and Fellows of Harvard College* (2004): 273-304.



in general and the key population in particular especially access to healthcare in Kenya. Fried does not take into account the challenges faced by sexual minorities emanating from cultural norms and myths. Moreover, his study does not cater for how the pivotal players such as CSOs fair in the protection of LGBT community rights amidst the existing myths and norms.

Human rights are an inherent entitlement that accrues to every human being by the mere fact that they belong to the human species. According Cranston these rights belong to each and every person, in all places and at all times<sup>34</sup>. He further observes that human rights are universal for the simple reason that they are applied across board. However, in this study, Cranston does not point out the role of civil society organizations in ensuring that these rights are attained. The study leaves a gap in the way by not indicating the intricate challenges faced by rights organizations in attempting to advocate for sexual minorities in terms of access to healthcare.

There is ample research indicating that sex between people of the same gender occurs in all societies<sup>35</sup>. In Africa such behavior is most often not associated with a homosexual identity, but rather, men having sex with men usually have sex with women as well as get married and have children. Additionally, in most of the African countries, sex between people of the same gender is still prohibited under sodomy laws which were introduced by the colonial powers<sup>36</sup>. Literature shows that great stigma and discrimination occur against those people who are either unable or unwilling to hide the fact that they have sex with partners of the same sex. These adverse consequences documented by Anyamele 2005, C. et. al include eviction from families and neighborhood, loss of jobs and housing, discrimination in the health services, and a high level of

---

<sup>34</sup>Cranston (1973) "What are human rights?" Taplinger Publishers. Co, Australia

<sup>35</sup> Anyamele, C. et. al. (2005). *Sexual minorities, violence and AIDS in Africa (English)*. Africa Region working paper series ; no. 84. Washington, D.C. : World Bank Group.

<sup>36</sup> Ibid 2005

violence, including from the police. As a consequence, many sexual minorities are among the poorest and most marginalized members of society, and have no social safety net. While critical of the experience of sexual minorities, the paper falls short of the objective of this study which is to understand the role of civil society organizations in advancing the health rights of LGBTs in Kenya in the midst of cultural prejudice.

According to the UHRC<sup>37</sup>, the human rights situation of the LGBTQI community remains precarious globally with continuing, grave and extensive violations perpetrated against persons based on their sexual orientation, gender identity and sex characteristics. It seems as if genuine efforts to protect human rights have a tendency to become lost against the backdrop of violence and discrimination. The report focuses predominantly on the actions of States, including national and local executive arms of governance, legislative assemblies, the judiciary and law enforcement agencies, as well as NHRIs across the orb to combat discrimination, violence and other forms of human rights violations against human beings based on sexual orientation, gender identity, gender expression and sex characteristics. It does not address the objective of the researcher.

### **2.1.2 Civil Society Organizations and the LGBT community Freedom of Expression**

Historically, human rights can be traced to the ancient kingdoms and empires where there was a manifestation of respect for humanity<sup>38</sup>. In these kingdoms, discrimination, for instance was discouraged, religious freedom encouraged and the slaves were freed by ancient leaders like King Cyrus of Persia. For the purpose of continuity and sustainability, some of these rights were

---

<sup>37</sup> UNHCR. (2016). Living Free and Equal: What States are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People.

<sup>38</sup>Halperin, David M., 1990, *One Hundred Years of Homosexuality: and other essays on Greek love*, New York: Routledge.

inscribed in instruments like stones and cylinders, a good example being the code of Hammurabi. These rights were not granted by leaders but by nature; it however took the efforts of the people to sustain and affect them. Most important is the aspect of the principles of human rights. These principles are considered as pillars upon which human rights is grounded.<sup>39</sup> Whereas it is expected that with their universality freedom of expression is supposed to be a given, this is not so. Instead CSOs are required to help attain this. This therefore warrants a study to understand how such rights are achieved. Moreover, in the case of sexual minorities, this study becomes imperative to understand how CSOs navigate the myriad norms and myths. In the Russian Federation, present-day responses to subjugation and rights violations as well as oppressive government practices, including retrogressive legislative enactments such as Law No. 135-FZ on ‘non-traditional sexual relations’ can be seen through CSOs<sup>40</sup>.

In the contemporary period, sexual rights are being given emphasis as any other rights. There have been struggles to eliminate discrimination, end stigma and bring to an end state sanctioned violence towards the LGBT community not only in Kenya but universally. According to Cornwall (2008), the biggest challenge to this struggle is adjusting individual claims to fit those of the society.<sup>41</sup> This cannot happen without expression. This study emphasizes the understanding of the universality of sexual rights and struggles to achieve this but has not specified the intricate challenges faced by rights organizations in Kenya and how it plays out with the multifaceted challenges facing the Kenyan LGBT community. However, freedom of expression remains a mirage in the literature on human rights in Kenya.

---

<sup>39</sup>UNFPA (2005) Human rights principles

<sup>40</sup> Paul, Chaney (2018). Civil Society, ‘Traditional Values’ and LGBT Resistance to Heteronormative Rights Hegemony: Analysis of the UN Universal Periodic Review in the Russian Federation, *Europe-Asia Studies*, 70:4, 638-665.

<sup>41</sup>Cornwall, A., Sonia Correa and Susie Jolly. *Development with a body*. London: Zed Books, 2008.

The United Nations Human Rights Council embraced the resolution asserting that the human rights not only encompass all human beings but are also universal and interlinked. This resolution contains an expression that condemns deeds of violence and discriminatory deeds against persons who are of a different orientation sexually and whose sexual identity does not conform to societal norms<sup>42</sup>. It is important to note that while these binding decisions are a stride in the right course, they have not been followed with clear steps on how to implement them leaving a gap on the role of internal actors within the state in the attainment of these rights.

### **2.1.3 Civil Society Organizations and LGBTs' Freedom of Association**

According to the International Center for Not-for-Profit Law (ICNL), CSOs prosecuting the case for the equality of sexual minorities face numerous challenges in the form of policy and legislation that is designed to prevent them from enjoying their rights. Such discriminatory mechanisms are designed by the same governments that they fight against thus they have no chance of being heard let alone speaking<sup>43</sup>. This falls short of the purpose of our study on the influence of CSOs in the fortification of the rights of LGBT persons as it does not show how local communal norms and cultural myths surrounding sexuality influence institutional mechanisms and hinder their freedom of association not to mention the Civil Society's role in this.

In its report aimed at illustrating the impact of existing legislation on the wellbeing of LGBT persons, Human Rights Watch<sup>44</sup> documents that LGBT persons in Liberia face challenges ranging from trouble in completing their studies, finding and sustaining jobs, and have limited access to safe shelter, food, and other basic necessities. This is compounded by social and

---

<sup>42</sup>A/HRC/RES/17/19, Human Rights, Sexual Orientation and Gender identity, 14 July 2011

<sup>43</sup> International Council for Not-For-Profit Law: Global Trends in NGO Law. *LGBTI Civil Society Organizations Around the Globe: Challenges, Successes, and Lessons Learned. Volume 7, Issue 2.*

<sup>44</sup> Human Rights Watch. (2013). "It's Nature, Not a Crime." Discriminatory Laws and LGBT People in Liberia.

legislative discrimination. LGBTs are constantly harassed by neighbours, family and even strangers. They are insulted and battered in public, disgraced and thrown out of homes, ridiculed and bullied at school.

It has become increasingly difficult for community-based organizations to operate, a phenomena frequently referred to as shrinking space for civil society<sup>45</sup>. Yet, to fully understand the impact of new laws restricting organizations' access to funding, laws equating human rights with the corruption of youth, and laws written to equate activism with threats to national security, it is important to analyze exactly how LGBT organizations are specifically impacted. LGBT movements globally are relatively young, and so many LGBT organizations have had little time to institutionalize. Recent research finds that legal registration for LGBT organizations is restricted and the as a result sexual minorities human rights defenders work with fewer resources and face more danger.

FRA's European Union-wide survey on discrimination against lesbian, gay, bisexual and trans persons (EU LGBT survey), published in 2013, showed that LGBT persons across the EU often experienced hate crime even though legislation and policies protecting them from discrimination and criminal victimization are in place across the EU<sup>46</sup>. The results show that although legal and policy responses have been implemented in recent years' prejudice and intolerance against LGBT community persist. Many respondents also maintained that intolerant public attitudes and an unfavorable political climate undermined the role of legislation on LGBT community rights. In parallel, several respondents including healthcare practitioners themselves

---

<sup>45</sup> Felicity, D. (2018). The Global State of LGBTIQ Organizing: the Right to Register. OutRight Action International

<sup>46</sup> FRA. (2016). Professionally speaking: challenges to achieving equality for LGBT people. European Union Agency for Fundamental Rights

expressed negative views towards LGBT persons, in some cases even deeming homosexuality a disease as well as a mental disorder.

In its study, the Kenya National Commission of Human Rights (KNCHR) notes that punishments for sex against what the penal code refers to as “the order of nature” ranges up to 14 years’ imprisonment in Kenya. Members of Parliament have in fact formed a caucus to fight LGBT community to interrogate the circumstances that have made the Attorney General not to engage in more aggressive prosecutions under the Penal Code. Although there are active LGBT organizations in the country, they often face harassment by the police and the government. For instance, the Non-Governmental Organizations Coordination Board refused to register the National Gay and Lesbian Human Rights Commission of Kenya. The Board claimed that the name that the organization sought to be registered under was morally perverse and an illegality under statutory laws.

The above studies do well to highlight the challenges facing sexual minorities in general and existing mechanisms of intervention despite their emphasis on a global view. Whereas this is critical, it does not address the focus of this piece of scholarship which is to understand the influence of CSOs in demystifying cultural norms and frames against LGBT persons in Kenya. This thus forms the entry point of the researcher to focus on cultural norms which continue to affect both LGBTs and organizations advancing the rights of LGBT persons from achieving full exercise of universal human rights. Much of existing studies have a broader coverage of the challenges faced by sexual minorities with an emphasis on national and international policy, institutional and legal framework. This leaves out the role of cultural norms in specific societies like Kenya and how they hinder the process.

## 2.2 Theoretical Framework

This study employed the interest theory of human rights. The interest theory was first introduced by Jeremy Bentham who observed that every individual has a distinctive right when another person has a duty to protect that right. This theory therefore endeavours to safeguard the aspect of humanity by protecting citizens' rights against transgression from another citizen in a given polity<sup>47</sup>.

John Finnis presents an elaborate explication of the interest theory. Finnis posits that the prominence of human rights lies in the provision that they are the foundation for the sustainability of mankind. He points to the following interests as the necessity for human rights: life and its developmental aptitude; pursuit and attainment of knowledge; frivolous activities; visual countenance; amiability and companionship; practical reasonableness; and finally, religious or spiritual experience<sup>48</sup>. According to Finnis, the above are the bases for the wellbeing of mankind in his pursuit of happiness. They also provide the bases for the claim of right or of liberty which fashions the respective and corresponding individual rights.

Finnis' approach endeavors to afford what James Nickel<sup>49</sup> has characterized 'prudential intentions' in support of human rights. According to this approach, all human beings retain rudimentary and vital interests and that each individual has an onus to venerate the rights of every other individual. This is based on self-interest. Nickel is of the view that a sagacious argument from vital safeties is imperative in order to agree to take and meet the terms of human rights since

---

<sup>47</sup>Jeremy Bentham (1789). *An introduction to the principles of morals and legislation*.

<sup>48</sup>Finnis, J. *Natural Law and Natural Rights*, (Oxford; Clarendon Press, 1980)

<sup>49</sup>Nickel, J. *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*, (Berkeley; University of California Press, 1987)

where these norms are an influential chunk of the best means for fortifying fundamental interests against actions and inadvertences that endanger them.

The interests approach provides a constructive defense for the creed of human rights. It is appealing to the universality and commonality of humanity, thus, broadens the understanding of the myriad aspects of human rights. It is an inclusive approach thus establishes the equality of human rights.

However, the interests approach not without criticisms. First of all, entreaties to human nature have by and large failed to attain the necessary consensus required for any ethical creed instituted upon an account of human nature. For instance, linking fundamental interests to the ambition of fortifying the obligatory state of affairs for each individual member of a polity leading a minimally good life is intricately made difficult by socio-cultural miscellany. According to Amartya Sen<sup>50</sup> the irreducible minimums for a decent human living are socially and culturally relative. As such, the provision of the conditions for leading a minimally good life will differ between different localities.

This is largely due to the fact that while the interests themselves may be similar, adequately protecting these interests will have to go beyond the mere specification of some purportedly general prerequisites for satisfying the fundamental interests of the persons living in these localities. As opined by Antoinette Baujard<sup>51</sup>, fairness should precede goodness.

---

<sup>50</sup>Sen, Amartya (1999). *Development as freedom* (1st ed.). New York: Oxford University Press.

<sup>51</sup> Antoinette Baujard. 2010. *Collective interest vs. individual interest in Bentham's Felicific Calculus. Questioning welfarism and fairness*. European Journal of the History of Economic Thought, Taylor Francis (Routledge), 17 (4), pp.607-134.



## **2.3 Research Hypotheses**

The study was guided by the following hypotheses:

H1 That the CSOs have played a major role in protecting and promoting sexual rights in Kenya;

H2 That the bottlenecks faced by the CSOs have hindered the attainment of sexual rights for the LGBT community in Kenya.

## **CHAPTER THREE: METHODOLOGY**

### **3.1 Introduction**

This chapter addresses the methods and approaches of collecting, collating, analyzing data and reporting, techniques of sampling while also giving the limitations. The researcher employed a qualitative approach in this study. A qualitative study presents an opportunity to evaluate the underlying reasons for the civil society's strategy in unraveling cultural norms and myths inhibiting the enjoyment of rights by the LGBT community.

### **3.2 Variables**

The study depended on a number of variables for establishing links and drawing conclusions. This is due to the use of both independent and dependent variables. Independent variables provided a basis for understanding the course and evolution of cultural norms. Dependent variables facilitated the understanding of trajectories of rights of the homosexuals.

- a. Independent (Causal) variables: cultural norms and myths i.e., heterosexuality
- b. Dependent Variable: human rights including access to healthcare and freedom of association.

### **3.3 Research Design**

This study adopted a qualitative research design that is exploratory in nature<sup>52</sup>. This involved collecting information members of the LGBT community and civil society actors advocating for the rights of LGBT persons about the specific norms that hinder the enjoyment of rights by sexual minorities and how the civil society has attempted to unravel them for the purpose of description and comprehension. Exploratory research is used to study a problem that has not been elaborately studied such as this one. A qualitative approach was favored due to the need to ascertain and gain impressions from the attitudinal attributes discovered from the primary and secondary sources. Meanings were then imputed after axial coding where qualitative data was presented in narrative and thematic form.

### **3.4 Site Selection**

The researcher focused on Nairobi as the research site. This is the capital city of Kenya and is therefore a hub of civil society organizations fighting for human rights. Additionally, Nairobi is a cosmopolitan thus easier to trace most members of the LGBT community that originate from different communities and different parts of the country thus provided a clear picture of the varied experiences from a cultural perspective.

---

<sup>52</sup> Creswell, J. W. (2003). *Research design: Qualitative, quantitative, and mixed method approaches*. Sage Publications. University of Nebraska, Lincoln.

### **3.5 Target Population**

The researcher studied civil society organizations involved in human rights advocacy and their role in the protection of LGBT persons. In this case respondents were selected from these organizations to provide relevant information on the subject. It is noteworthy that the respondents were only male. Kenya is a secular society that has witnessed numerous challenges in her quest to attain social equity. The above notwithstanding, most societies have undergone social change from traditional to modern. More important is the liberal nature of Kenya's society that gives credence to her growth and development in safeguarding human rights. It is therefore important to understand that although sexual rights often take the backstage in most societies evolving from traditional to modern, it is imperative to conduct a study in order to understand the prevailing circumstances and the progress.

### **3.6 Sampling Technique and Sample Size**

The study used key informants (KIs) and focus group discussions in the collection of primary data. The informants were drawn from a pool of human rights organizations and hospitals purposively selected from a list following the researcher's knowledge of the various entities involved. The key informants were deemed as representing the institutional sentiments of the various organizations selected for study. In this case, given the researcher's knowledge of Kenya, purposive sampling technique was employed in identifying the organizations to be studied. Another set of key informants was derived from the LGBT community through snowballing technique. A total of seven (7) key informants from the CSOs and three (3) from hospitals were interviewed through the aid of a key informant guide whereas fifteen (15) members from the LGBT

community were also interviewed. The researcher also conducted a focus group discussion comprising sixteen (16) participants who were all male.

### **3.7 Data Collection and Analysis**

The researcher relied on both primary and secondary sources of data in this study. The primary data was collected using semi structured interviews administered to workers in civil society organizations and hospitals. This data represents macro level responses. Additionally, more primary data was collected from members of the LGBT community who represent micro level responses. Interviews conducted among members of the LGBT community were instrumental in presenting experiences of LGBTs persons seeking to enjoy their rights. Secondary data was collected from academic books, journal articles, NGO reports, newspaper articles, and online sources. The Secondary data was used to augment the arguments emanating from primary sources. Once collected, the primary data were thematically coded using open and axial coding. Triangulation was undertaken and common themes emerged after which meanings were imputed to extend the narrative in the findings.

### **3.8 Ethical Considerations**

The data and identity of the respondents was treated with confidentiality to avoid victimization and ensure objectivity of the process. The names of the KI and members of the FGD were replaced with pseudo names for purposes of privacy. This was aimed at making sure that the scientific validity of the study is attained. The primary data collected was stored securely.

## **CHAPTER FOUR: DATA ANALYSIS AND INTERPRETATION OF FINDINGS**

### **4.1 Introduction**

This chapter presents the findings of this study. The objective of this project was to identify the role of individuals and organizations working to advance the rights of LGBT community in Kenya in the face of existing institutional, religious, and societal prejudice. The chapter discusses findings of the study following the FGD conducted for members of sexual minority groupings in Nairobi which is the site identified, and the ten (7) KIIs conducted, all of them male interviewees who were generally programme managers and heads of the represented institutions.

### **4.2 Demographic Background of the Participants**

#### **4.2.1 FGD Participants**

The FGD comprised of 16 participants all of them male drawn from around Nairobi through snowballing technique. Most of them were working professionals. The participants also varied in terms of professions as some were accountants, students, community health workers, lawyers, teachers and social workers who had lost their jobs. All the participants were male. Most of the participants were between the ages of 21 and 34 with one participant who was 49 years.

#### **4.2.2 The Key Informants Interviews**

A total of twenty-five (52) key informants were interviewed and were all male. They were drawn from seven (7) civil society organizations, one (1) public hospital, one (2) private

hospital, and one (1) health officer who coordinates all public health facilities in Nairobi, as well as fifteen (15) key informants from the LGBT community.

*Table 1: showing List of Key Informant Interviews*

<b>Key Informants Interviews</b>	<b>Number of Key Informants</b>
Civil Society Organizations	7
Private Hospital	2
Public Hospitals Coordinator	1
Focus Group Discussion	16
LGBT Community Members	15
<b>Total</b>	<b>41</b>

**Disclaimer:** The names associated with the quotes in the next section are pseudonyms and do not represent any real identity of the respondents or any other individual interviewed.

During the study, the informants gave detailed information regarding the status of LGBT community rights in the face of societal prejudice and the traditional value systems. They gave detailed accounts of the hurdles they have to jump through in order to further LGBT rights in particular access to health care and freedom of association and expression. The FGD further gave

the researcher detailed accounts of the experiences of members of the LGBT community while accessing public offices or services. The accounts documented the main areas under study by this project. Following the above exercise, a number of themes emerged namely:

- 1) Cultural Prejudices that pose a challenge on the initiatives for protecting LGBT community rights and how CSOs are navigating them
- 2) Institutional Mechanisms for promoting and protecting LGBT community Rights and their Convergence with Local Constitution and International Human Rights Expectations
- 3) Ways through which CSOs are balancing the observance of the existing Socio-Cultural Realities to Mitigate the Scrutiny, Harassment, and Violence against LGBT persons
- 4) Ways through which CSOs are Addressing Cultural Norms that Inhibit LGBT community Rights
- 5) Challenges faced by the LGBT Community in Kenya

#### **4.3 Theme One: Cultural Prejudices that Pose a Challenge on the Initiatives for Protecting LGBT community Rights and how CSOs are navigating them**

Stigma, shame, societal dishonor and discernment are the biggest bottlenecks plaguing sexual minorities. This has led to suffering physical violence, mental violence, verbal abuse, denial of services, eviction from rental houses, eviction from families, correctional rape, blackmail, loss of jobs, limited access to clinical services, and water disconnection.

Myriad cases of forced evictions from residences have been witnessed. These have made it impossible for sexual minorities to come out, posing a challenge on any efforts aimed at addressing their needs. Forced evictions often mean such individuals can't enjoy their



constitutionally guaranteed rights as per stipulation due to fear. It is thus impossible for the LGBT community to identify themselves out rightly and have to live in fear. One of the FGD participants, Aggrey, stated that,

*“One day I came back home from work only to find a 24 hour eviction notice on my door. When I asked the landlord he said hata Mungu alibomoa Sodom na Gomorra. (Translated: Vacate in 24 hours; even God destroyed Sodom and Gomorrah)”*

The stigma and societal dishonor usually begins with the kith and the kin of a sexual minority, who resort to ostracization of persons of different sexual orientation by harassing and humiliating them before finally alienating them when their sexual orientation becomes known i.e., when they are “*outed*”. To *out* someone in this case is the act of revealing one’s sexual orientation which for a long time had been a matter of secrecy. The failure to address the issue of LGBT rights by the respective authorities; making it a matter of public discourse has made it a taboo and its resultant treatment with secrecy. This has opened doors for outlandish superstitious beliefs LGBTs being cast out from heaven.<sup>53</sup>.

The above prejudices continue unabated and are a nightmare for LGBTs community as law enforcement agencies portray an ambivalent behavior towards the protection and safeguarding of LGBT community rights. In a nutshell, they are reluctant to assure the safety and gratification of rights by the LGBT community despite the constitution spelling out clearly that every person is equal and has inalienable rights. The absence of understanding on the LGBT issues has resulted in the perpetuation of discriminatory practices at the societal and systemic levels as society and law

---

<sup>53</sup>Ibid.

enforcement agents believe that sexual minorities should be punished.<sup>54</sup> One KI, Mwandaro, stated that,

*“when the police discover that you are gay they indulge you in correctional rape you as a form of punishment for going against the law. You are compelled to accept because the alternative is being beaten and paraded then charged for sexual solicitation.”*

Misconstrued perception about the existence of the LGBT community and origin of homosexuality in Kenya is a major challenge in the understanding of human rights. Most ideas on the origins are negatively oriented. Victims of LGBTs rights violations often experience these faulty assertions including the most prominent that homosexuality is a punishment from God. Therefore, conclusions are negative presenting a conundrum for the members of the LGBT community. They are presented as dooms day ambassadors. A number of individuals from the LGBT community have for instance been compelled into joining sexual counseling sessions because the overriding societal belief is that any sexual orientation other than heterosexualism is as a result of a psychological crisis<sup>55</sup>. One KI, Tsuma, stated that,

*“After learning that I was gay my family did not take it so well. They called our pastor who performed exorcism and said that I was possessed by a demon. He spent hours trying to cast away my said demons and used violent means like slapping me and pushing me around while some people held me intact so I would not escape, all of which failed.”*

From the study, it is evident that cultural prejudices are the greatest challenge faced by LGBT persons in Kenya. A majority of the LGBT persons are more worried of the discovery of

---

<sup>54</sup>Ibid.

<sup>55</sup>Ibid.

their sexual identity and the concomitant maltreatment by healthcare staff when knowledge regarding their sexual orientation comes out during treatment. Respondents stated that the government hospitals have not been particularly welcoming to members of the LGBT community. They have not been offering treatment and instead are spreading stigma as well as denial of service to such individuals belonging to the LGBT community. This continues to be a challenge in the quest for medical justice by CSOs advocating for equal treatment of LGBTs in need of public services. Therefore, LGBT persons seek access to healthcare when their persons health condition has worsened and often when it is too late<sup>56</sup>. This is the case with two respondents Jonathan and Kelvin. It was corroborated by Kelvin, an FGD participant, that “

*“When you approach a doctor and explain your case to him your case he stares at you with judgmental eyes and doesn’t even attend to you.in some instances they call their perrs to witness persons with queer infections and ailments”*

Another respondent, Jonathan, stated that when he reported that he had anal pain due to rough sex the doctor rushed out and called his colleagues then said,

*“kujeni muone huyu mtu penye anaumwa.”* Translated it means *“come and see what is ailing this person.”*

This is supported by a 2011 study by the KHRC where it was found out that medics who come into contact with sexual minorities seeking healthcare services routinely violate their privacy rights by either exposing them to other medics or law enforcement agents. In other instances, they resort to preaching to sexual minorities about the “sins” of sexual activities other than

---

<sup>56</sup>KHRC, 2011. Opp. Cit

heterosexualism or denying these sexual minorities much needed healthcare services<sup>57</sup>. This becomes demoralizing and embarrassing thus the LGBT community does not feel comfortable seeking medical services due to fear of prejudice. Many LGBT persons can't access critical healthcare services to manage and/or treat sexually transmitted infections and in turn predisposing them to infectious diseases. In addition, it makes it a herculean task for medical researchers to access them in order to understand the health risks associated with their sexuality. Consequently, the absence of data means they are not a target group for many HIV and AIDS programmes and health care services countrywide<sup>58</sup>.

Professionally, one respondent from the LGBT community was discharged from duty and another denied promotion after their carnal orientation was revealed, while others recounted instances of being ridiculed, humiliated and experiencing hostility at the work place<sup>59</sup>. The above is an indicator that the LGBT people face a myriad of challenges associated with discrimination due to their sexual orientation. This leads to LGBT persons resorting to a reclusive lifestyle while purposely shunning away from seeking health care services<sup>60</sup>. It is thus tough for LGBT persons to enjoy access to public services without being constantly castigated and emotionally prodded and shamed.

In a society where being conservative is considered truly African, any form of identity that is not traditional is considered alien, unAfrican and unnatural. LGBTs persons continue to be victims of indifference when it comes to their orientation thus posing a challenge in access to services such as health care. Such prejudices have permeated the entire fabric of society. This

---

<sup>57</sup>Ibid.

<sup>58</sup>KHRC, 2011. Opp. Cit

<sup>59</sup>Ibid.

<sup>60</sup>Ibid.

supports global findings by GPP which has pointed out cultural norms and religious dogma as the main impediments towards the full enjoyment of LGBT community rights.

#### **4.4. Theme 2. Institutional Mechanisms Aimed at Securing LGBT community Rights and their Convergence with Local Constitution and International Human Rights Expectations**

According to literature, the first organized movement centered on the advancement of the rights of sexual minorities in Kenya would sprout in the year 1997 with the formation of the Ishta MSM. At the core of its activities was the access to healthcare services for sexual minorities. The Ishta MSM movement also heralded the foundation of the Gay and Lesbian Coalition of Kenya (GALCK), a sexual minorities' umbrella body currently constituting groups such as Gay Kenya, Minority Women in Action, Artists for Recognition and Acceptance, Ishtar MSM, and the People Marginalized and Aggrieved<sup>61</sup>.

The study found that civil society organizations employ a nonpartisan policy in the promotion of LGBT community rights. When interviewed a number of respondents indicated as follows:

*“We have to work with all relevant stakeholders in order to achieve equality for our LGBT brothers and sisters. It has not been easy but it is slowly paying off given some mainstream entities like the judiciary are giving us positive feedback albeit too little.”*

Another, Owen, respondent reiterated in support that,

---

<sup>61</sup> LGBTs are part of the minority and marginalized groups in Kenya who have suffered discrimination in Kenya despite the existence of a constitution and other legal mechanisms promoting equality. See for example KHRC, 2011. The Outlawed Amongst Us. A study of the LGBTI Community's Search for Equality and Non-discrimination in Kenya.

*“In order to tackle discrimination, we have to address the matter head on. That means we need to lead by example and not discriminate anyone ourselves. We have to work with all the interested parties so as to achieve inclusivity.”*

These responses indicate that there is an attempt by CSOs to ensure professionalism and neutrality with regards to sexual rights which are universal in nature. This then supports the total embrace of constitutionalism on LGBT matters and therefore by applying the bill of Rights with specific reference to Article 27 of the CoK 2010 on the non-discrimination of all individuals regardless of their race, creed, origin, or sex, the attainment of universal human rights can be realized.

Strategic litigation is an integral part of advancing the rights of LGBT persons in Kenya. This can be witnessed through their participation in filing court cases touching on LGBT community rights such as the Eric Gitari VS NGO Coordination Board in 2015. In April 2015, the High Court ruled in favor of the National Gay and Lesbian Human Rights Commission, arguing that it was unconstitutional to foist restraints on the freedom of association for sexual minorities and deeming the denial of registration of the sexual minorities’ association unconstitutional<sup>62</sup> This thus means that being a democratic society, Kenya needs to ensure whereas the majority has their way; the minority is equally heard as constitutionally mandated. Following this, the government appealed the decision by the High Court of Kenya. The Court of Appeal then ruled on May 20<sup>th</sup> 2016, that the High Court’s decision pertaining to the constitutionality of the issue stood in the interim<sup>63</sup>.

---

<sup>62</sup>GPP, 2016. The Perfect Storm The closing space for LGBT civil society in Kyrgyzstan, Indonesia, Kenya, and Hungary. Global Philanthropy Project

<sup>63</sup>The UK Home Office’s COI. Country Policy and Information Note Kenya: Sexual orientation and gender identity. March 2017.

However, speaking to the Global Philanthropy Project (GPP), advocates for the rights of sexual minorities in Kenya remained skeptical stating that they were unenthusiastic in registering associations for sexual minorities in the wake of this ruling<sup>64</sup>. Another notable Court case was in July 2014 where the National NGO Council was compelled by the court to register an NGO, the Transgender Education and Advocacy (TEA). TEA's founder, Audrey Mbugua, also won another suit that compelled the Kenya National Examinations Council to change the gender on her KCSE certificate<sup>65</sup>. Other institutional mechanisms protecting and promoting the rights of LGBTs include Members of the LGBT community reporting their cases to selected CSOs for strategic litigation such as the KNCHR, KHRC, HOYMAS Kenya, and NGLHRC.

The researcher found that the aforementioned CSOs have also made advocacy a significant part of their work with specific focus on the legal frameworks. They advocate for the rights of LGBTs by ensuring that these frameworks engender the rights of sexual minorities as enshrined in the constitution. This is supported by their provision of pro bono legal aid and mobile legal clinics to victims of sexual discrimination. It is noteworthy that SWOP City and HOYMAS Clinics were singled out for providing excellent health care services to the community as compared to the much hyped universal healthcare. On the public Hospital Realm, Ngara health facility was singled out as one that offers excellent services to the key population. However, whereas other private hospitals also offer healthcare services to the LGBT community, they do so for profit but not as recognition of their violated dignity. Additionally, CSOs advocating for the rights of LGBTs have gone ahead and partnered with other organizations to collect and document experiences in a bid to

---

<sup>64</sup>GPP, 2016. Opp. Cit.

<sup>65</sup>GPP, 2016. Opp. Cit.

map out key areas of intervention and establish lessons learned in the process. Despite such efforts, obstacles are still present in the form of resistance from the police as one KI, Frank, stated that

*“the police continue to present a challenge as they are the ones responsible for investigating crime but how do they do so when they do not consider LGBT persons as having the right to enjoy like other members of the society. In some cases they refuse to investigate or just laugh at the victims whereas in others they are the perpetrators. It is difficult for LGBT persons to access justice in Kenya.”*

Sections 162 and 165 of the penal code criminalize all sexual acts against the order of nature. In this case homosexuality and to that extent belonging to the LGBT community is also included in this section. Illegalizing homosexuality makes it difficult to advocate for LGBT rights since it's considered an illegality. Literature indicates that sex workers servicing sexual minorities are often compelled to bribe or extend sexual favors to male law enforcement agents in exchange for their freedom and security<sup>66</sup>. Evidently the duty bearers have deliberately failed to protect the rights of the LGBT community as per the constitution. Fear of prosecution under the existing laws thus prevents them from freely identifying and associating with the LGBT community or going to the police to seek security services and report cases of human rights violation. For this reason there are very few people in Kenya who publicly advocate for LGBT community rights<sup>67</sup>. Much more shocking is the case of apathy from some individuals within the sexual minority groupings who are not engrossed by the desire to fight for collective and/or individual rights. Such members who most of the times tend to be well endowed and able to fund some of the legal cases only weaken the position of the LGBT community.

---

<sup>66</sup>Ibid.

<sup>67</sup>The UK Home Office's COI. Opp. Cit.



It was noted that KHRC works in cahoots with many civil society organizations and micro level activists in handling issues afflicting sexual minorities and forging ways forward including capacity building for rights defenders and sensitizing the community on the available channels of presenting their cases. In terms of partnerships which are known to leverage the voice of minority groups, KHRC has also worked with GALCK in backing the appreciation of sexual minorities and the non-discrimination of sexual minorities. This is supported by the sentiments George, a KI from who stated that,

*“our partners from KHRC have been very instrumental in supporting our efforts. They have provided training and advocacy for our staff and programmes which has in turn enhanced our capacity and work.”*

To further leverage partnerships, KHRC, and GALCK organized Kenya’s first public celebration of the International Day against Homophobia and Transphobia in the year 2010 as a forum to root out societal dishonor, stigma, and the attendant victimization of sexual minorities<sup>68</sup>. This highlights the efforts by CSOs to advance LGBT community rights and attempt to match the local standards to the global expectations in line with international laws and conventions which Kenya is a signatory to such as Universal Declaration of Human Rights.

CSOs channel their focus on human rights defenders in order to fortify the capacity of rights defenders to advocate for the rights of LGBTs. Data show human rights defenders interact directly with victims of sexual discrimination, thus becoming an important focal point for enhancing their ability to handle emerging cases. However, in most cases this has had to be done discretely as Nashon, a KI indicated.

---

<sup>68</sup>KHRC, 2011. Opp. Cit.

*“Our work is very dangerous. We have to be careful not to become targets ourselves from the police and the general public. Sometimes we are equally branded as homosexuals just because we are fighting for LGBT rights thus can easily become outcasts ourselves and targets for harassment and brutality by the police and the general public.”*

By maintaining a low profile and avoiding heightened attention Kenyan advocates have made significant progress in fighting for LGBT community rights. At the local level, CSOs have also maintained a low profile in their activities so as to avoid possible backlash from the authorities and the general public. In the rural set-up, organizations such as the Voices for Women in Western Kenya have been vocal in articulating issues afflicting LGBT women in rural areas.

With the devolution of governance heralded by the 2010 constitutional dispensation, activists on the rights of sexual minorities have been articulating the healthcare rights of sexual minorities in the new healthcare set-up which is devolved. This has been enabled by the fact that activists on the rights of sexual minorities can morph into grassroots actors to influence policy by engaging with elected officials such as MCAs and the local leaders as well as health ministries.

Local frameworks linked to LGBT community are cascaded from international ones such as ILGA (International Lesbian and Gay Association), IGLHRC (International Gay and Lesbian Human Rights Committee) and IGLYO (International Lesbian and Gay Youth Organization). ILGA is a global membership organization for LGBT organizations. ILGA is divided into regional sub groups consisting of ILGA Europe, ILGA Asia, ILGA Africa and ILGA Latin America<sup>69</sup>. Such platforms serve as grounds for networking, knowledge sharing and capacity building. The linkages provide opportunities for the local CSOs to gain insight on how to deal with authorities and the

---

<sup>69</sup>Lotta S., Wagberg, E. November 2005. Sexual Orientation and Gender Identity Issues in Development. A Study of Policy and Administration. SIDA

society in furthering the rights of LGBT persons. This was supported by Zera, a KI from NCHRDs who stated that;

*“International organizations have been instrumental in supporting our efforts to advocate for sexual equality. They not only provide funds, but also capacity building through training and materials as well as sharing experiences on how to deal with different legal and policy challenges. We in turn try to identify ways of engendering such efforts in our quest.”*

#### **4.5 Theme 3 Ways Through which CSOs are balancing the observance of the existing Socio-Cultural Realities to Mitigate the Scrutiny, Harassment, and Violence against LGBT persons**

The study revealed that CSOs engage the general public in programmes and activities aimed at sensitization of the society for purposes of opening up the space for dialogue and recognition of the rights of LGBT persons. CSOs put in place mechanisms for the sensitization of the general public on LGBT community rights such as radio and television programmes although they haven't been well received by media players. They equally use gatherings aimed at tackling other social challenges such as gender and security to indulge participants who tend to be community leaders, on the issue of LGBT community rights. CSO keenly ensure that these efforts align with the constitutional provisions.

Notably, CSOs equally train the queer community on their rights and how to advocate for the same. This has borne positive results given the increasing number of LGBT members seeking

legal aid through various organizations like KHRC and the NGLHRC. It is also supported by Raymond, an FGD participant who stated that:

*“if not for the workshops and training that we have received from KHRC,NGLHRC, HOYMAS and other CSOs, many of us would still be suffering in silence. We would not be accessing medical services as we are today. But still there is more that needs to be done.”*

This indicates that capacity building is an ongoing process key to ensuring that LGBTs can indulge in their rights like other citizens in the society. Additionally, it engenders a larger body of individuals with the knowhow on human rights and in particular LGBT rights. It is therefore a long term exercise whose results can only be verified by the increment in the number of people coming forward to access legal services.

Programmes run by KHRC,HOYMAS,NCHRD,GALCK and NGLHRC seek to ensure wholesomeness. They conduct outreach programs to members of the society not necessarily the gay community albeit on small scale. The peer to peer format of sensitization through police training, healthcare workers training, and cleaning hospitals while engaging stakeholders on human rights takes place on a small scale. However, the results have been visible through the slow but steady response by the same stakeholders on the rights of sexual minorities. Some of the healthcare practitioners and security officers now respond positively towards the LGBT victims of rights violations. Working with key stakeholders, the police, judicial officers and health practitioners has been a key aspect of ensuring that the entire society is aware of the need to fortify the rights of the minorities within the Kenyan polity. This highlights areas of possible intervention at the institutional level, further providing for a chance to address the gaps within existing mechanisms.

These community members are educated on the need for equality and justice for all affiliates of the society in order for everyone to live a just and commodious lifestyle. In one incident where Persons Marginalized and Aggrieved (PEMA) were training law enforcement agents on security issues afflicting sexual minorities, the law enforcement agents present began to share information regarding the session on social media claiming that PEMA was enrolling law enforcement agents into gayism. The overall head of Kenya's National Police Service was tagged in the tweets resulting in a social media war<sup>70</sup>.

In addition to community outreach programmes, findings indicate the presence of CSOs having established community advisory boards comprising chiefs, police officers, and religious leaders who support the LGBT community. Members of these boards champion advocacy, protecting gay rights. This goes a long way in establishing a cohesive system of channeling complains and addressing any cases of violation of the rights of the LGBT community. It also facilitates the process of influencing the community and winning the hearts and minds of the people in the struggle to ensure justice for the LGBT community. According to HOYMAS the importance of the boards cannot be over emphasized,

*“they act as a platform for setting the agenda on the administrative level which helps establish a unified approach for addressing LGBT rights.”*

The CSOs tackling LGBT rights related issues also train paralegals and provide civic education to grassroots organizations promoting human rights to make them better placed to defend and advocate for human rights. This capacity building approach provides for safer channels for victims of sexual discrimination to access the necessary legal services required at the

---

<sup>70</sup>GPP, 2016. Opp. Cit.

community level. Additionally, on the legal front, CSOs support by participating in cases touching on LGBT Rights. They go beyond the traditional rubric of providing legal aid to being enjoined in the cases and providing funds for litigation. This, they do so in addition to providing technical support to members who have suffered abuse due to their sexual orientation. CSOs have been on the forefront in providing security tips to the LGBT rights activists. Due to the high number of attacks targeting rights defenders, it was deemed necessary to come up with strategies on ensuring the safety of activists and LGBT community rights defenders. This led to lobbying for the creation of gender desks at Huruma and Pangani police stations in Nairobi where most of the cases are reported. One participant, Maurice, lauded this effort by CSOs stating that,

*“before we were given this training, we were practically unable to do anything without fear of possible attacks. Today it is now possible for me to go to work with ease knowing that anytime I feel threatened I have somewhere to turn to.”* In fact, the effort has not only been local but has extended to the judiciary. Scheduled meetings with the judicial officers as well as the AG in order to discuss matters concerning justice and the rights of LGBTs have been ongoing since 2010 despite the ambivalent behavior of the AG’s office.

#### **4.6 Theme Four: Ways through which CSOs are Addressing Cultural Norms that Inhibit LGBT community Rights**

CSOs engage in social media campaign to inform the general public on the universality of human rights and the need to respect LGBT community rights. The result of this has been the creation of space for a public dialogue to raise questions on how to address LGBT rights violation. This further opens important space for dialogue among the youth and educated professionals who mainly access social media. More importantly, while communities have voiced concern over the

loss of the conservative value system, a number of members wish to show their concern for LGBT persons. This was stated by Musa, a KI that,

*“social media outlets are very influential among the youthful generation and professionals today. It is easier to engage the public on such platforms than any other one including leaders who are at some point compelled to respond to some questions when tagged by their followers on such platforms as twitter than it would be if you phoned them.”*

Findings indicate that CSOs work with friendly religious leaders on educating the society that LGBTs are human beings and entitled to human rights too. One KI, Michael stated that,

*“engaging with religious leaders has been fruitful especially given they are supposed to be compassionate in how they deal with the public despite one’s transgressions whatsoever. This has led to a change of heart by some former religious fundamentalists and hardliners who believed that LGBT persons shall go to hell and preached such messages in their sermons.”*

The justification for this is the religious statement provided in religious edicts that “all human beings are equal before God.” This statement is powerful in ensuring that whether one is gay or not they are welcome in the house of God. This implies the acceptance of LGBT persons at the societal level and unlocks the conservative religious dogma. Findings supported the sentiments of FGDs group members who said that societal support is vital for the enjoyment of their rights.

*“it is impossible for us to feel free and happy if our families, friends and neighbours don’t like us, it is even worse when my local priest disowns me and preaches fire and damnation when they see me. However, when you come across a religious leader who understands and recognizes that we are all children of God then it is a Hail Mary.”*

Training the queer community on how to interact with the society especially in volatile situations helps them to navigate these situations and avoid being centers of attack. Training further provides them with information on how to address any cases of rights violation. Similarly, it also helps the LGBTs to identify ways of achieving acceptance even at the family level without creating alarm. This requires a sensitive and soft approach especially in conservative societies like the Muslim backgrounds. This was reiterated by Isaac, a participant from the FGD who stated that,

*“in the Islamic culture if I come out as gay then all hell breaks loose. My family will disown me. It is difficult for me to discuss matters of my sexual orientation with my family including coming out that am gay as I will be termed a disgrace to the family.”*

Sensitizing “friendly” community elders on promotion of LGBT community rights is integral towards creating room for alternative considerations that go against the conservative cultural norms and value systems. This is a sure way of attaining justice and equality for the LGBT community. This concurs with the findings that indicate such effort as stated in the FGD by Josh that,

*“in my local community, the leaders have proven to be resourceful in trying to fend off the negative sentiments originating from the conservative cultural norms. Such leaders help us live in harmony with our neighbors because they are able to influence the police and religious entities not to view us as outcasts but as integral members of the community. This began when our community leaders began attending KHRC awareness campaigns and programmes aimed at community sensitization.”*

In order to effectively address the issue of conservative norms and values that are without solid bases in human rights philosophy and the attainment of a commodious and judicious life for



the LGBT community, it is important for CSOs to identify community leaders who are liberal and ready to work with CSOs. This reinforces the universality of human rights and demystifies non-supportive cultural norms. An example of this was evident from John, a KI who stated that,

*“KHRC’s and the NGLHRC sensitization exercises have proved to be effective when certain community leaders came out in support of such efforts that would broaden the understanding of human rights issues beyond the traditional political rights. The fight for LGBT rights is now at a moment similar to where women rights were decades ago. It took liberal community leaders to try and broaden the topic at the grassroots level which is also a necessity for LGBT rights today.”*

The study revealed that as part of their programming activities, CSOs conduct research on best practice in society. CSOs are aware that different cultures and societies have various value systems that can be identified as entry points or focal points for channeling certain issues. Identifying the entry points is important as they provide loopholes through which LGBT community rights can be channeled. In addition, they provide important lessons for CSOs to learn the different cultural systems in order to know how to approach them.

#### **4.7 Theme Six: Challenges faced by the LGBT Community in Kenya**

Cultural prejudice is one of the greatest impediments towards the full enjoyment of the rights of the LGBT persons. More than 2/3rds of the respondents cited this:

*“the most pressing matter in terms of our freedoms is our own value system. Our society puts us in a precarious situation so that we can’t even reveal our identity. We can barely walk or talk to anyone without feeling like we are being chastised by our own families, friends, relatives and religious leaders.”* Said Bramwel.

On his part, Peter stated that, *“my own family can’t even look at me without feeling the shame. It is so painful that the people who should understand you are the ones having a hard time coming to terms with your orientation. How can you live happily in such a family set up?”* Similarly, it is equally a great challenge to CSOs in their quest to promote LGBT community rights. Despite certain constitutional and judicial milestones, cultural prejudice continues to pose a roadblock in the realization of LGBT community rights. This confirms studies by GPP and KHRC which have documented how numerous cases of LGBT rights violation have been perpetrated by social value systems that view it as a foreign idea. In order for CSOs to address the aspect of cultural prejudice, they state that they employ a holistic approach regardless of the cultural prejudice. This they do by involving all segments of society including the religious organizations, and community elders in community sensitization programmes.

Findings show that many organizations that protecting the rights of homosexuals together with people who run them more often operate in a covert manner for fear of discrimination. Kenya is not an exception in facing this vice. However, unlike many other countries in the region and across the world, Kenya is making some positive progress in recognizing the rights of homosexuals albeit through the judiciary. Literature indicates that in Kenya, there are activists and organizations who speak on behalf of gay rights, but any CSO advocating for gay rights is always under the radar of the government<sup>71</sup>. Advocating for LGBT community rights is deemed to be felonious. An organization working acquiescently with the quest to mainstream sexual minorities will be at inordinate risk of not only persecution, but as well as conviction as its cohort risks incarceration for promoting illegal<sup>72</sup> sexual activities.

---

<sup>71</sup>The UK Home Office’s COI. Opp. Cit.

<sup>72</sup>Lotta S., Wagberg, E. November 2005. Opp. Cit.

In order to properly ensure that cultural prejudices are diminished, sensitizing the key stakeholders in the community is an area that CSOs continue to invest their efforts. Engaging the police, religious leaders, and judicial officers on cultural prejudices and how they limit universality of human rights is integral towards expanding the dialogue on human rights for LGBT persons. It has facilitated the creation of space for channeling debates and discussions that are pertinent to the promotion of sexual minority rights. This has been noted in the Netherlands, US, and South Africa where expanded dialogue is continuing. It has been found to deepen the understanding of LGBT rights. LGBT community rights are part of the universal debate on human rights and in particular second generation rights that by now should have been attained by the states.

Sexual minorities have fashioned formal and informal networks to defend their rights and to avail information, social forums and safe spaces, meeting places<sup>73</sup> and organize social events and activities. These informal networks serve as an opportunity for communicating, sharing knowledge and seeking advice. One KI, Mathew, emphasized the salience of this by stating as follows,

*“When the system is so closed and does not leave room for dissentient ideas, it is impossible to maintain conventional approaches. It therefore means we have to find ways of taking care of ourselves including seeking legal advice and interacting freely.”*

The findings resonate with the sentiments that in the contemporary period, the fastest way to reach the public is through social media. Given the youthful generation’s affinity for modernity, CSOs tackling cultural prejudice are using social media as a powerful means of reaching out to the public

---

<sup>73</sup>Lotta S., Wagberg, E. November 2005. Opp. Cit.

and engaging them. Appearing on public media is also critical despite the fact that participants receive negative sentiments afterwards as one KI, Nathan stated,

*“Having gay people speak about their issues, even if they do face aggression from fellow panelists, is one of the ways that activists have been able to engage.”<sup>74</sup>*

It emerged that in a number of cases, victims of rights violations and CSOs have established friendly parties to channel the grievances. For example, the Community Advisory Board comprising of friendly religious leaders, Chiefs and policemen providing a stepping stone towards opening up administrative channels and tackling repressive norms and prejudices. This enables the LGBT community to report with confidence.

Social Media continues to present opportunity for all seeking to circulate information instantly. Whereas traditional media channels worry about profit margins and publicity, social media channels focus more on gaining more users who can be targeted with advertising thus it provides for a platform to circulate information. Findings support this view of social media because the LGBT community has an opportunity to share their stories online without much victimization, stereotyping and harassment. There exist specific channels such as Grinde and Planet Romeo are where LGBT community rights are addressed and members can discuss challenges facing them freely and get to learn from each other. This was supported by Dennis, who stated that,

*“social media has been very helpful in reaching out to our colleagues both domestically and abroad in order to share experiences and network while also learning how to defend ourselves.”*

---

<sup>74</sup>GPP, 2016. Opp. Cit.

Peer-to-peer advocacy mechanisms continue to facilitate growth of organizations in advocating for the rights of the LGBT community such as NGLHRC, HOYMAS, Katiba Institute, National Coalition for Human Rights Defenders, GALCK Kenya, and ISHTA. Such mechanisms are a foundation for knowledge sharing and networking between the CSOs which elucidate gaps as well as strengths and weaknesses in addressing challenges facing the LGBT community. They strengthen the advocacy mechanisms and are the building blocks for further learning and future legislation on the topic.

The Kenyan society, just like other African societies subscribes to deeply religious beliefs that are often misinterpreted. Human rights reports by PEMA and GALCK have recounted ongoing mob violence and abuse by law enforcement agents against sexual minorities across the country, noting the toxic influence of homophobic edicts by religious<sup>75</sup> leaders. This is even worse in a society where religious dogma permeates the entire fabric of social systems including sexuality. Religious beliefs are often used as the superintendent principle in social systems including in secular societies such as Kenya. For most communities in Kenya, an intersex kid is by and large considered to be a blot and more often than not, such a child is either abandoned or killed by the community. In essence, as illustrated by various studies, most parents of an intersex child do not know that they can opt to have their child go through reconstructive<sup>76</sup>surgery.

The LGBT community continues to struggle with inadequate information on protecting their rights. This is aggravated by the absence of proper channels to follow when a right is infringed. From police officers to medical practitioners who take advantage of their situation to exploit and stigmatize them, to inadequate space for organizations that openly advocate for LGBT

---

<sup>75</sup>GPP, 2016. Opp. Cit.

<sup>76</sup>KHRC, 2011. Opp. Cit

rights, the situation is fragile. Such a scenario exposes LGBT persons to the risk of exploitation and even more violation. The continued endangerment of their lives exacerbates their vulnerability thus making them suffer in silence.

#### **4.8 Discussion**

The Kenyan government has not been keen on the promotion of the rights of sexual minorities. This is evident in its ambivalent behaviour towards the issue of human rights. Despite its emphasis on the democratic gains in terms of constitutional and legal gains in the political sphere, there is little to be said of the same effort being diverted on social matters in particular LGBT community rights. Although Kenyans enjoy a relatively open political space, the same cannot be said of the LGBT community. Much remains to be done in terms of changing perceptions towards sexual minorities.

The narrative in Kenya is that LGBT community rights are often confused with gay marriage leading to misplaced discrimination. The notion of gay marriages is not allowed under Article 45 section 2 of the Kenyan constitution which stipulates that the family is a union of persons of the opposite sex. Due to misconception, it is often confused with LGBT rights thus posing a challenge for members of the public. The transgender persons are legally bound to a gender they do not identify with, which constitutes a violation of their freedom of expression. The government's failure to address and make cognizance of the falsity of the gender binary norms has resulted in State sanctioned<sup>77</sup> homophobia. The presence of homophobia continues to make it difficult to work in a non-receptive society. CSOs have the challenge of navigating societal norms

---

<sup>77</sup>KHRC, 2011. Opp. Cit

and values that are a stumbling block on universal human rights. This is worse when the issue is homophobia and misconstrued for LGBT persons. This thus makes LGBT rights advocates susceptible to misplaced anger and fear.

Homophobia, enmeshed with primordial cultural norms continues to shape modern thinking in the Kenyan society especially on the aspect of family and sexuality. Anthropological data indicate that homophobia in Africa in general and Kenya in particular was introduced by the western colonial powers as part of the Christian culture edging away tolerance for women's or men's same sex behaviors or relations<sup>78</sup> which were practiced in more or less institutionalized ways in the precolonial era. While homophobia continues to be a big challenge for the LGBT community, it is the cultural norms that strengthen it that worsen the situation. Some misconstrued cultural norms catalyze homophobia. Such norms present a stumbling block in the fight for LGBT rights as they are the foundation of systems of values and identity in the Kenyan society.

Lack of support from ruling elites for fear of losing political capital continues to weaken any opportunities for legislation and policy making on LGBT community rights. Despite their professed liberalism, the political class continues to portray a culture of conservativeness on sexuality often going with the traditional heterosexual position. During elections, such liberal arguments as universal human rights are often paid little attention and only used as populist sentiments without much bases. The inter-electoral period often witnesses sharp and hard anti LGBT arguments due to fear of losing political capital come election period.

The opinion shapers in the Community subscribe to the idea that same sex relationships is a western idea. Given the amount of publicity on foreign aid debates and the emphasis on human

---

<sup>78</sup>Ireen D. and Andréi H. Urgency Required. Gay and Lesbian Rights are Human Rights

rights, most people view aid tied to human rights as promoting a foreign agenda thus LGBT rights becomes a western idea. In many instances, with exception of being around people who understand the community, belonging to LGBT community in Kenya is largely considered a crime, unafrikan, unnatural and against the wishes of God. This therefore makes life difficult for the members of the community.

Whereas the LGBT community has witnessed a vibrant growth in organizations currently involved in advocating for its rights, a movement to counter the rights of LGBTs; the Kenya Christian professional's forum; has emerged. This presents another uphill task as such a movement is well funded and receives widespread support from the general public. The anti LGBT brigade is thus still live especially given it is emanating from the same milieu of cultural and religious dogma. In a number of court cases, rulings have been to the disadvantage of the LGBT community. The general implication of such unfavorable rulings is the outright indictment of the LGBT community with the result being negative reception by the public. Such outcomes tend to dampen any efforts aimed at lifting their plight. They inadvertently spell doom for rights crusaders and CSOs participating in such efforts.

CSOs continue to face the problem of inadequate funds. Funding hitches make it impossible to provide legal services to the members of the LGBT community whose rights have been violated. This also affects the advocacy programmes leading to a low response on advocacy issues. Such funding hitches dwindle their efforts in addressing the rising cases of rights violation and advocacy. A limited fund to carry out litigation that covers a larger LGBT population portends an issue for CSOs and individuals advocating for the rights of LGBTs. Given the high legal fees for such processes and cases, not to mention the need to ensure security of the victims and witnesses, it is always challenging for organizations to carry out such processes wholesome.



Additionally, unlike public knowledge that places the LGBT community at a handful of persons, the community is large and widely distributed making it even more expensive. Most individuals equally lack the ability to raise such funds on their own.

Due to security risks from both members of the public and service providers, LGBT persons tend to suffer in silence. Fear of being subjected to physical or mental violence makes it difficult for LGBT persons to seek medical attention or report cases of human rights violation. It is noteworthy that in some cases they tend to be violated by the same officers who are supposed to protect them. Fear of denial of government services is thus a big challenge. In some cases, members fear indignity where some have been subjected to correctional rape. The most common of trumped up charges was possession of narcotic drugs where reports were received of law enforcement agents “planting” rolls of bhang (cannabis sativa)<sup>79</sup> on the suspects.

One comes out of the closet as homosexual just as the literature doyen, the late Binyavanga Wainaina did. However, no one comes out as heterosexual. Homosexuality is thus seen to be an abject referent while heterosexuality is seen to be a subject referent<sup>80</sup>. That homosexuality is “unafican” is a constant reminder for sexual minorities. Such statements leave the society with the idea that homophobia is a norm. In the long run, LGBT persons have to contend with the idea that they have lost their true identity and have been turned into western puppets.

---

<sup>79</sup>KHRC, 2011. Opp. Cit

<sup>80</sup>Ibid.

## 4.9 Hypotheses Discussion

That the CSOs have played a major role in mainstreaming minority rights is undoubtedly true. This hypothesis resonates or provides insights to my question, how are civil society organizations advancing the rights of LGBT community in Kenya in convergence with international human rights expectations, and the local constitution? Today, many CSOs continue to run discrimination prevention and advocacy campaigns as well as legal support programmes which avail an aura of acceptance and hope for sexual minorities living in Kenya. In a country where many homosexuals often find it a herculean task to indulge their kith and kin about their sexuality because of the stigma associated with being one, CSOs have fused the conversation and have since introduced community interventions that are slowly lowering the stigma and discrimination barriers in the process. They are making this progress because they are inspired by social justice interventions which are a powerful social force that advocates for the replacement of stigma and discrimination against LGBT persons with acceptance, love, and tolerance<sup>81</sup>. In addition to providing an atmosphere of compassionate care, CSOs also play a key role in educating the LGBT community on their fundamental rights and how they can seek redress in case the same is violated.

That the challenges faced by the civil society Organizations have hindered the attainment of sexual rights for the LGBT community in Kenya is a fact that is indisputable. The cultural norms and prejudices they encounter continue to paint a grim picture of the idea of having LGBTs in the society. World civilizations do not have positive terms for LGBT persons and words that often come out amount to immediate judgment such as sodomy. Neutral or positive words do not exist

---

<sup>81</sup>The UK Home Office's COI. Opp. Cit.

thus confusion of tongues emerges which silences the debate in society on these topics<sup>82</sup>. This means CSOs operate in an environment of negativity and tension between tradition and modernity.

---

<sup>82</sup>Ireen D. and Andréi H. Opp. Cit.

## CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Introduction

This chapter covers the summary of the research findings, recommendations and conclusion.

### 5.2 Summary

In Kenya, civic and societal leaders often use homophobic sentiments to spite on sexual minorities. In the year 1999 for instance, the then Kenyan president denounced homosexuality, characterizing it as a scourge that transgresses against Christian teachings and African mores. This has been the norm in countries in the Global South such as Egypt, Kenya, Uganda, Namibia, Zimbabwe, Bangladesh and Tanzania where harsh punishments await individuals engaging in homosexual acts<sup>83</sup>.

For sexual minorities in Kenya, the attendant criminalization of homosexual relations coupled by societal hostilities predisposes sexual minorities to the risk of violence, harassment, and extortion from law enforcement agents<sup>84</sup>. Very strict anti-gay laws that exist in Kenya pose one of the biggest challenges to the LGBT community. Unlike other sections of the society who can associate without state intervention, LGBT rights movements operate knowing that they are prone to arrests and harassment since the aspect of their identity is illegal<sup>85</sup>.

Civic education is a powerful governance and social force that can be pivotal in replacing societal dishonor, stigma and discrimination with acceptance and love. CSOs therefore empowered by the expressions of tolerance have unique capacities to reach vulnerable, marginalized, and other

---

<sup>83</sup>Lotta S., Wagberg, E. November 2005. Opp. Cit.

<sup>84</sup>GPP, 2016. Opp. Cit.

<sup>85</sup>The UK Home Office's COI. Opp. Cit.

populations at risk<sup>86</sup>. Across the orb, due to the societal suppression of sexual “deviance”, LGBT persons have overt heterosexual marriages while covertly engaging in unprotected homosexual contacts and thus aggravating sexual scourges such as HIV/AIDS<sup>87</sup>.

Criminal sanctions, contrary their intended measure of deterrence, increase the vulnerability of sexual minorities to blackmail, violence, harassment, and extortion. This vulnerability is caused by the need to avoid stigma from friends and family as well as the public. Stigma in the public forces one to remain in the closet. Furthermore, deep seated societal beliefs, attitudes and norms aggravate the public healthcare problems that come with the overt marriages – covert relationships see saw that characterizes the sexual ecosystem of sexual minorities<sup>88</sup>.

Additionally, the binary dichotomy of the male-female and masculine-feminine herald the exclusion of sexual minorities. This is compounded by the criminalization of sexual minority orientations in the penal code which leads to overt violence meted upon sexual minorities by law enforcement agents. This then informs the misunderstanding in state agent’s interpretation of penal<sup>89</sup>provisions. When basic sexual rights between two adults are not disclosed or safeguarded, establishing gay movements becomes a herculean task and the struggle for freedom and equality becomes difficult to articulate<sup>90</sup>.

While it is crucial to note that there are no universal conventions and treaties asking for the protection of sexual minorities, there is a consensus on principles that advocate for the rights of sexual minorities; key among them is the Yogyakarta principles which were established by a cohort of human rights experts pertaining to the application of international human rights law in

---

<sup>86</sup>The UK Home Office’s COI. Opp. Cit.

<sup>87</sup>Ireen D. and Andréi H. Opp. Cit.

<sup>88</sup>Ireen D. and Andréi H. Opp. Cit.

<sup>89</sup>KHRC, 2011. Opp. Cit

<sup>90</sup>Ireen D. and Andréi H. Opp. Cit.

regards to sexual orientation as well as gender identity<sup>91</sup>. These principles aim at filling the gaps left by the international human rights law on the subject of sexual minorities. However, they only mention sexual rights briefly and not in detail on how they should be protected and achieved.

### **5.3 Conclusion**

Based on the study findings, the researcher concludes as follows:

#### **5.3.1 That civil society organizations advancing the rights of LGBT community in Kenya in convergence with international human rights expectations, and the local constitution**

Attainment of universal human rights in general and the rights of sexual minorities in particular cannot be accomplished without the involvement of government institutions. The Kenyan CSOs have partnered with Kenya National Commission on Human Rights (KNCHR) as well as the National Gender and Equality Commission (NGEC) in advocating for social inclusion including promoting and protecting LGBT rights. This has been done mainly through legal channels, advocacy, community sensitization, and public education in the form of publications. Such processes bring together key players from different sectors including the media which sheds light on the need for universal human rights thus facilitating the setting of the agenda for LGBT rights in the public discourse.

---

<sup>91</sup>Yogyakarta principles, <[http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)>

### **5.3.2 That Civil societies promote LGBT rights while observing the existing socio-cultural realities to avoid the scrutiny, harassment and violence against LGBT in Kenya**

The tenuous environment within which human rights organizations operate has presented a challenge to the nature of activities and approach the CSOs can engage in. Recently, black mail to organizations and community has emerged as an impediment for the promotion of the rights of LGBTs. From the police to robbers, individuals posing as the authority black mail LGBTs with the goal of violating them sexually and swindling them lest they be *outed*. Due to fear of shame and prejudice victims have to part with cash in order to safeguard their dignity and freedom. Severe societal prejudices and political risk often make it impossible for the LGBT community to come out and advocate for their rights. Additionally, human rights activists often experience violent attacks from members of the public branding them ‘crusaders of Sodom and Gomorra’. This plus constant harassment by the police makes it difficult for CSOs advocating for LGBT rights to register names that openly advocate LGBT rights and thus proffer terminologies with a more general outlook on human rights as well as mission statements that cover the entire rubric of human rights.

### **5.3.3 That there are the cultural norms and myths framing the society’s response to the rights of the LGBT community in Kenya**

The Kenyan society is pegged on traditional thinking of heterosexuality and that sex can only be enjoyed when it is between people of the opposite sex. This makes tolerance for the LGBT community difficult. On the one hand, some people believe human rights are universal on the other hand others rely on political and religious propaganda. In the case of propaganda, most of it is ad

hoc and only serves to satisfy the short term political interests of the elite. This makes it impossible to establish clarity on the matter. This is exacerbated by the religious leaders whose word often sways the population in whichever direction given they speak the word of God on behalf of God. This makes them extremely crucial in shaping public opinion especially during political campaigns. For this purpose, this becomes difficult to persuade the public to be liberal on LGBT matters especially when the principal movers of hatred are church leaders who tend to be the go to people for any moral challenges in the society.

Additionally, Biblical misinterpretation on sexual orientation continues to present a dilemma on sexuality. The destruction of Sodom in the first book of the Pentateuch is often cited as a punishment by the Christian deity while theologically it appears to be a punishment for the desecration of the visitors' rights. Furthermore, from an anthropological point, homosexual identities couldn't be overtly displayed in a heterosexual theocratic geographic region.

Cultural prejudices are a key impediment towards progress on the issue of universal human rights in general and the rights of sexual minorities in particular. It is cultural prejudices that inform negative thinking on the issue of the rights of sexual minorities. Such prejudices also inform public discourse on the same thus negating any efforts aimed at creating an open and just society. It is virtually impossible to navigate public debate on LGBTs without coming across some primordial cultural prejudices that are not only the foundation of some norms and values but also the pitfall for the quest to promote LGBT rights. Living in a conservative society is detrimental to the enjoyment of LGBT rights. This is so because individuals are not socialized to be LGBT "straight" on matters too intimate such as relationships in an environment where they would normally prefer not to be. Such socialization instills fear on the issue of one's true identity and sexual orientation



Kenya, being an emerging democracy continues to experience mixed progress on the social front. On the one hand, it presents a picture of a modern society; on the other hand it presents one of deep set cultural prejudices towards certain contemporary value systems and existence of some members in the society like the LGBTs. This therefore presents a dilemma for politicians seeking public office that have to contend with the issue and endearing themselves to the public in order to win popularity and garner votes. Lack of political will from the ruling elite for fear of losing political capital continues to hamper efforts for legislation on LGBT rights.

#### **5.4 Recommendations**

The researcher was able to narrow down to particular areas that require critical intervention. From the study findings, the following recommendations were deemed necessary:

1. Given the level of impunity employed by of the medical officers and security agencies, it is imperative that sensitization programs be established and actualized. It was evident that the security agencies and professionals in the medical field have inadequate universal understanding of human rights. The police and medical practitioners often chose to employ their own tactics emanating from socially constructed subjective truths rather than objective realities. Sensitization therefore needs to be done especially with duty bearers in particular the police officers and medical practitioners. Being compelled to engage in things that demean human dignity such as coerced anal and rectal examination by law enforcement agents as well as compulsion to undergo hormonal, shock or psychological therapy as well as religious exorcism presents a grave danger to human rights.
2. Article 43 (1)(a) guarantees each and every person in Kenya the right to the highest attainable health care which include but not limited to psychiatrist help. This therefore puts the duty bearers to task for ensuring that such services are availed to each and every individual

irrespective of their sexual orientation. It is therefore fundamental and a duty of the ruling elites to ensure that this and other rights are never compromised especially towards the sexual minorities. However, The LGBTs persons continue to suffer in silence due to the absence of mental health services for victims of rape and stigma. The challenges they face sometimes deteriorates their mental health. Therefore, they need psychiatric help which should be readily available given the recorded suicide cases by some of the CSOs studied.

3. The government together with all the stake holders in the human rights sphere should conduct capacity enhancing programs amongst the caregivers with the objective of educating them on modalities to employ when dealing minority groups and in particular the LGBT community. This is critical since a majority of the cases and victims from the LGBT community go unattended and if so, without proper care leading to worse outcomes including psychiatric problem and in worse scenarios death.
4. The Civils Organizations should step up their efforts with regards to conducting the community outreach programs which has proved to be effective in reducing stigma towards the LGBT community. The available channels though fruitful are still too few for a population that is fast growing
5. Given the ambivalent behavior of health practitioners in the public hospitals, there needs to be a policy mandating the training of health practitioners in targeting the treatment of the LGBT community. This policy has the potential to reduce the number of cases of mental health disorders and suicide attempts by community members. Additionally, it will make more members of the KP seek medical services. Lack of proper mechanisms for informed discourse amongst the medical practitioners of the medical needs of sexual minorities and in particular

of the LGBT persons is also a key issue of concern and should be addressed by the stakeholders dealing with the LGBT community rights.

6. There needs to be a change in the support policy and legislation for sexual health programmes as they assist the reduction of human rights violations that are constantly being felt around the African continent in general and Kenya in particular. Domestic and international support for the human rights defenders who advocate for LGBT rights is crucial in order to achieve the objective of universal human rights. Most of the defenders perform their duties with meager resources and facilities that often pose logistical challenges. Additionally, they do so under constant threat to their lives which often demoralizes them. Since Support to LGBT issues is a negligible part of international donor budgets, it often receives very little attention. The most common form of funding to support LGBT organizations is through donor agencies. Having a policy or a piece of legislation in place to support this course will lessen the burden of CSO and the human right defenders in this field of specialization
  
7. Mainstream and harmonize Judicial support has proven worthwhile in certain instances and should be enhanced and supported by all the stake holders and the duty bearers. This has been witnessed mainly through some wins like the case of the high court ruling allowing registration of the National Gay and Lesbian Human Rights Commission where the NGO Coordination Board had denied its registration. This has bolstered CSO efforts in tackling cultural norms that hinder the LGBT community from enjoying their rights. In these cases, the LGBT community found that it can finally have a voice in the public sphere given the preponderance of cultural norms and value systems that curtail or hamper their efforts to enjoy freedoms in the cases of association and healthcare. Such wins have highlighted their plight and given them a chance to breathe a sigh of relief. The judiciary continues to be the place where their cases

can be heard despite some setbacks, the publicity gained through the mass media generates debate.

8. There is an urgent need to enhance the existing community dialogues around the issues of sexuality and gender identity with the police, religious leaders and the opinion leaders. This is necessitated by the fact that numerous cases of violation of LGBT rights have involved the police or have been as a result of demeaning comments from the religious leaders as well as the opinion leaders in the society. Although it continues to be a challenge, interaction with these group of people is beginning to bear fruits. In some stations like Huruma and Pangani Police Stations gender desks have been put in place where members of the KP can report instances of violated rights without the fear of being subjected to shame. Further tolerant religious leaders have come out attesting that being different should not be a crime nor a sin. Kenya has experienced rise of religious group that welcome member of the LGBT community. This shows that with constant dialogue and interaction the attitude towards the Key population can change. Further some police chiefs and stations have begun warming up to the idea of universal rights especially as the wind of change sweeps the local and global public sphere on the meaning and purpose of universal rights. Although the police officers come from the same communities and cultures that subscribe to punitive and derogative cultural norms, some continue to have a change of heart with regards to sexual rights thus are presenting an opportunity for dialogue and interaction, gradually easing the way for addressing such impediments in the society.

## REFERENCES

- A/HRC/RES/17/19, *Human Rights, Sexual Orientation and Gender identity*, 14 July 2011.
- Adamczyk, A. (2017). *Cross-National Public Opinion about Homosexuality: Examining across the Globe* pp. 3–7. University of California Press.
- Amartya S. (1999). *Development as freedom* (1st ed.). New York: Oxford University Press.
- Antoinette, B (2010). *Collective interest vs. individual interest in Bentham's Felicific Calculus. Questioning welfarism and fairness.* 17 (4), 607-134 *European Journal of the History of Economic Thought*, Taylor Francis (Routledge)
- Anyamele, C. et al, (2005). *Sexual minorities, violence and AIDS in Africa (English)*. Africa Region working paper series; no. 84. Washington, D.C. : World Bank Group.
- Bentham, J (1789). *An introduction to the principles of morals and legislation*.
- Corinne, L& Matthew W (eds.) (2013) *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalization and Change* (London: School of Advanced Study, University of London).
- Cornwall, A., Sonia C and Susie. (2008). *Development with a body*. London: Zed Books.
- Courtney E. ( 2012). *Being Gay in Kenya: The Implications of Kenya's New Constitution for its Anti-Sodomy Laws*. *Cornell International Law Journal* Vol. 45.431-457.
- Creswell, J. W. (2003). *Research design: Qualitative, quantitative, and mixed method approaches*. Sage Publications. University of Nebraska, Lincoln.
- Crompton, L. (2003). *Homosexuality and Civilization*. Harvard University Press. Cambridge, MA.
- David M. 1990, *One Hundred Years of Homosexuality: and other essays on Greek love*. New York: Routledge.

- Feldblum, C. (2006). "*Moral Conflict and Liberty: Gay Rights and Religion*." Georgetown law Faculty Publications: 61-123.
- Felicity, D. (2018). *The Global State of LGBTIQ Organizing: the Right to Register*. Out Right Action International
- Fernandez B. ( 2010). *Make It Work: Six steps to effective LGBT human rights advocacy*. Corelio Printing.
- Finnis, J (1980). *Natural Law and Natural Rights*, (Oxford; Clarendon Press)
- Florien M. Cramwinckel D, Scheepers T.Joanneke T (2018). *Interventions to Reduce Blatant and Subtle Sexual Orientation- and Gender Identity Prejudice (SOGIP): Current Knowledge and Future Directions*. Social Issues and Policy Review, pp. 183—217Vol. 12, No. 1.
- FRA. (2016). *Professionally speaking: challenges to achieving equality for LGBT people*. European Union Agency for Fundamental Rights
- Fried, Susana T. (2004). "*Sexuality and Human Rights*." *The President and Fellows of Harvard College*. pp 273-304.
- Ghoshal N ( 2018). *For LGBT Rights, 2018 Will Be the Year of the Courts*. The Advocate.January.<https://www.hrw.org/news/2018/01/24/lgbt-rights-2018-will-be-year-courts>.
- GPP, 2016. *The Perfect Storm The closing space for LGBT civil society in Kyrgyzstan, Indonesia, Kenya, and Hungary*. Global Philanthropy Project
- <https://www.hrw.org/news/2010/10/21/russia-european-court-rules-gay-pride-ban-unlawful>.
- [https://www.hrw.org/sites/default/files/world\\_report\\_download/201801world\\_report\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf)
- Human Rights Council resolution 17/19, *Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19 (17 June 2011), available from [undocs.org/A/RES/17/19](http://undocs.org/A/RES/17/19). 1.

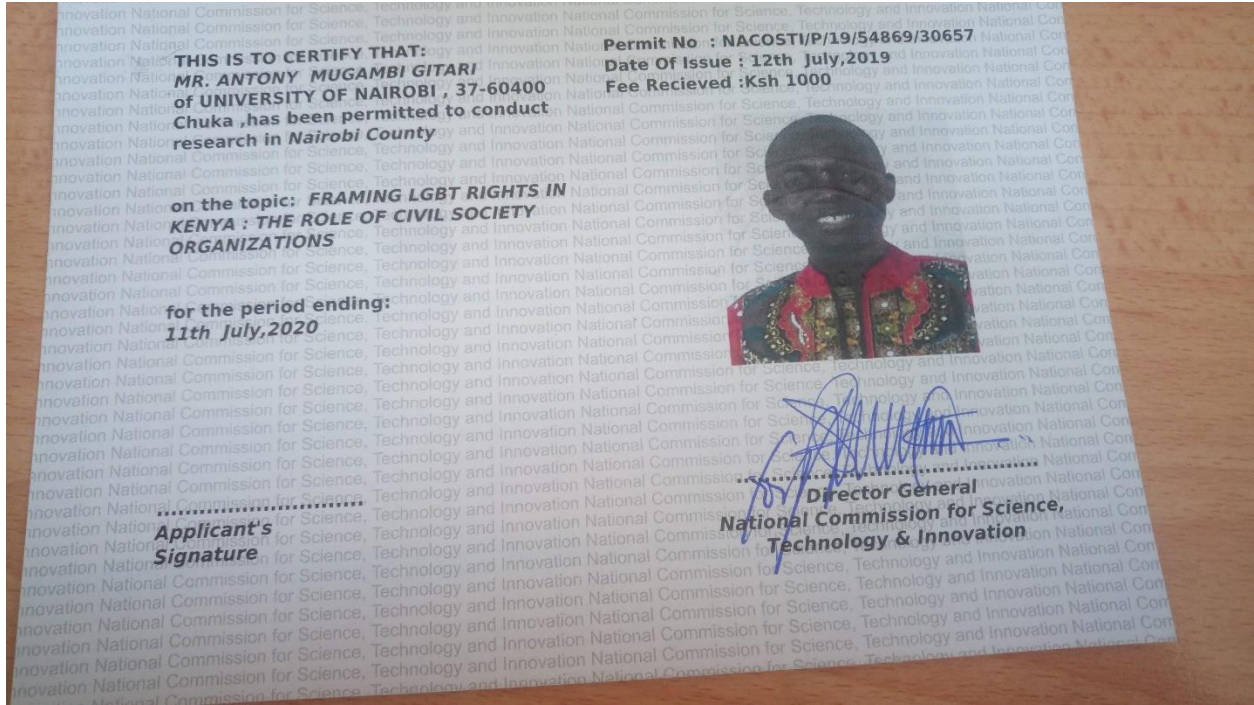
- Human Rights Watch (2018). *Russia: European Court Rules Gay Pride Ban Unlawful. Russia Should Allow March and Guarantee Freedom of Assembly.*
- Human Rights Watch. (2013). "It's Nature, Not a Crime." Discriminatory Laws and LGBT People in Liberia.
- Human Rights Watch. *World Report.*
- International Council for Not-For-Profit Law. *Global Trends in NGO Law. LGBTI Civil Society Organizations Around the Globe: Challenges, Successes, and Lessons Learned.* Volume 7, Issue 2.
- Ireen D. & Andréi H. *Urgency Required. Gay and Lesbian Rights are Human Rights year of publication*
- Janell L( 2015). *Sexuality Now: Embracing Diversity.* Wadsworth Publishing.city of pub
- KHRC, (2011).*The Outlawed Amongst Us. A study of the LGBTI Community's Search for Equality and Non-discrimination in Kenya. Kenya National Commission on Human Rights. The Fourth State of Human Rights Report Post Promulgation 2010 – 2014. Human Rights the Elusive Mirage?*
- Leila J( 2001). "Toward a Global History of Same-Sex Sexuality", *Journal of the History of Sexuality* 10: 287–302.
- Leonie Huddy (2001). *From Social to Political Identity: A Critical Examination of Social Identity Theory.* *Political Psychology*, 22, (1), pg number for all journals
- Lotta S., Wagberg, E. (2005). *Sexual Orientation and Gender Identity Issues in Development. A Study of Policy and Administration.* SIDA
- Lukacs J (2004). *"The Triumph and Collapse of Liberalism"*. *The Chronicle of Higher Education.*

- Nickel J (1987). *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*, (Berkeley: University of California Press).
- Nikki S (2003). *A critical introduction to Queer Theory*. Edinburgh: Edinburgh University Press.
- Paul C (2018). *Civil Society, 'Traditional Values' and LGBT Resistance to Heteronormative Rights Hegemony: Analysis of the UN Universal Periodic Review in the Russian Federation*, 70 (4) 638-665 *Europe-Asia Studies*.
- Robert L III (2015). *Homosexuality and scientific evidence: On suspect anecdotes, antiquated data, and broad generalizations*. 82(4): 364–390 *Linacre Quarterly*.
- The Constitution of Kenya 2010
- The Kenyan penal (1970)(Cap 63)
- The UK Home Office's COI. (2017). *Country Policy and Information Note Kenya: Sexual orientation and gender identity*. March.
- Timothy F (2000). *Reader's Guide to Lesbian and Gay Studies*.
- Todd J( 2010). *The Meaning of Gay: Interaction, Publicity, and Community among Homosexual Men in 1960s San Francisco*.
- Turner, J., &Tajfel, H. (1986). *The social identity theory of intergroup behavior*. *Psychology of intergroup relations*, 7-24.
- United Nations Human Rights Commission. (2016). *Living Free and Equal: What States are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People*.
- United Nations Human Rights Commission. 1948. *Universal Declaration of Human Rights (UDHR)*.
- William N ( 1993). *A History of Same-Sex Marriage*. *Virginia Law Review*. Vol.79, No. 7, Symposium on Sexual Orientation and the Law (Oct.), pp. 1419-1513.
- Yogyakarta principles*, <[http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)



# APPENDICES

## APPENDIX I: RESEARCH PERMIT



**APPENDIX II: KEY INFORMANT INTERVIEW GUIDE FOR CIVIL SOCIETY ORGANIZATIONS**

My name is Anthony Gitari, a master’s student in Human Rights at the University of Nairobi’s Department of Philosophy and Religious Studies. I am collecting data for my Masters’ project on **“FRAMING LGBT RIGHTS IN KENYA: THE ROLE OF CIVIL SOCIETY ORGANIZATIONS.”** Your responses will be strictly confidential and will be used for academic and scientific purposes only. For purposes of clarification you can have a look at the attached letter from the University.

*Disclaimer the research is targeted towards health rights, freedom of association and expression.*

**Section A: Demographics**

**Name (Optional)** .....

**Age** .....**Gender**.....

**Organization** .....

**Organization History**.....

**Vision**.....

.....

**Mission**.....

.....

**Position** .....

## **Section B: Questions**

1. Kindly elaborate on the institutional mechanisms do you have in place to protect the rights of LGBT in Kenya?
2. In what ways then have CSOs interacted with society in advocating for the rights of LGBT?
3. Please explain to me how you tackle cultural prejudice towards LGBT. Elaborate on the measures you have put in place to safeguard the rights of LGBT against cultural prejudice.
4. What is the role of government institutions in tackling cultural norms that limit enjoyment of the right to health, association and expression of the LGBT?
5. How have you gone about demystifying the cultural norms that hinder the rights of LGBT? What are the lessons learnt?
6. What are the challenges facing the Civil Society Organizations in their quest to promote and protect the rights of sexual minorities in Kenya?

## **APPENDIX III: KEY INFORMANT INTERVIEW GUIDE FOR HOSPITALS**

My name is Anthony Gitari, a master's student in Human Rights at the University of Nairobi's Department of Philosophy and Religious Studies. I am collecting data for my Masters' project on

**“FRAMING LGBT RIGHTS IN KENYA: THE ROLE OF CIVIL SOCIETY**

**ORGANIZATIONS.”** Your responses will be strictly confidential and will be used for academic and scientific purposes only. For purposes of clarification you can have a look at the attached letter from the University.

**Section A: Demographics**

**Name (Optional)** .....

**Age** .....**Gender**.....

**Organization** .....

**Position** .....

**Section B: Questions**

1. Are you aware of the LGBT Community in Kenya?
2. Kindly tell me which mechanisms you have in place to protect the right to healthcare of LGBT in Kenya?
3. In what ways has the hospital sensitized society on cultural prejudice in advocating for the rights of LGBT?
4. Please explain to me the challenges have you faced in providing healthcare services to LGBT?
5. How have you gone about demystifying the cultural norms that hinder the health rights of LGBT?
6. What lessons have you learnt from the struggle to secure the rights of LGBT?

7. How successful are the means used by hospitals in Kenya to counter mythical and cultural frames and provide LGBTs right the right to healthcare?
8. Where do you experience the greatest challenge in protecting the rights of LGBTs to healthcare?

**APPENDIX IV: QUESTIONNAIRE GUIDE FOR MEMBERS OF THE LGBT COMMUNITY**

My name is Anthony Gitari, a master’s student in Human Rights at the University of Nairobi’s Department of Philosophy and Religious Studies. I am collecting data for my Masters’ project on **“FRAMING LGBT RIGHTS IN KENYA: THE ROLE OF CIVIL SOCIETY ORGANIZATIONS.”** Your responses will be strictly confidential and will be used for academic and scientific purposes only. For purposes of clarification you can have a look at the attached letter from the University.

**Section A: Demographics**

**Name (Optional)** .....

**Age** .....

**Occupation** .....

**Section B: Questions**

1. Please explain if there are any societal channels for protecting the rights of LGBTs? If so elaborate.
2. Kindly expound on how the cultural norms have hindered the advancement of the rights of LGBTI in Kenya?
3. Which aspects of LGBTI’ rights have you faced the least resistance?
4. Please tell me the aspects of LGBTI’s rights have you faced the greatest resistance?
5. What forms of prejudice do you experience in your attempts to enjoy your rights?
6. What do you think prevents you from truly enjoying your rights?

7. What's the dominant cultural prejudice towards LGBT community in Kenya? Where do they come from?
8. Are there any forms of channels/institutions that you are aware of that you can use when you feel you have been violated?