



TRANS FORM

**A REPORT OF THE NATIONAL
TRANSGENDER DISCRIMINATION
SURVEY IN KENYA (NTDS)**

POLICY BRIEF





A growing Concern

Every day, transgender and intersex people endure the worst of social and economic marginalization due to discrimination based on their gender identity or expression. Advocates confront this reality regularly working with transgender and intersex people who have lost housing, been fired from jobs, experienced mistreatment and violence, or been unable to access the health care they need.

Too often, policymakers, service providers, the media and society have dismissed or discounted the needs of transgender and intersex people, and a lack of hard data on the scope of discrimination has hampered the work to make substantive policy changes to address these needs.

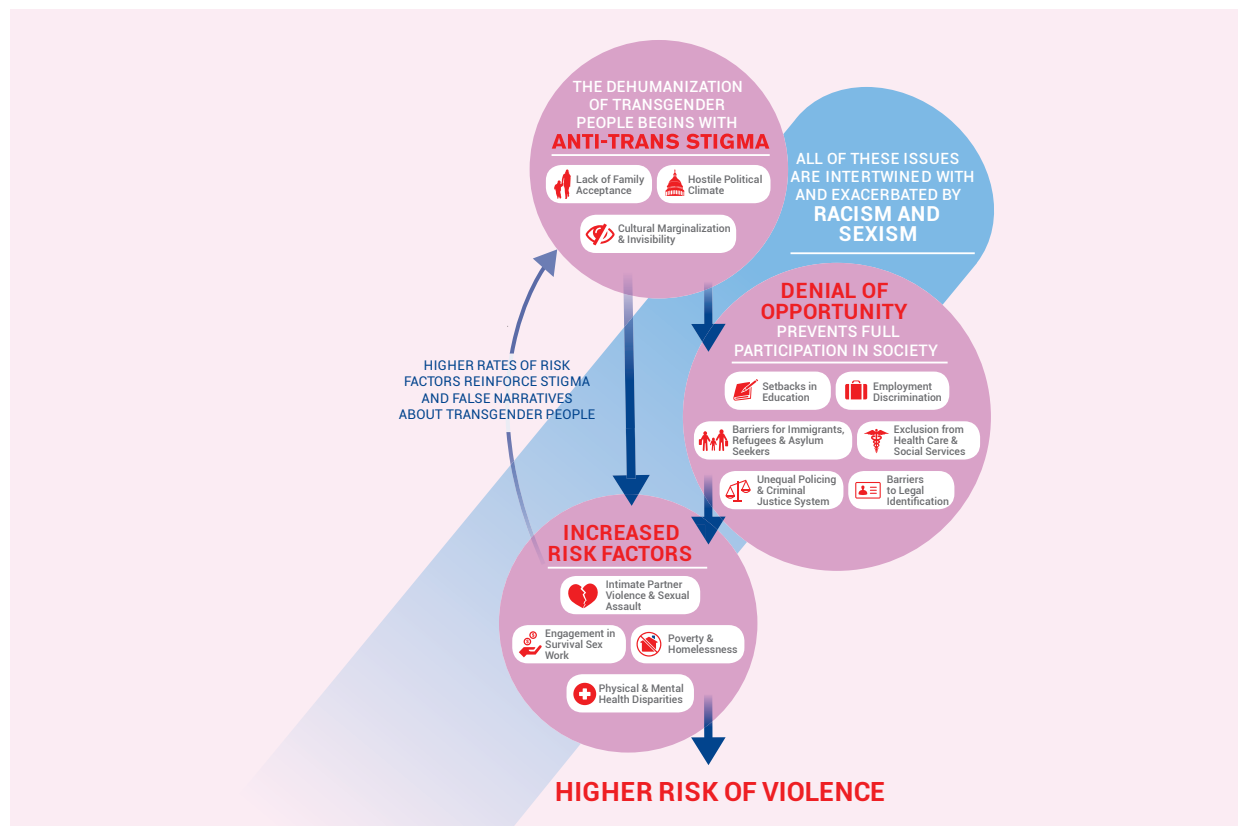
This policy brief spotlights protection issues against violence and discrimination based on gender identity targeted at transgender and intersex people in Kenya in the understanding that “an inclusive society enables people to enjoy protection from violence and discrimination, and leaders in the social, cultural, political and other fields can have an important role in

communicating, motivating and fostering that inclusiveness,” a strong pledge to the central, transformative promise of the 2030 agenda for sustainable development of “leaving no one behind.” Making inclusion of transgender and intersex people a high priority with the intention to increase demand for high quality data that builds a solid case for maximizing the NTDS methodology to understand, track and measure inequalities across the five dimensions of the LGBTI index - health, education, economic empowerment, civil and political participation, security and violence.

What Leads to Anti-Transgender Violence?



For many transgender and intersex people, living openly can be its own act of defiance in a society that continues to set rigid cultural norms for gender identity and expression. Numerous findings on the impact of anti-transgender and intersex discrimination are presented in this report. In many cases a series of bias motivated violence led to insurmountable challenges and devastating outcomes. Several Meta findings are worth noting from the outset:





NTDS Methodology

This report is guided by two principles: (1) strategic dialogue that includes a wide range of stakeholders from civil society organisations, national human rights and academic institutions, community-based organisations, community gatekeepers, and county governments through a public consultation and participation process; and (2) deconstructing the texture of the lived experiences of transgender

persons made visible through intersectional lenses in ways that are compounded by factors such as ethnicity/race, indigenous or minority status, colour, socio-economic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability and property ownership. This report is aligned with global and regional initiatives undertaken by human rights and development organisations in the field of social inclusion.

Key Findings:



Healthcare

KEY FINDINGS IN HEALTH



68%

postponed care because they could not afford it

68% of the survey participants recorded that they postponed care because they could not afford it; on the other hand, 51% expressed postponing medical care because of discrimination and disrespect from health providers.



51%

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"Issues of health at some point if you really need the services you hide within MSM so you get the services"

Transgender



COUNSELLING

was the only most common form of transition-related care that was sought by survey respondents.

Counselling was the only most common form of transition-related care that was sought by survey respondents. The survey respondents rarely sought the other transition-related health care like hormone therapy, top/chest/breast surgery, testes removal, MTF genital surgery, FTM genital surgery and FTM Phallophasty although a considerable proportion of the survey respondents indicated that they would seek such transition-related health care "someday."



10%

of the respondents reported being HIV positive.

10% of the respondents reported being HIV positive. There was statistically significant associations between HIV prevalence and disclosure of HIV status ($\chi^2(3) = 18.01; p < 0.001$) and Sexual partners ($\chi^2(12) = 23.46; p = 0.024$).

Primary healthcare systems (PHC) remains an important entry point for many transgender and intersex people in Kenya seeking healthcare services with an overwhelming majority (67%) seeking healthcare services in public health and private facilities, and key population clinics and alternative medical provider service delivery points being the least sought. A majority of transgender and intersex kenyan's postponed care: (1) due to finances with Kisumu, Mombasa and Nairobi bearing a disproportionate burden; and (2) due to discrimination and disrespect from providers, with over a half (51%) of transgender people reporting disrespect from providers. HIV testing and transition-related care counselling was the commonest service that transgender people in Kenya access with many unable to access transition-related care.

The study also identified key individual, interpersonal, and structural factors associated with an inability to access transition-related care. This included: (1) transgender

and intersex people and their families regularly navigate a myriad of challenges through society including bullying, discrimination, lack of adequate healthcare, disapproval from family and community, and an overall lack of societal understanding; (2) the experience of gender transition has a profound impact on adoption and foster parenting with a majority of transgender Kenyans adopting children of their partners (7%) or children related to them (5%) but few (1%) would adopt children previously unknown to them; (3) 82% of transgender Kenyans had not received any gender-related mental health diagnosis. A majority (58%) of the transgender people suffered from clinical depression, 17% reported suffering from anxiety, 10% reported alcohol use, and 5% reported suicidality.

Over a quarter, (26%) were currently using drugs, 24% had used drugs but were not currently using while 50% were not using drugs; (4) affordability and insurance coverage also limited access to healthcare for transgender and intersex people with an overwhelming majority (72%) lacking health insurance and 28% accessing government-subsidised plans (NHIF) and private insurance with Nakuru (95%) and Busia (94%) being disproportionately affected due, in part, to the higher prevalence of unemployment and poverty faced by transgender and intersex people relative to the general population, and a likely product of employment discrimination; and (5) only 10% of transgender and intersex people reported they were HIV positive and 17% indicated they were on treatment and care spotlighting disclosure as the most complex psychosocial challenge facing transgender and intersex people living with HIV and AIDS. 41% of transgender and intersex people were actively engaged in sex work with an average of 1-14 sexual partners in a month with a significant association between HIV prevalence and number of sexual partners. Predominant hotspots for a majority of those actively engaged in sex work included: home-based 14%, bar without lodging/chang'aa den 8%, guest house 6%, streets/highways 6%, strip club/ massage pallor 5%, park/beach/toilets 5%, sex den/brothel 4%, uninhabited building/ bush 2%.

Stigma, discrimination and violence



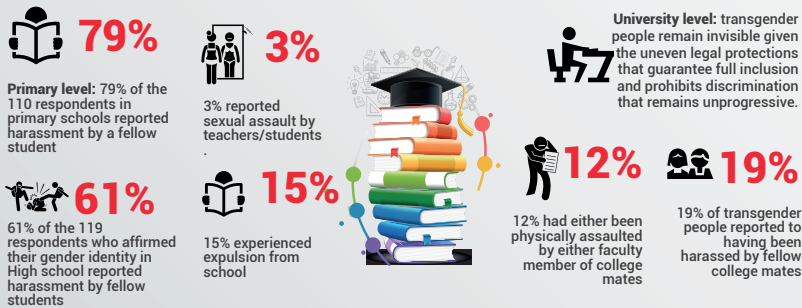
Transgender and intersex people are currently unable to access equal educational opportunities because SOGIESC violence was rampant in various levels of the education system with 79% of students in the primary level of education, 61% of students in high schools and 65% of students in university reporting harassment by fellow students. Similarly, 9% in primary, 14% in high school and 19% in university experienced harassment from teachers/lecturers. Over a third (37%) of those who had experienced SOGIESC violence in school had to be expelled. 74% of transgender and intersex students affirmed their gender identity in pursuit of their educational goals with a significant association between low current household incomes with gender affirmation at schools.

Systematic discrimination of transgender and intersex people in the workplace was high with nearly a half (49%) experiencing job denial with Nairobi County being a major casualty, 37% were denied promotion and 42% lost their jobs with Nairobi and Kisumu counties experiencing the highest proportion (54%). There was a significant association between sex work and being denied a job or losing a job. There was widespread mistreatment at the work place with 46% reporting harassment on grounds of gender identity status, 31% reported physical violence and 26% reported sexual assaults.

A half (50%) presented in the wrong gender, 65% experienced misgendering and 55% experienced information privacy breach and 41% experienced sex work discrimination in the workplace. Nearly half (47%) had experienced underemployment.

Housing insecurity was a major crisis for transgender and intersex people. 44% of transgender and intersex people had experienced direct housing discrimination either by being denied a house or being evicted (42%) on grounds of gender identity status. 61% of transgender and intersex people were homeless with an

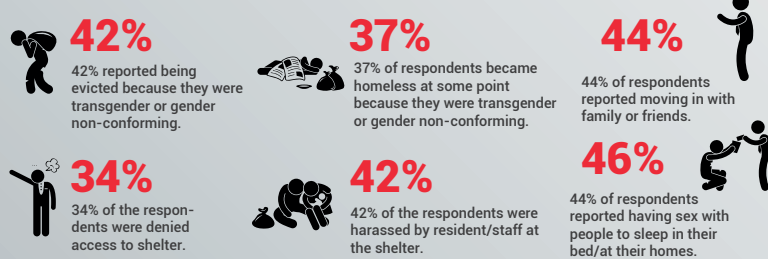
KEY FINDINGS IN EDUCATION



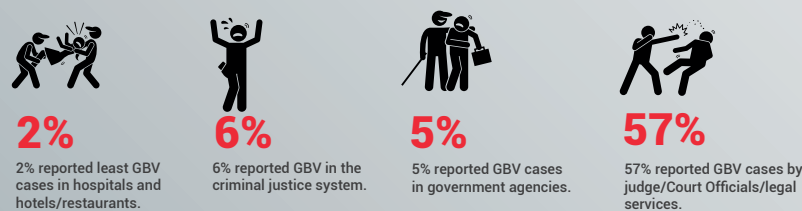
KEY FINDINGS IN EMPLOYMENT



KEY FINDINGS IN HOUSING AND HOMELESSNESS



KEY FINDINGS VIOLENCE IN PUBLIC SPACES



panic directly or indirectly positions transgender and intersex people as a sexual threat posed by the presence of sex-segregated spaces always considered unnatural or perverse and dealing with anti-transgender bias and gender stereotypes that position women as vulnerable and men as sexually threatening. Transgender and intersex people were denied equal treatment or service in hospitals (62%), legal aid services (57%), government agencies (55%), restaurants (52%) and by the police (51%). There was also widespread verbal abuse in the public sector with the transport sector presenting the highest rate of verbal harassment or disrespect (63%). Rates of reported assaults included 26% GBV rape cases, 20% GBV cases in domestic partnerships, 11% GBV cases in mental health clinics, 6% GBV cases in the criminal justice system, and 5% GBV cases by government agencies.

overwhelming 51% of homeless transgender and intersex people more likely to be incarcerated and twice more likely (60%) to have engaged in sex work for income, and (63%) attempted suicide. Only a third (33%) of transgender and intersex homeless people had access to shelters with an overwhelming majority always presenting in the wrong gender, experienced eviction or being thrown out from shelters, harassed by shelter administrators, denied access to a shelter, and had been physically and sexually assaulted in shelter homes.

In public settings and accommodation, transgender and intersex people experienced discrimination despite the existence of civil rights laws that prohibit discrimination. Additionally, the public gender moral

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Legal and gender recognition - barriers to receiving updated ID documents

KEY FINDINGS IN LEGAL AND GENDER RECOGNITION



12%

12% of the respondents had been denied to change their birth certificate to reflect their current gender.



11%

11% of the respondents were denied to change their ID/passport.



8%

8% of the respondents were denied to change their Health Insurance records.



10%

10% of the respondent who were denied ID/Passport were unemployed.



13%

13% of the respondent who were denied Work ID were unemployed.

Legal gender recognition is the official recognition of a person's gender identity, including gender marker and name(s) in public registries and key documents. Possessing accurate and consistent identification documents is essential to basic social and economic functioning in our country. Access to employment, housing, health care and travel all can hinge on having appropriate documentation.

Study participants confirmed anecdotal evidence that gender incongruent identification exposes transgender people to a range of hostile outcomes, from denial of benefits and employment to violence. Legal and bureaucratic barriers to amending transgender's identity documents marginalize and stigmatize transgender.

Gender incongruent identification exposes transgender and intersex people to a range of hostile outcomes, from denial of benefits and employment to violence. Over a half (63%) of transgender and intersex people had none of their identification documents and records reflecting their current gender identity and that 26% of those who presented their Identity Documentation (ID) (when it was required in the ordinary course of life) which did not match their gender identity reported being harassed, 9% reported being attacked or assaulted, and 10% reported being asked to leave. 10% and 13% of transgender and intersex people who were denied ID/passport and work ID respectively were unemployed. Similarly, there was a statistically significant association between those who were denied a chance to change their ID/passport and the unemployed and work ID and the unemployed.

Gender incongruent identification exposes transgender and intersex people to a range of hostile outcomes, from denial of benefits and employment to violence.



Criminal justice system - abuse by police and in prison

KEY FINDINGS IN CRIMINAL JUSTICE SYSTEM



43%

43% of those interacting with police reported, "officers generally have treated me with disrespect."



38%

Over a third(38%), indicated, "officers have harassed me."



34%

34% reported, "officers generally have treated me with respect"



28%

28% of the sample reported that they were very uncomfortable seeking help from police



18%

18% reported that they were comfortable seeking help from police.

According to Article 27 of the Kenyan constitution, every person is equal before the law. Article 27 (4) of the constitution says that: National and county governments shall not discriminate directly or indirectly against any person on any ground. Most people interact with police officers during the ordinary course of their lives. Transgender and gender non-conforming people may have higher levels of interaction with police. They are more likely to interact with police because they are more likely to be victims of violent crime because they are more likely to be on the street due to homelessness and/or being unwelcome at home, because their circumstances often force them to work in the underground economy, and even because many face harassment and arrest simply because they are out in public while being transgender.

Law enforcement agencies in Kenya have gained a reputation in the transgender and intersex community for arbitrary arrests, physical and sexual assaults and harassment. Nearly a half (43%) of those interacting with police reported being treated disrespectfully.

Over a third, (38%), indicated being harassed. And another 23% reported physical assault and 12% indicated being sexually assaulted by the police. 55% reported being uncomfortable seeking help from the police due to fear of criminalisation laws that target transgender people.

Nearly a third (31%) of transgender and intersex people had been arrested and incarcerated with a vast majority (83%) jailed under six months, 8% jailed up to one year, 6% jailed up to three years and 2% jailed between five to ten years.

Transgender and intersex people serving jail term also reported harassment (61%) by other inmates, 23% reported physical assault or attack, 11% reported sexual assault, and 5% reported being denied hormonal treatment impacting negatively on their physical, mental, and emotional well-being.



Principles and Policy Statements

Several principles and policy statements underlie the operational guidance given in this publication building upon the recommendations of Global Legal Environment Assessment (LEA)¹ that aims to advance human-rights-affirming law, policy and practice. These policy statements and principles form the basis for recommendations for law and policy reform, strengthened implementation and enforcement of legal frameworks and measures to protect and promote fundamental human rights freedoms for transgender and intersex Kenyans constituting critical evidence which is then used to develop evidence-informed national policy and strategy. These principles include:²

Human rights:

Fundamental to development of this publication is the protection of human rights of transgender and intersex people. Legislators and other government authorities should establish and enforce antidiscrimination and protective laws, derived from international human-rights standards, in order to eliminate stigma, discrimination and violence faced by transgender and intersex people.

Transfeminism:

A commitment to social justice, rooted in that understanding of power relations and experiences of oppression based on gender identity and expression ensuring equality and equity of health, security, dignity and autonomy that is inclusive of transgender and intersex people intrinsically linked to the broader liberation of all women and beyond. Transfeminism embodies feminist coalition politics in which women from different backgrounds stand up for each other deconstructing gender ideologies that sanctions systemized oppression.³

1 [Legal Environment Assessment For HIV – UNDP](http://www.undp.org/undp/library/HIV-AIDS)
<http://www.undp.org/undp/library/HIV-AIDS>

2 [https://www.fast-trackcities.org/sites/default/files/UNDP%20-%20Implementing%20Comprehensive%20HIV-STI%20Programmes%20with%20Transgender%20People%20-%20Practical%20Guidance%20Collaborative%20Interventions%20\(2016\).pdf](https://www.fast-trackcities.org/sites/default/files/UNDP%20-%20Implementing%20Comprehensive%20HIV-STI%20Programmes%20with%20Transgender%20People%20-%20Practical%20Guidance%20Collaborative%20Interventions%20(2016).pdf)

3 <https://diversity.utexas.edu/genderandsexuality/>

Access to justice:

Freedom from arbitrary arrest and detention, the right to a fair trial, freedom from torture and cruel, inhuman and degrading treatment and the right, including in prisons and other closed settings, to the highest attainable standard of health. The protection of human rights, including the rights to employment, housing and health care, for transgender and intersex people requires collaboration between health-care and law-enforcement agencies, including those that manage prisons and other closed institutions. Detainment in closed settings should not impede the right to maintain dignity and health.

Access to high-quality health care:

Health services should be respectful, acceptable, appropriate and affordable to transgender and intersex people in order to enlist their participation and ensure their retention in care and to build service capacity to provide specialized care. Access to quality and comprehensive care is a human right. It includes the right to appropriate, high-quality health care without discrimination.

Health-care providers and institutions should serve transgender and intersex people based on the principles of medical ethics and the right to health. Health services and products should be readily accessible ranging from primary healthcare, palliative, and gender affirming healthcare services recognizing that transgender and intersex people have multiple co-morbidities (HIV, viral hepatitis, tuberculosis, other infectious diseases and mental-health conditions) and poor social situations. Integrated services provide the opportunity for client-centered prevention, diagnosis, treatment and care facilitating better communication and care.

Community empowerment:

Giving power to transgender and intersex people to gain control over the factors and decisions that shape their lives addressing the social, cultural, political and economic determinants that undermine their

<wp-content/uploads/2016/03/Transfeminisms-Definitions-2016.pdf>

vulnerability, and seeks to build partnerships across sectors to address them collectively exercising their rights as a recognized authority, and equal partner in the planning, implementation and monitoring of social services and products. This approach represents a paradigm shift, away from transgender and intersex people being only recipients of services and towards the self-determination of transgender and non-binary communities.

WHEREAS diversity in gender identity and expression is part of the human experience and transgender and intersex people and expressions including for intersex persons are healthy; incongruence between one's sex and gender is neither pathological nor a mental health disorder;⁴

WHEREAS the practice of gender identity change efforts (GICE) reinforces stigma and discrimination against transgender and intersex people; these people experience cissexist discrimination and prejudice throughout their lifespan and life domains including significant discrimination in social settings;⁵

WHEREAS gender-related bias, victimization, discrimination, criminalization, and forced-gender conformity experienced by transgender and intersex people are associated with poor psychosocial outcomes, such as heightened psychological distress, compromised overall wellbeing, and disparities across various contexts (e.g., healthcare, schools/education, workplace, and in public settings);⁶ and that the invalidation and rejection of these identities by others (e.g., families, therapists, school personnel) are forms of discrimination, stigma, and victimization, which result in psychological distress.

4 (APA, 2009, 2015; SAMHSA, 2015)

5 Burnes et al., 2016; Fredriksen-Goldsen et al., 2014; Grant et al., 2011; James et al., 2016; Johns et al., 2019; Lambda Legal, 2010; Macapagal et al., 2016; Reisner et al., 2015; (APA, 2009), (Turban et al., 2020);

6 (Bockting et al., 2013; dickey et al., 2016; Egan & Perry, 2001; Meyer, 2003; Nadal et al., 2012; Russell et al., 2012; Hendricks & Testa, 2012; Toomey et al., 2010; Sandfort et al., 2007); (Bockting et al., 2013; D'Augelli et al., 2006; Egan & Perry, 2001; Hendricks & Testa, 2012; Hidalgo et al., 2015; Landolt et al., 2004; Meyer, 2003; Nadal et al., 2012; Price, et al., 2019; Roberts et al., 2012; Sandfort et al., 2007; Stotzer, 2012; Russell et al., 2012; Toomey et al., 2010; Truong et al., 2020a, 2020b; Zongrone et al., 2020);

Policy Conclusions

The theme of this publication, "TRANSFORM", deconstructs how discriminatory laws and sociocultural norms continue to marginalize and exclude transgender and non-binary people from education, healthcare, housing, employment and occupation and other sectors giving rise to a host of other problems in a context where access to economic, social and cultural rights is hampered resulting in poverty and exclusion, lower social-economic status, and limiting access to assets that are essential to enjoy the full range of human rights.



A glance at these issues undercuts four National fundamental issues that need to be addressed in the context of affirming the intersectionality of all human rights grounded in the firm commitment of 'leaving no one behind' under the 2030 agenda for sustainable development goals (SDGs):⁷

1. The notion that there is a gender norm, from which identities and expressions vary or depart, is based on a series of preconceptions that must be challenged if all humankind is to enjoy human rights. Among these misconceptions is the idea that it is a legitimate societal objective that persons adopt roles, forms of expression and behaviours that are considered entitlements or burdens according to their sex assigned at birth. Only by acknowledging the stereotypes, power asymmetries, inequality and fundamental violence that lies at the foundation of this system does the State comply with its obligation to address the violence and discrimination that it fuels, with its harrowing impact on transgender and intersex people.
2. Throughout the research process, it became evident that gender theory, gender-based approaches and intersectionality provide a framework for addressing multiple asymmetries of power (deriving from how sex is constructed and operates in societies), including those that feed violence and discrimination against transgender and intersex people; and that they are also a sharp lens for analysing the root causes of violence

7 A/HRC/47/27 or <https://undocs.org/A/HRC/47/27>

and discrimination based on sexual orientation and gender identity and expression.

3. The widely used acronym LGBT (lesbian, gay, bisexual and trans) and the term gender-diverse, as well as terms such as queer, questioning and asexual, are reflections of political and legal identities, and persons impacted by violence and discrimination based on sexual orientation and gender identity may identify themselves in ways that do not coincide with them.). These identities are sometimes included in notions of either gender identity or sexual orientation, but they operate under an understanding of gender that does not neatly or necessarily coincide with either. The resistance to gender stereotypes has been led by many kinds of non-conforming women; and it is of note that gender non-conformation runs not only to gender expression but also to the norms governing sexual conduct.
4. The gravitational force of binary gender constructions, and the resulting gender expectations, often pull in persons on the basis of their sex characteristics as well, and intersex people suffer damage from attempts or actions that aim to hammer them into sex categories that are inadequate for their lived experience. These violations often entail torture and ill-treatment. Attempts to recognize intersex persons in sex and gender classification systems have often failed to adequately establish the necessary legal and social frameworks to appropriately recognize their status.

This publication offers a window opportunity through which to gauge the character and scale of anti-discrimination data and the linkage with root causes, dialogue, consultation and cooperation with state and non-state actors, including implementation of international instruments, with identification of good practices and gaps.

Prevention, accountability and reparation are dimensions of State responsibility under international human rights law and the adoption of gender-based and intersectional analysis is a fundamental component of a diligent discharge of that responsibility. Both National and County governments' have a fundamental responsibility to: (a) To prevent, prosecute and

punish violence and discrimination on the basis of sexual orientation, gender identity and gender expression and, if relevant, provide reparation to the victims; and (b) To recognize every human being's freedom to determine the confines of their existence, including their gender identity and expression.

National and County Governments should:

Recognize the value of gender-based approaches, and uphold rights related to gender and sexuality as universal and inalienable, indivisible, interdependent, and interrelated to all other rights and ensure recognition of the right to bodily and mental integrity, autonomy and self-determination, and of the requirements that are concomitant to them, such as socioeconomic inclusion, housing, employment, education, and in particular, comprehensive gender and sexuality education.

Adopt in their legislation, public policy and systems for access to justice, an understanding of gender and gender identity and expression that is in conformity with the corpus iuris of international human rights law, and ratify the relevant regional conventions that are conducive to that end.

Implement data gathering and analysis systems that allow for intersectional analysis of violence and discrimination and that in the design of these measures, a gender-mainstreaming approach be adopted, that embeds measures to address violence and discrimination based on sexual orientation and gender identity, includes communities, populations and peoples in the key decision-making processes, and allows for their meaningful participation in all stages from design to monitoring and evaluation.

Investigate and put in place measures to identify human rights violations carried out on the basis of sexual orientation and gender identity, accompanied by fact-finding and, if appropriate, acknowledgement of responsibility and applicable reparation measures conducive to redress.

Provide access to legal recognition of gender identity in a manner consistent with the rights to freedom from discrimination, equal protection

of the law, privacy, identity and freedom of expression, and adopt all necessary measures so that such recognition is based on: self-determination, simplified administrative processes, non-compliance mandatory or abusive requirements, acknowledging non-binary identities in their full diversity, and ensuring minors have access to recognition of their gender identity.

Uphold an enabling environment for civil society organizing for the rights of transgender and intersex people, and respect and protect their right to freedom of assembly and association supporting civil society organizations led by and serving transgender and intersex people through robust funding opportunities and capacity-building training programmes.



Policy recommendation

Health

Taking action to ensure timely access to appropriate primary health care in public-funded health programs, develop guidelines on achieving universal access to acceptable, competent, appropriate, and affordable care, while promoting centres of clinical and research excellence in transgender health care countrywide, and to incorporate transgender sensitive care to develop into medical, nursing, and paramedical curricula, to improve cultural competency and resilience of healthcare system.

Stigma, discrimination & violence

Taking action to ensure laws, policies, programmes and procedures do not discriminate against transgender people through an effective and accessible legal and services framework that collects, collates, analyses and publishes antidiscrimination data that complies with established international standards and safeguards on data protection.

Legal and gender recognition

Taking action to allow individuals change their legal name and gender, including the gender markers on official documents, put in place quick, accessible and transparent procedures aimed at providing transgender people with official national documents, abolish mandatory medical examinations for obtaining legal recognition and to ensure information concerning changes of legal name and gender is kept confidential and such information should not be accessible to third parties without explicit consent.

Criminal justice system

Taking action to ensure equal protection under the law, adopting positive legislative, judicial, administrative, educative, and other appropriate measures to protect these rights and to ensure freedom from cruel, inhumane, and degrading treatment of transgender people.

National and county governments have a fundamental responsibility to respect, protect and promote the human rights of transgender people in Kenya.

A BASELINE STUDY OF TRANSGENDER PERSONS IN KENYA: LIFE EXPERIENCES AND ACCESS TO HEALTH SERVICES

A Report Of The National Transgender Discrimination Survey In Kenya (NTDS)

TRANS* ALLIANCE, NDUTA, S. SMITH, L.G. & OKEYO, N. (2020).



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