**Call for input to a thematic report: freedom of religion or belief (FoRB) and sexual orientation and gender identity (SOGI) - Due Jan 15, 2023**

1. In Kenya, violence, and discrimination against LGBTQI+ has often been perpetuated on the grounds of religion or belief. Religiously motivated persecution against sexual and gender minorities underlies a section of the Kenyan penal code that criminalizes same sex conduct between two consenting male adults.  In some religious quarters, claims of religious freedom are being used to rollback progressive sections of the Kenyan Constitution, specifically article 43, which guarantees the highest attainable standards of healthcare by all. Even as progressive religious groups specifically from non-mainstream religion have spoken up to defend sexual rights, along with human rights principles, still, mainstream churches, and evangelical protestant churches in Kenya, have often preached homophobia. Some religious groups led by the Kenya Christian Professionals Forum (KCPF), a group that often identify themselves as defending religious values, have often whipped up fears around homosexuality and access to sexual and reproductive health services including abortion.
2. The LGBTQI+ community is often the target of abuse and physical violence, which is often encouraged by religious leaders. Utterances by some religious leaders in Kenya, citing religious justifications for their messages of hate have advocated for trickster policies and laws ostensibly to tame homosexuality. Ahead of President Obama's visit to Kenya in the year 2016, for example, a march was organized in the streets of Nairobi. Marchers carried placards with slogans such as 'Stand with the family' and 'Protect the family'. Given the fact that same-sex acts are illegal in Kenya, these slogans showed the extent to which the right to freedom of religion or belief, and the freedom from violence and discrimination based on sexual orientation and gender identity could be mutually reinforcing. Reverberating the American 'Adam and Eve, not Adam and Steve' slogan, participants chanted 'We do not want Obama and Obama; we do not want Michelle and Michelle. We want Obama and Michelle, and we want a child!' In the same march, a member of parliament tapped into more than one American conservative agenda in a speech where he stated: 'We are telling Mr. Obama when he comes to Kenya this month and he tries to bring the Abortion agenda, the Gay agenda; we shall tell him to shut up and go home.’ William Ruto, the Deputy-President of Kenya then and now the President of Kenya, who sees homosexuality as 'unchristian' and 'dirty', states that his position is meant 'to defend our faith, and to defend our religion, and to defend our country'.

[https://www.cbsnews.com/news/kenya-anti-homosexuality-demonstration-few-protesters-ahead-obama-visit/](file:///C%3A/Users/sgromek/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/WFU15894/A%20FINAL%20ERRUPTION%20%281%29%20safe%20space_%20%28003%29.pdf)

1. A few narratives in Kenya, both traditional and religious contexts, have briefly mentioned persons of gender and sexual diversities in manners that depict awareness of the sexual and gender diversity in the society. However, the narratives neither promote acceptance nor protection, rather the narratives tell stories of continuous discrimination and depict diversity as vices in the society. Examples of Sodom and Gomorrah from the Bible and Quran have been used to declare homosexuality as immoral behaviors and sin and have formed the basis of Kenya’s Sodomy laws. Several traditional communities in Kenya have cultures that called for exclusion of sexual and gender minorities in the society and to deny them of their rights such as land inheritance, with some even called for killing of the sexual and gender minorities. Although many communities have progressed from such retrogressive cultures, they continue to shape the behaviors toward LGBTQI+ persons while some still uphold the cultures, albeit done in secrecy.
2. The principles of universality and non-discrimination are at the core of both the Universal Declaration of Human Rights and human rights treaties like the International Covenant on Civil and Political Rights (ICCPR). Even with such, the Human Rights Committee further advocates that states are obligated to protect individuals from discrimination on the basis of because of their sexual orientation. However, in Kenya, discrimination on the basis of based on sexual orientation and gender identities is widespread among some providers in various sectors because of homophobia and biphobia. Through interaction with LGBTQI+ persons (both Kenyans & refugees) CWS has noted barriers to employment, difficulty in accessing health care, as well as harassment and verbal abuse in both public and private spaces. On top of these difficulties, LGBTQI+ persons fear for their safety amid a climate of impunity for attacks on minorities by some religious extremists.

LGBTQI+ persons who are victims of human rights violations suffer from physical injury, psychological trauma, emotional distress, and social stigma. Those with mental health challenges, related and not to acts of violence against them, are further subject to discrimination and stigmatization. This makes the issue of social exclusion and poor mental health a vicious circle perpetuating health inequality. Acts of violence including rape/forced sex targeting LGBTQI+ people, especially lesbian women, have been reported as well. This creates anxiety and fear, it also generates safety concerns and can cause panic attacks. The social stigma attached to rape victims in African culture compounds the distress of survivors. Providers continuously rely on the religious narratives and criminalization of same-sex acts to perpetuate such injustices and discriminatory practices.

1. Despite various organizations working to protect and improve LGBT rights, same-sex marriage is still not permitted in Kenya.**Article 45(2**) of the new Kenyan Constitution states that every adult has the right to marry a person of the opposite sex, based on the free consent of the parties. While the constitution provides for equal protection of the laws and application of rights, it does not explicitly protect individuals from discrimination based on their sexual orientation, gender identity or expression, or sex characteristics. Provisions of the law such as the right to manifest religion or belief have been applied in a manner that has resulted in discrimination of practice on the same basis by some actors. Despite this, Kenya has recently amended the Children Act 2022 which presented a major win for Intersex persons in Kenya. This comes after numerous court battles by intersex people together with human rights activists. The amended Act makes Kenya the first African country to recognize Intersex as a third gender with a gender marker ‘I’. The Act provides protection and allows intersexed people to enjoy their fundamental rights as children and eventually as adults as henceforth. The Act is set to change archaic societal beliefs that perpetrated discrimination and violence towards intersex persons due to their gender as the discriminatory laws that limited them from accessing registration documents and subjected them to violence from forced surgeries to even filicide which have been abolished.

Unfortunately, transgenders still have some battles to fight. When transgender people are arrested in Kenya, they are often charged with impersonation and harassed for immoral purposes and homosexuality, while the Kenyan state remains silent on the issue. LGBTI+ people in police custody are often subjected to physical, sexual, and verbal violence both from the police and fellow inmates. The police have failed to uphold their obligation to protect LGBTQI+ people from gender-based violence and discrimination perpetrated against them by private individuals or entities, claiming a religious justification for their actions; nor have they followed through to sanction the perpetrators of such acts. Gender-based violence and discrimination is being perpetuated both in the public sphere as well as by and within religious communities and entities throughout many/most facets of Kenyan societal norms.

1. LGBTQI+ persons of faith and human rights civil society organizations in Kenya have continued to challenge and reject skewed interpretations of religious doctrine that continue to influence the foundations of national laws and are demanding equal rights within their religious and cultural beliefs as well as the Constitution. They have often maintained that religion should not be ‘all or nothing’– either you choose to take part in a religion and must accept its inequalities, or you must cease to belong to that religion. The activists continue to call upon tolerant and inclusive nature of the religious teachings in activism. However, those who pursue gender equality, including gender equal beliefs, have risked violence, shunning and stigma from their religious communities. Nevertheless, various CSO/NGOs still pursue efforts to challenge the conservative and rigid views towards LGBTQI+ persons in Kenya through various advocacies, petitions, and court battles challenging discriminatory Constitutional statutes. LGBTQI+ individuals and organizations have not yielded, and they continue to challenge the conservative beliefs and to have freedom to enjoy their rights. In 2013 Kenya saw the opening of the first openly LGBTQI+ church, the Cosmopolitan Affirming Community (CAC) which continues to offer a safe space for LGBTQI+ persons of faith to practice their faith. In 2019, a Kenyan Court of Appeal ruled for the registration of National Gay Lesbian Human Rights Commission (NGLHRC) as an NGO and dismissed the registration blocking appeal by the government. The NGLHRC together with other ally CSOs and NGOs have been able to fight for the rights of LGBTQI+ around the country and continue challenging policies that hinder LGBTQI+ rights and freedoms.
2. Unfortunately, the Kenyan Government and constitution continue to remain silent on discriminatory practices towards LGBTQI+ persons and human rights violations by the judgment made in 2019 which upheld the ban on homosexuality and refuted protection from discrimination on the basis of sexual orientation. Therefore, this has resulted to continued violent practices such as conversion therapies, corrective rape and gender-based violence among others as LGBTQI+ persons are not able to report the cases for the fear of even further violence, discrimination and extortion by the Kenyan police officers.
3. Lack of access to quality reproductive health services is the main contributor among women to the high maternal mortality and morbidity in Kenya just like the rest of Sub-Sharan Africa. This is partly due to a shortage of qualified and experienced health care providers. However, conscientious objection amongst the available few is a hitherto undocumented potential factors influencing access to health care not only among the LGBTQI+ populations but among the general populations as well. Provision of certain reproductive health services such as abortion goes counter to some individual religious and moral beliefs and practices. Health providers sometimes refuse to participate in or provide such services to clients/patients on moral and/or religious grounds. The rights to do so are protected by the principles of freedom of religion, among other documents such as the Universal Declaration of Human Rights (1948) which recognizes freedom to behave in accordance with one’s conscience as central to individual liberty and integrity. Further, the International Covenant on Civil and Political Rights states that “Everyone shall have the right to freedom of thought, conscience and religion and to manifest his/her religion or belief in worship, observance, practice and teaching.”
4. The scope and application of conscientious objection has not been sufficiently defined in Kenya. This has made it possible for healthcare providers and institutions to be reluctant to offer abortions or provide access to contraception on religious grounds. The invocation of ‘conscience clauses’ provided in law has made access to legal abortion effectively unavailable to women in some parts of the country. Furthermore, individual service providers and some health facilities have refused to provide services to LGBTQI+ persons. Conscientious objection inherently takes the decision-making power away from the patient and places it in the hands of a physician. Those who invoke should therefore demonstrate the same respect for other’s rights and freedoms as they require for their own and that a balance between providers’ rights of conscientious objection and patients’ rights of access to health care is necessary to avoid harm LGBTQI+ persons
5. While some religious communities and institutions are assuming an increasingly important role in the social, political, and economic affairs of these countries; some are playing a critical part in the promotion and realization of human rights–– including the right to freedom of religion or belief –– while others are advancing protections for their religious commitments at the expense of the human rights of others both within and outside their communities. Critically, some religious groups in Kenya are promoting and perpetuating interpretations of religious tenets to promote gender-based violence and discrimination against women, girls, and LGBTQI+ persons, including physical, sexual, and psychological harm. They have engaged in campaigns characterizing rights advocates working to combat gender-based discrimination as ‘immoral’ actors, seeking to undermine society by espousing ‘a gender ideology’ that is harmful to children, families, tradition, and religion. Invoking religious tenets as well as pseudoscience, such actors argue for the defense of traditional values and often call on the state to enact discriminatory policies. There are also well coordinated activities by anti-LGBTQI+ religious groups who are misusing freedom of religion or belief across the media, through litigation, and in political campaigns to counter human rights in the name of religion or belief.

**11a.** Civil Society Organizations (CSOs) are the vanguard of progress for the LGBTQI+ community in Kenya. CSOs coalesce together for common causes, particularly causes that represent minority views or challenge the status quo, making their voices louder, their actions stronger, and their shared resources more robust. For CSOs to be effective, however, they must operate within an enabling environment supportive of their efforts and protective of their rights, specifically including their rights to peaceful assembly, association, and expression. The outcomes of such coalitions have been amazing. In the year 2015, for example, the National Gay and Lesbian Human Rights Commission (NGLHRC) achieved its legal recognition after suing the government for denying them legal registration. In the Kenyan High Court case, *Eric Gitari v Non-Governmental Organizations Co-ordination Board & 4 Others*, the court ruled that the Kenyan Non-Governmental Organizations (NGO) Board must register NGLHRC, as an LGBTQI+ advocacy group. The NGO Board had refused to register it on the grounds that Kenya’s penal code criminalizes “gay and lesbian liaisons.” The High Court found that the Kenyan Constitution applies to every person, regardless of sexual orientation and that the NGO Board violated the right to freedom of association, as protected under Kenya’s constitution, by denying NGLHRC the right to register.

11b. Some faith traditions/leaders in Kenya have taught the need to listen to those who are silenced and uplift those who are oppressed such as the LGBTQI+ people. They ask their members/congregants to find the common ground in the human experience. They urge to embrace others, especially those who are different. They also inspire the LGBTQI+ community members to make choices that will allow them to reach their fullest potential and be their most authentic selves so that they can lead with love, courage, and kindness. In this sense, an inclusive faith perspective on sexuality and gender has created a profoundly meaningful safe space and fostered acceptance for LGBTQI+ people and other community members to thrive together, express themselves authentically, and feel closer to each other. Additionally, they have upheld the freedom to manifest religion or belief, while simultaneously protecting the rights to equality and non-discrimination of all people.