

DEFIANT



“We are raised to believe that if a woman behaves differently from what is expected then she is deviant.”

Focus group discussion with lesbian, bisexual and queer women in Bujumbura, Burundi

DEFIANT

LANDSCAPE SURVEY ON VIOLENCE AGAINST LBQ WOMEN, TRANS PEOPLE
& FEMALE SEX WORKERS IN BURUNDI, KENYA, TANZANIA & UGANDA

GLOSSARY OF TERMS AND ACRONYMS

Askari:	Used in Kenya to refer to county law enforcement officials who have the power to enforce county by-laws, distinct from the Kenya police.
Assigned Sex:	The sexual classification of bodies at birth, usually as female or male, based on such factors as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.
Bisexual:	The sexual orientation of a person who is sexually and romantically attracted to women and men.
Boda boda:	A motorcycle taxi, used frequently throughout East Africa.
Cisgender:	Denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex.
Gender:	Social and cultural codes (as opposed to biological sex) used to distinguish between what a society considers "masculine," "feminine," or "other" conduct.
Gender Binary:	A socially and often legally imposed division of people, characteristics and behaviors into two categories, female and male.
Gender Nonconforming (GNC):	Behaving or appearing in ways that do not fully conform to social expectations based on one's assigned sex.
Homophobia:	Fear of, contempt of, or discrimination against homosexuals or homosexuality.
Imbonerakure:	The youth wing of Burundi's ruling party, CNDD-FDD, which functions as a militia.
Intimate Partner Violence (IPV):	Violence or aggression that occurs in a close relationship. The term "intimate partner" includes current and former spouses and romantic or sexual partners.
ITGNC:	Intersex, trans and gender nonconforming.
Kuchu:	Term for queer or LGBT, created by Ugandan activists and now used throughout the region, primarily by gay men.
Lesbian:	The sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.
LBQ:	Lesbian, bisexual and queer.
LGBT:	Lesbian, gay, bisexual and transgender.
LGBTI:	Lesbian, gay, bisexual, transgender and intersex.
LGBTQ:	Lesbian, gay, bisexual, transgender and queer.
Queer:	An inclusive umbrella term covering multiple identities, sometimes used interchangeably with "LGBTQ." Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories.
Shoga:	Kiswahili term for gay man or man who has sex with men, sometimes used specifically to refer to a "bottom," or receptive partner.
Sungu Sungu:	Vigilante neighborhood militia in Tanzania, not formally part of the Tanzania Police Force.
Transgender:	Denoting or relating to people whose assigned gender (which they were declared to have upon birth) does not match their gender identity (the gender that they are most comfortable with expressing or would express given a choice). A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity, but may or may not desire to permanently alter their bodily characteristics in order to conform to their preferred gender.
Whorephobia:	Fear of, contempt of, or discrimination against people engaged in sex work.
Womxn:	An inclusive term for female-identified persons that also emphasizes a break from defining oneself in relation to men.

I. INTRODUCTION

“Sexuality and gender go hand in hand; both are creatures of culture and society, and both play a central, crucial role in maintaining power relations in our societies. They give each other shape and any enquiry into the former tends to invoke the latter.”

– Sylvia Tamale, *African Sexualities: A Reader*

This study examines lived experiences of gender-based violence as faced by lesbian, bisexual, and queer (LBQ) women, transgender people, and female sex workers in Burundi, Kenya, Uganda and Tanzania. The study examines how state efforts to exercise control over women’s bodies, combined with patriarchal social systems, result in a wide array of types of violence. As Ugandan feminist lawyer Sylvia Tamale goes on to say in her introduction to the anthology *African Sexualities*, such systems of control have origins in British colonialism, at which time “A new script, steeped in the Victorian moralistic, antisexual and body-shame edicts, was inscribed on the bodies of African women and with it an elaborate system of control. The instrumentalization of sexuality through the nib of statutory, customary and religious law is closely related to women’s oppression and gender constructions.”² Post-independence governments discovered that sexuality could be instrumentalized to suit their needs, too. Over 50 years since colonial power was vanquished on much of the African continent, patriarchal power over women’s bodies and sexualities persists.

In several spheres encountered during this study, “gender-based violence” appears to be used interchangeably with “violence against women.” In much of the world, including in East Africa, violence against women was long negated. Only in the past few decades have women began to claim space to speak out about violence – domestic violence, sexual violence, and even broader cultural phenomena such as female genital mutilation (FGM). In our view, while it is important to centre women’s experiences in discussions of gender-

based violence, patriarchy as a system of social control also can involve subjecting other bodies to violence, including the bodies of men and gender nonconforming people. For the purpose of this report, the definition of gender-based violence includes violence perpetrated against people with non-conforming gender identities, including both transgender men and transgender women, as well as cisgender women. In examining violence that targets women and trans people with the aim of controlling their sexuality or gender expression, the study focuses primarily at what might be considered “gender nonconformity-based violence.”

A classic dictionary definition of violence is “behavior involving physical force intended to hurt, damage, or kill someone or something.”³ The UN Declaration on the Elimination of Violence Against Women (1993) describes “violence against women” more broadly, as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”⁴ The declaration sets forth an understanding of gender-based violence that encompasses, but is not limited to, physical, sexual and psychological violence, occurring in the family, the general community, or at the hands of the state.

1 Sylvia Tamale, Ed. *African Sexualities: A reader*. Pambazuka Press, 2011.

2 Ibid.

3 Lexico, powered by Oxford Dictionary, “Violence,” <https://en.oxforddictionaries.com/definition/violence>.

4 United Nations General Assembly, “Declaration on the Elimination of All Forms of Violence Against Women,” adopted 23 February 1994, <https://www.un.org/documents/ga/res/48/a48r104.htm>.

DEFIANT

In conducting this research, we sought respondents' own definitions and examples of violence as they experienced it in recognition of the importance of nuancing this discourse based on the lived contextual realities. Their responses were wide-ranging and did not always include acts that might constitute violence under strict legal definitions. Because the purpose of this report is to convey the realities of LBGQ women, trans people, and female sex workers in East Africa, we adopt their uses of the term "violence." Our use of this term, in a broad sense, is not necessarily an endorsement of prosecution of all such acts as violence under the law. Where relevant, we also lean on definitions provided by international institutions. Thus, classifications of violence in this study include:

- **Physical violence**, which refers to any acts of physical aggression such as beating, shoving and obstruction;
- **Sexual violence**, defined by the World Health Organization as *"any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It includes rape, defined as the physically forced or otherwise coerced penetration of the vulva or anus with a penis, or other body part or object;"*⁵
- **Economic violence**, defined by the Pan American Health Organization (PAHO), a branch of the WHO, as *"actions or omissions on the part of the abuser that affect the economic life—and sometimes the survival—of [victims]"*;⁶
- **Psychological/ emotional violence**, defined as things that are done or said to isolate, humiliate, or threaten a person and/or affect their ability to be mentally well⁷;
- **Online violence**, a form of psychological or emotional violence carried out online.
- **Structural violence**, including denial of access to health care, education or justice. Some interviewees also referred specifically to "economic violence."
- **Intimate partner violence**, which can encompass physical, sexual, economic and psychological violence. We rely here on a World Health Organization definition: *"behavior by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviors"*⁸;

There have been efforts at local, national, regional and international levels to respond to violence against women, with positive steps in legislating on issues related to gender equality, including in the political, economic and social spheres, and increasingly on issues of violence against women. At a continental level, the African Commission on Human and Peoples' Rights (ACHPR) during its 60th session in 2017 adopted guidelines on combating sexual violence and its consequences in Africa.⁹ The guidelines recognize that sexual orientation, gender identity, and profession, among other factors, can increase people's vulnerability to sexual violence, and they call on states to respond to such violence in a non-discriminatory way.¹⁰

5 World Health Organization, "Violence against Women," November 29, 2017, <https://www.who.int/en/news-room/fact-sheets/detail/violence-against-women>.

6

7 Some source distinguish between "psychological violence" and "emotional violence"; see, for instance, the Violence Prevention Initiative of the government of Newfoundland (Canada), available at <https://www.gov.nl.ca/VPI/types/#3>. Respondents in our study tended to use both terms interchangeably, so we have grouped them together here.

8 World Health Organization, "Violence against Women," November 29, 2017, <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

9 African Commission on Human and Peoples' Rights, "Guidelines on Combating Sexual Violence and its Consequences in Africa," 2017, <https://www.achpr.org/legalinstruments/detail?id=4>. The African Commission guidelines note that sexual violence "mainly affects women and girls, but men and boys are also victims."

10 Ibid., p. 17.

In spite of the progress made on paper, in practice, advancements in ending gender-based violence are slow to be realized and often deprioritized by states. When it comes to women and gender nonconforming people whose sexual and/or gender identities or profession do not ascribe to societal norms, in spite of positive language from the African Commission, a state commitment to addressing acts of violence against them is often absent altogether.

All four countries criminalise same-sex sexual relations as well as sex work. Tanzania and Uganda have some of the harshest provisions against consensual homosexual sex in the world, with sentences of up to life in prison.

In Kenya, Tanzania, and Uganda, the penal codes makes reference to acts 'against the order of nature.' These colonial-era provisions are often interpreted as applying to anal sex or sex between males, but their vague language means that they can be levied as threats against females as well.¹¹ The penal code of Zanzibar was modified in 2004 to explicitly criminalise sex between two females. Burundi's more recent law, adopted in 2009, is gender-neutral, prohibiting "sexual relations between persons of the same sex." Transgender people are legally and socially invisibilized in all four country contexts (despite some legal progress in Kenya), so the laws, and the officials who enforce them, tend to understand transgender women as men and transgender men as women. While none of the four countries explicitly criminalizes being transgender, trans people are frequent targets under "homosexuality" laws.

All four countries criminalize some forms of sex work. While in some cases laws are limited to actions such as publicly "soliciting" for sex or "living off the earnings of prostitution," in practice police regularly arrest suspected sex workers simply on the basis of their sex worker status, regardless of whether they have been caught engaging in any illegal act.

¹¹ For instance, the head of Kenya's film classification board, Ezekiel Mutua, has claimed "lesbianism" is illegal in Kenya. Suleiman Abdi, "Ezekiel Mutua warns gay, lesbian lobby groups," hivisasa, 2018 [no exact date provided], <https://hivisasa.com/posts/ezekiel-mutua-warns-gay-lesbian-lobby-groups>.

	BURUNDI	KENYA	TANZANIA	UGANDA
Criminalises same sex sexuality?	Yes. Penal Code Art 567 punishes "sexual relations between persons of the same sex" with up to two years in prison.	Yes. Penal code 162-165* penalises "carnal knowledge against the order of nature" and "gross indecency between males" with sentences of 14 and five years respectively.	Yes. Section 154-155 of the Tanzania mainland penal code punishes "carnal knowledge against the order of nature" with up to life in prison, and S157 punishes 'indecent practices between males'. S150-151 of the Zanzibar penal code punishes "carnal knowledge against the order of nature" with up to 14 years in prison. S153 of the Zanzibar penal code penalises "acts of lesbianism" with up to five years in prison. S154 punishes "gross indecency between persons" with up to five years in prison. S158 of the Zanzibar penal code prohibits "same sex unions" with up to seven years in prison.	Yes. S145 penalises "carnal knowledge against the order of nature" with a sentence of up to life in prison. S148 penalises "gross indecency" with a sentence of up to seven years in prison.
Criminalises sex work?	Yes. Penal code Art. 538, Art 539 and 548 - 553	Yes. Penal Code S154 and s17 of the Sexual Offences Act and county by-laws.	Yes in Art 176 (a) of the Tanzanian penal code and 181(a) of the Zanzibar penal code.	Yes. S139 of penal code.
Recognition of non conforming gender identities?	No legal recognition. In the absence of any legal pathway to gender recognition, there is a risk that art 351, 364 and 365, penalising anyone with documents that do not reflect their 'identity,' may be used against trans people.	No clear pathway to legal recognition outlined by law. Positive judicial decisions have recognised the rights of trans people to obtain identification documents recognizing their name.	No legal recognition. In the absence of any legal pathway to gender recognition, there is a risk that Section 301 of Tanzania's penal code on 'false pretense' and Sections 304 of Zanzibar penal code (false pretense), together with sections 312 (obtaining registration by false pretense) and 313 (false declaration for passports) may be used against trans people.	No legal recognition. In the absence of any legal pathway to gender recognition, there is a risk that S 304 on 'false pretenses' as read with S312 (obtaining registration by false pretenses) and S313 (false declaration for passports) may be used against trans people.

This report seeks to interrogate violence as it affects lesbian, bisexual and queer women (LBQ), trans identifying individuals, and female sex workers. As an organizing tool in this report, we categorized information into three themes: “pussy,” “patriarchy” and “power.” The selection of these themes is posited on the established link between sex, sexuality, perceived gender roles and violence.

“Pussy” as a theme in this report, connotes state efforts to control women’s sexuality. Criminalization of both same-sex conduct between women and sex work is, in essence, a form of government control of women’s genitals and how they use them. While we recognize that the term “pussy” may make some readers uneasy, women around the world have claimed the word “pussy” as a term of empowerment, precisely as part of a campaign to destigmatize female sexuality. Part of the claim they are staking is that women and women alone own their pussies. But where states criminalize same-sex relations or sex work, the state is asserting ownership of pussy.

In the four countries included in this study, the authorities tend to conflate biological sex and gender. The theme “pussy” thus addresses, more broadly, how the state interacts with individuals based on their being born with or without a vagina. This includes interaction by the state through legislation and state-sanctioned action through its agents.

“Patriarchy” connotes a systemic culture in which power is associated to masculinity, and masculinity is largely identified by the extent to which individuals having phallic biological sex exercise power. Consequently, institutions and social structures have been and continue to be created to privilege men at the expense of women. As a result of patriarchy, specific gender roles are assigned to individuals biologically identified as men and women. Patriarchy breeds repression of any deviations that challenge the status quo, can take the form of homophobia, transphobia or whorephobia, and is exercised as dominance over others. This is often manifested through violence.

Patriarchy and heteronormativity have insinuated their way into queer communities in East Africa.

Traditionally feminine-presenting LBQ women are often referred to as “femmes” while typically masculine-presenting LBQ women or trans men are referred to as “tomboys,” “butch” and “stud.” These labels come attached to certain behavioral expectations according to which masculine presenting women are expected to play the role of provider and their feminine presenting counterparts expected to be homemakers—despite the fact that some masculine-presenting women and trans men miss out on job opportunities due to their non-normative gender expression.

The theme “patriarchy” therefore examines violent and oppressive social structures that subordinate women and gender nonconforming people, including through attacks on their sexual freedom. It also encapsulates trans peoples’ experiences of violence on the basis of not conforming to expectations based on their assigned sex. The study seeks to speak to the lived reality of violence against LBQ women, trans people and female sex workers in a context in which state protection is insufficient or lacking.

The title of this report, “Defiant” (written over an x’d out “Deviant”) speaks to the third theme, “Power” which in the context of this report refers to “power to.” We examine community-led organising aimed at mitigating violence against LBQ women, trans individuals and female sex workers.

Levels of organising vary by country and community. Kenya and Uganda have many peer-led organisations, as well as a range of relationships with mainstream civil society organisations, in comparison to Tanzania and Burundi. That said, communities in all four countries are contending with legislation that contributes to shrinking civil society space by seeking to control the ability of NGOs to raise funds, to register and obtain legal status, and to exist without the constant threat of arbitrary deregistration. For the security of peer led organisations and in recognition of their agency to determine to what extent their information is publicly available, we opted to exclude the list of identified organisations.

DEFIANT

The external funding environment acts as a constraint on the power of peer-led representing LBQ women, trans people, and female sex workers. Contrary to the myth that Western donors pour unlimited resources into a “gay agenda,” only a tiny percentage of international aid disbursed by Western governments and foundations actually goes toward lesbian, gay, bisexual, transgender and intersex (LGBTI) issues.¹² A much smaller fraction of that amount reaches women- and trans-led organizations.¹³ The HIV epidemic in Africa led to an influx of donor funds to fight HIV among at-risk populations, including men who have sex with men (MSM), and some MSM-led organizations have benefited from such funding to advance a broader agenda in support of equality and human rights, but female-led and trans-led groups have all too often been left behind. Sex worker rights groups, too, struggle to obtain donor funds.

Independence from donor funding is not always a liability. Grassroots community organizing with no donor strings attached can be liberating and empowering, as some respondents in this study attest to. Nevertheless, given the limited economic opportunities available to LBQ women, trans people and sex workers in East Africa, self-funding is not always a realistic option. Infusion of financial support into peer-led organizing remains important in contributing to these groups’ assertion of power.

Structural challenges

- Legislation that does not recognise LBQ, trans and sex workers and therefore inhibits access to justice;
- Existing legislation that criminalises same-sex sexuality and sex work;
- Peripheral legislation such as county bylaws that are easily manipulated against LBQ, trans and sex workers;
- Ineffective platforms for addressing gender-based violence which also exclude the intersectionality of gender, sexuality and bodily autonomy;
- Incompetent health care providers with little or no knowledge about how to address trans specific issues, particularly in public hospitals;
- Prioritisation of purported (repressive) culture over rule of law;
- Inadequate safe spaces to address or discuss experiences of violence for non-normative sexualities, genders or professions.

¹² Global Philanthropy Project, “Infographic: 2013-2014 Global Resources Report,” <https://globalphilanthropyproject.org/2016/06/23/grrinfographic/>.

¹³ Mama Cash and The Foundation Center, “Untapped Potential: European Foundation Funding for Women & Girls,” 2011, https://www.mamacash.org/media/publications/untapped_potential_-_european_foundation_funding_for_women_and_girls.pdf; Astraea Lesbian Foundation for Justice, “Global Surveys of Intersex and Trans Groups Reveal Critical Funding Gap,” October 31, 2017, <https://www.astraeafoundation.org/stories/global-surveys-trans-intersex-groups-reveal-critical-funding-gap/>.

Several emerging issues arose in the course of the study that merit further research namely:

1. **Online violence.** The use of the internet, greatly expanded in East Africa in recent years by widespread access to internet-enabled phones, and the influence of social media has facilitated the creation of digital spaces that, much like the physical bodies of LBQ women, trans people and sex workers, become a site for violence. This violence manifests in explicit forms such as bullying, trolling and stalking. Another threat to online space and safety includes government surveillance, arbitrary raids that target digital information storage, and legislation aimed at limiting organising and communication, such as the social media tax recently imposed by the Ugandan government. These violations remain largely undocumented and unaddressed.

2. **Patriarchy within, not just without.** The lens through which gender is perceived in relation to power even within LBQ, trans and sex worker communities sometimes appeared to be quite patriarchal. This was made evident particularly through the ways in which some trans men and some LBQ women in relationships with a butch/femme dynamic expressed understandings of gender and power. Some trans male respondents seemed to understand manhood as reflected through an assertion of power and dominance based on perceived gender roles, while associating femininity with submission.

“Since I’m the one that initiates the relationships, I think it is fair for me to dictate what I want and for my woman to follow. When she wants something and convinces me, then it is fine.”

3. **Community marketing.** Many respondents seemingly normalised intimate partner violence within their relationships and did not appear to consider it as a category in their definitions of violence, which mostly looked outward, and not introspectively within their personal relationships. This phenomenon was aptly described by a respondent who wrote a paper on intimate partner violence within Uganda’s LBQT community, as “community marketing”.

“None of the people I spoke to reported violence within their intimate relationships because for a lot of them there was the recognition that if they report it, they would be giving others power to abuse both them and the other party involved. Therefore people tend to excuse violence within the community. As a result of their collective exclusion peoples’ first instinct is protecting the community at large and not just the individual which affects the way individuals react to it and or experience violence within queer relationships.

– Godiva, activist, Uganda

4. **Cultural justifications for gender inequality.** Whereas all four countries have somewhat protective constitutions whose wording should ideally suffice to include non-normative gender identities, sexualities and professions, these coexist with legislation that upholds patriarchy, including legislation on land, family and inheritance. Laws that build inequality into social relations are often justified on the basis of cultural relativism. Other research has examined how cultural relativism is used to refute LGBT rights claims more generally, but such research has rarely looked at how LBQ women and trans people face intersecting forms of sexism and homo/transphobia that are justified on the grounds of culture. Sex workers, too, face cultural and sometimes legal condemnation of sex workers but not their clients, who are typically cisgender men.

5. **The impact of shrinking civil society space on women and others who do not conform to sexuality or gender norms.** All four countries have legislation that controls civil society space, regulating the means through which organisations can obtain legal identity or how they can fundraise or utilise funds. In all four countries, governments have sought to expand such restrictions in recent years, largely in reaction to civil society’s assertion of its independence and its role as a check on authoritarian tendencies. Such laws have a specific detrimental impact on LBQ, trans, and sex worker organizing, given that increased state scrutiny of activities and finances provides increased opportunities for states to shut down the work of organisations taking up “unpopular” issues.

II. METHODOLOGY

This research focused on violence as experienced by three communities — lesbian, bisexual and queer (LBQ) women, transgender and gender nonconforming people, and cisgender female sex workers — in Burundi, Kenya, Tanzania and Uganda. These four countries were chosen due to the depth of community organizing among the three target communities, as well as UHAI-EASHRI's existing networks with formal and informal groups representing them. We plan to conduct similar studies in other Eastern African countries in the future.

This report is based largely on primary sources, including focus group discussions and one-on-one interviews. We also relied on some secondary sources, including news articles, organisational reports, and statutes of law.

In addition to conducting interviews and focus group discussions, we distributed surveys in hard copy through key informants which sought to capture quantitative data on demographics (age, identity, orientation and financial disposition), experiences of violence, and knowledge of redress mechanisms for violence available in their countries. While we received back a significant number of surveys, responses to the substantive questions of the survey were often missing or incomplete.¹⁴ Some respondents reported a lack of understanding of the language used for the survey. For these reasons, we have not included substantive responses from the survey in this report, but we were able to generally confirm that where violence was described, it accorded with the types of responses provided in focus groups and one-on-one interviews.

Interviews and focus group discussions were conducted in several locations in each country, as listed below.

Burundi: Bujumbura, Gitega, Ngozi

Kenya: Eldoret, Nairobi, Kisumu and Mombasa

Uganda: Gulu, Kampala, Lira, Mbale, and Mbarara

Tanzania: Dar es Salaam and Zanzibar

Focus groups included between four and 25 participants. Those with more than 15 participants were generally the result of merging two groups, such as LBQ and trans, and were then split into smaller constituency groups of six to ten. Participants in both focus groups and one-on-one interviews were recruited by key informants and focus group discussion facilitators drawn from UHAI-EASHRI's partner organizations. Participants were paid a travel stipend ranging from USD 5 to USD 7 depending on the country and the distance travelled. All participants provided informed written consent.

In Kenya and Uganda, focus groups and individual interviews were conducted in English. In Tanzania, they were conducted in Kiswahili. In Burundi, focus groups and individual interviews were conducted in French, with the assistance of amateur interpreters drawn from the target communities.

Participants joined focus groups according to their self-perceived identity. We did not ask all participants to choose one descriptor to identify themselves. Some respondents are described in the report as "LBQ women," rather than with a specific identifier such as lesbian, bisexual, or queer, whereas some respondents are described using a term with which they self-identified.

¹⁴ We received 104 surveys back from Burundi, 155 from Kenya, and 78 from Tanzania. Due to a data collection problem, we only received 36 surveys back from Uganda.

The sex workers interviewed for the sections of this report focused on violence against sex workers were all cisgender women, although some transgender women interviewed for the trans sections of this report were also sex workers. Other studies suggest that transgender women sex workers, and in some cases cisgender male sex workers, face forms of violence similar to those experienced by cisgender female sex workers.

We did not specifically recruit intersex participants for this research. Although UHAI-EASHRI does support intersex organizing, we believe the issues faced by intersex people in East Africa are often substantively different than those faced by lesbian, bisexual, queer and transgender people and female sex workers, and that they merit focused research at a future date.

Limitations

The researchers found that most LBQ and trans identifying respondents seemed understandably reluctant to reveal their personal experiences of sexual violence. This was particularly evident in focus group discussions but may have been a limitation in one on one interviews as well.

Because of the politics of language and naming and the cultural nuances related to understandings of gender and sexuality, some respondents expressed multiple identities or were uncertain of what label may coincide with their identities. This seemed particularly so for some feminine-presenting respondents, assigned male at birth, who described themselves as women but also as gay men, and some masculine-presenting respondents, assigned female at birth, whose descriptions were as men but also lesbians.

Other limitations were geographical. For example, in Tanzania, due to the security situation and crackdown on LGBT organisations, we were only able to get information from two cities. In the other three countries, the selected towns and cities provided urban, peri-urban and rural perspectives of violence.

Finally, when conducting research among populations that are contained with regard to publicly expressing their identities, it is difficult to identify representative samples. In our case, all of the LBQ women, sex workers, and trans people we interviewed were reached by key informants or by civil society organisations. In other words, we only met people from these groups who had pre-existing connections to civil society groups and to key informants. Those living in isolation, who may be likely to experience the most severe forms of violence, were not reached.



BURUNDI

III. BURUNDI

“In 2015 during the political crisis many trans people moved to Rwanda [because] we were targeted and accused of being part of civil society trying to overthrow the government.”

— Eric, trans man, Bujumbura

DEFIANT

Overview

As is the case with its neighbours, in Burundi, gender is understood as binary and determined by an individual's assigned sex at birth. Gender inequality is pronounced, with women facing multifaceted discrimination under the guise of "culture."

On paper, there is some legislative protection of women. The new constitution, adopted in 2018, creates a strong template for the protection of human rights, which invariably should apply to every citizen, but implementation is uneven at best. Its provisions include a prohibition on discrimination based on sex, but the constitution itself includes a discriminatory provision related to marriage.¹⁵ The constitution also makes reference to gender, without articulating a distinction between sex and gender. Article 68, which calls on Burundians to uphold undefined Burundian values and morality, risks being manipulated against sexual and gender minorities and sex workers.

Burundi is party to 11 treaties that form part of international human rights law, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All forms of Discrimination against Women (CEDAW). It has signed but not ratified the Optional Protocol to CEDAW, which establishes complaint and inquiry mechanisms.¹⁶

A 2016 law on gender-based violence increases sentences for some forms of violence, establishes special courts for prosecution of such cases, and requires government reporting.¹⁷ But the same law contains deeply regressive elements: it punishes adultery, prohibits unmarried couples from living together, makes light of marital rape by punishing it with only 15-30 days in prison, and contains a provision that appears to blame victims, punishing those who "incite gender-based violence through indecent dress" with up to three years in prison.¹⁸ Meanwhile, Burundi retains laws that declare that in a marriage (limited by law to different-sex couples), the husband is the head of the family,¹⁹ and laws that fail to provide for inheritance of land by women.²⁰

Advances made through the 2016 legislation are limited by the fact that they exist within a legislative framework that criminalises same-sex sexuality and sex work, which limits access to redress for groups that may be at high risk of violence, and in so doing, sanctions that violence.

The political unrest that has plagued Burundi for years, spiking most recently in 2015/2016 following a coup attempt, has rendered violence commonplace in the lives of many Burundians.²¹ One constituency that has felt the brunt of the politically induced conflict has been women and girls, who fell prey to heightened violence, although reliable data on sexual violence is sparse.²²

¹⁵ Constitution of the Republic of Burundi, 2018, art. 13, 22 (on non-discrimination), art. 29 (on marriage).

¹⁶ United Nations Human Rights, Office of the High Commissioner, "Status of Ratification Interactive Dashboard," <http://indicators.ohchr.org/>.

¹⁷ République du Burundi, Loi N°1/013 du 22 Septembre 2016 Portant Prévention, Protection des Victimes et Répression Des Violences Basées Sur le Genre, <https://www.presidence.gov.bi/2016/09/22/loi-n1013-du-22-septembre-2016-portant-prevention-protection-des-victimes-et-repression-des-violences-basees-sur-le-genre/>.

¹⁸ République du Burundi, Constitution de la République du Burundi, 2018, art. 24 and 42 (prison sentences for unmarried different-sex couples living together), art. 41 (adultery), art. 27 (marital rape), and art. 60 (inciting gender-based violence through indecent dress).

¹⁹ Decret-Loi N° 1/024 du 28 Avril 1993 Portant Reforme du Code des Personnes et de la Famille), http://cnidh.bi/sites/default/files/fichierpdf/Code_des_Personnes_et_de_la_Famille.pdf, art 122.

²⁰ Alain Ndikumana, "Gender equality in Burundi: Why does support not extend to women's right to inherit land?", Afrobarometer Policy Paper No. 22, July 2015, http://afrobarometer.org/sites/default/files/publications/Policy%20papers/ab_r6_policypaperno22.pdf.

²¹ For a summary of Burundi's history of conflict through 2015, see L.L. Ndimurwimo and M.L.M. Mbaio, "Rethinking violence, reconciliation and reconstruction in Burundi," PER vol.18 n.4 Potchefstroom 2015, http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812015000400005.

²² Dijkman et. AL., « Sexual Violence in Burundi: Victims, perpetrators, and the role of conflict,» HiCN Working Paper 172, March 2014, <http://www.hicn.org/wordpress/wp-content/uploads/2012/06/HiCN-WP-172.pdf>, p. 3.

People of non-normative sexual orientations and gender identities have also been subjected to violence that stems in part from the political conflict.²³ Such violence may not be explicitly related to their gender expression, but the culture of surveillance that has taken root in the context of armed conflict puts them at heightened risk. The state, ostensibly to root out “rebels” and political opponents, exercises wide-ranging surveillance of citizens, through structures such as police checkpoints. Young people, in particular, are targets of scrutiny.

“In 2016 when I came back to Burundi I had a smart phone. The police would check peoples’ phones. They demanded to see my phone. Because it had messages that would incriminate me, I smashed my phone. They threatened to arrest me and became progressively aggressive and asked if I was a man or a woman. A friend of mine who is a policeman was there and convinced them to let me go, referring to me as ‘her’. I was forced to pay a bribe of 50,000 Francs because they said I’m a woman dressed like a man. I told them that I dress the way I do because I do karate.”

— Eric, trans man

“During the [2015-2016] conflict, I fled Burundi. At some point I decided to return. One day I was driving from Bujumbura to Gitega to visit my family and I was stopped. The policeman came to the window and asked me if I’m a man or a woman and asked to see my passport. I had hidden it and declined to produce it because they were targeting youth at the time and particularly anyone that had been to Rwanda recently. Luckily for me I knew someone influential in the police who I called and was let off with a warning.”

— Leonard, trans man

Contextualising the relationship between gender and violence in Burundi entails an understanding of the country’s legal framework, the longstanding history of conflict and the situating of cultural practice in the implementation of law and policy. The government as well as other stakeholders in Burundi, including NGOs, tend to conflate “gender” in the context of gender-based violence with cisgender women, excluding trans women and negating the gender identities of trans men.

The state perpetuates systemic violence through its enactment of discriminatory laws and policies and the weakness of its response to incidents of violence. This manifests through:

- Criminalization of same-sex conduct and sex work;
- A constitutional prohibition on same-sex marriage;
- A healthcare system debilitated by insufficient resources, skewed prioritization and hierarchal access, allowing those with money and power to obtain a higher standard of care;
- Largely inaccessible reporting structures and judicial redress systems; and
- Restrictions on civil society organizing, in an environment in which mainstream civil society organizations are unwilling or reluctant to take up LBQ, trans, and sex worker issues.

Because of the hostile legal environment, most LBQ women, trans people and sex workers do not report incidents of violence for fear of intimidation by police or, in the case of sex workers, losing their client base. No data is collected on crimes based on sexual orientation, gender identity or profession.

Some violence survivors do seek redress through the few peer-led and community-friendly organisations in the country. However, two pieces of legislation passed in January 2017, the law on local non-profit organisations and the law on foreign non-governmental organisations, restrict civil society organizing, making it increasingly difficult for such organizations to operate.²⁴

23 UHAI-EASHRI, Turi Abande: A Landscape Analysis of The Human Rights of Sex Workers and LGBT Communities In Burundi, 2016, <https://www.arcusfoundation.org/wp-content/uploads/2016/11/turi-abande-burundi-baseline-eng.pdf>.

24 République du Burundi, Loi N°1/ 02 Du 27 Janvier 2017 Portant Cadre Organique Des Associations Sans But Lucratif, January 27, 2017, <https://presidence.gov.bi/2017/01/27/loi-n1-02-du-27-janvier-2017-portant-cadre-organique-des-associations-sans-but>

PUSSY

The legislative environment in Burundi provides incomplete recognition of the rights of women. As noted above, men are legally the head of household, and inheritance laws discriminate against women. Just as the law limits women's economic self-sufficiency and agency, it also controls their bodies.

LBQ women and trans people are not at liberty to have sex with a partner of their choice. Sexual relations between persons of the same sex are punishable by up to two years in prison.

Burundians are also not at liberty to sell sexual services. The Penal Code criminalises a range of activities related to prostitution, including soliciting for sex and profiting from the proceeds of prostitution. Like in many penal codes around the world, the act of having sex for money is not itself criminalized. However, police use provisions against adultery to target sex workers whom they have no other basis to arrest.

The following table summarizes laws that may be used against LBQ women, trans people, and sex workers in Burundi. Laws related to "impersonation" or "false declaration" of identity, even if intended to prevent serious identity crimes, may perpetuate injustice in the absence of a law that provides a simple, rights-respecting process by which trans people can change their names and sex markers on documents. Some trans people may obtain an identification document which a picture and gender marker that matches their gender expression, not out of an intent to defraud the authorities, but as a simple survival strategy to avoid the daily harassment and violence that may accompany carrying an ID that does not match one's expression.

lucratif/; République du Burundi, Loi N°1/ 01 Du 23 Janvier 2017 Portant Modification De La Loi N°1/ 011 Du 23 Juin 1999 Portant Modification Du Décret-Loi N°1/ 033 Du 22 Août 1990 Portant Cadre Général De La Coopération Entre La République Du Burundi Et Les Organisations Non Gouvernementales Étrangères (ONGE), January 23, 2017, <https://presidence.gov.bi/2017/01/23/loi-n1-01-du-23-janvier-2017-portant-modification-de-la-loi-n1-011-du-23-juin-1999-portant-modification-du-decret-loi-n1-033-du-22-aout-1990-portant-cadre-general-de-la-cooperatio/>.

Legislation Controlling Women’s Sexuality and Gender Expression in Burundi

LEGISLATION	RELEVANT PROVISION	IMPACT
Constitution ²⁵	Art. 29 – prohibits marriage between people of the same sex	Denies marriage equality.
	Art. 68 – calls on all Burundians to uphold undefined Burundian cultural values and contribute to a morally health society	Could be wielded against people with non-normative sexualities, gender identities, and professions.
Penal Code ²⁶	Art. 363 – false declaration of one’s identity to an authority	This provision could be used against trans people, who have no legal pathway to change their name and gender identity officially.
	Art. 539 – inciting debauchery or prostitution Art. 542 – running or financing a brothel Art. 543 – profiting from prostitution Art. 544 – aiding or abetting prostitution Art. 546 – providing a space for prostitution Art. 548 – soliciting for sex	These provisions, prohibiting activities related to sex work, are used by Burundian police to harass, extort, and sometimes arrest sex workers. They carry sentences of up to five years in prison.
	Art 549-553 - indecency (defined as any sexual act against Burundian culture) Art. 565 – sharing or distributing immoral content Art. 565 – public indecency	These vaguely worded provisions could be used against LBQ women, trans people and sex workers, simply for expressing their identity.
	Art. 567 – same-sex sexual relations	Criminalizes consensual same-sex conduct with up to two years in prison.
Act No. 1/13 of 22 September 2016, on the protection of victims and the prevention and punishment of sexual and gender-based violence ²⁷	Art. 24 – cohabitation	Prohibits cohabitation between unmarried people of different sexes.
	Art. 41 – extramarital sex	Modifies and expands Burundi’s existing law on adultery, removing a limitation by which adultery was previously only punishable if one of the spouses filed a complaint.
	Art. 45 – pimping	Provides for five to ten years in prison for someone who serves as an “intermediary” between a sex worker and a client.
	Art. 60 – inciting gender-based violence through indecent dress	This provision blames victims of gender-based violence and is likely to prevent them from coming forward.
Code of the Person and the Family ²⁸	Art. 122 – stipulates that the husband is the head of the household	Perpetuates patriarchal customary ideals, to the detriment of women.
Law No. 1/1 Of 23 January 2017 Amending Law No. 1/11 Of 23 June 1999 Amending Decree-Law No. 1/033 Of 22 August 1990 On General Framework for Cooperation Between The Republic Of Burundi And Foreign Non-Governmental Organizations (INGOs) ²⁹		Both laws shrink civil society space by making it difficult for organisations to remain autonomous and engage in work that includes communities otherwise left out in government initiatives.
Law No. 1/02 of 27 January 2017 Regulating the Functioning of Non-profit Associations ³⁰		
Ministerial Ordinance No. 620/613 of 7 June 2011 ³¹	Art. 9 – decreeing that students can be expelled for a year and denied admission into any school on the basis of “homosexuality.”	Denies LGBT students the right to education.

Legislation Supportive of Bodily Autonomy and Rights in Burundi

LEGISLATION	RELEVANT PROVISION	IMPACT
Act No. 1/04 of 5 January 2011, on the creation of the Independent National Human Rights Commission		While creation of an independent human rights commission is in principle a positive development, the commission's independence has been questioned. It has not taken up rights issues related to nonconforming gender identities, sexualities or professions.
Penal Code	Art. 535 – Domestic violence	In principle, applies to same-sex intimate partners and violence by any person living under the same roof.
	Art. 554 – Rape	Includes both women and men as potential victims and perpetrators of rape.
Act No. 1/13 of 22 September 2016, on the protection of victims and the prevention and punishment of sexual and gender-based violence ³²	Art. 27 – Marital rape	Punishes marital rape, but with a sentence of only 15 to 30 days in prison, plus a fine.
	Art. 28 – Provides for the establishment of a special chamber on gender-based violence in each court, and special magistrates trained to handle such cases	Such magistrates may be more sensitive to women's issues, including LBQ women and sex workers.
	Art. 49, 50 – Criminalizes psychological or emotional violence, economic violence	Broad understanding of the types of violence that may affect women.
Constitution	<p>Art. 13, 14 – Equality, dignity and respect for difference are enshrined in the constitution as Burundian values</p> <p>Art. 21 – Right to dignity</p> <p>Art. 22 – Right to equality on the basis of "origin, race, ethnicity, sex, color, language, social status, religious, philosophical or political beliefs, physical or mental disability, or being a carrier of HIV or another incurable disease"</p> <p>Art. 23 – Prohibits arbitrary actions by the state and its agents</p> <p>Art. 28 – Respect of private life</p> <p>Art. 32 – Freedom of assembly and association</p> <p>Art. 43 – Right to privacy</p> <p>Art. 54 – Right to work</p>	In principle, these rights should apply to everyone in Burundi, regardless of their sexual orientation, gender identity, or profession. However, the constitution lacks specific provisions for protection of these groups.

State Control of Sex Workers' Bodies

Burundian law does not punish the act of transactional sex itself. But it punishes a range of activities related to sex work, resulting in the policing of sex workers' bodies. Law enforcement officers also abuse the existence of an adultery clause in the penal code to extort, blackmail and arbitrarily arrest sex workers and, some cases, their clients. This abuse is facilitated by a common practice of restricting shared hotel room occupancy to married (cisgender, heterosexual) couples.

“The police often target guest houses and knock on doors so that they catch us in the act and thereafter solicit bribes by threatening to expose us and our clients.”

– Miya, sex worker, Gitega

Police officers were reported to be more lenient towards the sex workers' clients, whom they often let go, while harassing and threatening the sex workers. In criminalizing adultery, Burundi negates the right to bodily autonomy.

“The police beat us when they catch us with clients, but they let our clients go after getting bribes because they know they have money.”

– Leila, sex worker, Ngozi

Policemen were reported as demanding sexual favours from sex workers in exchange for release – a form of rape.

“There was a time the police came to our house and arrested us. In these situations they demand sex or sexual acts in exchange for release.”

– Tina, sex worker, Ngozi

Aside from law enforcement officers, the *Imbonerakure* – the youth wing of the ruling party, whose members sometimes carry out arrests, despite having no legal right to do so – were also identified as abusing said powers to harass and threaten sex workers, as documented below.

Respondents reported having heard of a proposed law that would regulate sex work by having sex workers register with the government. However, at the time of writing this report, there was no such legislation tabled.

“We would prefer paying that tax instead of getting arrested all the time.”

– Extract from sex worker focus group discussion, Bujumbura

25 République du Burundi, Constitution de la République du Burundi, 2018, <https://www.assemblee.bi/IMG/pdf/constitution.pdf>.

26 République du Burundi, Loi n°1/05 du 22 avril 2009 portant révision du Code pénal (Code pénal).

27 République du Burundi, Loi N°1/013 du 22 Septembre 2016 Portant Prévention, Protection des Victimes et Répression Des Violences Basées Sur le Genre, <https://www.presidence.gov.bi/2016/09/22/loi-n1013-du-22-septembre-2016-portant-prevention-protection-des-victimes-et-repression-des-violences-basees-sur-le-genre/>.

28 République du Burundi, Décret-loi N° 1/024 du 28 Avril 1993 portant Reforme du Code des Personnes et de la Famille, http://cnidh.bi/sites/default/files/fichierpdf/Code_des_Personnes_et_de_la_Famille.pdf.

29 République du Burundi, Loi N°1/ 01 Du 23 Janvier 2017 Portant Modification De La Loi N°1/ 011 Du 23 Juin 1999 Portant Modification Du Décret-Loi N°1/ 033 Du 22 Août 1990 Portant Cadre Général De La Coopération Entre La République Du Burundi Et Les Organisations Non Gouvernementales Étrangères (ONGE), January 23, 2017, <https://presidence.gov.bi/2017/01/23/loi-n1-01-du-23-janvier-2017-portant-modification-de-la-loi-n1-011-du-23-juin-1999-portant-modification-du-decret-loi-n1-033-du-22-aout-1990-portant-cadre-general-de-la-cooperatio/>.

30 République du Burundi, Loi N°1/ 02 Du 27 Janvier 2017 Portant Cadre Organique Des Associations Sans But Lucratif, January 27, 2017, <https://presidence.gov.bi/2017/01/27/loi-n1-02-du-27-janvier-2017-portant-cadre-organique-des-associations-sans-but-lucratif/>.

31 See MOLI « Burundi : L'incompréhension sur l'Orientation Sexuelle/Identité de Genre et Pratique Sexuelle mène à une mesure discriminatoire en milieu scolaire Rapport sur l'Ordonnance Ministérielle No 620/613 du 7 Juin 2011 portant fixation du Règlement Scolaire en vigueur au Burundi, » May 2012, http://moliburundi.org/wp-content/uploads/2012/09/moli_burundi_rapport_education_2012-lgbt-fr.pdf, Annex 5.

32 République du Burundi, Loi N°1/013 du 22 Septembre 2016 Portant Prévention, Protection des Victimes et Répression Des Violences Basées Sur le Genre, <https://www.presidence.gov.bi/2016/09/22/loi-n1013-du-22-septembre-2016-portant-prevention-protection-des-victimes-et-repression-des-violences-basees-sur-le-genre/>.

DEFIANT

Trans sex workers face heightened scrutiny by the authorities.

“As a trans sex worker, I’m stopped and arrested by the police a lot. When they stop me, they question the way I’m dressed once they take a look at my ID and see that it says male. Often times they make me stand to the side and use my ID to solicit a bribe from me.”

– Tina, trans woman and sex worker, Bujumbura.

State Control of LBQ Women’s Bodies

Although documented arrests of LBQ women in Burundi on the basis of their sexual orientation are rare, respondents from rural and peri-urban areas, where non-normative behaviour or expression are more visible than in urban areas, reported incidents of harassment from law enforcement.

“One time, the commander of police in Gitega came with soldiers to our meeting and said, ‘We know who you are and what you do.’ They threatened us with media exposure even after we informed them that the topic of the meeting was health.”

– Leah, lesbian, Gitega

“In Gitega it is difficult to convene. When they [police] know that you are lesbian or attracted to women, [they] intentionally crash our meetings and intimidate us. They use any materials we may have at the meeting to justify arbitrary threats of arrest.”

– Nia, lesbian, Gitega

The context of the political conflict fostered an environment in which respondents reported being subjected to extortion and blackmail from both state and non-state actors taking advantage of the lawlessness that ravaged the country.

“The rebels demanded money from me because they felt that we had money and had a misperception that we are funded by Americans so they used the violence to threaten us and blackmail us.”

– Extract from LBQ focus group discussion, Bujumbura

Gender roles (*Noun*):

The role or behavior learned by a person as appropriate to their gender, determined by the prevailing cultural norms.³³

³³ https://en.oxforddictionaries.com/definition/gender_role

PATRIACHY

Given the cultural manifestation of archaic gender dynamics that do not reflect the reality of the role women play in society and a discriminatory legislative framework that treats women as second-class citizens, Burundian women experience an imbalance of gender-based power. This power manifests, in part, in the systemic invisibility of marginalized members of society. This section examines how the strict social policing of gender roles manifests in patterns of violence, as experienced by lesbian, bisexual and queer women, trans identifying people and female sex workers.

As noted in the introduction, respondents categorized violence as falling into the following (sometimes overlapping) categories: physical violence; emotional violence; sexual violence; economic violence; intimate partner violence (including all of the above forms of violence); and online violence in the form of threats, intimidation, outing and abuse.

Violence Against Lesbian, Bisexual and Queer Women

Summary of Findings

- Most respondents reported having experienced or known another LBQ woman that has experienced physical violence, sexual violence, or intimate partner violence. Reports of violence were particularly pronounced in rural areas.
- Physical violence from society was reported as experienced largely by LBQ women that are perceived as having strong masculine expression. LBQ women whose expression conformed to society's norms reported fewer instances of explicit targeting because people seldom question their sexualities.
- Sexual violence was reported as perpetrated by people known and, in some cases, trusted by respondents.
- Intimate partner violence was reported as common in relationships, but largely undiscussed, undocumented and unaddressed.
- Economic violence was largely reported in Bujumbura, including from employers who arbitrarily dismissed female employees as a consequence of rejected sexual advances.
- Several women described pressure from families to marry as a form of violence. However, LBQ women in rural or peri-urban areas reported that having children alleviated some such pressure.

“Whenever I get pressure to get married, I respond that marriage is stressful. They accept my explanation because I have a child.”

— Mila, LBQ woman, Ngozi



DEFIANT

Physical Violence

Burundian LBQ women reported physical attacks from both acquaintances and strangers, which they saw as a form of social policing of their sexuality or gender expression. Identified perpetrators include:

- Members of the general public.
“I have been beaten in a bar because I’m a lesbian. We were a group of lesbians drinking and there were some couples amongst us kissing. When I went to the balcony to smoke a group of boys came and started to insult us and when we insulted them back they started beating us.”

– Ani, lesbian, Bujumbura

- Acquaintances
“I get problems from my male friends who get violent when they find out I date women. Especially after expressing attraction to me.”

– Leila, LBQ woman, Gitega

- Family members
“My family started forcing me to wear dresses and skirts and would beat me if I refused. They put me in a room and locked me in there for hours. They then took me to a psychologist because they believed that I’m mentally unstable because of my sexuality. In the end I had to run away from home.”

– Heri, LBQ woman, Ngozi

Sexual Violence

Respondents reported that rape and other forms of sexual violence are perpetrated against LBQ women with some regularity, but none of them provided first-hand accounts.³⁴ It was reported that for masculine expressing women, incidents of rape are perpetrated as a “lesson” primarily by people known to the victims, whilst for non-masculine presenting women, it was reported that some incidents occurred after the victim rejected the sexual advances of the perpetrator and came out to them as lesbian.

Respondents said some LBQ women are pressured or forced into ostensibly heterosexual marriages, while others get “beards”—different-sex partners used as a cover to mask one’s sexual orientation—as a form of social protection. Marital rape was

reported as occurring. For women forced or pressured into marriage, each sex act can be experienced as rape, regardless of whether their spouses have ill intentions or whether it would meet a legal definition as rape.

“I went through forced marriage. There is no happiness in the marriage since it was not with my consent. We do not understand each other. When it comes to sex then the sexual act feels violent and violating.”

– Nia, LBQ woman, Bujumbura

Psychological/Emotional Violence

Women interviewed described psychological or emotional violence as including actions that are targeted at the esteem of an individual by inducing shame or guilt based on who they are or how they identify. This includes threats of “outing,” emotional blackmail and forced isolation or ostracisation and was reported as experienced from:

- Family members
“They (family) know that I’m bisexual and insist that I have demons. They called a counsellor to speak to me.”

–Tata, LBQ woman, Gitega

“My family bought me a sewing machine as a bribe to change my sexuality. When I stayed as I am, they confiscated my machine and abandoned me.”

– Extract from focus group discussion, Ngozi

- Acquaintances
“When people know we are lesbians, they threaten to out us. For many of us, our families are respected here and so being ‘outed’ may have consequences.”

– Extract from focus group discussion, Gitega

“My neighbors fear that I will ‘infect’ their daughters and make them lesbians. So they ban me from interacting with their households and warn their children against interacting with me.”

– Lilo, LBQ women, Ngozi

³⁴ The interviewer observed discomfort by respondents in discussing sexual assault.

One bisexual woman described biphobia—the stigmatisation of bisexual people—as a form of violence, in that it presented her with a choice between hiding her authentic self, and facing further isolation and the denial of community.

“My friends know me as a lesbian...but I have had feelings for men but I had to hide it so that people do not label me as confused about my sexuality.”

— Luna, LBQ woman, Bujumbura

Intimate Partner Violence

“If I do something that may displease my girlfriend, I ensure I tell her first before she hears about it from elsewhere. I cook for my girlfriend even when I do not feel like cooking. Sometimes we go out and I will go even if I do not feel like it... However, when my girlfriend does not feel like going out, I cannot go out. If I go out, we have to go together. If I use all my feminine wiles to try to convince her and she still says no, then I do not go out.”

— Sara, LBQ woman, Bujumbura

The above statement indicates how deeply entrenched patriarchy is in LBQ and trans communities (as well as in sex worker communities, as discussed below). Many LBQ relationships in Burundi were reported as mirroring heterosexual relationships, complete with rigid gender roles and toxic masculinity.

“One of us has to be the guy and the other the girl. In terms of responsibilities, I have to be the one to take charge. We share decisions. The head of the family is always a man. So in my relationship I’m the head of the family. When I take her out I’m the one that pays the bill. When she needs something or when I need something I’m the one that buys it. I get the example from my parents.”

—Tina, LBQ woman, Bujumbura

“In my relationship I’m dominant. I’m the one that does everything. I give her money and she cooks and washes clothes.”

— Leila, lesbian woman, Ngozi

Intimate partner violence occurs in part as a result of this internalization of patriarchy. Intimate partner violence in this context is not limited to physical violence; it includes more subtle actions intended to intimidate within the relationship.

“I’m dating a trans man. He makes all the decisions and is the one with the power... When he has money he gives it to me and pays the bills but I never give him money. He expects me to be the wife of the house. I stay in the house as he goes to work and I make the house. He prefers me to stay home until he comes home. If I step out of line, he becomes angry and shouts at me.... He tried to hit me once but I told him if he did he would regret it.”

— Bina, LBQ woman, Bujumbura

“If I saw a woman I was with flirt with a man, I may beat her or leave her.”

— Milo, LBQ woman, Gitega

This dynamic does not characterise the relationships of every respondent interviewed for this study, particularly in urban areas.

“I act like a man and she acts like a woman but for me it doesn’t mean anything. If I need something from my girlfriend I’ll ask.... We do not have to comply with each other’s decisions. We talk about it and arrive at a mutual conclusion.”

— Nina, LBQ woman, Bujumbura.

Most respondents interviewed appeared to either normalize or be reluctant to discuss intimate partner violence. Attempts to arrange interviews with the self-identified perpetrators’ partners on the sidelines of the focus groups were observably met with reluctance, perhaps influenced by subtle non-verbal intimidation by present partners.

DEFIANT

Violence Against Female Sex Workers

“Being paid less than what was agreed after sex”, Being forced to do sexual positions that were not part of the agreement”, “rape”, “getting beaten”, “insults from family members”, “wasting my time and not paying me”

Summary of Findings

- The most common forms of violence identified include clients refusing to use condoms, clients renegeing on negotiated amounts post service, and police soliciting sexual favours;
- Intimate partner violence was not recognized by most respondents as violence, and most do not report it to the police;
- Aside from law enforcement officers, the *Imbonerakure* were associated with state-sponsored violence;
- Occasional violence between sex workers was reported;
- Economic violence was reported as perpetrated by clients, law enforcement officers, *Imbonerakure* and other sex workers;
- The majority of sex workers interviewed consider violence to be part of the job, a direct result of the criminalisation that drives their work underground and away from social protections. The normalization of violence, along with criminalization, inhibits reporting;
- There is limited access to resources that would facilitate responses to violence, such as education and legal know-how, and limited access to post-violence health care.



Sexual Violence

Most respondents in the study reported sexual violence as commonplace in the course of work.

a. Rape.

At least half of the respondents reported being raped by clients in the course of their work. The reports on rape include threats of violence in order to force sex workers to comply. In some instances, clients would change negotiated acts when in the privacy of a room, become increasingly hostile, force themselves on the respondents and subsequently leave the premises having intimidated the sex worker and refusing to pay. Many respondents reported clients demanding sexual acts that were not part of the negotiated agreements, including, for example, oral or anal sex.

“There are some clients that you have an agreement which does not include anal sex but when you get to the location they demand anal sex and threaten to do it by force if we do not agree. So even if you scream no one rescues you and when you demand the additional payment he beats you.”

– Extract from sex worker focus group discussion, Bujumbura

Female sex workers also reported being forced into sex by police, as described above.

b. Refusal to wear condoms.

Some respondents reported that clients threatened or intimidated them when they refused to engage in sex without protection, and that some clients refused to wear condoms altogether. Others reported incidents of ‘stealthiness,’ where male clients take condoms off during sex without the sex worker’s consent. Several respondents reported succumbing to the pressure because they need the money, an indication of the structural violence experienced by this economically, socially and legally marginalized population. While clients who express a desire for unprotected sex, without force, may not be intentionally perpetrating violence, some sex workers feel they have little choice in the matter and may experience the resulting sexual acts, which they know to be risky, as a form of violence.

“Some clients do not want to use condoms and I often have to accept because I need the money. Some of them have [sexually transmitted infections] and so we are exposed but we fear going to hospital because people might see and out us, which will discourage clients from coming to us.”

– Leila, female sex worker, Ngozi

Some sex workers said they regularly tested for pregnancy and HIV. Very few sought out treatment in the form of post-exposure prophylaxis (PEP), which is perceived as inaccessible to many sex workers based on geographic location of institutions, cost of transport, and associated stigma. Other respondents operate on faith:

“You keep praying and believing that you did not catch a disease hoping that God will protect you. If you don’t want to get pregnant, most people take Paracetamol after unprotected sex and it clears away the sperm.”

– Extract from sex worker focus group discussion, Bujumbura

Physical Violence

Physical violence was reported by over 90% of respondents and primarily took the form of beatings, but sex workers also reported vulnerability to more grave violence, including stabbings and even attempted murder. Named perpetrators include:

a. Police.

“The police beat us when they catch us with clients, but they let our clients go after getting bribes because they know that they have money.”

– Leila, sex worker, Ngozi

b. Clients

“Once in a hotel, a client stabbed me in the throat with a fork because we had a disagreement. He demanded I give him back the money he spent buying me drinks, took my phone and threatened to kill me and throw my body in Ruvyironza River.”

– Mimi, sex worker, Gitega

c. Family members

“My uncle would come beat me after hearing rumours from the neighborhood.”

– Leila, sex worker, Ngozi

DEFIANT

d. Imbonerakure

“During the conflict, when looking for work sometimes you run into Imbonerakure who demand money and if you do not have any to give them, they beat you.”

– Extract from sex worker focus group discussion, Bujumbura

e. Other sex workers

“Recently I had an argument with a fellow sex worker in a nightclub. She paid someone to kill me. The hit man hit me on the head with the dull side of a heavy night and I lost consciousness. I believe he thought me to be dead.”

– Name, sex worker, Gitega

Sex workers reported a lack of support from persons who might be in a position to stop acts of violence against them.

“The hotel owners never help us when they hear skirmishes. Instead they keep threatening to call the police on us.”

– Extract from sex worker focus group discussion, Gitega

Psychological/Emotional Violence

Types of psychological or emotional violence reported as experienced by most sex workers include shaming and ostracisation. Named perpetrators include:

a. Family

“Sometimes you have family members who ostracize you and stigmatise you. When you ask them for help, they ignore you and tell you to sort yourself out.”

– Liz, female sex worker, Bujumbura

b. Neighbours and members of general society

“Yesterday I went to the shop to buy milk for my children.... People started yelling at me saying I’m a whore and that I’m rotten. People always talk. You are always subjected to discrimination.”

– Nunu, female sex worker, Gitega

“Many parents passing you with their children actually tell them ‘Look at her, if you are not careful you will end up like that woman.’”

– Sophie, female sex worker, Bujumbura

c. Clients

“My children get insulted all the time by clients when we disagree.”

– Dorine, female sex worker, Ngozi

Economic Violence

Clients were reported to be the primary perpetrators of economic violence. During periods of conflict, the ability to earn a livelihood was undermined for most sex workers, rendering economic violence more destabilizing.

“That time [during the 2015-2016 conflict], problems got worse because there was no work and we would be desperate because some of us would not work for even a week. Clients would lie to us and then after sex, say that they did not have money. Money was not circulating at that time.”

– Extract from sex worker focus group discussion, Gitega

Intimate Partner Violence

Most respondents did not name intimate partner violence as among their self-identified experiences of violence. Aside from the cultural factors that normalize violence against women, particularly in the context of intimate relationships with men, several respondents articulated jealousy and greed as explanations for partner violence.

“Sometimes my boyfriend gets jealous and therefore gets physically violent. In this situation I would never report him to the police.”

– Tina, sex worker, Bujumbura

“My husband would beat me for the money I have and because I’m a sex worker. I tried to explain to him that the money is to feed my children.”

–[Name], sex worker, Gitega

Violence Against Trans People

Summary of Findings

- The types of violence reported as occurring include emotional violence, physical violence, sexual violence, and intimate partner violence;
- Some trans women engage in sex work, making them vulnerable to double stigmatization;
- Most trans male respondents associated masculinity with strength, financial responsibility and dominance.

“I often ask God to just kill me. I wish I had a lot of money to go to a place where people understand me.”

– Utu, trans man, Gitega

Surprisingly, most trans men reported a fair degree of acceptance of their gender expression by family members when younger. This was attributed to their playing a sport, notably football.

“Since my childhood I played sports and my family treated me like a boy because I have a boy’s physique.”

– Nish, trans man, Gitega

But family members were reportedly less empathetic as the individuals got older. Culture and religion influence the conduct not just of family members but also trans individuals themselves, sometimes for self-preservation. Trans-identifying men reported pressure to marry, particularly in rural areas.

“I got married to a man because my family forced me since we are Muslim. Even if I was not forced to get married, because of my religion I would likely have ended up there.”

– name, trans man, place

Emotional Violence

Verbal abuse was reported as the most commonplace form of violence experienced by trans women, particularly those whose gender expression is visible. The perpetrators of this form of violence were reported as including intimate partners, family members, and members of the public. It includes insults and threats as well as shouting with the intention to degrade, intimidate and humiliate.

“Trans people get stopped and harassed to take off their clothes so that people can see if we are boys or girls.”

– Nila, trans woman, Ngozi

Respondents also described pressure from families to “change” their gender identity or expression as a form of emotional violence.

“My family had a meeting and decided to take me to my uncle who is a pastor so that he would pray for me, make me wear dresses and go to church. For a whole year I was forced to wear girl clothes... In church they kept insistently praying and it got scary. So I ran back home and refused to go back... There was once they forcefully braided my hair and forced me into church.”

– Dieudonné, trans man, Bujumbura

“One of my uncles asked me to go live with him so that he could take me to church and try to see if he could change me. I started realizing that my uncle was trying to oppress me so I cut him out of my life.”

– Alain, trans man, Bujumbura

“My stepmother did not want to see me... [She] threatened to poison me with rat poison. My stepmother eventually left my father, which caused my father to resent me and kick me out of the house.”

– Hélène, trans woman, Bujumbura

DEFIANT

Physical Violence

For some trans respondents, family was a source of physical violence.

“When I became a teenager, I had masculine behaviour. I would pee standing up because that is what I would see other boys do. I would copy what other boys would do. At home I would be beaten every day.”

– Dieudonné, trans man, Bujumbura

“My parents would beat me and say that I’m spoilt because I’m playing girl games. Eventually they chased me away from home.”

– Lucie, trans woman, Bujumbura

Intimate Partner Violence

Several trans women in Burundi described suffering intimate partner violence, including both physical and economic violence, at the hands of a cisgender male partner.

“Because I was a sex worker my husband beat me and bruised my face, my cheek and my forehead to the point that I was scarred.”

– Carine, trans woman, Bujumbura

“When we disagree and he gets upset, he threatens to stop paying my school fees so I do whatever he tells me to do because I depend on him.”

– Nina, trans woman, Ngozi

Trans men may also experience intimate partner violence, but were notably reluctant to discuss violence against them.

“Being paid less than what was agreed after sex”, “being forced to do sexual positions that were not part of the agreement”, “rape”, “getting beaten”, “insults from family members”, “wasting my time and not paying me”...

POWER

Organising on LBQ, trans and sex worker issues in Burundi is still nascent in comparison to organizing by gay and bisexual men and other men who have sex with men (MSM). It is particularly limited in peri-urban and rural areas.

As of 2017, this study found only one organization based in Bujumbura that is LBQ-led and one that is trans-led. Other organising reportedly takes place through groups that identify broadly as LGBT, some of which have branches or member organisations in the rural and peri-urban areas.³⁵

Sex worker-led organisations are yet to be formed, but most sex workers participate in informal location-based groups. These self-help groups are set up primarily to address security concerns and economic sustenance. Members within a specific geographical scope contribute monthly sums that go to two or three members at a time in a periodic cycle.

These informal groups are also the platform through which sex workers share experiences of violence. Respondents reported that such groups present a safe space to be heard by their peers, who provide assistance or refer victims of violence to allied mainstream organisations such as ASOUPEVU.

³⁵ Turi Abande

Challenges

Some of the challenges identified in organising include:

Lack of capacity

Given the vicious circle created by institutionalised discrimination against LBQ and trans people and sex worker identities, most respondents reported challenges in accessing spaces of learning that would enable them compete in various professions or even gather knowledge or skills that would have an impact not just on their individual ability to earn a living, but also in their level of activism, particularly in formal advocacy platforms.

Financial resources

Resources to address violence in the LBQ, trans and sex worker communities are extremely limited. Whereas some global LBGT funding is targeted toward combating violence, most respondents reported that certain components, such as work around sexual violence, tend to be more resourced, whilst other elements of violence, such as psychological or emotional violence, receive little attention or resources in the Burundian context.

Of particular note is the reluctance of most funders to invest in income-generating activities, given the link between economic disposition and vulnerability to violence.

Limitation of Safe Spaces

Not only is the legislative environment hostile to nonconforming identities, but the government is increasingly passing legislation that further restricts civil society organizing, as detailed above.

Mainstream organisations in Burundi are reluctant to engage with activists of nonconforming sexual orientations and gender identity, and to a lesser degree, female sex workers, who do receive some limited support from women's rights groups. Some organisations and health institutions purport to work with the LBQ, trans and sex worker communities, but several respondents said this is the case on paper only, and, with regard to HIV prevention work among sex workers, as a strategy to access key population funding through the Global Fund.³⁶

That said, a few organisations in the health sector, such as the Association for Support of Vulnerable People (*l'Association pour le Soutien des Personnes Vulnérables*, ASOUPEVU) and the Linkages project run by the international organization FHI360, were identified as having programming that is inclusive of LBQ, trans and sex worker communities. These organisations tend to be limited in:

- geographical scope;
- thematic focus, with some working exclusively with sex workers;
- range of services, which include sensitisation, peer education, HIV and STI testing, counselling, access to condoms, providing a safe space, and referrals to purported sex worker friendly health centres and institutions such as *L'Association Nationale de Soutien aux Séropositifs et malades du sida* (Burundian National Association of Support for People Living with HIV and AIDS Patients, ANSS) and *L'Association pour la défense des droits de la femme* (Association Defending Womens Rights, ADDF)

³⁶ The Global Fund "The Global Fund 2017-2022 Strategy 2017-2022: Investing to end epidemics," https://www.theglobalfund.org/media/2531/core_globalfundstrategy2017-2022_strategy_en.pdf



KENYA

IV. KENYA

“Violence transcends all areas of our lives. If it is not your family it will be the religious leaders, if not them it will be police officers, if not them, it will be at the work place or school, or in the area where you live in, by your clients if you sex work.”

— Extract from trans focus group discussion, Kisumu

Overview

Kenya's 2010 constitution contains a comprehensive bill of rights, with fundamental rights and freedoms guaranteed to all. The constitution also contains a wide range of clauses that protect and promote the rights of women, including article 21 (3) on the duty to address the needs of vulnerable groups in society including women, article 27 (3, 4) on non-discrimination, and article 100 on parliamentary representation of marginalised groups including women.

Kenya has also undertaken to uphold women's rights through a range of legislation, including laws relating to sexual offences, equal rights in marriage and divorce, and female genital mutilation.³⁷ The government-established Women Enterprise Fund promotes women's economic empowerment by providing accessible and affordable credit.³⁸ Constitutionally created bodies, including the Kenya National Commission on Human Rights and the National Gender and Equality Commission, play a role in protecting and promoting the rights of women.³⁹ The government of Kenya has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol).

Kenya's courts have also played a role in addressing sexual and gender-based violence. In one 2017 decision, a magistrate handed down the death penalty, commuted to a life sentence, to persons charged with robbery with violence and assault of a woman whom they stripped naked, robbed, and sexually assaulted in 2014. The retention of the death penalty in Kenya raises human rights concerns, but the sentence demonstrated a departure from the trivialization of violence against women that rights activists have often denounced.⁴⁰

The question that remains unanswered, however, and that this study seeks to explore further, is whether the progressive legislative and policy steps taken by Kenya to protect and promote women's rights are applied to include sexual and gender minorities and female sex workers.

Kenya has become a refuge for LGBT asylum seekers from around the region.⁴¹ Despite a legislative environment that criminalises same sexual conduct, the courts have made important rulings that protect the communities and uphold their rights under the Constitution. Cases decided in favour of LGBT equality in Kenya include *Eric Gitari v Non-Governmental Organisations and Co-ordination Board and 4 Others (2015) eKLR*⁴² in which the court held that the NGO co-ordination board had contravened article 36 of the Constitution in failing to accord just and fair treatment to gay and lesbian persons seeking the registration of an association of their choice, and *Republic v Non-Governmental Co-ordination Board & Anor Ex parte Transgender Education*

37 Laws of Kenya, The Sexual Offences Act, No. 3 of 2006, <http://www.kenyalaw.org/lex//actview.xql?actid=No.%203%20of%202006>; The Marriage Act, No. 4 of 2014, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf, Part II(3)(2); The Matrimonial Property Act, No. 49 of 2013, <http://www.kenyalaw.org/lex/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/M/Matrimonial%20Property%20Act%20No.%2049%20of%202013/docs/MatrimonialPropertyAct.pdf>, Part II(4),

The Prohibition of Female Genital Mutilation, No. 32 of 2011, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProhibitionofFemaleGenitalMutilationAct_No32of2011.pdf.

38 The Women Enterprise Fund describes itself as "the Kenya Government's commitment to the realisation of sustainable development goals on Gender Equality and Women Empowerment (MDG 3)." Retrieved from <http://www.wef.co.ke/>.

39 Constitution of Kenya, art. 59.

40 Sam Kiplagat, Daily Nation. 19 July 2017, "Matatu Driver, Tout to Hang for Stripping Woman." Retrieved from <http://www.nation.co.ke/counties/nairobi/Matatu-crew-strip-woman-case/1954174-4021598-8ixk18z/index.html>

41 Kenya is markedly less intolerant of LGBT people compared to her neighbours, however this does not mean that the refugees do not face stigma and discrimination once they have sought solace in Kenya.

42 The ruling was upheld on appeal in March 2019. Court of Appeal at Nairobi, Civil Appeal No. 145 of 2015, Judgement, 22 March 2019, <http://kenyalaw.org/caselaw/cases/view/170057/>.

and Advocacy & 3 Others (2014) eKLR⁴³ in which the court similarly ordered the NGO co-ordination board to register Transgender Education and Advocacy as a non-governmental organisation. In *Republic v Kenya National Examination Council Ex-Parte Audrey Mbugua*,⁴⁴ involving a transgender woman, the court held that gender markers in academic documents were irrelevant, and in the Alexander Nthungi case, the court awarded a transgender woman Ksh 200,000 after police officers stripped her on the pretext of confirming her gender identity.⁴⁵ A 2017 ruling ordered the Registrar of Persons to effect name changes on the identification cards of the five transgender applicants.⁴⁶ In 2018, the Court of Appeal ruled that the use of forced anal examinations for prosecutions of consensual same-sex conduct was unconstitutional.⁴⁷

But LGBT Kenyans faced a blow to equality when in May 2019, the High Court upheld sections 162 and 165 of the penal code, which criminalize consensual same-sex conduct, deflating the hopes of petitioners who had argued that the provisions violated privacy and non-discrimination rights. LGBT people also face discriminatory treatment from the Kenya Film and Classification Board (KFCB)⁴⁸ which banned the Kenyan-made LGBT-themed film *Stories of Our Lives* (2014) and *Rafiki* (2018) and a 2016 music video, "Same Love (Remix)", claiming the films promote homosexuality, contrary to Kenyan values. The chairperson of KFCB also banned a social gathering in 2016 through a Facebook post, purporting that it was a lesbian party, and justified the ban by stating that it was to

"uphold the law, public decency and morality."⁴⁹

The legal and social environment in Kenya combine to deny sex workers the right to bodily autonomy. Evidence suggests that criminalisation of sex work in any form, including criminalising those who profit from earnings of sex work, puts sex workers at risk of physical and sexual violence.⁵⁰ Kenya has seen a myriad of murders of sex workers, with the latest reported murder happening in Nairobi in May 2019.⁵¹

Kenyan sex worker activists are currently in the process of filing a petition to decriminalise sex work⁵² while LGBT activists are appealing the High Court ruling upholding "unnatural offenses" clauses in the Penal Code. Positive rulings could translate to reduced stigma, discrimination, marginalisation and isolation. They could also improve access to legal protection and basic rights, including health, education, employment and housing, and allow survivors report instances of violence without revictimisation by law enforcement.

43 High Court of Kenya in Nairobi, JR Miscellaneous Application No. 308a of 2013, Judgement, 23 July 2014, <http://kenyalaw.org/caselaw/cases/view/100341/>.

44 *Republic v Kenya National Examination Council Ex-Parte Audrey Mbugua*, High Court of Kenya, JR Case No. 147 of 2013, Judgment, 7 October 2014, <http://kenyalaw.org/caselaw/cases/view/101979/>.

45 "Second 'woman' fights in a man's world," Daily Nation, 19 June 2013, retrieved from <http://www.nation.co.ke/news/Woman-who-was-stripped-wins-case/1056-1888792-e5snoc/index.htm>

46 Jillo Kadida, The Star Newspaper: Names Ruling Win for Transgender Individuals. Retrieved from https://www.the-star.co.ke/news/2017/02/16/names-ruling-win-for-transgender-individuals_c1507437

47 COI & another v Chief Magistrate Ukunda Law Courts & 4 others, Court of Appeal, Civil Appeal No. 56 of 2016, Judgement, 22 March 2018, <http://kenyalaw.org/caselaw/cases/view/171200/>.

48 The Kenya Film Classification Board is a State Corporation under the Ministry of Sports, Culture and the Arts mandated by Films and Stage Plays Act Cap 222 of Laws of Kenya to regulate the creation, broadcasting, possession, distribution and exhibition of films in the country with a view to promote national values and morality. Retrieved from <http://kfcfb.co.ke/>.

49 "Does Ezekiel Mutua Have Authority To Ban Lesbian Parties?", GALCK, 29 July 2016, <https://www.galck.org/does-ezekiel-mutua-have-authority-to-ban-lesbian-parties/>.

50 World Health Organisation: Violence against Women and HIV/AIDS: Critical Intersections- Violence against Sex Workers and HIV Prevention. Retrieved from <http://www.who.int/gender/documents/sexworkers.pdf>

51 "Missing Commercial sex worker found dead at city morgue," The Standard, May 27, 2019, <https://www.standardmedia.co.ke/ureport/article/2001327348/missing-commercial-sex-worker-found-dead-at-city-morgue>.

52 The decriminalisation of sex work in Kenya is spearheaded by KESWA, the Kenya Sex Workers Alliance, which has embarked on documentation of violence against sex workers and the impact of criminalisation.

PUSSY

Legislation Controlling Women’s Sexuality and Gender Expression in Kenya

LAW	SECTION	IMPACT
Penal Code	Section 162 – Prohibits “unnatural offenses”	Punishes anyone who “has carnal knowledge of any person against the order of nature” or “permits a male person to have carnal knowledge of him or her against the order of nature” with up to 14 years on prison
	Section 165 – Prohibits “gross indecency between males”	Because trans women are often perceived as men, this provision may be used against them
	Section 313 – Criminalises “false pretenses”	Has been used against a trans people simply because of their gender expression
Constitution of Kenya	Article 45, “Family” – States that “Every adult has the right to marry a person of the opposite sex,”	Excludes same-sex couples from marriage, denying them related rights, including inheritance under the Law of Succession Act
Children’s Act	Section 158(3)(c) – Prohibits adoption by anyone who is homosexual.	Denies lesbian women the right to a family
Sexual Offenses Act	Section 11A – Punishes any “indecent act with an adult.”	An indecent act is defined as “any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration.” There is no explanation of the circumstances under which such contact is considered indecent.
Nairobi City County By-Laws ⁵³	“General Nuisance” By-Laws	Offences include “committing any act contrary to public decency” and “loitering, importuning, or attempting to procure a female/male for prostitution purposes.”

Legislation Supportive of Bodily Autonomy and Rights in Kenya

LAW/STATUTE	PROVISION	IMPACT
Constitution 2010	Article 27 – Freedom from discrimination	In principle, these provisions apply to everyone in Kenya, although sexual orientation and gender identity are not explicitly mentioned. Several court rulings have affirmed that these rights apply to all, regardless of sexual orientation and gender identity.
	Article 28 – Right to human dignity	
	Article 29 – Freedom and security of the person	
	Article 31 – Right to privacy	
	Article 36 – Right to freedom of association	
	Article 43 – Right to the highest available standard of health	
Sexual Offences Act No. 3 of 2006	Sections 3 and 10 criminalise rape and gang rape respectively	This protects the communities from rape and gang rape
	Section 5 criminalises sexual assault	Protects the communities from sexual assault
National Police Service Act No 11 of 2011	Section 95 prohibits police officers from committing torture or other cruel, inhuman or degrading treatment or punishment	This protects the communities from physical and verbal abuse from police officers
Anti-Corruption and Economic Crimes Act No.3 of 2003	Section 46 – Prohibits the abuse of office	Protects the communities from police officers or any other public officers who ask for bribes or for sexual favours without pay
Penal Code	Section 300 – Criminalises extortion	This protects the communities from extortion from police officers

53 Several other counties have similar by-laws, but we were not able to compile them all for the purposes of this report.

DEFIANT

State Control of Sex Workers' Bodies

While the act of exchanging sex for money is not illegal in Kenya, the Penal Code criminalises "importuning for immoral purposes" and living off the proceeds of prostitution, while the Sexual Offences Act prohibits pimping or "inciting" anyone to do sex work.⁵⁴ Some county by-laws, formerly municipal laws, explicitly criminalise sex work or are used to arrest sex workers on grounds of loitering and importuning for immoral purposes.⁵⁵ These laws create an environment that restricts what sex workers can do with their bodies. Police rarely prosecute sex workers under these laws, but often extort money or sex from them.

"I once got arrested while at work and had to bribe the police officer with all my nights earnings, 500 Kenya shillings for them to let go of me."

—Extract from sex worker focus group discussion, Kisumu

"Police are notorious for arresting us and demanding for sex then they refuse to pay us as a means to justify our release."

—Extract from sex worker focus group discussion, Eldoret

State Control of LBQ Women's and Trans People's Bodies

Sections 162 of the penal code punishes "carnal knowledge against the order of nature," a vague term that may be used to prosecute sex between women, or between trans people and their partners. In addition to this, the Sexual Offences Act punishes "indecent acts against an adult" including with consent and it is interpreted to include contact between: genital organs, breasts, and buttocks of another but does not include penetration.⁵⁶ Although lesbian, bisexual and queer women are rarely arrested under these laws, they perpetuate stigma and discrimination, which is often manifested through violence against LBQ women in Kenya.

Because the Kenyan authorities often conflate sexual orientation and gender identity, transgender and gender non-conforming persons may be arrested under the penal code's morality clauses. Transgender people have also been arbitrarily arrested on grounds of impersonation.⁵⁷

"A group of us were once arrested and taken to the police station. When it was my turn to be put into the cell, the police did not know where to put me since my voice was evidently soft but I appeared to be a man. They let me go."

— Extract from trans focus group discussion, Nairobi

54 Republic of Kenya, Penal Code, sections 153(1)(b), 154.

55 Republic of Kenya, Sexual Offences Act No. 3 of 2006, sec. 17(3).

56 Republic of Kenya, Sexual Offences Act No. 3 of 2006, section 11A.

57 An organisation working on the rights of transgender persons in Kenya reported, between October 2016 and 2018 (?), three confirmed cases and one unconfirmed case involving three transgender men and one transgender woman arrested in Western Kenya on grounds of "impersonation." Three did not proceed to court due to insufficient evidence and one was still pending [as of DATE] with the accused being held in prison. [source?]

PATRIARCHY

The criminalisation of sex work in Kenya creates an environment where female sex workers are in danger of physical, emotional, economic and sexual violence from: police officers and *city council askaris*, who often times arrest them and extort bribes or ask for sexual favours for their release; their clients as the laws create an environment in which they cannot negotiate for safe sex or report said cases of abuse by their clients to law enforcement officials; their colleagues; boda boda operators from whom they procure transport services; and brothel or bar owners where they usually operate from. In addition to this, sex workers also face stigma and discrimination from society at large, their families and even religious leaders.

When sex workers in Kenya experience violence, respondents reported that there are a few safe spaces where they can seek treatment without the fear of discrimination and stigmatisation. Such spaces include the International Centre for Reproductive Health (ICRH) in Mombasa, Hope Worldwide Kenya in Eldoret, and the Kenya Medical Research Institute (KEMRI) in Kisumu and Mombasa.

However, despite offering a safe space for treatment, sex workers said no organisation provided meaningful follow-up on cases of violence.

DEFIANT

Violence Against Female Sex Workers

Key Findings

- Perpetrators of violence against female sex workers include clients, police officers and county government askaris (security officers), family members, society at large, colleagues, and bar/brothel owners;
- Sex workers face physical, sexual, emotional, verbal and economic violence, as well as stigma and discrimination in health care facilities;
- Instances of violence against sex workers remain high and largely unreported due to the hostile legislative environment.

“Prior to April 2016, ICRH had a good network comprising of paralegals, lawyers and sensitised law enforcement officials which would help us follow up on reported cases of violence against sex workers. However things have changed now and we can’t follow up on these cases as this programme has since ceased receiving funding.”

– ICRH Staff member, [location]

“Hope Worldwide, an organisation that works with sex workers in Eldoret, gives us sex worker friendly HIV treatment and prevention services, STI treatment and safe sex commodities. They even have a ‘violence form’ which collects data on our experiences of violence at work. However no action is taken afterwards as I think the information they collect is for statistical purposes only.”

– Debra, female sex worker, Eldoret

As mentioned, Kenya introduced gender desks at police stations to provide an environment where victims of gender-based violence could report cases without fear of stigma. When pasked about the utility of gender desks, most sex workers attested to their existence, but said that many police officers staffing the desks did not treat them with respect and dignity. Further, due to frequent transfers of personnel, there were occasions they would report a matter at the desk and find an officer who was not trained on gender-based violence at all, and who was unable to attend to them adequately.

“We have conducted several trainings with police. However, this has not helped because of the high rate of police transfers.”

– Umra, female sex worker, Mombasa

“It is difficult to report our cases of violence at the gender desk because the police officers manning them are generally insensitive, even to ordinary women who are victims of domestic violence. We therefore hesitate to report our issues there because we are doubly discriminated as female sex workers.”

– Extract from focus group discussion with female sex workers, Mombasa

Physical and Sexual Violence

Respondents named clients and police officers as perpetrators of sexual violence, including rape. Cases of sexual violence against sex workers often involved other forms of violence as well.

“Before going with a client to the room, we negotiate the price and everything else associated. Sometimes when we get to the room and we are trying to make them wear a condom, they start beating us up and can sometimes rape us without protection.”

– “Name,” female sex worker, Eldoret

“On our way home from work one night in Kericho, police officers sprung up on my colleagues and I and raped us. They let us go and told us to sleep it off. I was too scared to report the incident to the police station because I knew they would not take any action against their fellow police officer.”

– Extract from sex worker focus group discussion, Eldoret

Sex workers are reluctant to report incidents of sexual assault by a police officer for fear of re-victimisation as well as wilful negligence by police officers who fail to take such allegations seriously, thereby negating the sex worker’s constitutionally enshrined right to access to justice. Sex workers also stated that they hesitated to report such cases to police stations because of a perceived requirement to be able provide witnesses or identification details of the police officer who abused them.

“Police officers are a big problem; they wear reflector jackets which cover their badges and it makes it hard to report their misconduct because we will be asked for their identification numbers once we go and report them.”

– Extract from sex worker focus group discussion, Nairobi

Economic Violence

Sex workers in Kenya are vulnerable to theft, under various circumstances, with little recourse to justice.

“Our clients are very notorious. They insist on paying us via Mpesa [mobile money] but never complete the transaction or sometimes send the money and reverse the transaction. In such instances, we have no recourse because we are unable to report the matter to the police for further action.”

– Extract from focus group discussion with female sex workers, Mombasa

“I was once robbed of my proceeds for the night by thieves, and when I reported the matter at Bamburi Police Station, they told me that I needed witnesses and that in addition to this, I had obtained the money illegally through prostitution and therefore had no claim to bring forward.”

– Extract from sex worker focus group discussion, Mombasa

Psychological/Emotional Violence

Sex work is Kenya highly moralised, opening sex workers to ridicule and verbal abuse from religious leaders, families, and society at large, which some respondents considered a form of psychological or emotional violence.

“Pastors are really bad. They keep calling us malaya (prostitutes) and rebuking the spirit of umalaya (prostitution) and pour holy water on us in a bid to change our ways.”

– Extract from sex worker focus group discussion, Eldoret

“I have noticed in churches; pastors refuse our tithe because it has been gotten from sex work. This treatment can demoralise someone because we are rejected everywhere because of the work we do.”

– Extract from sex worker focus group discussion, Mombasa

Most sex workers said that they face hostility from members of their family. Even providing financial support to their families did not lead to full acceptance.

“I was ostracised by my family once they found out that I was a sex worker, but they came calling when my brother needed money to go to school. I gladly paid his school fees up until he graduated and later got a job. Unfortunately, a few years later, I hit a rough patch in life and had to move back home. I was surprised by the insults I received from my family and refusal to help me at my time of need. I think that most of our families only ‘accept’ our profession when it is of financial benefit to them and frown upon it every other time.”

– Extract from sex worker focus group discussion, Mombasa

DEFIANT

“We are sidelined during family meetings and our opinions on the goings on of the family are never taken into account. We are only as valuable as the money we can give to solve a family problem.”

– Extract from sex worker focus group discussion, Mombasa

Sex workers in Kenya also described psychological or emotional violence as emanating from health facilities, which have an ethical responsibility to promote clients’ health and well-being. Respondents described stigma and discrimination when seeking treatment, despite the constitutional safeguards on equality and freedom from discrimination and the right to the highest attainable standard of health.

“I was once attacked at the stage [bus stop] at night while I was at work and the thieves cut my eyes. I was taken to Makadara Hospital in Mombasa. The doctor treated everyone else and ignored me because they assumed that I was a sex worker due to the way I was dressed. I stayed in hospital for a couple of days and during visiting hours, the nurses would come and stare at me because word had gone round that I was a sex worker. My eye however did not heal well. I was referred to Nairobi a little too late and lost almost all my sight in one eye.”

– Extract from sex worker focus group discussion, Mombasa

“I once had unprotected sex with a client under duress and a few weeks later I started feeling queasy and went to seek medical attention. At the hospital after I got checked, I am not too sure what they saw, because the nurse called her colleagues to come see me and they all started calling me a whore. I braved it all because I needed their assistance, but that was a very humiliating moment for me.”

– Extract from sex worker focus group discussion, Kisumu

Intimate Partner Violence

Intimate partner violence was discussed during the different interviews. Most of the female sex workers reported that due to the nature of their work, they hardly explored long-term relationships. However, one respondent who is married reported that if her husband found out the work she did, he would break her legs or worse yet kill her.⁵⁸

Intra-Community Violence

One sex worker reported fighting among the sex worker community.

“We also fight among ourselves and I think this disunity amongst us is what also causes police to arbitrarily arrest us. We should love each other stop fighting over clients, because it is nonsensical.”

– Extract from female sex worker focus group discussion, Nairobi

Violence Against Trans People

Key Findings

Transgender persons face forms of violence including physical and sexual violence, arbitrary arrests, misgendering, stigma and discrimination at health facilities, ostracization, and verbal abuse. These forms of violence are perpetrated by law enforcement officials, family, intimate partners, members of the public, and clients, in the case of transgender persons who engage in sex work.

Violence is an obvious form of retaliation against transgender persons for defying gender norms. Trans men in Kenya appeared to experience fewer incidents of violence than trans women. They attributed this to their portraying “dominance” by being men.

⁵⁸ One on one interview with female sex worker in Eldoret.

Physical and Sexual Violence

As discussed above, trans people are sometimes subjected to arbitrary arrest. They face a heightened risk of violence from police and while in custody.

“The police do not care about your gender when they arrest you. They will throw you in a male cell even if you are a trans woman and tough luck if anything happens while you are inside there.”

– Extract from trans focus group discussion, Mombasa

Some trans women mentioned that they carried out sex work to supplement their income, opening them up to rape, arbitrary arrests, police harassment, and abuse by clients.

“I often sex work to earn an extra coin. I was once out on the street waiting on a client and got arrested by the police and was driven around town and they eventually raped me (since I did not have any cash on me) and released me. I was unable to report the matter because I was afraid of what would happen to me.”

– Cynthia, trans woman, Mombasa

Psychological/Emotional Violence

As a transgender person in Kenya, living one’s daily life becomes a chore.

“Being a trans woman, I have nice lingerie and dresses I like to wear but I cannot wash them and hang them outside for fear of what my neighbours may say or do. So whenever I wash them, I tie a string on the rafters of my ceiling and let them dry in there.”

– Jamila, trans woman, Mombasa

“It is difficult being transgender in Kenya. We have come up with ways of protecting ourselves especially when out having a drink. For instance, we opt not to use the bathrooms as other patrons or the management might abuse us.”

– Extract from trans focus group discussion, Nairobi

Access to their socioeconomic rights including education, health care and housing are greatly hampered due to their gender identity. Trans-identifying persons in Kenya shy away from seeking medical attention, even for simple ailments, due to the treatment they receive in health facilities.

“I once went to hospital for a routine check, and even after identifying myself as a trans man they still wrote in their records female.”

– Extract from trans focus group discussion, Nairobi

Gender is central to being transgender, and thereby mis-gendering is a form of violence to transgender persons, especially since it is closely connected to passing as one’s preferred gender.

“Being misgendered is the worst form of violence I can face.”

– Extract from trans focus group discussion, Nairobi

Emotional violence can even come from within trans communities themselves.

“The trans community in other towns for example Nairobi, look down upon us because we are not ‘trans’ enough and have not transitioned or do not pass for our desired gender.”

– Sam, trans person, Kisumu

DEFIANT

Economic Violence

Some transgender people reported denial of access to education, thereby limiting their future economic opportunities.

“I was once summoned to the administration of the college I was in and asked to bring my parents with me, I told them that they do not need my parents as they could speak with me directly. They proceeded to tell me that that would be my final semester in the college and that they were acting from the direction of the student board, which claimed that I was a danger to the other students in the college. When I asked them who the student board was, they said that they were not at liberty to disclose its composition. I know they kicked me out of the college due to my gender identity and I believe that this has locked me out of many opportunities to make my life better,”

— Benta, trans woman, Mombasa

Intimate Partner Violence

Though brought up by the researcher during the interviews and focus group discussions, most transgender persons denied being in relationships and were reluctant to answer questions about intimate partner violence.

“Most trans people shy away from mentioning that they are in fact victims of IPV. I believe we face the highest rate of IPV because our relationships transcend sexual orientation, gender identity and choice of work. I also believe due to the rampant violence we face generally, we tend to stay away from relationships but that does not mean that we are not victims of IPV.”

— Storm, trans person, Kisumu

Violence Against Lesbian, Bisexual and Queer Women

Summary of Findings

- Intimate partner violence is high among LBQ women and takes the form of verbal abuse, physical, emotional, economic and sometimes sexual violence;
- Other perpetrators of violence amongst LBQ women are their families and society at large;
- Masculine-presenting women were sometimes accepted due to the sports they are engaged in, but faced expectations to marry when they attained a certain age;

Psychological/Emotional Violence

When it comes to violence from society, masculine-presenting women are often ridiculed when their appearance does not accord to gender norms.

“I feel like mental violence is a big thing for us studs, because of our expression and choice of dress, especially when people keep asking whether you are a girl or a guy and asking why you don't have breasts.”

— Extract from LBQ focus group discussion, Nairobi

Patriarchy manifests itself in interaction with the law, society, family and intimate partners. Because of the gender roles assigned, one is expected to dress, behave in a certain way, or achieve certain milestones including marriage to fit into society which can have negative effects including violence.

“I am discriminated against by my family, I have become an outcast and I am not allowed to attend family meetings and most of my family members do not talk to me. This definitely affects me psychologically because it is very difficult to come to terms with someone as close as a family member not talking to you.”

— Extract from LBQ focus group discussion, Kisumu

Sometimes LBQ women opt to toe the line and live up to the expectations of society and family to ensure that they can get a roof over their heads or an education.

“I sometimes find myself doing what my parents want so that my school fee is paid and that my education is not discontinued. I will persevere for the moment.”

– Extract from LBQ focus group discussion, Eldoret

Intimate Partner Violence

Throughout the study, it was apparent that violence has been normalised in LBQ relationships due to various past experiences, including growing up in violent homes. Fear of being outed and bottling up frustrations due to one’s non-conforming sexual orientation may also contribute to violence.

“Sometimes societal and family influences are catalysts to violence. There is a Kiswahili proverb that ‘wapiganao ndio wapendanao’ (those who fight are those who love each other), compound this with coming from homes where our fathers beat our mothers. This makes us think that violence is normal to be honest.”

– Extract from LBQ focus group discussion, Kisumu

“I grew up in a violent home and witnessed a lot of violence and therefore I have carried on to my present relationships.”

– Extract from LBQ focus group discussion, Mombasa

It was also reported that harmful gender stereotypes are enforced within LBQ relations.

“Violence is just violence and there is no excuse for it.... However, [some studs] feel like they can beat the femme due to the patriarchal society we live in, where men exercise their dominance over women through beating them.”

– Extract from LBQ focus group discussion, Kisumu

“In same sex-relationships, economic privilege can be catalyst to violence. Most femmes provide for their masculine-presenting partners, as they are oftentimes unemployed or unemployable due to their presentation and this therefore opens up [femmes] to violence from their partners.”

– Extract from LBQ focus group discussion, Mombasa

Infidelity was cited as a frequent factor in intimate partner violence.

“Infidelity in LBQ relationships is the major cause of violence. Self-love is very important to ensure that incidences of IPV reduce amongst ourselves.”

– Extract from LBQ focus group discussion, Mombasa

Rape within intimate partner relationships was rarely discussed, but one rape survivor said she could not report to the police due to the existence of laws which punish same-sex relations.

“I was working and used to get back home extremely tired due to working odd shifts, when I would get home I was too tired to have sex with my partner. She would sometimes tie me up and force me to have sex with her even if I did not want to and despite my pleas for her to stop. It was not until I ended the relationship that I accepted that she raped me on a number of occasions, and I am angry because I could not dare report this to the police for fear of victimisation.”

– Sheila, LBQ woman, Mombasa

It was reported that there weren’t enough spaces where LBQ women could seek help and share their experiences of violence.

“We are not aware of organisations where we can report our incidences of violence. You see by the time you have been beaten, most people offer the simple solution that we break up, but you don’t see that the relationship has become toxic, and we need counselling which we don’t have.”

– Extract from LBQ focus group discussion, Kisumu

“We sometimes blame ourselves for the acts of violence occasioned against us because of our guilty conscience. When reporting, we are not sure how to report our cases of violence because we do not know who to talk to and not just having a counselor, there needs to be a safe space where LBQ women can meet and seek help for such cases.”

– Extract from LBQ focus group discussion, Mombasa

POWER

Sex workers, LBQ women and trans people in Kenya have found various ways to address violence, key among them being forming organisations which give members a sense of community and build their capacity to know their rights. Some organizations also provide treatment and counselling. Some have done work to sensitise law enforcement, and some work with allied mainstream organisations which help them people with non-conforming identities access help if they are violated.

“We have tried partnering with mainstream organisations such as FIDA and KELIN to a certain degree and such alliances with mainstream women’s rights or HIV organisations are very important as we are able to negotiate with government and get our voices heard.”

— “Name,” female sex worker, Nairobi

Among sex workers, organising in urban areas like Kisumu, Mombasa and Nairobi was more established and had more members and partnerships across the board, while organising in peri-urban areas like Eldoret was cited as nascent and still navigating itself to form a strong movement.

“We do not have unity in our sex worker movement here in Eldoret, unlike other Kenyan towns where the sex worker movement is very united.”

— Peninah, female sex worker, Eldoret

Regardless of locality, most sex worker organising is targeted towards health and human rights awareness amongst members.

Sex Worker Organising in Kenya

NAME OF ORGANISATION	DATE OF FORMATION	NATURE OF WORK
FSW organisation a	1998	A Nairobi-based organisation targeting sex workers, women having sex with women, women using drugs and bar hostesses. Primarily engages in HIV/AIDS Prevention, care and support, gender/ human rights awareness, advocacy and economic empowerment
FSW organisation b	2015	A coast-based sex worker led organisation. Primarily formed to address challenges such as human rights violations, violence, stigma and discrimination among the sex workers in Coast.
FSW organisation c	2012	A network of various sex worker organisations in Western Kenya. Primarily work with sex workers to ensure that they access better health care and also conduct capacity building trainings for their members to have economic stability
FSW organisation d	2010	A network of various sex worker organisations in Kenya to facilitate the improvement of the human rights status of sex workers in the country
FSW organisation e	2015	Formed with the aim of addressing challenges faced by sex workers in Murang'a including: human rights violations, stigma and discrimination in health and public service areas, violence, harassment and arbitrary arrest by police officers among others
FSW organisation f	2012	Promote sex workers living with HIV access to healthcare services that is non-discriminatory and free from stigma
FSW organisation g	2015	Targets street sex workers and works to create a society that does not discriminate or stigmatise sex workers
FSW organisation h	2000	Consists of both female and male sex workers Formed to with the aim of educating sex workers on STI, reproductive health and how to control and prevent new infection of HIV and AIDS and finally to advocate for the rights of sex workers in the community as a marginalized population

DEFIANT

As for LBQ women in Kenya, they have carried out campaigns on social media platforms such as Facebook and Twitter to have open discussions around, among other issues, violence in LBQ relationships and patriarchy in the movement. To this end, they have come up with hashtags including: #ConsentIsCool, #DontBeARapist, #QueeringTheCloak, #ResistPatriarchy and #ResistIgnorance.

Another platform where LBQ women have organised open and candid conversations by queer women is through the National Gay and Lesbian Human Rights Commission's "Because womxn," convened monthly as a space for queer womxn by queer womxn to discuss their needs, including with regard to safety and security, health, and wellness.⁵⁹ The conversations also provide an opportunity for increased civic awareness.

Being involved in sporting activities was reported to provide a source of community. Team sports like football or rugby were reported to give masculine-presenting LBQ women a sense of belonging and acceptance. Respondents also said sports helped keep them away from drugs and alcohol, which can contribute to violence.

"Being involved in sports has really helped me build my self-esteem and accept who I am, because there are other LBQ women in my rugby team. I am therefore happy that I found such a place with women like me, that keeps me busy and away from any harmful vices like alcohol or drugs that could make me turn violent in my relationship."

– Extract from LBQ focus group discussion, Nairobi

⁵⁹ National Gay and Lesbian Human Rights Commission, Because Womxn, <https://www.nglhrc.com/because-womxn/>.

LBQ Organising in Kenya

NAME OF ORGANISATION	DATE OF FORMATION	NATURE OF WORK
LBQ organisation 1	2006	LBQ rights organisation which works across Kenya. Has a hotline where LBQ women who have been violated can call and receive assistance
LBQ organisation 2	2009	LBQ rights organisation based in Western Kenya
LBQ organisation 3	2012	LBQ organisation based in Western Kenya. Works closely with the County government to ensure that the rights of LBQ women are heard in formulation of county laws and policies.
LBQ organisation 4	2011	Has an in-house counselor who offers psychosocial support to LGB women and gender non-conforming people in Eldoret.
LBQ organisation 5	2016	LBQ organisation based in Mombasa, focused on LBQ mothers.
LBQ organisation 6	2013	Empowers lesbian and bisexual women in Kisumu on their rights and creates safe spaces for them to express themselves freely.
LBQ organisation 7	2015	Advocate for human rights and access to sexual and reproductive health services for LBQ women in central Kenya.
LBQ organisation 8	2011	Works with and for LBQ women in college and university.

The priorities of transgender persons and organisations in Kenya vary in the different study cities, with all cities focusing on issues of violence, stigma and discrimination, and with some, especially in Nairobi, taking up issues of transitioning and hormone therapy.

“When it comes to funding and also priorities for the different transgender communities in the country, you realise, that all we want in a place like Kisumu is to be able to lead normal lives without fear of violence and be able to work, as opposed to accessing hormones for instance.”

— Ellis, trans person, Kisumu

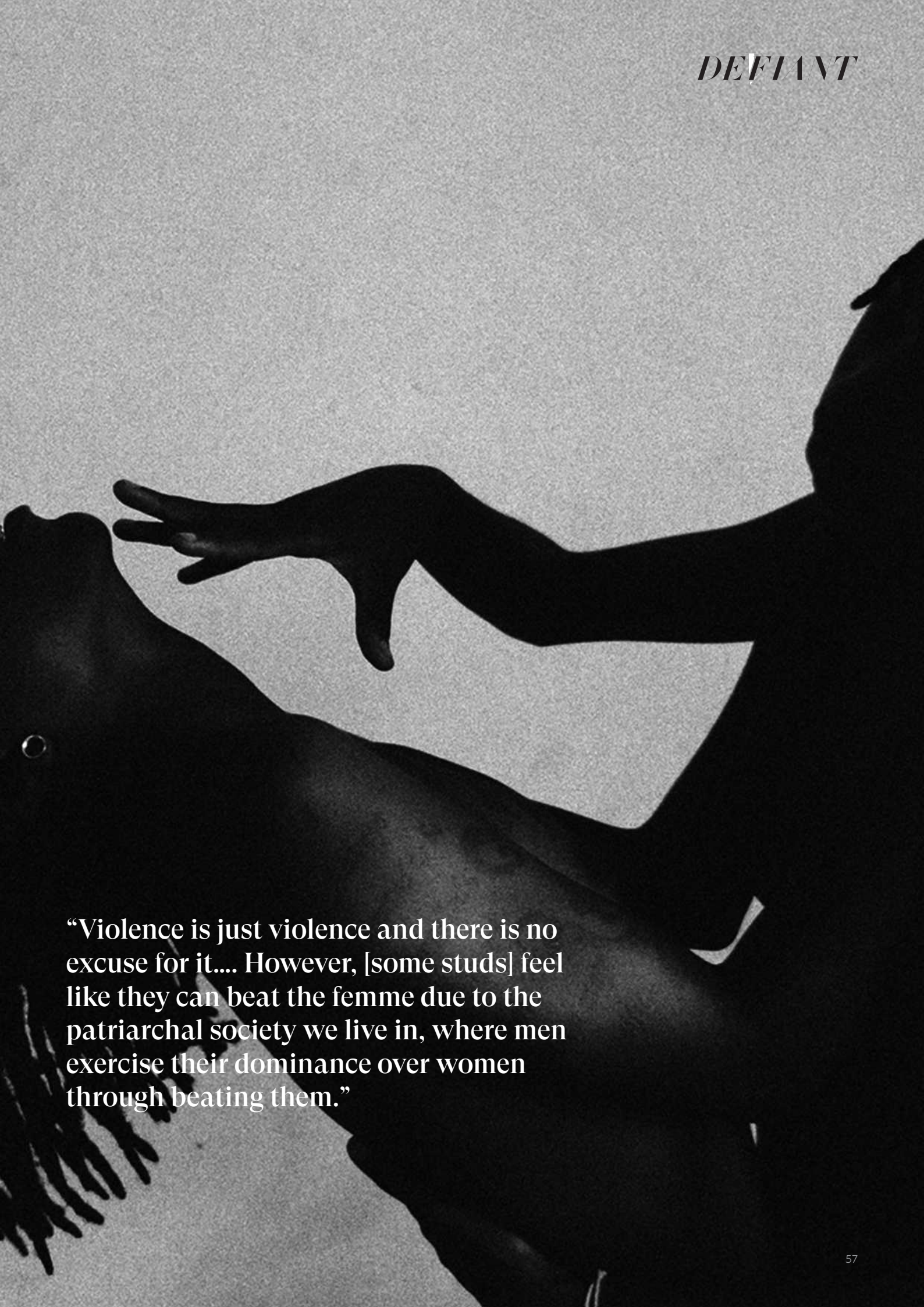
There are safe spaces in all the study cities and towns, including KEMRI and ICRH, where transgender people can access healthcare free of stigma and discrimination. Trans people in Kenya have also racked up some successes through judicial decisions and have built awareness on transgender issues among law enforcement officials, resulting in improved conditions.

“Police and prison officers I believe are becoming more aware of trans issues nowadays. We recently had a case of a trans woman who was arrested and taken to Kodiaga prison and was initially put in a male cell but after the community complained she was moved to a solitary cell.”

— Excerpt from trans focus group discussion, Kisumu

Transgender Organising in Kenya

NAME OF ORGANISATION	DATE OF FORMATION	NATURE OF WORK
Trans organisation 1	2008	Legal advocacy, strategic litigation.
Trans organisation 2	2012	Psychosocial support, health, education and rights-based advocacy.
Trans organisation 3	2015	Seeks to alleviate stigma and discrimination against ITGNC persons in Western Kenya and improve health care services.
Trans organisation 4	2012	Empowers transgender and gender non-conforming persons on the coast, including sex workers, through human rights education and psychosocial support.



“Violence is just violence and there is no excuse for it.... However, [some studs] feel like they can beat the femme due to the patriarchal society we live in, where men exercise their dominance over women through beating them.”

DEVIANT

TAVZINI



V. TANZANIA

“It is unfortunate that we do not have somewhere where we can report these issues of violence against us because of re-victimisation from police officers.”

— Extract from female sex worker focus group discussion, Zanzibar

Overview

The United Republic of Tanzania consists of the mainland region and the semi-autonomous island region of Zanzibar. While the government of Tanzania has some authority over Zanzibar's affairs, Zanzibar also has its own its own president, legislature, and judiciary. The regions share a constitution and have the same obligations under regional and international human rights law.

The government of Tanzania has ratified international and regional treaties which protect and promote the rights of women, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol. Tanzania criminalises sexual offenses, including female genital mutilation, and has issued National Plan of Action for the Eradication of Violence Against Women and Girls, aimed at alleviating sexual and gender-based violence against women.⁶⁰ However, as in neighbouring countries, provisions against gender-based violence are implemented through a heterosexual cisgender lens, excluding people whose professions, sexual orientations or gender identities do not conform to societal norms.

PUSSY

The Penal Code of Tanzania and the Penal Decree Act of Zanzibar both criminalise "carnal knowledge against the order of nature" and "gross indecency," while the Penal Decree Act of Zanzibar specifically criminalises acts of lesbianism and same-sex unions. Sex work is criminalised under both laws.⁶¹

In spite of constitutional guarantees of equality, recognition and respect for dignity,⁶² Tanzania's treatment of LGBT people and sex workers has been characterized by verbal attacks against LGBT people; withdrawal of safer sex commodities, specifically water-based lubricant; closure of drop-in centres which provided health services to LGBT people and sex workers; threats of deregistration made to organisations working on LGBT and sex worker rights, and police raids, including on meetings and workshops addressing health and rights. Police raided a meeting on sexual and reproductive rights hosted by Open Society Initiatives for East Africa in December 2016. In September 2017, Zanzibar police raided a peer-to-peer parent workshop on HIV/AIDS prevention, which aimed at addressing stigma and discrimination in the family with regards to HIV/AIDS, and in October 2017, police in Dar es Salaam raided a strategic litigation meeting to discuss LGBT people's right to health. Police have also cracked down on sex workers, with a mass round up of close to 500 sex workers and 300 clients in Dar es Salaam in 2016⁶³

60 The Sexual Offenses Special Provisions Act, 1998, <http://parliament.go.tz/polis/uploads/bills/acts/1457516075-ActNo-4-1998.pdf>; National Plan of Action to End Violence Against Women and Children in Tanzania, 2017/18 – 2021/22, December 2016, http://www.mcdgc.go.tz/data/NPA_VAWC.pdf. This policy establishes gender desks in all police stations to enable reporting of sexual and gender-based violence in a safe and comfortable space.

61 Tanzania Penal Code, Chapter 16 of the Laws, 1981, https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TZA_penal_code.pdf; Zanzibar Penal Decree Act No. 6 of 2004, https://www.unodc.org/res/cld/document/criminal-procedure-act-2004-zanzibar_html/Penal_Decree_Act.pdf.

62 Constitution of the Republic of Tanzania, 1998, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/56763/90488/F224631551/TZA56763.pdf>, art. 12.

63 "Tanzania arrests 500 'sex workers,'" BBC News, 15 March 2016, <http://www.bbc.com/news/world-africa-35815997>.

Legislation Controlling Women’s Sexuality and Gender Expression in Tanzania

LAW	PROVISIONS	IMPACT
Tanzania Penal Code	Section 130 – Rape	Rape is defined as a man having sexual intercourse with a woman under circumstances that are legally not permissible, one of which is without consent, but the law explicitly excludes marital rape. Rape between same-sex partners is not contemplated under the law. Because trans women are not recognized as women by law, they may be unable to file rape reports.
	Section 138 A – Acts of gross indecency between persons.	Has been applied to sexual acts between women
	Section 154 (1) (a) and (c) – unnatural offenses. Section 155 – attempt to commit unnatural offenses	These sections do not define “unnatural offences,” but are construed as applicable to anal sex.
	Section 157 – indecent practices between males	Because trans women are not legally recognized under the law, they may be charged as men, and imprisoned for up to five years.
	Section 176 – idle and disorderly persons	Punishes undefined indecent acts and soliciting for prostitution or undefined “immoral purposes”; could be used against LBQ women, trans people or sex workers. Those convicted more than once are “deemed to be a rogue and vagabond” and may be imprisoned for up to one year
	Section 176A – Harboring common prostitutes	Deprives sex workers of safe spaces to carry out their work
Zanzibar Penal Decree	Section 140 – Prostitution	Punishes any person who “for consideration offers her or his body for sexual intercourse,” denying the right to bodily autonomy
	Section 150 – Unnatural offenses Section 151 – Attempt to commit unnatural offenses Section 153 – Acts of lesbianism Section 154 – Acts of gross indecency between persons	These sections punish same-sex sexual acts between consenting adults, violating the rights to privacy and non-discrimination
	Section 158 – Unions of persons of the same sex	Violates the right to freedom of association and the right to form a family

State Control of Sex Workers' Bodies

Police in Tanzania frequently arrest sex workers, often demanding sex or money in exchange for release.

"I once got arrested and the police wanted to have anal sex with me, which I did not want, but ended up doing it to secure my release."

— Extract from female sex worker focus group discussion, Zanzibar

Tanzania makes use of community police, who are ordinary citizens appointed by the local government, trained and uniformed, and charged with law enforcement duties in particular neighbourhoods, with ultimate accountability to their assigned police posts. In some areas, more informal groups called Sungu Sungu also operate and exercise policing functions. Female sex workers reported harassment, threats of arrest, and extortion for money or sexual favours from Sungu Sungu.

"Sometimes the Sungu Sungu come around to our places of work and ask for bribes which include money or sexual favours and if you do not give one, they take you to the police station."

— Extract from female sex worker focus group discussion, Dar es Salaam

State Control of LBQ Women's and Trans People's Bodies

While most people arrested under Tanzania's anti-homosexuality laws have tended to be men who have sex with men, LBQ women are also occasionally arrested, including as part of raids on workshops addressing sexual health and rights. Several women were arrested in Geita for alleged lesbian conduct in 2017, and the case against them remained open as of this writing.⁶⁴

Sexual orientation and gender identity are conflated in Tanzania. The loosely worded morality clauses under the Penal Code and Penal Decree Act for the mainland and Zanzibar respectively are used to harass and arbitrarily arrest transgender people, particularly since the beginning of the government crackdown on LGBT people in 2016.

"I was new in town and people had known me as a woman. One day I had gone to an Mpesa shop and I was arrested by Sungu Sungu. They interrogated me and asked me to board a bajaj [three-wheeler] and we went to the local government office. Most people had been called and told that they had arrested a shoga. They asked me my shoga name and I refused to tell them and they accused me of going to a school to show children how to kata kiuno [dance; euphemism for sex]. They asked if I was 'Suzie.' I said yes and they asked for a bribe of 70k. They asked if the landlord knows I am a shoga I said they did not know. I am always stared at so much when I walk around in the estate. They asked to call my landlord and even brought out my contract to verify my name and he even defended me by saying that I am a human being, and the officers let me go but only after giving a bribe of Tsh 30, 000."

— Extract from trans focus group discussion, Dar es Salaam

Transgender persons, as in other study countries, are hesitant to report incidents of violence to the police for fear of re-victimisation.

"I am a trans man, and there is this once I was leaving the club with my girlfriend going home and we met with Sungu Sungu. They entered my pockets and picked my phone. I went to the police station to report what the Sungu Sungu had done, and they called me a lesbian and claimed that my girlfriend and I were kissing and yet this was a false report. They told me to come back another day. However I felt afraid and decided not to pursue the case as I was afraid that my mum would find out about my ways."

— Extract from trans focus group discussion, Dar es Salaam

⁶⁴ "Lesbian kiss video posted and shared online lands Tanzanians in jail," Associated Press, published in Toronto Sun, December 8, 2017, <https://torontosun.com/news/world/lesbian-kiss-video-posted-and-shared-online-lands-tanzanians-in-jail/wcm/c1676af7-4b79-41a7-8c5d-71b80d14c724>.

PATRIARCHY

Violence Against Female Sex Workers

Key Findings

Criminalisation of sex work puts sex workers at risk of violence, including through arbitrary arrests, extortion, rape, physical abuse and verbal abuse, perpetrated by law enforcement officials, Sungu Sungu, clients, owners of spaces sex workers operate from, landlords, and society at large. Criminalisation also leads to low uptake of treatment for HIV/AIDS and sexually transmitted infections (STIs) due to the stigma and discrimination sex workers experience when they seek treatment at health facilities.

Sex workers reported reluctance to report incidents of violence to the police, for fear of re-victimisation. They felt that they had no recourse for any violations they faced from law enforcement officers or other perpetrators.

DEFIANT

Physical and Sexual Violence

In a criminalised environment, clients sometimes feel free to assault sex workers with impunity.

“One day I was picked by a client, it was in my younger days, when I was still new to the work. We had agreed to Tzsh.70, 000 for front and back and once we were done he refused to pay me and boiled water in a kettle and burnt my foot and kicked me out. I was in hospital for three months. I did not report this incident for fear of what would happen to me.”

– Extract from female sex worker focus group discussion, Dar es Salaam

The closure of key population drop-in centres by the Ministry of Health, and the prohibition on community-led HIV outreach activities, has limited the circulation of condoms, reducing sex workers’ ability to negotiate for safe sex and opening them up to violence and the spread of HIV and STIs.

“We sometimes have to buy condoms because the free government ones are very few, and we can no longer access water-based lubricant after the ban. To get lubricant you must have a certificate from a doctor.”

– Extract from female sex worker focus group discussion, Zanzibar

Sex workers also face physical and sexual violence from police officers and Sungu Sungu members, as noted above.

Economic Violence

Tenants in Tanzania are often expected to pay the year’s rent upfront. Unfortunately, landlords take advantage of this, harassing tenants who are suspected to be sex workers.

“When it comes to paying rent, we are expected to pay the year’s rent and somewhere in between the lease, they demand for the next year’s rent. I sometimes feel that they use it as blackmail because they can go out and report us as sex workers. Sometimes they increase the rent arbitrarily before the lease is over.”

– Extract from female sex worker focus group discussion, Dar es Salaam

Economic marginalization sometimes leads sex workers to perpetrate abuses themselves, including against their children.

“I used to lock my children up in the house, at night all by themselves and go to work. Whenever I think about it, it breaks my heart but I do not have much of a choice when I think of all the bills I have to pay. I hope they can forgive me for what I put them through and try to understand that I was doing this to provide for them.”

– Extract from female sex worker focus group discussion, Dar es Salaam

Psychological/Emotional Violence

One form of emotional violence sex workers said they face in Tanzania is isolation by families.

“My family does not know I am a sex worker, as I fear that they could ostracise me if they found out. I came to the city and got a fake husband and a fake job to report back in the village. A sister of mine came to the city to stay with me and she said that she could not accept proceeds from my work.”

– Extract from female sex worker focus group discussion, Zanzibar

Sex workers reported stigma and discrimination at health facilities as a form of violence, although they said there were still some sex worker-friendly services. Some preferred to go to hospitals far away from their residence to seek STI or HIV/AIDS related medication.

“I go to a post far away from my home to get my drugs [antiretroviral treatment] because of stigma. Whenever I go to get my drugs near where I live, people follow me to go see where I am going and they ridicule me.”

– Extract from female sex worker focus group discussion, Zanzibar

“... We do not have drop-in centres at all in Zanzibar, and this would be very important for us to get our treatment without discrimination.”

– Extract from female sex worker focus group discussion, Zanzibar

Intimate Partner Violence

Sometimes, intimate partners are the perpetrators of violence, including beatings. Sex workers feel criminalisation prevents redress for such violence.

“My husband beats me up because of my sex work. Once I got home back home from work he beat me up and asked me not to continue with my work. I was unsure of how to deal with the situation because going to the police to report the matter would only put me into more trouble.”

– Extract from female sex worker focus group discussion, Zanzibar

Online Violence

Sex workers reported experiencing online violence, whereby their photos may be taken by clients and shared on social media platforms like WhatsApp and Facebook. The sex workers interviewed were not clear on any redress mechanisms available to them when this happened. Online violence is sometimes linked to physical and sexual violence.

“I had gone to the bar for work and my client spiked my drink. I blacked out and they took me to a room where they undressed me and took naked photos of me and put them up online.”

– Extract from female sex worker focus group discussion, Zanzibar

Violence Against Lesbian, Bisexual, and Queer Women

Key Findings

- LBQ women face different forms of violence including physical and verbal abuse from family, intimate partners, landlords and society in general;
- LBQ women hesitated to report their incidents of violence to police officers for fear of re-victimisation;
- There was very little LBQ-specific organising in Tanzania. Organisations were either broadly LGBT-focused, trans-focused, or focused on gay men and men who have sex with men (MSM).

While lesbianism is not expressly outlawed in mainland Tanzania, its Penal Code punishes “gross indecency,” and Zanzibar criminalises acts of lesbianism. The legal environment coupled with religious and cultural influence both in mainland Tanzania and Zanzibar exposes LBQ women to violence from families, landlords, and the general public, including physical violence, verbal abuse, arbitrary arrest, and economic violence in the form of lack of access to socio-economic rights such as housing or education.

Physical Violence

Some LBQ women reported violence from men after not accepting their advances. One woman facing such violence had the courage to take it to the police, despite hesitation from many others to report any incidents of violence for fear of police victimisation.

“Some boys [young men] from the neighbourhood once attacked me in my house because I did not accept their advances. I went to report the matter to the police station and they only listened to me after I started crying and agreed to give me a defender to go and arrest the boys.”

– Extract from LBQ focus group discussion, Zanzibar

DEFIANT

Psychological/ Emotional Violence

Tanzania's conservative culture dictates that women are expected to dress a certain way. Masculine-expressing women may face verbal abuse or other forms of violence for expressing themselves through their dress of choice.

“At work I get irked that I cannot wear pants, which I find most comfortable, since I am a stud, and they always ask me to wear skirts and dresses.”

– Extract from LBQ focus group discussion, Dar es Salaam

Economic Violence

Unlike in Kenya, where none of the LBQ women interviewed said that they engaged in sex work, this was common in Tanzania, where many LBQ women resorted to sex work to earn an income. They however reported that it was difficult to do so comfortably, as heterosexual sex workers mistreated them and scrutinised their work, sometimes threatening their source of income.

“I am a sex worker and there are issues with my workplace especially because I do not deal with male clients and the other sex workers really police my life and keep threatening that they would kick me out of brothel.”

– Extract from LBQ focus group discussion, Dar es Salaam

Similar to sex workers and transgender persons in Tanzania, LBQ women face housing insecurity and risk being evicted, without a refund of their annual rent, if landlords learn of their sexual orientation.

“My former landlord came and locked up my house alleging that I was a lesbian, and he refused to refund my rent as I was in the middle of my lease. I went and reported him to the police station and refuted all the claims that I was a lesbian. I think it was my lucky day because the police asked him to refund my balance and I moved out of the house.”

– Extract from LBQ focus group discussion, Dar es Salaam

Intimate Partner Violence

Intimate partner violence was discussed during the study. While some respondents told us that it rarely happened as they were cognisant they were in criminalised relations, other LBQ women said intimate partner violence existed and ranged from verbal abuse to physical fights.

“I was in a relationship where I had to provide for my partner as she was out of a job. However, after a while I felt like she was becoming too dependent and was comfortable that I was willing to provide for her and did not want to go out there and look for a job. I broke up with her but she was still living in my house and would beat me and verbally abuse me, accusing me of having gotten another girlfriend.”

– Extract from LBQ focus group discussion, Dar es Salaam

Most of the respondents reported that they would benefit from support systems such as relationship counselling to help them navigate their relationships.

“It is hard being in a same-sex relationship. We sometimes need relationship advice from counsellors just as heterosexual couples have counsellors, but this is not available to us, and so whenever we have issues we let them escalate till it becomes a physical fight amongst us.”

– Extract from LBQ focus group discussion, Zanzibar

Violence Against Trans People

Key Findings

- Stigma and discrimination is fuelled by religion and culture, resulting in verbal abuse and physical violence by family members and members of the public;
- The crackdown on LGBT organisations and ban on lubricant has negatively impacted transgender people in Tanzania;
- Transgender people fear reporting experiences of violence to the police for fear of re-victimisation.
- When discussing intimate partner violence, most trans women in Tanzania reported not to be in long term relationships and hence unable to adequately comment on the issue, while trans men shied away from the topic.

Psychological/Emotional Violence

Due to heavy cultural and religious influence, trans men feel that they cannot adequately express themselves, especially through dress.

They are expected to wear *buibuis* or *dhiras* (long dresses that cover the entire body, often worn by Muslim women and accompanied by headscarves) considered respectful clothes for women to wear.

“Even though I identify as a trans man, whenever I go back home to my parents house, I have to dress respectfully and wear a buibui, which I immediately change out of once I leave their house.”

– Extract from trans focus group discussion, Zanzibar

As with other countries within the study, patriarchy in Tanzania plays out such that trans men are generally accepted more if they are engaged in an activity or sport that affirms their masculinity, while trans women are ridiculed for not embracing their masculinity.

“Sometimes I feel society is skewed against trans women because trans men are most times accepted and are praised by their family for being chaste and staying away from boys.”

– Extract from trans focus group discussion, Dar es Salaam

Economic Violence

One trans woman reported that the government crackdown on sexual and gender minorities had encouraged residents to believe they could steal from LGBTI people with impunity.

“I cannot dress as a woman in my estate because of the issues that would arise. The government right now is clamping down on the LGBTI community and that pronouncement by the government has made people more vigilant and they steal from us our phones and jewellery.”

– Extract from trans focus group discussion, Dar es Salaam

Physical Violence

Trans women who do sex work are subjected to double discrimination, and intersecting forms of violence, due to their identity and their choice of work by their clients, police officers and society at large. They seldom report their experiences of violence for fear of re-victimisation.

“I am a trans woman and I also sex work every so often to get extra money. I once got a call from a client and he told me he was in a certain area and he wanted me to go there dressed as a woman. When I arrived at the meeting place, my client had organised a group of street urchins to harass me and they stole my phone and clothes I was left in my boxers. I met with sex workers who fortunately gave me money to get a boda boda to go back home. I did not report this or share this with anyone at all as I was a bit too shaken and feared that the police would find out a trans woman.”

– Extract from trans focus group discussion, Dar es Salaam

POWER

The government crackdown on LGBT people and sex workers complicates organizing. In April 2019, the government deregistered two key organizations – CHESA, a group focusing on LGBT health and rights, and KBH Sisters, a sex worker rights organization – while others have been threatened with deregistration. Additionally, under a new NGO law, organisations are forced to declare all their sources of funding. This puts at risk organizations that obtained registration without making specific reference to LGBT or sex worker issues in their name or registration documents. These organisations could be “outed” by being forced to demonstrate that they receive funding specific to LGBT or sex worker rights.

The deregistration of KBH Sisters destabilizes the recent progress in organizing by sex workers in Tanzania, who have come together in recent years to form organisations which provide HIV and STI treatment and counselling, raise awareness on human rights for their members, conduct legal aid clinics where victims of violence can seek assistance, and sensitise police officers on the rights of sex workers.

“At KBH we have a lawyer whom we can use to follow up on our cases of violence.”

– Extract from female sex worker focus group discussion, Dar es Salaam (before the dissolution of KBH)

Criminalisation also poses a challenge to sex working organizing.

“It is hard to educate the police because they will just re-victimise you and start abusing you. I had recently gone to collect names from the police station of some girls who had been arrested. I did not hear the end of it. I was told I was promoting prostitution and that those girls should remain behind bars and that we should not have such people in society.”

– Extract from female sex worker focus group discussion, Zanzibar

LBQ organising appeared nascent at best. At the time of writing this report, there were no existing LBQ-led and focused organisations. LBQ issues were subsumed in the general LGBT ambit, where they they may not always be highlighted or addressed. It was reported that some LBQ women come together and play sports, and this gives a sense of belonging and community.

Transgender organising in Tanzania is more visible, although based mainly in Dar es Salaam, with trans organising in Zanzibar subsumed into general LGBT organisations. It focuses mainly on education, advocacy, and awareness raising on health and human rights. One notable gap applicable in both LBQ and trans organising in the country is the apparent lack of trained paralegals or collaborative relationships with lawyers who can assist with legal matters.

“We should try use lawyers or trained paralegals if we can, to represent us whenever the police officers arrest us. We should also get legal education amongst the transgender community to empower us and we can disseminate this information.”

– Extract from trans focus group discussion, Dar es Salaam

Because of the current crackdown against LGBT and sex worker organisations in Tanzania, we have refrained from listing organisations by name in the following chart.

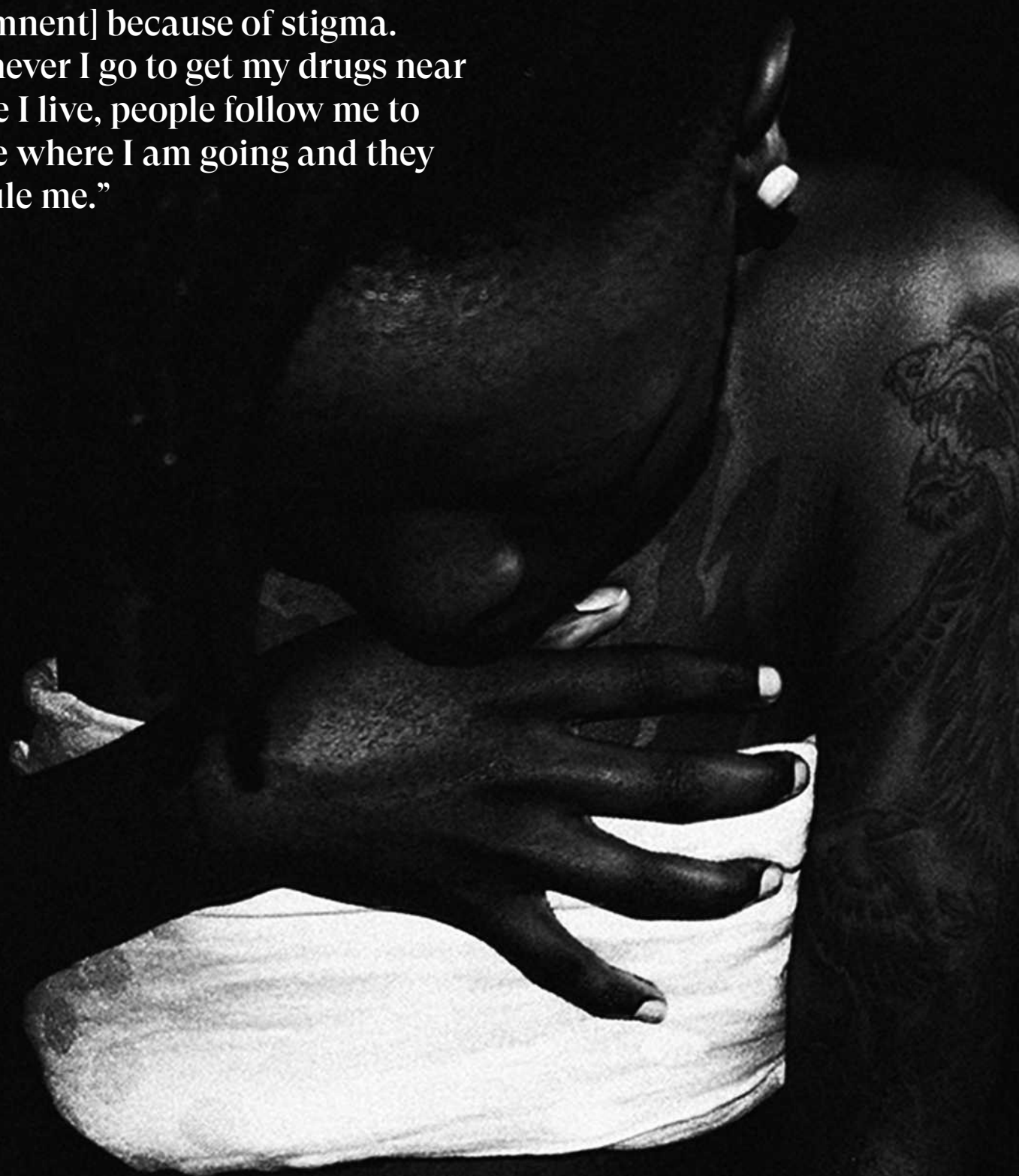
Transgender Organising in Tanzania

NAME OF ORGANISATION	DATE OF FORMATION	NATURE OF WORK
Trans Organisation 1 (Dar es Salaam)	2015	Human rights and empowerment
Trans Organisation 2 (Dar es Salaam)	2015	Advocacy on health and human rights, empowerment through capacity building.
Trans Organisation 3 (Dar es Salaam)	2013	Health, youth empowerment, human rights advocacy and lobbying of the religious sector.
Trans Organisation 4 (Dar es Salaam)	2016	Health and human rights advocacy, visibility, capacity building, research and documentation.

Female Sex Worker Organisations

NAME OF ORGANISATION	DATE OF FORMATION	NATURE OF WORK
FSW Organisation 1 (Dar es Salaam)	2013	Legal aid Advocacy and education on HIV/AIDS and Gender Based Violence
FSW Organisation 2 (Dar es Salaam)	2012	Human rights and health advocacy and education
FSW Organisation 3 (Zanzibar)	2014	Advocacy and education on the law and health
FSW Organisation 4 (Dar es Salaam)	2015	Human rights and health of sex workers

“I go to a post far away from my home to get my drugs [antiretroviral treatment] because of stigma. Whenever I go to get my drugs near where I live, people follow me to go see where I am going and they ridicule me.”



DEFIANT



UGANDA

VI. UGANDA

“It takes a lot of mental battles to express and present ourselves. How do I package my body to make sure that out there I’m safe?”

— Sam, trans man, Kampala

DEFIANT

Overview

The context in Uganda has some similarities to Burundi, including that Northern Uganda was long a site for armed conflict. The conflict has resulted in displacement of people, economic distress and heightened insecurity, which are all ingredients for an environment that facilitates violence of all kinds, including gender-based violence.

Discourse on gender-based violence in Uganda has greatly evolved in recent years, stemming in part from feedback garnered through international human rights platforms such as the Universal Periodic Review at the UN Human Rights Council. The Constitution (1995) explicitly recognises the “significant role that women play in society,” albeit without further clarifying that role. The government has enacted several pieces of legislation that at least theoretically promote gender equality, notably the *Domestic Violence Act of 2010*,⁶⁵ the *Prohibition of Female Genital Mutilation 2010 Act*⁶⁶ and the *Employment (Sexual Harassment) Regulations, 2012*.⁶⁷ Several policies also seek to address gender-based violence, such as the *National Referral Pathway for Prevention and Response to Gender Based Violence Cases in Uganda of 2013* and the *National Action Plan on Women of 2008* and the second *National Development Plan (NDPII) 2015/16 – 2019/20*.

Uganda’s National Development Plan acknowledges gender-based violence as “a critical human right, public health and economic issue.”⁶⁸ The Plan notes that 56 percent of women in Uganda are reported to have experienced physical violence by the age of 15 whilst 28% of women aged between 15 and 49 are reported to have experienced sexual violence.⁶⁹ These statistics are not disaggregated to take into account nonconforming gender identities, sexual orientations or sex work.

Despite the plethora of policies discussing gender equality, existing laws and provisions are seldom fully implemented. And given the inculcated and institutionalized exclusion of and discrimination against sexual and gender minorities in Uganda, their existence seemingly has made little difference for LBQ, trans and sex worker Ugandans. Furthermore, the data collection and stakeholder consultations that informed the development of these pieces of legislation and policies were not inclusive of LBQ, trans or sex worker communities. Sex workers said that they were also not consulted with regard to the Prevention of Trafficking in Persons Act of 2009, a notable omission given that sex workers may be targets of human trafficking.

While making various commitments and declaring implementation of laws addressing gender based violence, the government has also explicitly posited within the same platforms such as the UPR that Uganda “could not accept activism or the promotion and public display of what people did in private,” describing such activism as “inconsistent with Ugandan culture, morals and customs.”⁷⁰ Sections 145 and 148 of Uganda’s Penal Code respectively prohibit “unnatural offences” and “indecent practices.”

65 Uganda Domestic Violence Act, No. 3 of 2010, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=88097&p_country=UGA&p_count=130.

66 Prohibition of Female Genital Mutilation Act, No. 5 of 2010, <https://ulii.org/system/files/legislation/act/2010/5/Prohibition%20of%20female%20Genital%20Mutilation%20Act.pdf>.

67 Employment (Sexual Harassment) Regulations, 2012, <https://ulii.org/ug/legislation/statutory-instrument/2012/15>

68 Second National Development Plan (NDPII) 2015/16 – 2019/20, <https://consultations.worldbank.org/Data/hub/files/consultation-template/materials/ndpii-final11.pdf>, p. 75 paragraph 275.

69 Ibid., p. 76.

70 United Nations General Assembly, A/HRC/34/10, 27 December 2016, Human Rights Council, “Report of the Working Group on the Universal Periodic Review, Uganda,” https://www.upr-info.org/sites/default/files/document/uganda/session_26_-_november_2016/a_hrc_34_10_en.pdf, para 57.

The legislative framework of Uganda thus serves as a double-edged sword, with one hand offering protection yet another taking it away through legislation that polices bodily autonomy and reflects systemic patriarchy and misogyny. An almost textbook example is provided by the Sexual Offences Bill tabled in 2016, which includes “unnatural offences” and “prostitution” among the offenses it would further criminalize.⁷¹

This hostile legislative environment facilitates violence by state and non-state actors in the form of assault, arbitrary arrest and extortion.

An example of the ways in which this hostile environment manifests into state sponsored violence was detailed in the affidavits submitted in the case *Mukasa and Another v Attorney-General (2008) AHRLR 248 (UgHC 2008)*. In this instance, police officers arbitrarily arrested two trans men and sexually assaulted them, allegedly to determine their sex. In this landmark case, the court found in favour of the applicants, Oyo and Victor. It acknowledged that the law enforcement officers contravened national and international laws and reiterated the obligations and rights as provided for by CEDAW. However, in order to file, the two trans men were forced to adopt genders they did not identify with. Further, the state never paid them the sum awarded to them by the court.

In spite of the hostile environment, there is growing pushback against discriminatory treatment, as indicated by the Victor Mukasa case as well as *Kasha Jacqueline, David Kato Kisule & Onziema Patience v Rollingstone Limited & Giles Muhame*, Miscellaneous Cause No. 163 of 2010, which successfully challenged a tabloid's outing of alleged gays. Another case filed by LGBT activists - *Jacqueline Kasha Nabagesera, Frank Mugisha, Julian Pepe Onziema, and Geoffrey Ogwaro v. The Attorney General and Hon. Rev. Fr Simon Lokodo*, High Court Miscellaneous Cause No. 33 of 2012 - was unsuccessful, with the High Court ruling that the government had the right to shut down a human rights workshop for LGBT people.

The hostile legislative and social environment has two-fold impact on experiences of violence by the LBQ, trans and sex worker communities.

- First, victims of violence from these communities seldom report their experiences. There is a real fear of being revictimized and possibly arrested because in reporting the circumstances of said violence, the victim's sexual orientation, gender identity and/or choice of work may be revealed.
- Secondly, in the rare case that violence is reported by an LBQ identifying woman, trans person or sex worker, police seldom take it seriously, owing to the demonizing of individuals whose sexual orientations, gender identities or choice of work do not conform to society. This impunity perpetuates the narrative that violence against members of these communities is permissible.

Other laws or policies, while not gender based, limit the abilities of LBQ women, trans people, and sex workers to organize and network, thus implicitly fostering violence. One example is the Over the Top (OTT/Social Media) tax.

With regard to transgender rights in particular, a few trans individuals have been able to change both names on their identity documents, as in Kenya. Trans men have been found this easier to do this than trans women.

“When I got my [male] ID card my father asked me why I did not put down his name. So I think it is also another way in which patriarchy is inculcated into our society and the politics of name and identity as related to ownership. My passport reflecting my identity was by chance. I think that the person processing my passport assumed that the name Tomy was masculine and on my form I had left the part on gender blank. So it was by fluke.”

— Tomy, trans man, Kampala

⁷¹ One of our partners, HRAFP, conducted a comprehensive analysis of the proposed bill. Human Rights Awareness and Promotion Forum, “Legal Analysis of the Sexual Offences Bill 2015 and its Implications on LGBTI Persons, Sex Workers and Persons Living with HIV/Aids,” 2 May 2016, <https://hrapf.org/images/legalanalyses/160510hrapfanalysisofthesexualoffencesbill2015.pdf>.

PUSSY

Legislation Controlling Women's Sexuality and Gender Expression in Uganda

LAW	PROVISION	IMPACT
Equal Opportunities Commission Act	Section 15 (6) (d) prohibits the commission from investigating 'any matter involving behavior which is considered to be immoral or unacceptable by social and cultural communities in Uganda'	This law explicitly acts to exclude the ability of the marginalized communities subject to this report, access justice afforded through the tribunal powers of the commission
Penal code as read with the Penal Code (amendment) (sexual offences Act) of 2016	Sections 136 to 139 criminalise prostitution, earning a living off prostitution, and operating brothels	These articles criminalise sex work and any association with sex work
	Sections 145 and 146 criminalises acts against the order of nature and 'attempts' to commit acts against the order of nature.	Given that the law does not draw distinctions between nonconforming sexual orientations and gender identities, this law is wielded discriminatorily against transgender Ugandans with homophobia as its basis
Non-Governmental Organisations Act'0	Section 30 provides that an organisation may not be registered if its objectives do not comply with the laws of Uganda	Given the criminalisation of sex work, same sex sexuality and implicitly transgender persons, any peer-led LGBT or sex worker organisation is likely to be denied registration
Anti Pornography Act 2014		This law impedes the ability of sex workers to operate as well as promote their services using various platforms
HIV/AIDS Prevention and control Act 2014	Penalizes wilful transmission of HIV	This law is open to abuse including disproportionate application against sex workers, based on reckless presumptions that, as a by-product of their work, sex workers are the likely suspects
The Over the Top (social media) Tax		Restricts the use of social media in Uganda therefore affecting organising as social media tends to be a widely used medium

Legislation Supportive of Bodily Autonomy and Rights in Uganda

LAW	PROVISION	IMPACT
Constitution	Article 20 – fundamental and other human rights and freedoms Article 21 – Equality and freedom from discrimination Article 23 – Protection of personal liberty Article 24 – Respect for human dignity and protection from inhuman treatment Article 27 – Right to privacy Article 29 – Freedom of expression, assembly and association	In principle, these rights should apply to everyone in Uganda, regardless of their sexual orientation, gender identity, or profession. The constitution lacks specific language on sexual orientation and gender identity, although its language on marginalized groups, minorities and women, in the articles enumerated below, may be helpful in asserting rights.
	Article 32 – Affirmative action in favour of marginalised groups	Requires the state to take “affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom”
	Article 33 – Rights of women	Prohibits “laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status”
	Article 36 – Protection of rights of minorities	Uphold minorities’ rights to participate in decision-making processes
Domestic Violence Act, 2010 ¹¹ , and its Regulations, 2011 ¹²	Prohibits physical, sexual, emotional, verbal, psychological and economic abuse in domestic relationships.	Broad definition of relationships that are covered by the act in principle covers same-sex relationships.
Employment (Sexual Harassment) Regulations, 2012 ¹³	Prohibits workplace sexual harassment.	In principle, protects employees who are sexually harassed on the grounds of their sexual orientation or gender identity.

DEFIANT

State Control of LBQ and Trans People's Bodies

Given that legislation in Uganda does not distinguish between sexual orientation and gender identity, trans peoples' gender expressions are perceived through a lens of same-sex attraction. Consequently, the experiences of violence by the trans community in Uganda in many ways mirrors the violence experienced by individuals whose sexual orientations are considered to fall out of society's norms.

"Last year we organised Pride in Kampala, the police raided. I was in charge of security at the location of pride. As we were enjoying the party, a group of policemen entered and said that we are organising a gay wedding here. So I told them to wait a moment as I looked for the organisers. I was doing this to buy time. As I went, they followed me. We went to talk downstairs. They did not give us a chance to explain and arrested us without explaining why. They were not wearing police uniforms. They made us sit on the floor and asked me, 'Are you a man or a woman?' One of them said, 'He is just fat, he is a man' and they put me in a cell with over 30 cis men. There was no way I could explain anything because they had been alerted that they arrested homosexuals. I was also traumatised at the thought of being outed in the media in the morning."

— Tim, trans man, Kampala

At the point of arbitrary arrest, violations include frisking and body searches with the purported objective stated as determining if an individual is male or female. These arrests are often times done without due consideration to the individual's gender identity and interactions are characterised by threats, intimidation and insistent mis-gendering.

Furthermore law enforcement officers have repeatedly used arrests as an opportunity to shame and humiliate trans identifying people by inviting the media whose reporting tends to be sensational and misrepresentative. In some instances, individuals are often coerced to pay bribes in order to avoid said humiliation.

"When I got to Pride I thought it was a safe space so I wore a dress, wig and was slightly drunk by the time the policemen came. So when they arrived, I thought they were there for my security. However when they came they said 'these are the culprits that we want', pulled those of us in dresses out of the crowd, beat me and told me not to undress and took me to the police station. I was worried because I was in a town that was not my own and my family did not know where I was. They grouped all of us trans woman and said that they would check us to find out if we are men or women. I told them that I'm an entertainer and I'm dressed like this for my work."

— Habi, trans woman, Malaba

At the stations where individuals are taken to be arbitrarily detained, individuals are confined in congested cells, exposing them to yet another platform for violence during confinement. Both trans men and trans women reported this to be particularly problematic in that trans women reported being placed in cells with cisgender men who are informed by the arresting officers that the individual is a homosexual. A few respondents that identify as trans, like Tim, quoted above, also reported experiences of confinement in cells with cisgender men.

"When the Anti Homosexuality Act (nullified) was passed, I was working in a bus park where they used to call me 'Desire' which was a woman's name. People were already aware of who I was. So people started provoking me. I lost my job and fled Uganda for six months until things calmed down. I went to Rwanda without any help...I didn't know anyone there. When I came back I did not know where to start since when I left I had to sell everything I had to raise some money. I would eat just one meal a day. One of the organisations gave me a small amount of money to set up an income generating activity selling juice."

— Mina, trans woman, Mbarare

State Control of Sex Workers' Bodies

Sex workers reported arrests and brutal levels of violence by the Ugandan police.

“On the street we get arbitrarily arrested and they put the baton in our vaginas.”

— Amina, sex worker, Kampala

PATRIARCHY

Violence Against Trans People

Key findings

- Trans women reported a higher number of experiences of physical violence than trans men;
- Experiences of state-sponsored and societal violence by trans individuals was reported as higher in urban areas than in rural and peri urban areas;
- Economic status vis-a-vis one's habitat was a factor in experiences of violence, with those living in low-income areas reporting higher incidences of violence in comparison to those living in affluent neighbourhoods;
- Trans-identifying individuals are generally perceived by their wider communities to be masculine expressing lesbians or effeminate men;
- Some trans women, especially in rural areas, are unable to express their identities through their dressing for security reasons;
- Many trans people do not have steady sources of income as a result of discrimination based on their gender expression, and often are economically dependent on families or partners;
- Emotional violence in the form of verbal abuse from members of the public is commonplace for most trans people;
- Intimate partner violence seems to be normalized within the trans community, including emotional violence based on perceptions of whether or not a trans person "passes";
- Verbal abuse from partners on the basis of "manhood" or not being "woman enough" are a common occurrence within intimate partner violence;

The forms of violence reported include:

- Economic violence, in the context of blackmail; and extortion and in the context of intimate partner violence, when one partner has economic advantage over the other;
- emotional violence in the form of misgendering and verbal abuse;
- Sexual violence in the form of rape as well as coercion; and
- Physical Violence

Ugandan culture leans heavily on a narrative of strict gender binaries, manhood as defined by the existence of a penis and womanhood as synonymous with having a vagina and uterus. The very existence of trans identifying individuals presents a challenge to these destructive norms, which challenge is often objected to through violence.

Most trans identifying Ugandans do not have access to social structures which support access to education, housing, health care and employment.⁷² Most respondents interviewed for this study reported struggling financially, which has in turn impacted how society perceives them—often, as miscreants and not of value to society. This stigmatization has a bearing on the respondent's experiences of violence.

“They undermine us and regard us as useless people. When someone calls you immoral and bewitched, mad, people not wanting to associate with me it is violence to me.”

— Lisa, trans woman, Mbarara

Trans specific and trans competent health services remain an ideal. Even within existing structures particularly as regards HIV and sexual health, trans individuals reported experiencing stigma and discrimination from health care workers. Consequently, individuals are reluctant to go to hospital to address various ailments including basic health. In the cases in which they visit hospitals or health institutions they are subjected to misgendering and have to identify with their biologically assigned sex in order to attain access.

As a result of the legislative environment on their ability to seek employment, most individuals living positively with HIV also reported challenges in keeping up with the nutritional demands that accompany ARV therapy.

Whereas there are some health institutions that purport to work with key populations (including MSM and sex workers), these institutions seldom take into consideration non-normative genders identities. Additionally, there is reportedly inadequate sensitisation of staff thereby even in accessing said services individuals experience different forms of violence most notably emotional and psychological, from their experiences there.

Physical and Sexual Violence

“I was working from home one day when the guards came and knocked on the door and asked ‘you people what are you doing here?’ From nowhere they started beating my girlfriend. When I came out to rescue her they started beating me too. He wanted to hit me on the head with a baton that had nails. Luckily the patrol was moving around and came to ask what was going on. The landlord also came. I was bleeding and my girlfriend was unconscious.”

— Mick, trans man, Tororo

The study found that experiences of physical violence were reported as higher in urban areas as opposed to rural or peri urban areas. In urban areas these experiences were reported as higher in low-income areas in comparison to high-income areas. Perpetrators of physical violence were reported as including law enforcement officials, neighbours and members of the public.

⁷² refer to Uhai report

DEFIANT

“I met someone on Facebook and we moved the conversation to Whatsapp. He was living in Nairobi. I had heard stories of blackmailers in Nairobi. I didn't think it existed. He seemed to be my age...told me that he stays alone and is a university student. We had exchanged pictures. He was cute. I went to Nairobi. When I got there I called him because I didn't have money for transport. He sent me ksh 200, picked me from the highway and we went on the boda boda to some expensive apartments. When we got there he locked the door and turned on some music. He kept asking me questions about what I had, like my phone and my ipod which was a gift from my aunt. When we got into bed he asked if he could use lube. I noticed that someone else had come into the room. The other man asked me if I'm Ugandan and said 'you are doing such shit in Kenya'. The boy I came with pretended not to know me. The stranger slapped me, picked a hammer and bottle and increased the volume of the music. There was no way to jump because we were on the 5th floor.”

– Nina, Trans woman, Tororo

“I stay in slums in Katwe. One time I was walking and there was a gang of men that called me to go to them. I ignored them and kept moving. They ran after me and when I tried to run they caught up with me, took me to a house under construction. There I found a big group of men taking weed and they asked me why I behave like a girl. They started slapping me and one called me gay, got a nail and scratched the side of my eye and inner thighs. I shouted and neighbours came. If you want to be safe in my neighborhood you have to develop relationships. So when I shouted they came to my aid. Sometimes I define myself as intersex for my security and to build empathy.”

– Shero, trans woman, Kampala

A considerable number of trans identifying men in rural and peri urban areas play a sport or are involved in professions for which masculine expression is perceived as a norm. As such, whilst their communities may not explicitly acknowledge (or know of) their gender identities, their gender expression is often attributed to the fact that they may play a sport or have a profession in which masculinity is expected or accepted such as bouncers because of societal genderisation of particular sports and professions.

“I was in Garden City Kampala in a club and I felt like using the bathroom. When I entered they [other patrons] locked me inside. I was terrified because I did not know what was going on and could hear people talking outside. They were thinking of undressing me to determine if I was a woman or man. Those 20 minutes were extremely traumatizing.”

– Chris, trans man, Mbarara

Trans victims of violence may face further victimisation at the hands of the police.

“I was once beaten in my neighborhood by a man who I confronted because he stole my phone. When I reported him to the police, they called me a devil, spat on and beat me and told me that I will die an early death.”

– Lia, Trans woman Malaba

Psychological/Emotional Violence

This was reported emanating largely from partners, friends and family members. Seldom discussed, acknowledged or considered is that some trans men have sex with men. A few respondents that identify as trans men reported having children from sexual encounters with cis gendered men. In this context the main perpetrators of the emotional violence were reported as family members. The violence experienced is largely in the form of denying respondents access to their children, or leveraging children to force respondents to conform to normative behavior.

"I needed to travel so I left my son with a woman that had a day care centre near my sister's house. I thought that my trip would take five days but it took a week and four days. When I got back I found out that she had given my child to my sister who had taken my son to my mother in Mbarara. We don't have a very good relationship. I found out that my mother had taken my son to a childrens' home. She said that I'm a lesbian and do not have any rights. Recently I went to the ministry of internal affairs and opened a case against my mother to try and get my son back. When I reported, I did not report as a trans man. I had to report as my former self which took a great emotional and psychological toll because I had to express differently other than myself. When my mother was contacted she said 'These are the people that will decay our country.' She has sworn that if I pursue the matter she will make sure I end up in jail. So this now forced me to forgo the issue of finding my son so as not to expose my self to more insecurity. I have tried to involve the rest of my family but they keep blaming me. I'm not getting protection from the people that are supposed to be protecting me and I'm not getting support from my peers because it is difficult to talk to people about this."

– Silas, trans man, Tororo

Some respondents reported misgendering as a form of emotional violence.

"When I started transitioning I would have friends who still today, and in spite of being activists themselves call me by my former name. They think that being a trans man is an exaggeration of sexual orientation. I have lost friends even within the community. They feel I betrayed lesbians."

– Tim, trans man, Kampala

"I fled my country because my family did not understand me. My father accepted me but my mum did not. She would make me feel bad. She would ask me 'I gave birth to a boy with a penis and now you say you are a woman. How is a man meant to have sex with you?'"

– Kate, trans woman refugee, Kampala

One trans woman reported that judgment by other trans people could be experienced as emotional violence.

"[One problem] is the conversation on validation of trans-ness like you are not trans enough, I'm trans enough, and you are not really trans. Who's trans enough? That conversation of who is passing...like trans-ness based on physicality...on how someone looks"

– Patra, trans woman

Online Violence

Given the hostility experienced by trans Ugandans, social media has become a common platform through which individuals express themselves, advertise their work and engage in advocacy. Unfortunately, the internet has also afforded yet another platform through which trans people in Uganda, as well as LBQ women and sex workers, experience violence. Online violence still goes largely unrecognised, undocumented and therefore unaddressed.

"On my Facebook my gender is listed as female. There was a guy that sent me a message asking if I'm a man or a woman. He took my picture and put it on his wall and posted that I'm calling myself a woman and yet I'm a man and he shared even my Facebook name which got shared on other walls because he tagged me."

– Lisa, Trans woman Kampala

"There was this girl that is a former schoolmate that went on my Facebook page and said that I never used to have a penis how come I identify as a man. Even though I tried to explain to her she kept pushing saying that 'don't I menstruate?' At the end of it she said I'm digging my own grave and will never be a man."

– Charles, trans man, Kampala

DEFIANT

Intimate Partner Violence

Intimate partner violence was reported as emanating from both parties in the relationship and not necessarily linked to masculinity or femininity, but rather it was linked to power. Within the LBQ and trans community, several respondents that identify as trans men or masculine presenting LBQ women reportedly openly admit their roles as perpetrators of violence within their relationships but less so about their victimhood in the converse. For the few respondents that expressed being victims of violence from their 'feminine expressing' partners, in the focus group discussions, there were cackles and ridiculing bordering on shaming. This behavior mirrors society's reaction to exceptions to the perceived norm and the corresponding expectations that associates masculinity with dominance and binary identification of gender. Anything to the contrary is labelled as weakness.

"I had a girlfriend who was blackmailing me and threatening to tell my neighbours about me every time we had a fight. One day she went outside and shouted that 'you say you are a man yet you are a woman like me. If you are a man get out your dick and fuck me.' At that point I was so upset I slapped her. She then threatened to commit suicide by setting herself on fire and refused to leave the house."

— Jack, trans man, Tororo

Reporting to authorities or law enforcement was reported as likely to bring negative visibility and attention further exacerbating violence and arbitrary arrests not just against the perpetrator of said violence but against the victim too.

"My ex boyfriend always insisted on having threesomes. I would complain that I was not ok with the idea but he would still invite strange men. He became controlling and at some point refused for me to leave the house."

— Siwa, trans woman, Mbarare

Trans women interviewed in the course of this study reported most of the cited forms of violence as emanating from their partners.

"I had a boyfriend that I met online who called me and asked me to meet him in Jinja. When we went out clubbing, I met some of my friends. It turns out he was an extremely jealous guy and thought that I was loose because I was saying hello to many people. He asked us to change venue but I also knew a lot of people at the next venue. He got upset and insisted that we go home. When we got to his house, he slapped me and demanded to know who those people were. When I ran into another room and locked myself in, he broke the door open, tied me with bedsheets and raped me. The next morning he told me that he should find me at home when he gets back. He gave me money to go shop but took away my wallet. I ran away. He kept texting me and said that no matter how far I ran, he would always find me."

— Lina, trans woman, Tororo

Cases of violence are reportedly hinged on disparity of economic status, infidelity, projected frustration, transphobia and emotional insecurity.

"When I ran away from home, I went to live with my partner. She was the main breadwinner and I was dependent on her. One weekend we went to visit her cousin in a different town. She paid for the hotel we were staying in. On one of the nights we had an argument and she left for her cousin's house without sharing the address. The next morning I realised I was stranded. I did not have any money to go back home and was forced to take a boda boda to go look for her. Once I got home and revealed to the boda boda driver, a cis man, that I did not have money to pay him, he negotiated having sex with me to cover the cost. From this encounter I contracted HIV. Having broken up with my partner I did not tell anyone about my status for a long time in the fear of stigmatisation. Years later I fell in love with a woman I thought I would be with forever. I thought she would understand, because we were in love. When I revealed my status to her, she revealed it to some people we knew in common and left me. These days I'm extremely guarded because there is no one I can trust."

— Brandon, trans man, Mbale

During focus group discussions it was observed that the topic of intimate partner violence was regarded lightly and most victims of violence, in particular trans men, did not feel comfortable discussing their experiences in front of their peers. Those that did were mocked and made fun of.

“Trans men tend to be more reserved discussing experiences of violence because they are embarrassed and because a lot of trans men are still going through internal struggles of how their bodies present. Body politics and how comfortable a person may be with their bodies is an important conversation because of perceptions of masculinity and what a ‘real man’ may be. Which perceptions affect our relationships”

— Sam, trans man, Kamplala

DEFIANT

My maternal grandfather raping me at the age of 16 was not my first experience of sexual violence nor was it the second. I had experienced rape three times before that and two attempts. I'm an orphan brought up in an environment of deep stigma, compounded by my sexuality. My father died when I was young and my mother died at childbirth when I was born. So I lived with my aunties....my mother's sisters who mistreated me.

My aunt's friend who was also a neighbour had a son that I was close to. We basically grew up together in the same area. There came a time when he lost his dad. I was 17 by then. My aunty was too busy to attend the funeral and asked me to represent the family. So I went for the burial and on the way back he decided to drop everybody first and since we stayed in the same area he said he would drop me last. When we reached our neighbourhood, he asked me to go with him so he would park the car and he would walk me back. I did not find it odd because we were so close, he was the first person I told that I'm a lesbian. When we got to his house he asked if I'm sure about my identity and if I can't have feelings for a man. He then declared his love for me and asked me out. I dismissed him. He started touching me and I was so uncomfortable...I tried to make noise so he tied me up and gagged me. It was the saddest experience. It doesn't how much you go for counselling that incident never gets out of the head or the mind. He tore my clothes and raped me. He was very rough and it really hurt. The house was really big to the point that even though I tried to shout, nobody came to my rescue.

When he was done, he seemed to feel guilty and told me 'You know where your place is, just walk it is not too late.' It was around 2 am. So I walked home in pain, bleeding. Because we were fighting (I have grown up being beaten, tortured and mistreated so I tried really hard to fight him off) I think I got some kind of

internal damage. When I got home I was crying and my aunt made a joke thinking that I was crying because of the funeral. I went to my room. I didn't have anyone to talk to about it. The next day that guy came to my home and acted like nothing happened. I was quiet for almost a week. I couldn't do anything around the house and my aunty would complain that I spent all my time in my room. When she came to my room it had a funny smell. So she called my other aunties who came and actually checked me and discovered that I had wounds all over. All I could do was cry. I was scared to even tell them what happened because I thought they would beat me and blame it on me ... ask me why I went to that guy's house. So I kept quiet. They said a lot of things and at some point accused me of being pregnant and smelling because of a failed attempt at abortion. Eventually I was kicked out of my home.

So I went to the village I heard my father was from to look for my paternal side of the family. I didn't know where to go and didn't have enough money. My father's name was common and no one could point me in the right direction. Eventually, I blended in and started staying in the streets of Tororo, doing odd jobs to survive. One night I started bleeding and decided to go to the clinic. The nurse checked me and informed me that I was four months pregnant and was bleeding because there was a complication in my womb. I was so confused. I did not know what to do. The whole situation was so fucked up. I asked the nurse for an abortion but she said she could not help me because it is illegal. So I looked for other ways. One of the girls I stayed with on the street told me of a local herbalist, a lady who would help me abort. I went to see that woman and paid her Ugx 5000. She took some things that looked like sticks...they were like tooth picks, three of them. She put them inside my vagina. I think that was supposed to pierce the

uterus or something and the baby was supposed to flow out or something. I bled almost to death but the baby was not coming out.

So she got scared and went and dumped me somewhere. On the street. Where she dumped me was very dangerous in some ghetto area. Where she dropped me is where I was raped for the second time. Up to now, even if you put a gun to my head and ask me how many people raped me that night I cannot really tell you because I was unconscious when she dropped me there. The next morning when I came to, I was in a hospital, the clinic. I think some good Samaritans picked me and took me to the clinic. The doctors told me I was raped...and still pregnant. I was mortified. Raped again?! They told me that according to the sperm samples it was more than one person. It appeared to be a group of men that raped me. I felt lost. I felt that the only way out at this point was committing suicide. Trust me, I tried. When the nurse left me alone one day, I picked all the drugs I saw she had left behind and swallowed them. They found me and got concerned at my attempt. I did not know what to tell them. So they called the police who took me to a detention centre in Tororo because they thought I was a street kid.

When I was there by some miracle a woman that used to work with my aunty and was a cousin came to the detention centre to bail out her cousin. When she saw me there she asked me what I was doing in Tororo. For some reason I felt that I could trust her. So I told her the truth about what happened. It was that woman that got me away from Tororo and got me back to Kampala. We looked for that guy that raped me and he was arrested. They gave him two years in prison. The lady tried to take me back to my family (my aunty) but they still insisted that even if I was raped, it was even better because at least I had a child even though I'm a

lesbian. So the woman took me in. When I gave birth, that man's family came for the baby and I gave up my baby willingly because I did not want anything to do with it.

She was an elderly woman with no children. She took me back to school, I finished senior 6 and she even took me to YMC to do a course. It was at that time that she died and her family came and sent me away because they did not know me. After that I hustled and looked for different employment opportunities and it is in doing so that I got to know of the LGBT community. I spoke to a counsellor including about how haunted I felt because I cut myself off from my child. The counsellor advised me to try and reconnect with my child, but it did not quite work out. I decided for his own benefit, because I did not trust how I felt around him, I gave him back to that man's family. There are very many things I went through because of that child. It all tortured me. I was very angry with my counsellor and felt like she put a lot of pressure on me to love that child. My son is about seven years old now.

In my current job I face sexual harassment every day. Being out about my identity as a lesbian has hardened me. I have a former colleague I worked with closely and he even knew my then-partner yet he still asked me out. He assumed that being lesbian is a character one puts on in the morning and takes off at night. When I rejected him he started trying to make my life difficult. He trolled me on social media, hacked my accounts and blocked me from accessing them and started posting extremely homophobic posts. He threatened me and said that he would use all his influence to destroy me. I was completely unfazed and remained steadfast in my resolve not to be bullied. It has not been easy, but I'm doing fine and taking it one day at a time.

DEFIANT

Violence Against Lesbian, Bisexual and Queer Women

Key Findings

- Masculine and androgynous-presenting LBQ women reported experiencing more incidents of physical violence in comparison to non-masculine presenting LBQ women;
- Most masculine presenting respondents reported a reluctance to openly discuss violence from the perspective of victimhood. They also experienced challenges identifying safe spaces and people with whom they could share experiences of sexual violence because of stigma and ridicule from peers;
- Experiences of sexual violence were reported as emanating largely from individuals known or close to respondents such as relatives and acquaintances as well as unknown members of society;
- Experiences of intimate partner violence are based on cross cutting factors such as physical and/or economic dominance. They go largely unreported because of the existing legislative environment as well as 'community marketing';
- Reported forms of emotional violence against queer identifying women include denied access to their children by family or previous lovers.

Sexual Violence

Sexual violence was a difficult topic for most respondents. It was reported that this form of violence often stems from intolerance toward non-normative sexualities, which tends to be perceived as a challenge to manhood or lack of satisfactory heterosexual sex. A different factor also reported is the fetishisation of LBQ women, attributable in part to the objectification of women's bodies driven through various forms of media, and to normalized perceptions of the hierarchy of the pleasure of men, which in this context is served by the visual and psychological notion of two women engaged in sex.

Sexual violence experienced by LBQ women was reported as including rape and sexual harassment. Perpetrators were reported as including known individuals, cisgender male family members, cisgender men unknown to individuals as well as other LBQ women and in a few cases, trans men.

Several respondents reported experiencing rape at the hands of cisgender men unknown to them or by previously trusted individuals who take advantage of the relationship or disparate physicality to sexually violate the reporting LBQ women particularly knowing that said women identify as LBQ.

A second context in which sexual violations were reported was within the LBQ community. It was reported that some LBQ women use drugs and alcohol to disable other women's ability to consciously and intentionally consent to sexual advances.

"I went to a party once and the hosts and their friends were passing around cakes with marijuana as well as other drugs and plying some femme woman at the party with alcohol and discussing her level of sobriety as well as taking turns with her. I was disgusted and went to warn her."

– Max, LBQ woman

Respondents also reported sexual harassment, including verbal harassment and gestures, often in situations in which the perpetrator feels rejected by an LBQ woman, and physical acts such as unsolicited and non-consensual bodily contact.

"In clubs when we go out and they see two women dancing together cisgendered men tend to interrupt us by coming to dance with us uninvited or worse doing things like slapping our bums."

– Lila, LBQ woman Kampala

Blackmail and Extortion

Blackmail and extortion were reported as emanating largely from police, LGBTQ community members, family members and in the context of bisexual women, their current or former cisgender male partners (existing or former). Extortion is often fueled by the misperception that LGBTQ movements have access to a lot of funding.

“We receive several reports of theft and consequent threats of from thieves to falsely report LBQ identifying victims as having drugged and raped them. This is fueled by religious leaders like Martin Ssempe who publicly states that the LGBT community has a lot of money. Uganda is a struggling economy so statements like these have impact.”

– Coordinator, National LGBTI Security Committee, Kampala

Intimate Partner Violence

“We have internalized and normalized violence. Most LGBT’s first experiences are of violence. People that have been through it tend to be less empathetic to other peoples’ experiences of it. The prevailing association of masculinity is portrayed and defended by violence which is also why most people do not openly discuss it.”

– Gee, LBQ woman, Kampala

“Culturally children were beaten to show love (and control as based on love) so that is how it may translate. Therefore it comes from a culture of domination and control which was what traditionally existed in relationships and transitioned into a sign of love because traditionally love had nothing to do with relationships.”

– Godiva, activist, Kampala

The LBQ community does not exist in a vacuum, and various facets of some LBQ relationships mimic heteronormative patriarchal relations, including domestic violence. The difference lays in the fact that LBQ relationships being criminalised results in victims’ inability to utilize existing protection offered through legislation prohibiting violence.

Violence was reported as linked to power and dominance.

“In 2007-2009 I was in a relationship with a very possessive woman who lived with me. When she was drunk she would hit me. One day whilst she was out with her friends one of them came home without her. I went out to find her because no one had heard from her in a while. Eventually when she turned up she accused me of sleeping with her friend and stabbed me in the back with a knife. I was rushed to the hospital where it was discovered that she punctured my lung. People ask why I did not report her to the police but what would I have told them? Would you believe that after that we still got back together? Eventually I left her. That is why I say that I’m a survivor. People get surprised when they hear my story because I’m masculine-expressing, big and strong. So they wonder how I could be in that position.”

– Lexxy, LBQ woman, Lira

The notion of power is not limited to economic or physical dominance. Given the hostile legal environment, it includes power over victims in the context of taking advantage LBQ women’s vulnerability and inability to access justice in the same way as heterosexual people.

“The problem is that in same sex relationships are taken lightly and being that we are criminalised, where are we going to report? What? And how? When the media advertises advocacy against intimate partner violence they refer to heterosexual relationships.”

– Coordinator National LGBTI security, Kampala

DEFIANT

One activist reported that “community marketing” was also an obstacle to LBQ women reporting intimate partner violence.

“None of the people I spoke to reported violence within their intimate relationships because for a lot of them there was the recognition that if they report it they would be giving others power to abuse both them and the other party involved. Therefore people tend to excuse violence within the community. As a result of their collective exclusion peoples’ first instinct is protecting the community at large and not just the individual which affects the way individuals react to it and or experience violence within queer relationships.”

— Godiva, activist, Kampala

Respondents also reported experiences of violence, including stalking, by former partners or lovers. If they share children, the children may be used as leverage against the individuals.

“I used to date a man that became the father of my child. He was also a policeman. When we separated and I started seeing someone else that identified as a trans man he would randomly turn up at places we would be or turn up at my house and threaten and attempt to intimidate me. He took my child and denied me access to my own child. Every attempt I made to get my child back was met with threats that if I pursued judicial action, he would reveal that I’m a lesbian.”

— Tina, LBQ woman, Kampala

Violence Against Female Sex Workers

“Violence is mistreatment that is physical, psychological or economical and can be caused by partners, relatives even friends.”

– Extract from sex worker focus group discussion, Lira

Sexual Violence

One misperception perpetuated by the criminalisation of sex work is that sex workers cannot be victims of sexual violence. This misperception is often manifested through the negation of the sex worker’s right to consent and was reportedly experienced largely from clients and intimate partners.

“I once went to a hotel in Tororo and they got me a customer but it turned out to be a customer with an abnormally huge penis. He forced me to go round after round in order to get the full negotiated amount so in the end because I could not go another round he gave me less money.”

– Suzi, sex worker, Tororo

The reported experiences include rape by clients.

“I negotiated with a client and informed him that I had condoms in my bag. He refused to use the condoms and pinned me down and forcefully had sex with me without a condom.”

– Mina, sex worker, Lira

“I agreed to go with a client and negotiated a rate when we got there he said he didn’t have money but has a knife and he told me that I didn’t give him sex he would stab me so I was forced to have sex with him because I felt threatened.”

– Mira, sex worker, Tororo

This includes unnegotiated sexual positions or acts performed under duress. Frequently mentioned incidents include refusal to wear condoms, being performed to perform sexual acts that were not part of the negotiation such as anal and oral sex, and being forced to have sex with a number of people not included in the negotiation.

“I have a client who switched on me whilst we were having sex and forcefully had anal sex.”

– Teri, sex worker, Tororo

“Ever since I started working I have never liked giving oral sex when we got to the room the man told me that he wanted me to suck him off. I offered to give him back his money and he insisted. So I put it in my mouth however when I did after a few days I got warts in my mouth...I got an STI as a result.”

– Jackie, sex worker, location

Several women said police forced them into trading sexual favours for release, a form of both blackmail and rape.

DEFIANT

“Sometimes the police force you into sex because that is the only way they can set you free. The worst part is that they rarely want to put on condoms and so you end up getting infected or having an unwanted pregnancy.”

– Salma, sex worker, Kampala

“The police use their batons and scare you and extort you for sex under threat.”

– Milka, sex worker, Kampala

Sexual violence was reported as also experienced from known and unknown members of the public.

“A robber came into my house at night and he came naked. He had two goals, to steal and to rape me. He had a weapon. I did not have anyone to report this to. I got tears in my vagina because he was very big and I was not ready. So I had to go to hospital for treatment.”

– Rita, sex worker, Lira

Victims of sexual violence are often left without options for redress and further have to deal and cope with their trauma without the benefit of a support system, especially in peri-urban and rural areas in which the movement is yet to gain visibility and sex workers are excluded from most spaces.

Physical Violence

Sex workers in Uganda reported experiencing physical assault including beatings, stabbing, and maiming. Reported perpetrators included clients, other sex workers, and law enforcement officials.

“There was a day I went to a pub and I was drinking with friends. So a man came and invited me to play pool with him. He bought me beers... When I left he was outside and he asked me to take him home. So when we went he kept changing the distance. So when I told him that I didn't want to go he slapped me. When I fought back he showed me a gun....it was a boda boda man that came to my rescue.”

– Mila, sex worker, Kampala

“If we go out and one of us is wearing a more expensive dress and go out and meet a client that shows interest in one or the other, the other is likely to start feeling bad and jealous and eventually this leads to violence which starts with quarrelling. Other friends typically come in and arbitrate because they do not want to draw attention.”

– Extract from sex worker focus group discussion, Lira

“I'm currently not feeling well because a man beat me yesterday after refusing to pay me. He started telling the neighbours how I'm a sex worker, beat me and took my money.”

– Jenny, sex worker, Kampala

“We once had a case of a young female sex worker living with HIV that had wounds on her head because a client found her Anti Retro Viral (ARV) medication. When she denied their belonging to her, the man hit her. She was pregnant at the time and consequently lost her child.”

– Representative of Uganda Network of Young People Living with AIDS (UNYPA), Kampala

Psychological/Emotional Violence

Respondents defined psychological violence as actions that affect their psyche and mental state of well-being. Perpetrators of this kind of violence were identified as emanating family members and neighbours.

“You find that the community keeps pointing at you because sex work is a taboo. So people in the community do not want to associate with you.”

– Tina, sex worker, Lira

“I have experienced verbal abuse. I have friends who live in my neighbourhood. Whenever I go to visit them, their parents do not allow them to associate with me they say that I'm a spoilt girl and a sex worker and that I will spoil their children.”

– Lisa, sex worker, Lira

Respondents with children highlighted the use of their children to perpetrate psychological violence through name calling and ostracization.

“It is mostly verbal and psychological. Sometimes they take it out on our children and tell their children to not interact with ours. ‘Don’t eat that thing they used money from the devil to buy.’”

– Joyce, sex worker, Tororo

“People refuse to talk to you or deny their children from coming to your house.”

– Shebby, sex worker, Kampala

Often sex workers experience ostracization by loved ones because of their profession. Most reported a lack of a support system, forcing them to cope with the distress of harassment alone.

“For me the fact is that when I’m being harassed I’m alone. I cannot call my parents, family, friends. I have to go through it alone.”

– Eniya, sex worker, Tororo

A few respondents reported being stalked by strangers as well as known people because of their choice of work.

“Two years ago my neighbour followed me and stalked me to my place of work which was on the street...he actually even purchased my services. The next time he came he tried to negotiate for less and denied that he was the one that spread the rumours that I’m a sex worker.”

– Shona, sex worker, Kampala

“There was a man that stalked me and would ask me for sex all the time. I had to threaten him that I would go to the police. So he stopped following me for some time.”

– Cleo, sex worker, Lira

Intimate Partner Violence

Most respondents reported violence as a regular occurrence in their relationships. Responses on experiences of intimate partner violence were mixed from the respondents in that for some relationships there was a clear economic power dynamic with their partners having the advantage. However, violence was also reported in the context in which the sex worker is the main breadwinner in the family. It was reported that the violence in this case tends to stem from insecurity or substance abuse. Further, some respondents reported not revealing their work to their partners and experiencing violence once their partners found out.

“Someone told my partner that I was a sex worker... I used to lie to him that I was going for fellowship. One day he followed me to work. He abused me, beat me up, tore my clothes and undressed me to humiliate me. By the time I got home he had left and he left our children claiming that he doesn’t think he is the father of our children.”

– Bini, sex worker Tororo

“My ex embarrassed me in front of his work colleagues some of whom were my clients. He strangled me, we fought and I ran away. When I got home, he was right behind me. He tried to push me out of the house but failed so he took my clothes out of the house and burnt them and then took his clothes and left.”

– Lisa, sex worker, Kampala

“I don’t have a partner currently because the last one I gave my heart to left me with scars as evidence of that love. He would find me seated with friends and force me to have sex. So one day he beat me and still demanded sex. He locked me inside the house and started beating me, when I fought back he bit me. I since left him.”

– Tracy, sex worker, Lira

“The father of my kids found out that I sex worker. We had a fight and he boiled water and threatened to burn my vagina. Thankfully I overpowered him. We have since separated.”

– Tina, sex worker, Kampala

DEFIANT

“My husband was the reason I was put in a psychiatric ward for 2 weeks. He told my child that I fuck dogs. He poured hot tea on me, beat me and then kicked me and our children out of the house.”

— Evelyn, sex worker, [location?]

In addition to physical and sexual violence, other reported forms of intimate partner include verbal abuse.

“When your partner finds out that you are a sex worker and they start to harass you in different ways. Sometimes words can harass and it keeps violating you.”

— Rachel, sex worker, Kampala

Emotional violence included denial of parental rights.

“I was married and had a daughter. The father of my child took my child away and she was just three months old at the time. He threatened to take me to court. I missed critical moments in my daughter’s life and did not breast feed her as a result and I felt powerless and felt like giving up my work.”

— Lulu, sex worker, Kampala

Reasons cited for why some respondents do not report said incidents to the police centered on the legal environment’s hostility to sex workers. Another reason cited is economic insecurity. Sex workers often reported their partners were the main breadwinners in the family.

POWER

Organising on gender-based violence in Uganda has existed for a while, spurred on by the development of international mechanisms such as the UPR, CEDAW, and the millennium development goals (MDGs) and sustainable development goals (SDGs), which have facilitated involvement by civil society organisations in holding governments accountable. Organisations working on women's rights and violence against women have benefitted from a consistent stream of resourcing and capacity development owing to the global recognition of the intersection between gender-based violence and development.

DEFIANT

Organising on gender-based violence that is inclusive of non-normative communities in Uganda is riddled with challenges including:

- Mainstream organising on gender-based violence tends to be limited by a cis gender heterosexual framing of gender-based violence;
- Given the resource-linked intersections between gender-based violence and non-normative sexual orientations, gender identities and sex worker status, reference to these communities is mostly reportedly exploitative;
- Shrinking civil society space. The NGO Act of 2016 creates an environment that is hostile to the operation of organisations that work with sexual and gender minorities or sex workers through its provisions for denial of registration based on legality.⁷³

Challenges to Organising

Much LBQ, trans and sex worker community organizing in Uganda, particularly in peri-urban and rural areas, takes place primarily at an informal level. Such groups are not considered eligible for funding by some donors because of restrictive conditions such as being registered as a prerequisite for funding. Consequently, most resourcing of LBQ, trans and sex worker organising is restricted to the few partners that adopt a flexible approach to funding, such as UHAI, and in some cases, contributions from their communities.

Further, most funder support is limited to the short-term solutions such as relocation and medical support, which, although extremely helpful, are not sustainable solutions and in some cases have been abused by errant members of the community. There is reportedly less consistency or donor commitment to support longer term strategies.

Most community-led and allied mainstream organising on violence was reported as limited to advocacy or health. There was little focus on familial or intimate partner relationships – a lacuna, given that one's family was reported as

typically the first site of violence – or on economic empowerment.

Organising around intimate partner violence presents particular challenges. As mentioned before, there is a vested interest in 'community marketing'. This particularly relates to intimate partner violence. None of the representatives of LBQ, trans or sex worker inclusive or focused organisations reported any organising or addressing of intimate partner violence as part of organising. As mentioned above, one of the reasons for the seeming de-prioritisation of IPV is the hostile legislative environment.

Exclusion by mainstream organisations: Although many mainstream organisations in Uganda purport to work with and for the rights of sex workers and trans communities, particularly in the context of sexual health and rights, this purported inclusion is hardly holistic, and organisations appear reluctant to push for visibility of these communities or to visibly advocate for their rights. In peri-urban and rural areas in particular, some organisations do not want to engage with LGBTIQ or sex worker communities for fear of losing their licenses.

“We do not have organisations here that could support us as sex workers to whom we could report the violence.”

– Extract from sex worker focus group discussion, Lira

This is not to say there are no collaborations. This study identified some organisations that have consistently engaged with the community, including the following.⁷⁴

Uganda Network of Young People Living with AIDS (UNYPA)

They work with youth regardless of their sexual orientation, gender identity or profession. The communities they engage with include sex workers and trans women.

Their focus includes violence in the context of HIV.

⁷³ <https://hrapf.org/legal-analyses/#>

⁷⁴ This list is not comprehensive. It includes organisations listed by respondents in the course of data collection and report validation.

DEFIANT



DEFIANT

*Human Rights Awareness Protection Forum (HRAPF)*⁷⁵

A legal based organisation headquartered in Kampala. HRAPF has a longstanding history of working with the LGBTIQ and sex worker communities. Their work includes litigation, capacity building of community members, training of paralegals including those from rural areas, legal assistance, and sensitization of law enforcement and other government stakeholders.

Defenders Protection Initiative (DPI)

This organisation does a wide range of work that include both sexual minorities and sex workers. Their engagement includes security and protection capacity strengthening, training and technical support notably online violence, emergency responses, research and advocacy.

Uganda Feminist Forum

This is a forum founded by 'self-identified African feminists who wanted to create a regional platform to link feminist energies and initiatives' that offers a platform for engagement and discourse.
and please remove the text box around the other organisations.

Other organisations named as possibly collaborative include:

- TASO (treatment and psychosocial support; beneficiaries include sex workers)
- FIDA (legal redress and psychosocial support)
- UGANET and PLAN (reportedly offer psychosocial support and legal redress)

⁷⁵ More information on their work is available on <https://hrapf.org/>.

VII. PATHWAYS TO PROGRESS

This report has outlined the numerous forms of violence that impede LBQ women, trans people and sex workers' full enjoyment of their rights. They endure institutionalized discrimination, systemic violence from both state agents and members of the public, social stigma, and impunity. Nevertheless, throughout East Africa, such groups are organizing, standing up and demanding that their voices be heard as rights-holders who deserve the same level of protection from violence as anyone else in the region. They are reclaiming pussy, dismantling patriarchy, and asserting power.

In conducting this research, UHAI has observed that organizations representing LBQ women, trans people, and sex workers thrive when they build strong networks, both within their own identity-based communities and with other allied groups and movements. Members of all three groups benefit from knowing their rights and having access to information on how to access services. When activist organisations working with these groups develop links to state institutions that may demonstrate some degree of inclusivity, such as national human rights institutions, state agencies tasked with promoting gender equality, and even supportive individuals within agencies such as the police, they can help ensure access to justice and an end to impunity. For example, in Kenya, some organizations are exploring how to make regular use of constitutionally created bodies such as the Kenya National Human Rights Commission, the National Gender and Equality Commission, and the Independent Policing Oversight Authority (IPOA) in order to report experiences of violence, ensure that rights are protected and promoted, and bring visibility to issues of violence against LBQ women, trans people and sex workers. Others, throughout the region, are working to scale up sensitization of health care professionals and law enforcement officers on issues of sexual and gender minorities and sex workers.

Activist groups can also benefit from reminding mainstream civil society organisations and movements of the intersectionality of identities. If women's organisations and youth movements, for example, are not inclusive of LBQ women, trans people and sex workers, they are leaving a portion of their constituencies behind.

A number of groups have begun to take advantage of the mouthpiece offered by regional and international treaty bodies and human rights processes, such as the Committee on the Elimination of All Forms of Discrimination against Women and the Universal Periodic Review process at the Human Rights Council. The door is open for LBQ women, trans people and sex workers to engage with such bodies and process by submitting shadow reports to highlight human rights violations and hold the state to account with regard to its obligation to protect and promote the rights of all.

Given that UHAI is an activist fund, we take pride in movements' determination of movement agendas. As such the following recommendations will be addressed to other stakeholders including donors, mainstream or allied civil society organisations, and governments.

DEFIANT

Recommendations

To Funders

- Provide increased resources to LBQ, trans, and sex worker organisations, with particular attention to historically underfunded organisations including those representing transgender people and those based in Francophone countries, including Burundi
- Specifically, consider scaling up funding for the following:
- documentation of experiences of violence as based on one's sexual orientation, gender identity or choice of work, including through collecting accurate, relevant data of incidences of violence;
- sensitisation of staff in Burundian institutions such as health and law enforcement;
- engaging cultural leaders, particularly in peri-urban and rural areas, regarding the balance between human rights practice and tradition or perceived culture;
- income generating activities for transgender persons, as this may improve their access to other socio-economic opportunities and reduce instances of violence on them;

To Mainstream and Allied Civil Society

- Ensure that shadow reports to relevant regional and international treaty bodies and process, including the Committee on the Elimination of All Forms of Discrimination against Women, highlight violations against LBQ women, trans people and sex workers, based on input from these groups, and hold the state to account with regard to its obligation to protect and promote the rights of all;
- Collaborate with LBQ, trans and sex worker organizations to produce of reliable data on violence, including the link between violence and HIV prevalence;
- Where it is not safe for LGQ, trans and sex worker movements to publicly advocate with their own governments, advocate on their behalves, including in support of repeal or reform of discriminatory laws.

To Governments

- Initiate law reform to repeal discriminatory laws, including laws that criminalise same-sex conduct and sex work;
- Ensure that civil society organisations representing LBQ women, trans people and sex workers can operate freely, without fear of government reprisals;
- Review and where necessary reform laws and policies on gender-based violence in order to ensure clarity that gender-based violence is interpreted as applicable to violence against LBQ women, trans people and sex workers, and where laws and policies refer specifically to violence against women, ensure this is interpreted as applicable to all women, including trans women;
- Create inclusive safe spaces for LBQ women, trans people and sex workers to seek health care in order to uphold the right to health;
- Establish anonymous complaints mechanisms that allows individuals to submit complaints regarding discrimination or abusive treatment from any state agent on the basis of sexual orientation, gender identity, gender expression, or sex worker status;
- Produce reliable data on violence against LBQ women, trans people and sex workers, including link between violence and HIV prevalence;

National Human Rights Institutions should

- Publicly and privately reach out to groups representing LBQ women, trans people and sex workers and encourage them to file complaints;
- Appoint staff liaisons to engage specifically with these marginalised communities, particularly where they may not be received in a welcoming manner by all staff;
- Sensitize staff with regard to the rights of LBQ women, trans people and sex workers, including through trainings conducted in collaboration with members of these communities;

Police should

- End arbitrary arrests based on sexual orientation, gender identity, gender expression and arbitrary arrests of sex workers;
- Stop harassing and extorting LBQ women, trans people, and sex workers;
- Ensure adequate training for gender desk officers, including adequate training on sexual orientation, gender identity and sex workers' rights;
- Minimize transfers to ensure that qualified personnel are available at gender desks at all times.

DEVIANT

ISBN 978-9966-8236-0-1



9 789966 823601