

**At Risk in a Safe Space:
Online Threats to the LGBT Community in Kenya**

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Summary

This study explores the unique opportunities that the Internet brings to LGBT people in Kenya, and the threats or obstacles that limit the LGBT community's freedom of expression online.

Key Findings

An original study of 18 LGBT (lesbian, gay, bisexual, transgender) people in Kenya, conducted for this paper, revealed the extent to which LGBT people in Kenya rely on the Internet. Data showed that LGBT people use the Internet to find three main things:

- Safe space to meet other members of the LGBT community and allies (17 out of 18 respondents);
- Education, news, health, and other information through online courses (14 out of 18 respondents).
- Resources for activism and as a tool to disseminate information (6 out of 18 respondents);

For the Internet to serve as a technology promoting equality for the LGBT community, anonymity and privacy are critical. The Kenyan state should honor the constitution by decriminalizing homosexuality. It has the chance to change the narrative on the treatment of LGBT individuals by ensuring they have equal opportunities for Internet access, online expression, and personal security.

Background

Provisions in the Bill of Rights enshrine the right to privacy, equality, nondiscrimination, and freedom of expression, yet the Penal Code of Kenya considers homosexuality “against the order of nature.” Sections 162, 163 and 165 criminalize same sex relationships with jail terms ranging from 5 to 21 years dependent upon whether relations were consensual.¹

Human rights discourse on LGBT issues in Kenya is highly imbalanced. Negative attitudes toward LGBT lifestyles are reflected in Kenyan religious practices, legal instruments, marketplaces, education institutions, and media outlets. The Attorney General's office often declines to register LGBT

¹Attorney General, *Penal Code Chapter 63*. Nairobi: National Council for Law Reporting, 2014.

organizations, requiring the judiciary to intervene to ensure they be allowed the non-profit status that qualifies them for legal, fundraising, and tax benefits.² The Kenya Film Classification Board, which licenses filmmaking, also discriminates openly against LGBT projects. As a result, misinformation about homosexuality spreads more quickly than information supporting LGBT rights, driving a trend in which media stories on LGBT people are usually followed by violence against members of the community.³ This situation must change so that LGBT people can organize and tell their stories with the same freedom of mainstream storytellers, without fear of reprisal.

The Internet challenges this power structure by offering minority groups like LGBT people space to develop communities and coordinate advocacy. Author Binyavanga Wainaina became Kenya's first openly gay celebrity in 2014, intentionally coming out in an African focused blog in order to spread his message across the country rather than use traditional media that he suspected would have controlled and disapproved of his message.⁴ In 2015, Facebook enabled users to cover their profile pictures with a rainbow image to celebrate the United States Supreme Court ruling that legalized same-sex marriage, launching one of the most widespread public discussions of LGBT issues in Kenya.⁵ Activists have also used YouTube to publish a video aimed at normalizing LGBT relationships, and created podcasts to create awareness of LGBT issues.

Online communities are critical safe spaces for LGBT people and other minorities. Unfortunately, LGBT people face greater obstacles to Internet access, and frequent threats from government officials, other Internet users, and criminal hackers that foster self-censorship. Government proposals to increase surveillance of Internet users to defend their security are also particularly problematic for LGBT people.

Internet Freedom & LGBT Community

Over 85 percent of Kenya's 43 million people are online, mostly through mobile phones (99 percent).⁶ This national average, however, masks

² Human Rights Watch, *Kenya: High Court Orders LGBT Group Registration*, 28 April 2016. <https://www.hrw.org/news/2015/04/28/kenya-high-court-orders-lgbt-group-registration>; Accessed on 24 August 2016.

³ See for example B Muriithi, *Kenyan marries another man in USA*, Daily Nation May 23 2016. <http://www.nation.co.ke/news/Kenyan-marries-another-man-in-USA/1056-3214636-7i0swg/index.html>

⁴ Binyavanga Wainaina, *I am a homosexual, mum*, Africa is a Country, January 14, 2014. <http://africasacountry.com/2014/01/i-am-a-homosexual-mum/>; Accessed August 4 2016.

⁵ Staff Writer, *Big brands use rainbow flags in logo after marriage equality ruling*, Al Arabiya News <http://english.alarabiya.net/en/media/digital/2015/06/27/Major-brands-use-rainbow-flags-in-logo-after-marriage-equality-ruling.html>; Accessed 29 September 2016.

⁶ Communication Authority, *Quarterly Sector Statistics Report Third Quarter For The Financial Year 2015/2016 (January –March 2016)*. Nairobi: Communication Authority, 2016.

differentiated access across Kenya's various regions and populations, and the digital divide between urban and rural regions is significant.⁷ Several factors contribute to the lack of coverage enjoyed in rural areas. For instance, although 94 percent of the Kenyan population is covered by 2G networks, that geographic coverage reaches only 45 percent of Kenya's land area. Similarly, 3G networks cover 78 percent of the population with a geographic coverage of 17 percent of Kenyan territory.⁸ The absence of telecommunication infrastructure, minimal disposable income, and low education levels all constrain both the supply and demand for Internet connectivity.

These access gaps have particularly negative effects on minority groups like the LGBT community, who already experience offline discrimination in Kenya. Rural areas, with their greater preponderance of low-income zones and less-educated populations, also exhibit the country's highest levels of intolerance and homophobia.⁹

Affordability is also an issue that also disproportionately affects LGBT groups, according to Louisa Essendi, a program officer with the Gay and Lesbian Coalition of Kenya (GALCK), an umbrella organization for LGBT groups in Kenya. Since most members of her community struggle to acquire formal education due to stigma and criminalization, they are economically marginalized and have an even harder time affording Internet subscriptions and mobile devices.¹⁰ Rural areas that arguably need online LGBT resources and community more than the comparatively tolerant urban areas are, unfortunately, the least connected to the Internet.

Local LGBT activists cannot overstate the utility of online spaces. "We thrive on Google," said Eric Gitari, Executive Director of the National Gay and Lesbian Human Rights Commission (NGLHRC). But ease of use is often prized over digital security, such that LGBT people are at risk in the very place that offers them the greatest sense of community.¹¹

The risk is exacerbated by government measures to increase surveillance, ostensibly to deter security threats, but which could undermine privacy for all

<http://www.ca.go.ke/images/downloads/STATISTICS/Sector%20Statistics%20Report%20Q3%202015-16.pdf>;
Accessed on 15 August 2016.

⁷ In 2009, the most recent comparative study available, Bungoma County, a populous rural region, had three percent Internet penetration, compared to Nairobi at twenty-three percent. Kenya National Bureau of Statistics, *Internet Use Access By County And District*. Nairobi: KNBS, 2016.

⁸ Communication Authority, *Quarterly Sector Statistics Report Third Quarter For The Financial Year 2015/2016 (January – March 2016)*. Nairobi: Communication Authority, 2016.
<http://www.ca.go.ke/images/downloads/STATISTICS/Sector%20Statistics%20Report%20Q3%202015-16.pdf>;
Accessed on 15 August 2016.

⁹ Pew Forum, *Religious Beliefs Underpin Opposition to Homosexuality, Religion & Public Life, November 2003*.
<http://www.pewforum.org/2003/11/18/part-1-opinion-of-homosexuals/>; Accessed on 18 August 2016.

¹⁰ Interview conducted in Nairobi, August 2016.

¹¹ Interview with Eric Gitari, Director at National Gay and Lesbian Human Rights Commission in Kenya, August 2016, Nairobi.

Kenyans. Newly-proposed cybersecurity regulations opened for public consultation in 2016 would require cybercafé owners to install CCTV cameras, and public Wi-Fi operators to log users by identifying their devices.¹²

In the meantime, online spaces are subject to monitoring and attacks from people outside the community. Complaints of resultant blackmail and extortion constitute 30 percent of the cases reported to GALCK each year.¹³ Gay men, especially in heterosexual marriages, will be threatened with having their sexuality exposed without their consent based on their online behavior or photos, said Anthony Oluoch, legal and human rights officer for GALCK, in an interview with Kenya's *Identity* magazine.¹⁴

GALCK also reported incidents indicating hackers were attempting to manipulate the organization's correspondence and possibly identify its constituents, such as unrecognized email exchanges appearing in a staff member's account. The organization has responded by switching to the anonymous Tor browser, among other measures to keep their advocacy work secure.¹⁵

Blackmail and extortion are perhaps the most prevalent attacks on LGBT people in Africa—and the least visible.¹⁶ Unlike mainstream individuals, LGBT people fear reporting these crimes to the authorities, since doing so would also result in the forced disclosure of their private identity, inviting serious economic and social repercussions.¹⁷ Although the Kenya Information and Communications Act (2013) criminalizes unauthorized access to data and computer systems, the embattled LGBT community has little opportunity, both in terms of technical proof and political security, to pursue blackmailers who use illegally accessed data to threaten LGBT people.¹⁸

Internet usage also carries other risks for LGBT people who have not acknowledged their sexuality in their offline lives. One woman reported that her sexuality was revealed when a picture of her participating in a pro-LGBT protest was published on a newspaper's website in 2015. "My cousins were

¹²Communication Authority, *Cyber Security Regulations*, Section II - 7 (a) and (f) <http://www.ca.go.ke/index.php/public-consultations>; Accessed 8 August 2016.

¹³Identity Kenya, Blackmailed, January 2012 https://issuu.com/denisenzioka/docs/identity_magazine_january_2012_issue; Accessed August 24 2016.

¹⁴Identity Kenya, Blackmailed.

¹⁵Interview with Louisa Essendi of GALCK. 16 August 2016, Nairobi.

¹⁶Eds. Thoreson and Cook, 2011. *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa* p. 5.

¹⁷Identity Kenya, Blackmailed, January 2012 https://issuu.com/denisenzioka/docs/identity_magazine_january_2012_issue; Accessed August 24 2016.

¹⁸Articles 31, 83 and 93(1) of The Kenya Information and Communications Act (2013). See also, Human Rights Watch, *The Issue is Violence: Attacks on LGBT People on Kenya's Coast*, p.1 <https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast>.

surprised to see me tagged in an LGBT protest image,” she said.¹⁹

Harassment is also common, especially when mainstream news outlets publish articles on LGBT issues, which tend to inflame homophobic sentiments.²⁰ In the wake of such stories, social media users spread insults and threats of rape, physical abuse, or even death.²¹ When these issues hit headlines, most LGBT community members limit their social media use out of fear.

LGBT social media users are less likely than others to report abuse to popular platforms. Facebook currently requires that a certain number of complaints be made against a given Facebook page or group before it will consider suspending it from the site. However, members of Kenya’s LGBT community often lack the numbers to meet this threshold.²²

Homophobia also flourishes in the comments sections of online news outlets. And NGLHRC’s Eric Gitari was reluctant to endorse a policy that would restrict them, since it will give room for censorship to both government and newspaper editorial teams, eroding freedom of expression in the long term.²³

Some private media outlets have made an effort to combat discrimination. East Africa’s largest media company, the Nation Media Group, has a policy to reject advertisements if they are likely to “expose an individual or group to hatred or contempt” on the basis of sexual orientation.²⁴

Yet official agencies actively repress LGBT content. The Kenya Film Classification Board is responsible for licensing film production and distribution,²⁵ a practice it has sought to extend to films distributed online, although with mixed success, given the proliferation of online video-sharing platforms hosted overseas. Ezekiel Mutua, the CEO of the Board, has threatened to investigate those who proceed with unlicensed projects, including an audio podcast about sexuality in August 2016 that Mutua mistook as containing visual content after it was promoted by a website run by a

¹⁹Anonymized online interview administered in August 2016.

²⁰Ishaq Jumbe, Gay video sends Kwale men into hiding, Standard Digital <http://www.sde.co.ke/thenairobi/article/2000153999/gay-video-sends-kwale-men-into-hiding>; Accessed on 5 September 2016.

²¹The Star, Two gay men arrested in Kwale as Police hunt for suspects behind Diani child porn videos, February 19 2016, <https://www.facebook.com/thestarkenyaposts/907961989249035>.

²²Anonymized online interview administered in August 2016.

²³Interview with Eric Gitari, August 2016, Nairobi.

²⁴Nation Media Group Advertisement Guidelines Part 5 (a) of the <http://www.nation.co.ke/meta/1194-1872326-12rdo7iz/index.html>; Accessed on 16 September 2016.

²⁵See Section 4:4 of Kenya Films and Stage Plays Act Cap 222 [Rev 2012]

television station.²⁶ The podcast's sponsors subsequently backed out.²⁷ In another prominent case, he threatened the creators of a YouTube video celebrating love amongst the LGBT community with arrest for violating the law and "moral values" and asked YouTube to remove it, prompting its makers to temporarily go into hiding.²⁸ YouTube declined to restrict the video from Kenyan viewers based on the request but flagged the content as "potentially inappropriate."²⁹

²⁶Ezekiel Mutua's Facebook Post on August 29 2016.

<https://web.facebook.com/182419141819421/photos/a.611791415548856.1073741826.182419141819421/1137884739606185/?type=3&theater>

²⁷ Blog Etu, "After Nini Wacera's Podcast Was Banned, She Has A New Project For Actors," September 17, 2016, <http://www.blogyetu.com/after-nini-waceras-podcast-was-banned-she-has-a-new-project-for-actors/>.

²⁸Elizabeth Daley, February 24 2016, WATCH: Kenyan Creators of Banned 'Same Love' Remix Are 'Living in Fear' <http://www.advocate.com/world/2016/2/24/watch-kenyan-creators-banned-same-love-remix-are-living-fear>; Accessed on 21 August 2016.

²⁹Lily Kuo, "Google has flagged a Kenyan music video celebrating gay love as "potentially inappropriate,"" *Quartz Africa*, May 5, 2016, <http://qz.com/676822>.

Recommendations

For policymakers

- Decriminalize homosexuality in the penal code to bring Kenyan law back into line with the constitution, which guarantees basic rights to all Kenyans.

For the Attorney General

- Authorize the registration of LGBT-affiliated organizations, guaranteeing them the same status as other NGOs.

For technology companies

- Design platforms that prioritize user anonymity and privacy to assist persecuted minorities overcome self-censorship.
- Facebook should supply alternative options or criteria for users reporting incidents of hate speech.

For media and civil society

- Frame LGBT rights issues as human rights issues that are accorded to all Kenyan citizens.
- Train LGBT activists in digital security, privacy, anonymity and secure communication, so that they can continue to enjoy community spaces with minimal threats of criminal hacking or harassment.
- Train journalists about LGBT community issues to promote the normalization of LGBT issues in the media.
- Include LGBT rights activists in Internet freedom advocacy programs without labeling or separating them from other program members.