

Stonewall

ABOUT THIS RESOURCE

This resource is produced by Stonewall, a UK-based charity that stands for the freedom, equity and potential of all lesbian, gay, bi, trans, queer, questioning and ace (LGBTQ+) people.

At Stonewall, we imagine a world where LGBTQ+ people everywhere can live our lives to the full.

Founded in London in 1989, we now work in each nation of the UK and have established partnerships across the globe. Over the last three decades, we have created transformative change in the lives of LGBTQ+ people in the UK, helping win equal rights around marriage, having children and inclusive education.

Our campaigns drive positive change for our communities, and our sustained change and empowerment programmes ensure that LGBTQ+ people can thrive throughout our lives. We make sure that the world hears and learns from our communities, and our work is grounded in evidence and expertise.

To find out more about our work, visit us at www.stonewall.org.uk

Registered Charity No 1101255 (England and Wales) and SC039681 (Scotland)

Stonewall is proud to provide information, support and guidance on LGBTQ+ inclusion; working towards a world where we're all free to be. This does not constitute legal advice, and is not intended to be a substitute for legal counsel on any subject matter.

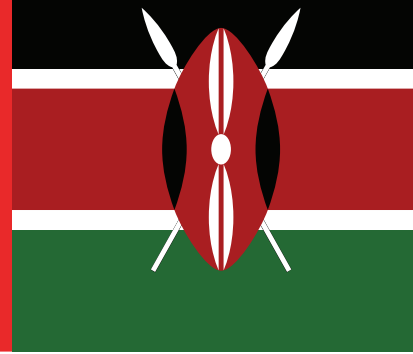
KENYA



Population: 47+ million



Stonewall Global Diversity Champions: 19



THE LEGAL LANDSCAPE

In Stonewall's **Global Workplace Equality Index**, broad legal zoning is used to group the differing challenges faced by organisations across their global operations.

Kenya is classified as a Zone 3 country, which means sexual acts between people of the same sex are illegal.

Two further zones exist. In Zone 1 countries, sexual acts between people of the same sex are legal and clear national employment protections exist on grounds of sexual orientation. In Zone 2 countries, sexual acts between people of the same sex are legal but no clear national employment protections exist on grounds of sexual orientation.

FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

Articles 33, 36 and 37 of the Constitution of Kenya protect the **rights of freedom of expression, association and assembly, demonstration, picketing and petition.**

Each of these **rights may be restricted** under certain specified circumstances, but there are **no specific restrictions** regarding the **rights of LGBT people.**

In 2015, the **High Court of Kenya ruled** that these **rights are held by every person, including LGBT people.**

The **Kenya Film Classification Board regulates** the creation, broadcasting, possession, distribution and exhibition of **films and stage plays** as provided for in Section 15 of the Films and Stage Plays Act.

The **Board has banned LGBT-related content** from being aired or watched in Kenya on the ground that such content is against public morals.

FAMILY AND RELATIONSHIPS

Different **sexual acts** and attempted sexual acts **between people of the same sex are illegal** and may be **punished with imprisonment** of up to five or up to 14 years under Sections 162, 163 and 165 of the Penal Code Cap 63 Laws of Kenya.

A **petition to decriminalise same-sex sexual activity** was **referred to the Chief Justice** by the High Court in 2016 in order to make a constitutional determination.

In March 2018, a **Court of Appeal held** that **forced anal examinations** previously used by authorities to test for same-sex sexual activity **are unconstitutional.**

Article 45 of the Constitution only **recognises marriages between persons of the opposite sex.**

There is **no legal recognition of same-sex couples.**

Section 158(3)(c) of the Children Act specifically **prohibits the adoption of a child by a 'homosexual' person.**

EQUALITY AND EMPLOYMENT

Section 5 of the Employment Act, Cap 226 of the Laws of Kenya, **prohibits employment discrimination based on a limited list of grounds including HIV status.** The **list does not include sexual orientation or gender identity.**

There are **no other non-discrimination provisions** making **reference specifically to sexual orientation and gender identity.**

Article 27(1) of the Constitution provides the **rights to equality, freedom from discrimination** and that **every person is equal before the law** and has the **right to equal protection** and benefit of the law.

GENDER IDENTITY

There is **no legal gender recognition** for trans people.

Under the Registration of Persons Act, Cap 107, the **details of a person in the principal register of persons must include sex.** 'Sex' has subsequently been defined as **either male or female** by the High Court in 2007.

Name change is allowed for all persons, including trans people, as held by the High Court in 2014. The name **can be changed via a deed poll** under the Registration of Documents Act.

Trans people submitted a memorandum on the 2016 Health Bill **seeking to be legally recognised** and to curb the stigma associated with trans identity. The **law has remained unchanged.**

In 2014, the **High Court allowed** for the **removal of the gender mark on a trans person's exam certificate.**

IMMIGRATION

There is **no explicit provision** in the Kenya Citizenship and Immigration Act Cap 171 that **allows for dependant visas for same-sex partners.**

A VIEW FROM KENYA

Jackson Otieno is programmes officer at the Gay and Lesbian Coalition of Kenya (GALCK). GALCK is a national umbrella organisation connecting 16 Kenyan LGBTI groups and has been operating since 2006.

Levis Maina is the founder of Sullivan Reed, a national LGBT group working to economically empower LGBT people in Kenya as well as create safe workplaces.



What is the context within which LGBT rights discussions take place in Kenya?

Jackson: Kenya is a very diverse country, with different religious groups and various ethnic communities. There are also sharp ideological divides between political movements. Within this diverse society, gender and sexual minorities have increasingly claimed space to talk about issues affecting them. Making use of social media and other online spaces, we can see a growing boldness to speak about gender and sexual diversity. This is despite strong resistance: often the louder the sexual orientation and gender identity and expression movements get, the louder their opposition responds.

What are some of the challenges LGBT people face in Kenya?

Jackson: People who don't conform to society's expectations about gender and sexuality, particularly LGBTIQ persons, are immediately in danger. LGBTIQ persons are not only marginalised but often face violence and discrimination when they're open about their sexual orientation and gender identity, and when they're perceived to be anything other than heterosexual and/or cisgender. This can come from an individual's family, community or even from state officials.

Together with the organisation Hivos, Sullivan conducted a study on the *State of LGBT Workplace Diversity Among Multinational Corporations in Kenya*. Can you tell us about this?

Levis: 10 international corporations participated in the study and we made several interesting discoveries. There was a real gap in employee awareness on LGBT issues in general, as well as with regard to their companies' diversity and inclusion LGBT policies and actions. Employers on the other hand sometimes have an optimistic perception of what the workplace is like for their LGBT employees. The good news is that both employees and employers believe that championing LGBT workplace equality leads to better

productivity from the workforce. In mid-2017 we launched the Colorful Workplaces programme, which seeks to bridge this gap. Through workplace interventions, we've since found that in Kenya it's more about building a social-cultural case for diversity and inclusion than building a business case.

What can businesses do to champion LGBT equality in Kenya?

Levis: Within the Kenyan context, it's not always best for employers to be publicly vocal about LGBT rights in the country. However, there's a lot employers can - and should - do within their organisations. An important step is training staff on LGBT workplace issues. In particular, HR teams need to be educated on unconscious bias towards LGBT employees and potential LGBT employees during recruitment. Senior and middle-level staff should also be trained on the unique needs of LGBT employees, so they can lead by example. Policies and diversity programmes should be audited and include a commitment to LGBT equality; these policies need to be explained during staff inductions so new employees are aware of them. Business forums and roundtables on LGBT issues can also be very useful for participating employers to share experiences, as well as discuss LGBT diversity and inclusion strategies. In addition, businesses can and should sign up to the UN Standards of Conduct on tackling LGBTIQ discrimination, launched for the first time in Africa at the Colorful Workplaces conference in Nairobi in February 2018.

Jackson: Businesses do have a role to play in advancing the rights of LGBTIQ persons. At GALCK we believe this role should go beyond workplace issues. Companies can actively advocate for social justice issues and push for human rights for all, including LGBTIQ people. Some of the approaches companies undertake in the west to advance gender and sexual diversity and inclusion may not make complete sense in Kenya. However, companies can understand and use their power to push for diversity and inclusion for all, including LGBTIQ persons. To make sure the approach taken is mindful of local context and corresponds to the needs of LGBTIQ people in Kenya, businesses should consult with local LGBTIQ rights movements.

LGBT INCLUSION IN THE WORKPLACE

THE FOUNDATIONS

There are several steps employers can take to start creating a supportive workplace environment for their LGBT employees in Kenya:

-  **Consult local LGBT organisations to understand the local context for LGBT people**
-  **Introduce explicitly LGBT-inclusive anti-discrimination and bullying and harassment policies**
-  **Train HR staff and promote inclusive policies**
-  **Carry out LGBT-inclusive diversity training**
-  **Encourage senior managers to promote their commitment to LGBT inclusion and equality**

NEXT STEPS

Once a foundation has been built, there are further steps employers can take to bring about positive change for LGBT people. For example:

-  **Carry out LGBT awareness-raising events**
-  **Partner with local LGBT groups to advance LGBT equality beyond the workplace**
-  **Work with suppliers and partners to advance LGBT workplace equality**

Employers can improve their initiatives by participating in Stonewall's Global Workplace Equality Index - a free benchmarking tool offering a clear roadmap to LGBT inclusion in the workplace. www.stonewall.org.uk/gwei



LEARN FROM STONEWALL'S GLOBAL DIVERSITY CHAMPIONS

Safaricom

Safaricom is committed to providing a supportive working environment to all employees. As part of its Diversity and Inclusion work, Safaricom continues to train its leaders and employees on unconscious bias and ways to promote an inclusive workplace. Further, all Safaricom employees enjoy access to an employee assistance programme that offers them advice and support on a broad range of issues, including matters regarding their gender and sexuality. The success of Safaricom's diversity and inclusion work is a result of support at a senior leadership level. The CEO, Bob Collymore, is a member of a global team of leaders who support diversity initiatives, with a specific focus on LGBT+ and equality. Safaricom, continues to partner with other multi-national organizations in Kenya to further the conversation on Diversity and Inclusion; one such event was a recent external LGBT equality event hosted by IBM.



GET INVOLVED



FIND LGBT GROUPS AND COMMUNITIES

Gay and Lesbian Coalition of Kenya (GALCK) – a national sexual orientation and gender identity and expression umbrella body, representing LGBTQ voices across Kenya. www.galck.org

Ishtar MSM – a group working for sexual health rights and social wellbeing for men who have sex with men. www.ishtarmsm.org

Transgender Education and Advocacy – an organisation defending and promoting the human rights of trans people. www.transgender.or.ke

Artists for Recognition and Acceptance – a group seeking to provide a safe platform for LBT women to express themselves and engage with others. www.galck.org/afrakenya

Minority Women in Action – a group representing the rights of LGBTI women. www.galck.org/mwa

Persons Marginalized and Aggrieved – a group working to advance the human rights of gender and sexual minorities through advocacy, partnerships, health promotion and empowerment. www.pemakenya.org

Gay Kenya Trust – a human rights, media and religious advocacy group for gay identifying men. www.gaykenya.com



STONEWALL'S GLOBAL DIVERSITY CHAMPIONS PROGRAMME WORKS WITH 19 ORGANISATIONS OPERATING IN KENYA.

Our team of workplace advisors offers tailored one-to-one advice on how to create LGBT-inclusive workplaces globally. If you would like to receive support or want to be featured as a case study in one of our Global Workplace Briefings, contact Stonewall.

Stonewall
192 St John Street, London
EC1V 4JY
United Kingdom

Switchboard: +44 (0) 20 7593 1850
Info Line: +44 (0) 800 050 2020
Email: info@stonewall.org.uk
Website: stonewall.org.uk

Legal Partner



Freshfields Bruckhaus Deringer