

Briefing Note

LGBTIQ+ Refugees and Asylum-Seekers in Kenya

October 2022

Background

This briefing note provides an overview of UNHCR Kenya's efforts to improve the overall protection environment for lesbian, gay, bi-sexual, transgender, intersex and queer (LGBTIQ+) refugees¹ in Kenya, including how we work with the Government of Kenya and partners to address their concerns and work towards identifying lasting solutions for them.

There are currently some 800 refugees in Kenya who have sought international protection because of persecution based on their LGBTIQ+ profile, with many living in the refugee camps in Kakuma and Dadaab. Individuals with an LGBTIQ+ profile have also sought asylum on other protection grounds. In line with global commitments, UNHCR continues to closely follow the situation of LGBTIQ+ refugees in Kenya as individuals with heightened protection risks and makes every effort to ensure their individual protection needs are addressed.

The [Refugees Act, 2021](#), which came into effect in February 2022, forms the foundation of the legislative framework for the protection of refugees in Kenya. The Act reaffirms the commitment by the Government of Kenya to offer protection to refugees in line with the 1951 UN Refugee Convention and the 1969 OAU Convention.

Refugee Regulations to guide the implementation of the Refugees Act, 2021 are currently being developed, and efforts are being made to ensure that the impact of provisions that may reduce protection space for LGBTIQ+ refugees, including the possibility of expulsion under Subsection 19(2), are minimized through the development of appropriate guidance in the Regulations.²

Kenya's legal framework on same-sex relations

Same-sex relations remain criminalized under the Kenyan Penal Code.³ The constitutionality of these provisions was brought to the High Court in May 2019, but the High Court declined to remove the provisions. Although an appeal to the Court of Appeal remains pending, the approach of the High Court highlights the importance given to morality and societal acceptance, even when discussing individual rights, and indicates that same sex relations continue to be viewed as immoral and unacceptable in Kenya.

Interventions by UNHCR and partners to support LGBTIQ+ refugees

1. Registration and refugee status determination

The Government's Department of Refugee Services (DRS) is fully responsible for conducting registration and refugee status determination in Kenya. While UNHCR provides technical support to the process, UNHCR does not have the authority to expedite the processing of specific cases.

¹ Unless specifically noted, the term "refugees" refers to both recognized refugees and asylum-seekers whose refugee status has not yet been determined.

² Subsection 19(2) indicates: "Subject to subsection 19(1) a refugee or an asylum seeker engaging in a conduct that is in breach or is likely to result in breach of public order or contrary to public morality under the law irrespective of whether the conduct is linked to his claim for asylum or not, may be expelled from the Kenya by an order of the Cabinet Secretary."

³ See Articles 162 and 165 of the [Kenya Penal Code](#).

There are currently more than 64,000 asylum-seekers whose refugee status has not yet been determined, including many with an LGBTIQ+ profile. UNHCR continues to advocate for measures to improve the efficiency of the process and to address the backlog, and requests expedited decisions in cases involving individuals with heightened protection concerns or pending applications for durable solutions, including those with an LGBTIQ+ profile.

It is worth noting that Kenya is the only country in the East Africa region that allows asylum claims to be lodged on the basis of sexual orientation and/or gender identity. In the past, asylum-seekers with claims of this nature were normally recognised as refugees; however, over the past year UNHCR has observed that such claims have been increasingly kept on hold without a decision being made. UNHCR continues to advocate with DRS to resolve the pending caseload and to ensure access to asylum for LGBTIQ+ refugees in Kenya.

2. Access to services

LGBTIQ+ refugees residing in the camps have free and non-discriminatory access to services offered to all residents, including shelter, food, core relief items, counselling, healthcare, and specialized gender-based violence (GBV) services.

Healthcare services in the camps in Kakuma and Dadaab are provided at hospitals and clinics operated by UNHCR's partners. The hospitals in the camps are Level 4 facilities with inpatient and outpatient departments, operations theatres, GBV centres, maternity wards, and other important facilities. UNHCR's healthcare partner in Kakuma also manages a drop-in center, which serves as a safe space for LGBTIQ+ refugees to seek healthcare and at the same time gain knowledge of topical issues that affect them.

In Nairobi and other urban areas, LGBTIQ+ refugees have access to all services offered by UNHCR and its partners, and are also enrolled in the Government's National Health Insurance Fund that provides access to low-cost healthcare in national facilities.

Generally, medical facilities serving refugees provide sexual and reproductive health support (condoms, lubricants), post-exposure prophylaxis, pre-exposure prophylaxis, screening and treatment for sexually transmitted diseases, and referrals to specialized services. LGBTIQ+ refugees are recruited to work in healthcare facilities in the camps, for example as health and peer educators and contact tracers, to ensure proximity and confidence in access to services. Specialized training has been organized for medical staff to ensure non-discrimination of LGBTIQ+ persons during service provision.

UNHCR's partners also provide psychosocial support to LGBTIQ+ GBV survivors as part of GBV case management programs. For LGBTIQ+ refugees presenting more complex mental health issues, qualified psychotherapy services, including programs on suicide prevention, are provided, along with general mental health services and clinical management. UNHCR's GBV partner in Kakuma has employed two additional staff, with funding from UNHCR, who have received specific training and have expertise working with LGBTIQ+ refugees and who focus exclusively on providing case management services for LGBTIQ+ refugees. Similarly, UNHCR's partner in Dadaab employs four LGBTIQ+ refugees as outreach staff who are engaged in facilitating identification and referral of GBV and protection cases. They coordinate, monitor, assess and update UNHCR regularly on the delivery of services and protection issues affecting LGBTIQ+ refugees.

UNHCR continues efforts to expand cooperation with national LGBTIQ+ organisations to ensure the inclusion of refugees in targeted programs and to facilitate access to specialized services, including counselling.

3. Ensuring the protection of LGBTIQ+ refugees

The Government's encampment policy remains in place under the Refugees Act, 2021 and all refugees are expected to reside in the camps in Dadaab and Kakuma (including the Kalobeyei settlement). In exceptional circumstances, refugees who are unable to remain in the camps for serious protection reasons are authorized by the Commissioner for Refugee Affairs to relocate to urban areas. It is important to understand that UNHCR does not have the authority to permit refugees to relocate from the camps to Nairobi or other urban areas. UNHCR and other organizations do not normally provide financial assistance to refugees residing in urban areas as being self-reliant is a pre-condition for being authorized by the Government to reside outside the camps; however, UNHCR works with a range of partners, including national LGBTIQ+ organizations, to support the protection and psychosocial needs of all refugees in urban areas.

For safety reasons and to avoid drawing unwarranted attention, LGBTIQ+ refugees are not concentrated in specific locations of the camps but are instead integrated within the broader refugee community, though a small group has preferred to settle together in an area known as "Block 13" of Kakuma Camp.

In response to reports of security incidents involving LGBTIQ+ refugees in Kakuma, police patrols and the presence of community volunteers have been increased where needed to help mitigate risks, including in the Block 13 area of the camp. In Dadaab, community support for temporary shelter is sought in cases at heightened risk, and a Protection Area can be used to accommodate those in need of urgent relocation, including LGBTIQ+ refugees.

LGBTIQ+ refugees have access to various mechanisms to report protection or security incidents, with staff trained on the specific aspects of handling cases of this nature. They can access the UNHCR country-wide toll-free 24-hour helpline, the dedicated UNHCR protection email accounts in Nairobi, Dadaab and Kakuma, and partner-managed helplines and designated contacts. Despite the restrictions imposed by the COVID-19 pandemic, information dissemination channels and complaints and feedback mechanisms have remained accessible, and all calls and incoming messages to UNHCR related to LGBTIQ+ refugees are closely monitored and responded to as quickly as possible, including through individual counselling by UNHCR and partners.

For any reported protection or security incident, UNHCR takes systematic and immediate action in coordination with government counterparts and relevant partners. Law enforcement authorities are responsible for investigating reports of violence, assault, or other criminal actions and ensuring they are addressed in accordance with the law. UNHCR closely follows up on such cases, and UNHCR protection and partner staff provide affected individuals with any legal support or counseling they may need. In addition, UNHCR and its partners employ an inter-agency referral system to ensure timely case management.

UNHCR has put in place a mechanism for new shelter allocation as a protection response in cases in which individuals may have protection concerns in a particular location, and the construction of suitable shelters for LGBTIQ+ refugees is carried out in coordination with UNHCR protection staff.

UNHCR advocates for respect for the human rights of all refugees and implements its programs through a rights-based approach. UNHCR provides individual counselling to LGBTIQ+ refugees on the legal framework in Kenya and the overall sociocultural context in the camps and other refugee-hosting areas to help mitigate the risk of security incidents.

4. Access to livelihoods

UNHCR is working to expand livelihoods opportunities for refugees in Kenya, including those with an LGBTIQ+ profile, with programs in place in the camps and in urban areas. Many LGBTIQ+ refugees have benefitted from vocational training programs, including tailoring, hairdressing, and basic computer skills, from the provision of multipurpose cash grants to set up small businesses, and have been engaged in various group livelihoods activities such as soap and detergent production, catering services, and poultry rearing.

A number of LGBTIQ+ refugees are employed by partner organizations. Some LGBTIQ+ refugees have also been trained in entrepreneurship and have been engaged in apprenticeships in various sectors. Partners continue to support the economic empowerment of LGBTIQ+ refugees through high impact, hands-on skills development, business training, and business start-up support, with programs being developed in consultation with LGBTIQ+ refugees. Although opportunities for livelihoods are presently limited, efforts are being made to expand programs to facilitate self-reliance for refugees in close collaboration with the Government of Kenya, the private sector, and the international community.

5. Resettlement and complementary pathways

Among Kenya's refugee community of more than 550,000 there are numerous profiles of individuals with specific protection needs for whom resettlement may be an appropriate solution, including LGBTIQ+ refugees. While being LGBTIQ+ is not a specific criterion for resettlement, the vulnerabilities and protection needs of some LGBTIQ+ refugees can be addressed through resettlement to the extent possible, keeping in mind the limited number of places allocated by States for refugees in Kenya and around the world. While UNHCR remains committed to working towards ensuring the protection of refugees and finding durable solutions for them regardless of their culture, nationality, sexual orientation, gender identity, religion or any other factor. UNHCR will continue advocating for more resources and increased resettlement places for refugees who need it, but it is important to understand that each year less than half of one percent of the world's refugees are resettled, despite the fact that global resettlement needs continue to rise.⁴ UNHCR provides individual counselling and organizes regular information sessions with refugees in Kenya on processes and procedures relating to resettlement and complementary pathways, and UNHCR has been transparent that resettlement is not an automatic right available to all refugees considering the very limited resettlement opportunities available worldwide and in Kenya.

Resettlement under the auspices of UNHCR is available only to persons who have been formally recognized as refugees. To maintain the integrity of the resettlement program, priority continues to be given to those who need protection the most, including survivors of torture or GBV, refugees with serious medical conditions that cannot be treated in Kenya, women and girls at risk, unaccompanied or separated children, refugees with urgent legal and physical protection needs, and refugees with immediate relatives in third countries. Refugees who have been recognized based on their LGBTIQ+ profile have been able to benefit from this important program, with some 500 having been processed for resettlement from Kenya since 2014, of whom nearly 200 have already departed to third countries.

Complementary pathways are another option for both refugees and asylum-seekers to find a durable solution in a third country, including through programs based on family reunification, education,

⁴ In 2021, some 57,500 refugees were resettled out of a total estimated population of 27.1 million, which corresponds to roughly 0.2% of refugees globally. See *Global Trends: Forced Displacement in 2021*, UNHCR, 2022 [<https://www.unhcr.org/62a9d1494/global-trends-report-2021>].

individual sponsorship, and employment. UNHCR does not normally identify or process such cases directly, but rather supports the agency or organization identified by the receiving country to facilitate the process based on specific criteria and in line with government policy. As an example, in 2019 Canada introduced the Rainbow Refugee Assistance Partnership, which aims to support Canadians in privately sponsoring LGBTIQ+ refugees who are fleeing violence and persecution by allowing organizations to privately sponsor refugees for admission to Canada.

For those who are accepted for resettlement or complementary pathways in third countries, the Government of Kenya must issue departure clearance to allow them to exit Kenya. UNHCR has no control over this process, but advocates with relevant authorities for the expedited handling of such requests, including for LGBTIQ+ individuals. It is important to note that the Government of Kenya will generally issue departure clearance only for recognized refugees, though UNHCR continues to advocate for asylum-seekers accepted for complementary pathways to be allowed to depart Kenya.

6. Information, communication and feedback mechanisms

The importance of engaging LGBTIQ+ refugees has been integrated within UNHCR's broader communication strategy. Information about UNHCR's toll-free helpline number and email addresses is disseminated in the community through posters, community radio, WhatsApp trees and cars equipped with megaphones to broadcast key messages on how to prevent and respond to GBV. In Kakuma and Dadaab, LGBTIQ+ refugees receive information through individual counselling and ad hoc meetings with UNHCR and partner staff, including UNHCR management, during which specific concerns are raised and addressed. In Nairobi, LGBTIQ+ refugees also to receive information through individual counselling, group sessions and inclusion in activities conducted by national LGBTIQ+ organizations.

7. Promoting tolerance and peaceful co-existence

UNHCR works closely with communities in the camps and in urban areas to promote tolerance and peaceful co-existence, both within the refugee community and between refugees and the Kenyans hosting them. In Kakuma, along with DRS, partners, local law enforcement authorities and refugee community leaders, UNHCR has put in place mechanisms for peaceful community dialogue aimed at systematically improving mutual understanding and acceptance. UNHCR has encouraged the participation of LGBTIQ+ refugees in broader refugee and host community meetings to bring all groups together to openly discuss challenges and identify solutions. These efforts have thus far been only partially successful, however, as some LGBTIQ+ refugees have been unwilling to join meetings, but UNHCR continues to invest in outreach efforts to ensure an inclusive approach.

Thanks to these efforts, UNHCR has noted a significant decline in the number of protection or security incidents reported by LGBTIQ+ refugees in recent months, and UNHCR will continue its efforts to promote community dialogue and peaceful co-existence.

Despite the efforts, UNHCR remains deeply concerned about the spread of incorrect information on social media regarding the LGBTIQ+ situation in Kakuma, with regular updates being circulated from individuals both in Kenya and abroad. Social media posts have also reportedly "outed" LGBTIQ+ refugees without their consent. Misinformation and disinformation spread quickly online, and any exaggeration or manipulation of facts can create additional tensions and place the most vulnerable LGBTIQ+ refugees at heightened risk. UNHCR has been urging those posting on social media about events or situations related to refugees in Kenya to verify information through diverse sources. The situation is very complex, and the spreading of misinformation undermines our continued and collective efforts to protect those in need, ensure peaceful co-existence and safeguard the best interest of all refugees in Kenya, including those with an LGBTIQ+ profile.

Additionally, several fundraising efforts have been organized on behalf of LGBTIQ+ refugees in Kenya, including in relation to access to medical treatment and to address reported security incidents, but accountability concerns have been raised as to how the funds have been used.

UNHCR continues to provide fact-based information to refugees and host communities to promote peaceful coexistence. UNHCR also communicates regularly with international advocates to explain the situation on the ground, address misinformation and contribute to fact-based advocacy.

8. Staff training and sensitization

Kenya has been targeted by UNHCR's global training efforts to raise awareness and improve knowledge on how to address specific protection concerns of LGBTIQ+ refugees. In 2021, for example, UNHCR staff from the Kenya operation underwent a three-month Training of Trainers course for humanitarian and government workers engaging with LGBTIQ+ communities. The aim of the training was to create a pool of trainers capable of competently delivering relevant training modules. Since then, additional trainings have taken place to enhance service delivery to LGBTIQ+ refugees in Kenya. Such trainings have targeted agency staff and government officials (at both the county and national level) and have sought to provide enhanced skills and knowledge on effective and efficient service delivery to LGBTIQ+ refugees and to develop action plans for dealing with the issues affecting the LGBTIQ+ community. Additionally, UNHCR and partners have ensured that all GBV trainings organized cover LGBTIQ+ issues.

Annex 1 – Summary of Services Provided to LGBTIQ+ refugees

Sector	Services Provided
Healthcare	<ul style="list-style-type: none"> - Reproductive health items (condoms, lubricants) - Post-Exposure Prophylaxis (PEP) and Pre-Exposure Prophylaxis (PREP) - Screening and treatment for sexually transmitted diseases - Referrals for specialized services, including psychosocial support - 'Drop-in center' for key population groups, including LGBTIQ+ refugees, at health clinic in Kakuma - Recruitment of LGBTIQ+ refugees in healthcare programs, including as health educators and contact tracers - Trainings on non-discrimination and sensitivity for healthcare workers
Education	<ul style="list-style-type: none"> - Safe school initiatives for all population groups, including teacher training - All children have equal access to education without discrimination - Non-discriminatory access to scholarships - Scale up of non-discrimination and tolerance awareness sessions by NGOs/CBOs, including on the Code of Conduct - Inclusion of LGBTIQ+ refugees in school workforce, for example membership in PTAs and school boards, and as support staff - Strengthening referral systems for individuals with protection, medical, or psychosocial concerns - Online education programs
Livelihoods	<ul style="list-style-type: none"> - Supporting economic empowerment of LGBTIQ+ refugees through high impact, hands on skills training and small business models - Business training and business start-up support (seed funding) - Poultry rearing and soap and detergent production - Employment opportunities with UNHCR partner agencies
Nutrition	<ul style="list-style-type: none"> - LGBTIQ+ refugees have equal access to programs that focus on children below 5 years and pregnant and lactating mothers
Shelter	<ul style="list-style-type: none"> - Construction of shelters in suitable locations in coordination with UNHCR protection staff and in consultation with LGBTIQ+ refugees - LGBTIQ+ refugees concerns and needs are considered in site planning, in coordination with UNHCR protection staff
Protection	<ul style="list-style-type: none"> - Case management through focal points for the LGBTIQ+ caseload - Peer support groups - Support for relocation within the camps (and if warranted, to urban areas) to address protection concerns in coordination with UNHCR protection staff - Protection counselling - Cash-based interventions to support vulnerable LGBTIQ+ refugees - Information dissemination on rights, legal obligations and responsibilities as a refugee, including information on registration, RSD processes and options for durable solutions - LGBTIQ+ sensitivity training for service providers across the operation, including key GBV working group members - Regular community dialogues and discussions on GBV in the context of the LGBTIQ+ community - Continuous engagement with communities on peaceful coexistence and peace building processes, with deliberate efforts being made to include LGBTIQ+ refugees - Capacity building and sensitization of religious and block leaders on LGBTIQ+ protection issues