

Contextual information and observations on LGBTI asylum-seekers and refugees in Kenya

Legal framework: The 2006 Refugees Act, its 2009 Regulations and amendments by the 2014 Security Laws Act regulate the protection, assistance and encampment of asylum-seekers and refugees in Kenya. Asylum-seekers and refugees are expected to reside in a designated camp location: Kakuma or Dadaab. The Refugee Affairs Secretariat (RAS) in Nairobi registers asylum applications and issues corresponding instructions for the individual to move to a specified camp location. The adjudication of asylum applications is only undertaken in the refugee camps. A movement pass issued by RAS is limited in use to facilitate relocation to the camps and on arrival the individual is subsequently restricted from departing without the permission of the Refugee Camp Officer and issuance of another movement pass. Despite UNHCR advocacy LGBTI individuals have in general not been exempted and given authorisation to stay in Nairobi.

Refugee status determination (RSD): From 1991 to July 2014, in accordance with its mandate, UNHCR recognized refugees through an individual and a group-based approach. As of 1 July 2014, the Government of Kenya assumed responsibility for the adjudication and determination of refugee status, initially under the authority of the Department of Refugee Affairs (DRA), which was subsequently disbanded on 6 May 2016 and replaced by the Refugee Affairs Secretariat (RAS). As a result of some capacity challenges during the transition to state responsibility a backlog of cases built up. UNHCR has been assisting the Kenyan authorities to devise a strategy to address the backlog and achieve a processing time standard of 90 days as provided in the 2006 Refugee Act.

Registration and assistance to LGBTI asylum-seekers: In the overall context of addressing the case processing backlog UNHCR supported the national system by undertaking registration of newly arriving LGBTI asylum-seekers and providing financial assistance, expedited RSD and proactive consideration of resettlement outcomes after recognition. These actions were implemented as interim protection measures which had to be closely monitored and adjusted over time to safeguard against fraud risks, including allegations of trafficking of persons from Uganda for the sole purpose of taking advantage of expedited processes, in anticipation of a resettlement outcome.

Perception of LGBTI asylum-seekers and refugees: Kenya's Penal Code, Article 162, refers to homosexuality as an "unnatural offence" punishable by imprisonment of up to 14 years. Although the law is rarely enforced, its existence contributes to potential protection challenges affecting LGBTI persons of concern to UNHCR, including heightened risk of blackmail and extortion in lieu of prosecution. In general, refugees and nationals living in proximity to the refugee hosting areas in Kenya are conservative. Some hold strong prejudicial views on homosexuality and gender identity.

1. Please provide any additional information and/or comment(s) you may have on the allegations mentioned in the attached letter [written correspondence from the United Nations Human Rights Special Procedures to Her Excellency, Ms Monica Juma, Cabinet Secretary for Foreign Affairs and International Trade – Reference: AL KEN 9/2018 dated 21 September 2018.

The information summarized below is specific to the two incidents mentioned in the written communication addressed to UNHCR. It is limited to what UNHCR was able to directly observe and does not purport to be a fully exhaustive account of the experience of each of the affected individuals.

2018 incident: During the last week of January 2018, eight transgender asylum-seekers staged a protest in front of the UNHCR compound in Kakuma camp. They presented a number of concerns, including, insecurity in the camp, the pace of adjudication of their asylum applications and their desire

to be resettled. UNHCR intervened with RAS to request expedited appointments and reached an understanding with the protesters that pending the adjudication of their cases they would return to the protected area within the camp. Interviews with RAS were undertaken in February 2018 but the group remained concerned about their circumstances and resumed their protest in the second week of March 2018 requesting information about their RSD decisions. UNHCR and a leader from the LGBTI community met several times to discuss the situation and UNHCR encouraged the group to discontinue their demonstration. UNHCR received a warning that members of the host community offended by acts of transactional sex that they accused some individuals from the LGBTI community of engaging in, were threatening to attack the protestors. UNHCR urged the LGBTI Community leader to inform the protestors of this looming risk and to encourage them to return to the protected area. UNHCR instructed the compound security guards (G4S) to allow the protesters access in the event of any direct attack against them.

On 29 March 2018, approximately one hundred individuals from the local community attacked the LGBTI protesters. The security guards on duty at the UNHCR gate were overwhelmed. The police arrived on the scene and intervened to move ten members of the transgender group (including the seven individuals named in the cited letter) to the Kakuma police station in police vehicles. The assailants from the host community followed and gathered outside the police station. The commanding officer spoke to the host community members and was able to calm them down. UNHCR was able to assist those LGBTI persons of concern who needed medical treatment and move the group from the police station to the UNHCR-run protection area. The police station closest to the protection area was advised of the situation, by both the UNHCR Field Safety Unit and the police commanding officer, and asked to provide appropriate security for the group. After this incident, three of the seven named protesters self-relocated to Nairobi. The other four remained in Kakuma refugee camp. With respect to the subsequent status of their respective asylum applications; four have been recognized; one is pending final determination on the basis of a positive recommendation for recognition; and decisions are pending in another two cases. Two of the recognized refugees have been submitted for resettlement consideration.

2017 incident: In May 2017, a group of Ugandan LGBTI asylum-seekers staged a protest outside the UNHCR office in Westlands, Nairobi. They had all previously received financial support for a period of three to four months and were demanding the continuation of this specific form of assistance. On 9 May 2017, the group blocked traffic by laying down in the road. UNHCR and RAS colleagues appealed to the group to desist. The police arrived and proceeded to effect arrests for violation of traffic laws. On 10 May 2017, RAS initiated an operation to relocate approximately 45 persons who had been camping outside UNHCR's Office. This included both LGBTI and non-LGBTI refugees and asylum seekers. The first stage of the relocation involved transfer and detention of the persons of concern at Pangani and Shauri Moyo police stations, prior to their transfer to Kakuma.

In line with the Kenyan government's overall role in refugee affairs, the process of relocation to the camp is managed and executed entirely by Kenyan authorities. On 12 May 2017, UNHCR Kakuma confirmed the arrival of 40 asylum-seekers. Five individuals remained behind in detention in Nairobi facing charges of assaulting a police officer and disturbing the peace. UNHCR's legal partner was engaged to monitor the proceedings. The State later withdrew the charges and the asylum seekers were released and relocated to Kakuma.

Upon their arrival in Kakuma on 12 May the group of 40 were taken to the Kakuma 3 Reception Centre managed by an NGO partner. There some of them staged another protest. UNHCR staff and the RAS Camp Manager were unable to resolve the situation successfully and the group ultimately barricaded themselves in the NGO offices at the Reception Centre, obstructing access to other vulnerable persons

in the reception area. The protest continued for some days. Members of the community in Kakuma including an LGBTI leader visited the group and appealed to them for calm. The existing community were apprehensive that the actions of the new arrivals could negatively impact the overall security situation. On 24 May 2017, the group continued to demonstrate and obstructed public access to the NGO offices. They refused to register, boycotted meals and disrupted service delivery to other refugees. The police intervened and effected arrests for disturbing public order.

Staff from the UNHCR Protection Unit and UNHCR's legal partner monitored the situation of the LGBTI refugees while in detention at the police station and subsequently in court where they appeared on 26 May 2017 to face charges of creating a disturbance in violation of Section 95(1) of the Penal Code (Criminal Case [REDACTED] and 18 others). They all pleaded guilty. UNHCR's legal partner provided representation and secured a reduced sentence of one month (as opposed to the prescribed six months) or a fine of 13,000 KSH. The refugees could not raise the fine and served 30 days in Lodwar prison. The UNHCR Protection Unit in Kakuma was in contact with the Prison Welfare Officer who provided regular updates on the situation of the detained refugees. UNHCR did not receive any reports of mistreatment during their time in prison.

After their release, a total of 11 out of the 19 LGBTI individuals involved in the court case relocated to Nairobi on their own initiative. With regard to the current status of their asylum applications: recognition was recommended in four cases; another four remain under review; two asylum-seekers have been interviewed and their assessments are still pending and one asylum-seeker is still awaiting an RSD interview still needs to be conducted. Another seven of the LGBTI asylum-seekers remained in Kakuma where one has been recommended for recognition; three have concluded an RSD interview and are pending assessment and three more are still awaiting interview.

2. Please provide information on measures taken by UNHCR to address the safety and protection concerns of LGBTI asylum-seekers and refugees both within and outside the Kakuma camp.

LGBTI individuals in Kenya are at risk of serious human rights abuses due to prejudice and entrenched stereotypes about sexual orientation and gender norms. These risks are a reality for LGBTI refugees and asylum-seekers in Dadaab and Kakuma camps and those living in Nairobi and elsewhere.

To enhance their security and protection the LGBTI community in Kakuma refugee camp has established a "protected area" adjacent to a police station. This is in addition to an existing UNHCR-run protection area (referred to as Protection Area B). While the latter area is fenced, there is currently no systematic access control system resulting in complaints that police and other refugees can enter the area. Efforts are underway to provide a safer area for members of the LGBTI community with recognised protection needs. Specifically, one where the entry and exit points are controlled by private security guards. A location has been identified and is being renovated by UNHCR. The physical protection of asylum-seekers and refugees rests with the government and in support of this UNHCR has several projects with law enforcement and other government entities which aim to sensitize them to the specific needs and protection concerns of LGBTI asylum-seekers and refugees and the obligation on State authorities to protect their human rights and dignity.

UNHCR employs various strategies to mitigate risks and better address the safety and protection concerns of LGBTI asylum-seekers and refugees, including:

- a. Sensitizing national and international personnel and partners to the specific protection needs of LGBTI persons.** UNHCR and partner staff, including the Kenyan Refugee Affairs Secretariat (RAS), other relevant national authorities and partners in regular contact with refugees participate in training programmes where the specific needs and risks confronting

LGBTI refugees are highlighted. Training programmes utilize UNHCR guidance and policy documents listed below in an end note. Training is provided on a rolling basis, by qualified UNHCR protection staff and external trainers. Material related to LGBTI refugees is also included within the annual Code of Conduct exercise which is mandatory for all UNHCR staff.

- b. Consulting LGBTI persons and ensuring that their views inform the design, implementation and monitoring and evaluation of programmatic responses.** UNHCR Protection staff hold individual counselling and regular focus group discussions and structured dialogues with LGBTI refugees in order to ensure the inclusion of their views in programming decisions.
- c. Promoting awareness of the LGBTI community to challenge discrimination, particularly with regards to their refugee claims.** UNHCR has undertaken advocacy with Government partners to ensure that claims for refugee status based on sexual orientation and/or gender identity are heard and fairly considered. Four hundred cases (446 individuals with LGBTI-related claims) have been approved by the national authorities since 1 July 2014. There have been no firm rejections as yet but approximately 25 are currently subject to the possibility of rejection pending a quality review. Rejected cases have a right to appeal.
- d. Increasing the safety environment for LGBTI asylum-seekers and refugees.** UNHCR provides practical support to the Kenyan Police operating in Kakuma and Dadaab (infrastructure, vehicles, provision of fuel, human resources) resulting in enhanced policing and strengthened community policing. Police personnel receive training on protection concerns as well as principles of the Code of Conduct. UNHCR advocates for the increased deployment of female police officers. Accompaniment by a legal partner is provided to ensure effective possibilities for LGBTI refugees to report acts of intimidation to the police.
- e. Ensuring the establishment of appropriate systems in order to prevent and respond to the exploitation and abuse of LGBTI persons covered under UNHCR programming.** Monitoring and reporting mechanisms are in place and UNHCR has developed strong partnerships with national LGBTI organizations to provide LGBTI refugees and asylum-seekers access to a wider variety of legal and medical partners.

3. Please provide information on actions taken by UNHCR operations in Kenya to take into consideration and address the specific risks of LGBTI persons in the country, given the alleged stigma and discrimination they are facing from the host community, law enforcement officers and other refugees.

UNHCR pursues a multi-track approach to address the specific risks facing LGBTI persons of concern. Through these interventions UNHCR aims to identify and mitigate the prejudice and discrimination that LGBTI refugees and asylum-seekers face. We are acutely aware that risks can emanate from a wide range of actors including, UNHCR and partner staff, the host community, law enforcement officers and other refugees, amongst others.

In addition to the interventions already listed above in response to question 2, UNHCR wishes to highlight how the protection risks faced by LGBTI refugees are also factored into durable solutions planning.

- a. Expanding Third Country Resettlement:** By the end of 2018, UNHCR will have submitted 260 LGBTI refugees and their family members for resettlement: 200 to Canada, 30 to the US, 25

to Iceland, and 5 to Australia. Canada will accept another 12 LGBTI under its G5 sponsorship programme. Resettlement processing is actively pursued for 43% of currently registered LGBTI refugees across Kenya. Successful outcomes and departures depend on resettlement country processing requirements. While every effort is made to achieve a resettlement outcome for the maximum number of LGBTI refugees, additional resettlement spaces are still needed in order to address existing needs comprehensively.

- b. Undertaking In-Country Relocation:** In response to real or perceived threats to their security, UNHCR enables LGBTI refugees to move within Kenya, on the basis of a movement pass. During 2018, UNHCR has supported the in-country relocation of 39 LGBTI refugees, assisting their movement to locations in and around Nairobi. In-country relocations are premised on an assessment of whether or not existing safe shelter mechanisms meet their specific needs. Consideration is given to whether placing a number of LGBTI refugees in one location or a safe house will expose them to violence if the facility is discovered by members of the public or other refugees. Caution is also taken to ensure that transgender refugees are provided with safe locations. In some instances, the relationship with national LGBTI organizations has resulted in highly vulnerable LGBTI refugees being hosted with and by Kenyan LGBTI persons.
- c. Addressing discrimination by law enforcement:** Refugees in Kenya report fear of the police, as well as incidents of verbal or physical harassment, and unnecessary questioning. UNHCR uses advocacy with senior level police commanders, official communications and the provision of training as means to address this particular concern. In addition, Kenyan LGBTI organizations have cultivated a working relationship with law enforcement officials which UNHCR is able to avail of in the best interests of LGBTI persons of concern. LGBTI-refugee Community Based Organizations (CBOs) in urban areas have also developed protection mechanisms within the areas they reside. UNHCR and RAS have facilitated linkages to the local administration within these locations and persons of concern work to build a functional relationship by making courtesy calls to share information on their activities within the community.
- d. Addressing discrimination by host communities and other refugees:** Incidents of violence by host community members and other refugees against LGBTI refugees have been recorded, including in the reports which triggered this query. Supporting peaceful co-existence and social cohesion is an important part of UNHCR operations in any refugee setting, and efforts in this regard must be re-doubled as related to LGBTI persons in Kenya where prejudice is evident. UNHCR works to sensitize leaders, including faith-based leaders, from the host community and within Government on the rights of LGBTI refugees, and the specific risks which they face. Outreach campaigns are undertaken to identify and address the concerns of all stakeholders. While many activities have already been undertaken, additional work needs to be done, to provide coverage to refugees in Kenya across multiple locations. UNHCR has been working with local LGBTI NGOs or NGOs supporting LGBTI groups to increase awareness and understanding of the LGBTI community among the host communities in Turkana County.

4. Please explain the measures taken by UNHCR operations in Kenya to ensure non-discriminatory access to food, housing, health and other basic necessities by LGBT refugees in Kakuma camp and in the capital, as well as to ensure that they have appropriate access to HIV-AIDS-related prevention and care on an equal basis with others.

- a. **Health:** UNHCR through its lead health partners has developed targeted Sexual and Reproductive Health (SRH) services that LGBTI persons of concern can access. In Kakuma these activities include:
- HIV testing and counselling;
 - Prevention of mother to child transmission services;
 - Home based care and provision of Anti-Retroviral Therapy (ARVs) and nutritional support for persons infected with HIV;
 - Provision of PEP kits (Post-exposure prophylaxis) to sexual assault survivors;
 - Work with HIV-positive refugee populations (including LGBTI persons) to prevent further spread.
- b. **HIV/AIDS Prevention and Treatment services** are largely available in Kenya for free. All refugees and asylum-seekers, including LGBTI persons of concern, are able to access services under the same conditions as nationals. In 2018, in the Nairobi area, 150 LGBTI persons of concern were enrolled in the National Health Insurance Scheme (NHIF). The NHIF allows for refugees and asylum-seekers to access free quality health services from government clinics in Nairobi and around the country.
- c. **Food:** LGBTI refugees and asylum-seekers in Kakuma receive a mix of food items and cash equal to the services provided to other refugees. UNHCR advocates with World Food Programme for LGBTI refugees and asylum-seekers to receive 100% of their food assistance in cash (bamba chakula – mobile money) in an effort to reduce potential harassment when collecting food.
- d. **Housing:** LGBTI asylum-seekers and refugees have access to the same shelter opportunities as other refugees. Those with assessed protection needs can choose to live in the protected areas.
- e. **Registration and documentation:** Refugees and asylum-seekers need to present registration documentation in order to access national services. Through UNHCR advocacy with the Government, LGBTIs are now registered immediately by the Government upon arrival to Kenya and enabled to present their asylum claim promptly. Registration enables LGBTI asylum-seekers to promptly receive legal documentation, an Asylum-seeker Pass, pending their refugee status determination. The Asylum-seeker Pass is an acceptable document to access national medical services.
- f. **Financial Support:** Targeted financial assistance is available to LGBTI refugees and asylum seekers in urban locations with assessed specific. This is provided in the form of monthly stipends to assist in meeting the essential needs like housing and food. Currently 52 highly vulnerable LGBTI refugees and asylum-seekers are provided a monthly stipend of 4,500 KES.
- g. **Livelihoods:** UNHCR advocates for the provision of work permits to allow refugees to have access to the labour market. Livelihood and operational partners have undertaken specific training for LGBTI refugees and some have found employment with project partners in urban areas. UNHCR Kakuma has also offered vocational training and livelihood opportunities and 10 LGBTI refugee community members are engaged as incentive

workers with implementing partners. Livelihood activities within the protection area, fostered by the LGBTI community itself, focus on the transgender group. Some LGBTI asylum-seekers and refugees are reluctant to participate in income-generation opportunities due to a concern that they may impact their pursuit of resettlement.

UNHCR reference materials and initiatives relevant to LGBTI refugees and asylum-seekers

- UNHCR has established a [web page on its refugee-related information portal, Refworld](#), as an accessible repository of legal, policy and operational guidance material from a variety of sources. [Guidelines on International Protection No. 9](#) providing legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR staff carrying out refugee status determination under its mandate is readily available on line and is a core reference material in UNHCR training events.
- "[Need to Know Guidance: Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement](#)" (2011), which provides practical guidance to staff on a range of issues to consider when working with LGBTI persons of concern to ensure the rights of LGBTI persons of concern to the Office are met without discrimination.
- "[Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees](#)" (2013), which assists UNHCR staff and other stakeholders working with and assessing claims and resettlement needs of LGBTI refugees.
- UNHCR's 2012 "[Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention](#)" and the "[Detention Monitoring Manual](#)" both contain sections specifically dealing with issues of detention for persons with a minority sexual orientation and/or gender identity.
- In order to strengthen the protection of LGBTI persons, UNHCR conducted a global assessment to identify organizational strengths and gaps. Released in December 2015, the culminating report, "[Protecting Persons with Diverse Sexual Orientations and Gender Identities](#)", provides the first global overview of concrete measures taken by UNHCR at the operational level to protect LGBTI asylum-seekers and refugees, and reveals significant opportunities to strengthen training, protection programming, monitoring, and reporting efforts undertaken by operations
- Following on from the assessment, UNHCR, jointly with IOM, developed a comprehensive [training package on the protection of LGBTI persons](#). The training module is publically available online and also formed the basis of a UNHCR learning programme on working with LGBTI persons in forced displacement. The training focuses on appropriate terminology, international law related to sexual orientation and gender identity, communication techniques, operational protection, resettlement and RSD for LGBTI persons. The training package is being translated into Spanish and French and the first French cohort was organized in July 2018.
- In March 2018, UNHCR issued an updated [Age, Gender and Diversity \(AGD\) Policy](#) which comes with 10 core actions advancing meaningful participation and equal access to rights for all women, men, boys and girls of concern to UNHCR, irrespective of their age, gender, and diverse characteristics, including; religion, ethnic background, disability, sexual orientation and gender identity.