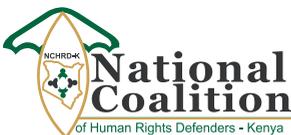




**For LGBTQ persons, SOGIE HRDs and  
Human Rights Organizations working  
on SOGIE issues in Kenya**



**NCHRD-K & GALCK**



## ACKNOWLEDGEMENT

The development of this Safety and Security Guide has benefited from the patient and considered input of the SOGIE Reference Group, and representatives of human rights institutions that took part in the pilot project. We are especially indebted to SOGIE HRDs, who freely shared information and their experiences on their operating environment that informed the development of this Guide.

The development of this Guide would not have been possible without the support of our consultant Nguru Karugu and his assistant Chris Ouma. We acknowledge the staff of National Coalition of Human Rights Defenders Kenya (NCHRD-K) and Gay and Lesbian Coalition of Kenya (GALCK) under the stewardship of Kamau Ngugi and Lorna Dias respectively for their commitment and leadership. Special thank you to NCHRD-K and GALCK programme team comprising of Yvonne Wamari, Francis Ndegwa, Gloria Madegwa, Jackson Otieno and Salome Nduta. for dedicating their time to walk with the consultants and review the guide. We thank the American Jewish World Service (AJWS) for supporting this initiative.

We are grateful to all of those who offered extensive personal and professional input. We further appreciate the immense contribution and personal sacrifices of human rights defenders in Kenya and globally to defend human rights for all.

We believe that by documenting these experiences SOGIE HRDs, human rights organizations and other users will find it a useful reference guide that would enrich their work.

## FOREWORD

Across Africa, LGBQ Persons and human rights defenders working on issues relating to sexual orientation, gender identity and expression and the communities they support experience violence and discrimination. Although violence and discrimination manifest differently and to varying degrees in each country, across the continent people of diverse SOGIE groups are harassed by police, face arbitrary arrest and detention, unfair trials, extortion, physical and sexual violence - including rape and murder. These rights violations are frequently supported by government officials who do not believe in respect to human rights for all persons. The burden of this violence is exacerbated by entrenched discrimination across areas of physical and mental health, deepening poverty, and economic inequality and exclusion<sup>1</sup>.

The National Coalition of Human Rights Defenders- Kenya (NCHRD-K) joins the international human rights community in recognizing discrimination and persecution of all citizens and other people resident within Kenyan jurisdictions, including non-citizens such as refugees, on the basis of their real or imputed sexual orientation and/or gender identity or expression (SOGIE). Our foundational commitment to this critical area of human rights is derived from international, and regional uttermost commitments to these issues such as the African Commission on Human and Peoples' Rights (ACHPR) adoption of resolution 275- Protection against Violence and other Human Rights Violations on the basis of their real or imputed Sexual Orientation or Gender Identity at its 55th Ordinary Session (Luanda, Angola, April - May 2014) and the Kenya constitution which recognizes that every Kenyan, including LGBQ, are equal before the law and are protected from discrimination as articulated in Article 27 of the Constitution.

As a result of the NCHRD-K long –term commitment to the protection and promotion of SOGIE HRDs rights in Kenya, in partnership with GALCK we developed this Guide to provide SOGIE HRDs with knowledge and tools that may be useful for improving their understanding of security and protection in their local contexts in Kenya. It is hoped that the guide will build the SOGIE HRDs capacity in integrating protection and security into their work plans and day-to-day lives. The guide provides practical step-by-step ways to ensure safety and security of LGBQ persons and SOGIE HRDs/HROs that recognize and work to defend SOGIE as human rights in Kenya referred from here on collectively as SOGIE HRD's. The guide also presents key concepts of safety, protection and security.

<sup>1</sup> 2013, International Conference on Human Rights, Sexual Orientation and Gender Identity, Oslo, 15 – 16 April, at <http://geneva.usmission.gov/wp-content/uploads/2013/06/SOGI-conferencesummary-and-toolkit.pdf> - last accessed 6 June 2018

## FOREWORD

It looks at risks and threats, and how LGBQ persons and SOGIE HRDs can respond to them. It also provides information and explanation on what contributes to security risks and threats, the essential guidelines for safety and security, plus tools and strategies on how LGBQ persons and SOGIE HRDs can improve their safety, protection and security. It also covers personal and organizational security planning, plus information on digital security for your devices, accounts and communications. It provides essential framework for security analysis and planning as well as the support mechanisms available in Kenya for SOGIE HRDs. Overall, it contains key strategies and concrete measures that SOGIE HRDs can and should implement immediately to improve their own and their organizations' safety.

The guide is a work in progress, and will need to be reviewed, improved and refined over time. Your feedback as a defender or key stakeholder on any aspect of this manual will be invaluable. Remember, the guide only adds to the existing materials on security management as it contextualizes security management knowledge and tools for SOGIE HRDs in Kenya.

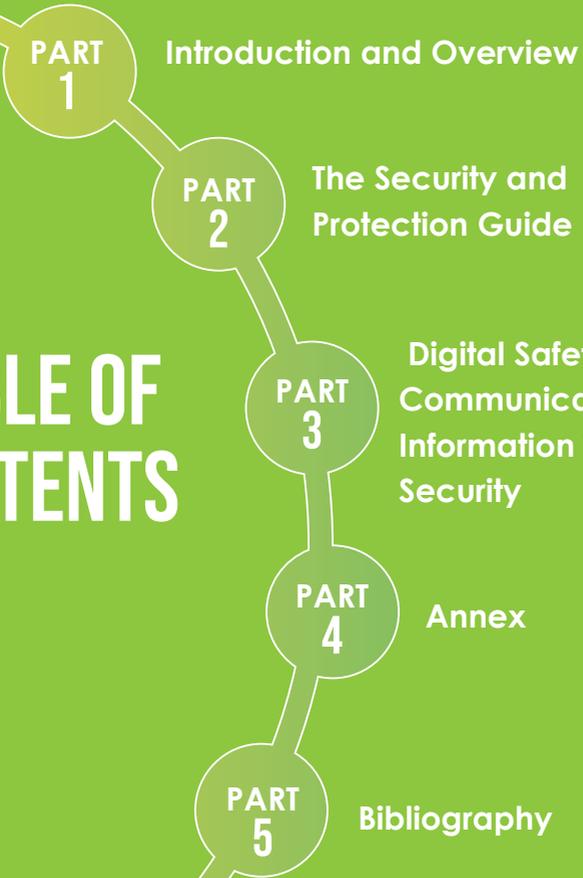
## USEFUL CONTACTS

This section provides important contacts and essential focal points that LGBQ persons, SOGIE HRDs and HROs can reach out to for advice, and or for urgent assistance

S/No.	Organization Contact Details	Contact Details
1.	Gay & Lesbian Coalition of Kenya (GALCK)	Tel: 020-242 6060 Email: info@galck.org
2.	Kenya National Commission of Human Rights (KNCHR)	Tel: 020-3969000 Mobile: 0753780000, 0778 000000, 0724256448, 0726610159 Email: complaints@knchr.org haki@knchr.org
3.	National Gender and Equality Commission (NGEC)	Tel: 254 – 20-3213199 Email: info@ngeckkenya.org
4.	Nyanza, Rift Valley and Western Kenya LGBTI Coalition (NYARWEK)	Tel: 0722111377 Email: nyarwek2013@gmail.com
5.	National Coalition of Human Rights Defenders, Kenya (NCHRD-K)	Mobile: 0712632390 Hotline: 0716200100 Email: info@hrdcoalition.org
6.	Protection International (PI)	Email: pi@protectioninternational.org
7.	National Gay and Lesbian Human Rights Commission (NGLHRC)	Tel: 0800-720-566 (24/7 free hotline)

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## ACRONYMS

<b>ACHPR</b>	African Commission on Human and Peoples Rights
<b>AIDS</b>	Acquired immune deficiency syndrome
<b>EACC</b>	Ethics and Anti-Corruption Commission
<b>GALCK</b>	Gay and Lesbian Coalition of Kenya
<b>HRD</b>	Human Rights Defender
<b>HRO</b>	Human Rights Organization
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICT</b>	Information Communication Technology
<b>IPOA</b>	Independent Policing Oversight Authority
<b>ISHR</b>	International Service for Human Rights
<b>KHRC</b>	Kenya Human Rights Commission
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>KP</b>	Key Populations
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender and Intersex
<b>LGBQ</b>	Lesbian, Gay, Bisexual, Queer
<b>MSM</b>	Men who have sex with Men
<b>NCHRD-K</b>	National Coalition of Human Rights Defenders - Kenya
<b>NGEC</b>	National Gender and Equality Commission
<b>NGLHRC</b>	National Gay and Lesbian Human Rights Commission
<b>NYARWEK</b>	Nyanza, Rift Valley, Western Kenya LGBTI Network
<b>SOGIE</b>	Sexual Orientation, Gender Identity and Expression
<b>STI</b>	Sexually Transmitted Infection
<b>UDHR</b>	Universal Declaration of Human Rights
<b>GSM</b>	Persons Marginalized on the basis of their Gender and Sexuality

## OPERATIONAL TERMS

**Human Rights Defenders (HRDs)** is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified above all by what they do and it is through a description of their actions and of some of the contexts in which they work that the term can best be explained.

**SOGIE** is an acronym that stands for Sexual Orientation, Gender Identity and Gender Expression. EVERYBODY has one!

**SOGIE HRDs** for the purpose of this guide include Human Rights Defenders who are sexual and gender minorities and Human Rights Defenders and organizations that recognize and work to defend SOGIE as human rights.

**LGBQ** is an acronym for Lesbian, Gay, Bisexual and Queer

**Key Populations** as defined by the National AIDS and STI Control Programme include sex workers, men who have sex with men and people who use drugs.

**Family** means any person(s) who play(s) a significant role in an individual's life. This may include a person(s) not legally related to the individual. Members of "family" include spouses, domestic partners, and both opposite-sex and same-sex significant others. "Family" includes minors' parents, regardless of the gender of either parent.

**Security** [in this context] is described as freedom [of LGBQ, SOGIE HRDs and HROs] from risk or harm resulting from violence or other intentional acts.

**Digital security** is an all-encompassing term which includes the tools you can use to secure your identity, assets and technology in the online and mobile world.

**Security incident** can be defined as any fact or event which you think could affect your personal or organizational security.

**Capacities** are the strengths and resources a group or defender can access to achieve a reasonable degree of security.

**Threats** are the possibilities that someone will harm somebody else's physical or moral integrity or property through purposeful and often violent action.

## OPERATIONAL TERMS

**Vulnerability** is the degree to which people are susceptible to loss, damage, suffering and death in the event of an attack. This varies for each defender or group, and changes with time. Vulnerability is always relative, because all people and groups are vulnerable to some extent. However, everyone has their own level and type of vulnerability, depending on their circumstances.

**Risk** is a dynamic concept that changes with time and with variations in the nature of threats, vulnerabilities and capacities.

**Protection** refers to measures taken by LGBQ persons, SOGIE HRDs or other actors to enhance their security or security of their allies and clients.

**Safety** is the condition of being protected from, or being unlikely to cause danger, risk, or injury.

# PART 1:

## INTRODUCTION AND OVERVIEW

### Introduction

- The guide provides practical step-by-step ways to ensure safety and security of LGBTQ persons and SOGIE HRDs/HROs that recognize and work to defend SOGIE as human rights in Kenya referred from here on collectively as SOGIE HRD's.
- The guide presents key concepts of safety, protection and security. It looks at risks and threats, and how LGBTQ persons and SOGIE HRDs can respond to them. It also provides information and explanation on what contributes to security risks and threats, the essential guidelines for safety and security, plus tools and strategies on how LGBTQ persons and SOGIE HRDs can improve their safety, protection and security. The guide is a work in progress, and will need to be reviewed, improved and refined over time. Your feedback as a defender or key stakeholder on any aspect of this manual will be invaluable.

### Understanding human rights, security and LGBTQ community

- Human Rights are guaranteed under international, regional and national law. However, LGBTQ persons are subject to persistent human rights violations because of their gender expression, gender identities and actual or perceived sexual orientation.
- SOGIE HRDs are often the only force standing between LGBTQ persons and members of the society that mean to cause harm and/or the unbridled power of the state and non-state actors. Their work to ensure the promotion and protection of the human rights of LGBTQ can be dangerous not only in Kenya but globally. The threat is significantly increased when the SOGIE HRD is known to be lesbian, gay, bisexual or queer.
- SOGIE HRDs often face harassment, detention, torture, defamation, suspension from their employment, forced eviction and difficulty in obtaining legal recognition for their associations. In some countries they are killed, abducted or "disappeared."
- Based on the security and safety challenges that SOGIE HRDs face they need to implement comprehensive and dynamic security strategies in their day-to-day work.

### Purpose and scope of the guide

- This guide has been developed to provide SOGIE HRDs with knowledge and tools that may be useful for improving their



## INTRODUCTION AND OVERVIEW

understanding of security and protection in their local contexts in Kenya.

- It is hoped that the guide will build the SOGIE HRDs capacity in integrating protection and security into their work plans and day-to-day lives.
- The guide covers personal and organizational security planning, plus information on digital security for your devices, accounts and communications. It also provides essential framework for security analysis and planning as well as the support mechanisms available in Kenya for SOGIE HRDs.
- Overall, the guide contains key strategies and concrete measures that SOGIE HRDs can and should implement immediately to improve their own and their organizations' safety.
- Remember, the guide only adds to the existing materials on security management as it contextualizes security management knowledge and tools for SOGIE HRDs in Kenya.
- The most effective security lessons come from defenders' daily experiences, tactics and strategies they develop over time in order to protect others and their own working environments.
- The authors of this guide would like to state that defenders risk their lives and wellbeing and this is a serious matter. Sometimes the only way to save a life is by going into hiding and/or fleeing. Thus, the authors would like to make it very clear that all the techniques and suggestions in this guide are not, by any means, the only way to think about security issues for SOGIE HRDs.

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### Objectives of the guide

- This guide is aimed at achieving the following specific objectives;
  - o Information and knowledge for security and protection
  - o Awareness and sensitization
  - o Enhance capacity of SOGIE HRDs

### Target audience and users of the guide

- The guide will be useful to both LGBQ persons, and SOGIE HRDs and HROs which are either LGBQ led and/or that recognize and work to defend SOGIE as human rights in Kenya

### Key safety and protection parameters for this guide

- Based on a contextual analysis of the security and protection needs of SOGIE HRDs and the common prevailing threats and risks they face, there was need for this guide to pay attention to the following;

## INTRODUCTION AND OVERVIEW

- Knowing one's rights guaranteed in the Constitution
- Understanding risks and threats
- Assessing risk
- Personal safety and security – how to respond/protect oneself
- Reporting security incidents
- Dealing with security agencies and law enforcers
- Which actors to engage in case of security threat or incident
- Coping with sustained risks

### Structure of the guide

- The guide is presented in five sections as follows;
- Part 1: Provides an overview of the rationale to the guide, its purpose and scope
- Part 2: Describes the legal protections for LGBQ persons and the legal framework under which SOGIE HRDs operate.
- Part 3: Enumerates tools and strategies that SOGIE HRDs can use to respond effectively to physical security risks and threats
- Part 4: Provide for tools and strategies to safeguard digital security
- Part 5: The appendix contains additional resources and tools that can be used to enhance or facilitate safety of SOGIE HRDs

## LEGAL FRAMEWORK

Protection of LGBQ persons, SOGIE HRDs and HROs working on SOGIE issues is enshrined in not only International Human Rights statutes, but also regional and Kenyan law.

### The Constitution of Kenya 2010

The Constitution recognizes that every Kenyan, including LGBQ, are equal before the law and are protected from discrimination as articulated in Article 27 of the Constitution of Kenya. Although Sections 162,163 and 165 of the Penal Code criminalize consensual private same sex conduct between adults, the Kenyan Courts have clarified that this does not extend to personhood (Eric Gitari vs the NGO Coordination Board Petition 440 of 2013<sup>1</sup>). ). Moreover, the constitutionality of the same Sections 162,163 and 165 has been challenged at the Constitutional and Human Rights Division of the High Court of Kenya.



### Regional Instruments



In November 2011, The African Commission on Human and Peoples Rights (ACHPR) adopted **Resolution 196<sup>2</sup> on Human Rights Defenders in Africa**. Amongst many things, the resolution is against acts of violence against HRDs and their activities and specifically, “**calls on states to recognize the role of human rights defenders in the promotion and protection of rights and freedoms as recognized by the African Charter and other regional and international instruments.**”

In May, 2014 the African Commission on Human and Peoples Rights (ACHPR) adopted **Resolution 275<sup>3</sup> on Protection against Violence and other Human Rights Violations against persons on the basis their real or imputed sexual orientation and gender identity**. Amongst other things, resolution “**Calls on State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals**

1 Eric Gitari v Non- Governmental Organisations Co-ordination Board & 4 others [2015] eKLR (<http://kenyalaw.org/caselaw/cases/view/108412/>)

2 ACHPR Res 196 <http://www.achpr.org/sessions/50th/resolutions/196/>

3 ACHPR Res 275 <http://www.achpr.org/sessions/55th/resolutions/275/>

or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities;”



### International Instruments

In 1998, The **UN General Assembly adopted “The Declaration on human rights defenders”**<sup>4</sup>. The Declaration’s full name is the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.

On June 17, 2011, South Africa led a resolution at the UNHRC requesting that the High Commissioner drafts a report "documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity".

In September 2014, Brazil, Chile, Colombia and Uruguay led on a follow up resolution at the UNHRC. 'with a view to sharing good practices and ways to overcome violence and discrimination, in application of existing international human rights law and standards'

In 2016, the UNHRC passed a resolution to appoint an "independent expert" to find the causes of violence and discrimination against people due to their gender identity and sexual orientation, and discuss with governments about how to protect those people.



<sup>4</sup> General Assembly Resolution A/RES/53/144 <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

### Carrying out a security risk assessment

- HRDs work negatively impacts on some of the actors in their environment which will certainly attract threats.
- The work SOGIE HRDs do or their visibility as LGBTQ persons may increase the level of risk they face unless properly managed.

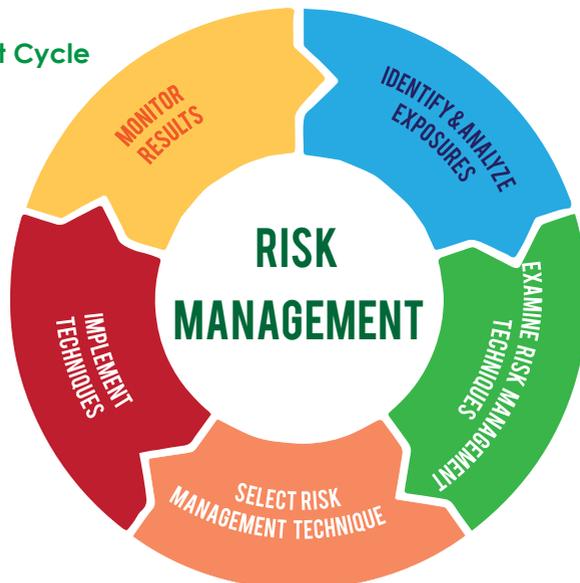
**SOGIE HRDs are to a large extent susceptible to a number of risks, the extent of the vulnerability however varies for the various groups and/or individual HRDs.**

Good security risk management requires that you develop a solid understanding of your environment. Effective security management requires that you understand your Risks, Threats, Vulnerabilities and Capacities.

Risk is a dynamic concept and it depends on context, i.e., social, political and even economical context. It changes with time and with variations in the nature of threats, vulnerabilities and capacities. This means that risk must be assessed periodically.

The objective of a risk assessment is to understand the existing systems and environment, and identify risks through analysis of the information/data collected.

### Risk Management Cycle



## RISK MANAGEMENT CYCLE - EXPLAINED

**Identifying and analysing exposure:** - In risk management, the process begins with identifying and analysing the risks in your environment also known as Risk mapping. This communicates specific risks an organization, an individual or a group of individuals faces. The goal of risk mapping is to improve our understanding of our risk profile, risk appetite, as well as the nature and impact of the risks we face, with an aim to improve our risk assessment.

**Examine Risk Management Techniques:** - A good analysis of the risks in our environment enables informed decisions regarding which security plans and procedures that speak to our situations to consider.

**Select Risk Management Technique:** - A good analysis of the risks in our environment as well as the consideration of the various risk management techniques that speak to our situations enables informed decisions about which security plans and procedures to apply. It is also important to think about possible future scenarios, in order to take preventive action where possible.

**Implement Techniques:** - After considering the various techniques that speak to our situations, we then select the best suitable techniques and implement them in our work, in our way of life and in our organizations.

**Monitor Results:-** Upon implementing the chosen risk management techniques, we must then monitor their effectiveness. Should any of the techniques prove to be ineffective, then we must change the said technique.

- Be aware that no security assessment or protocol is exhaustive. Thus, it is important to keep yourself informed of what goes on around you and what could affect your security; meaning, re-assess your security situation at regular intervals.
- Preventing an attack requires actions both to maintain the social cost as high as possible (reduce impunity level) and to reduce one's physical exposure to risk as close as possible to zero.
- Ordinarily, threats are not taken seriously until someone is harmed. In security management, understanding how these threats come about will help you to come up with strategies to mitigate them.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

- With the knowledge of the risk or threat you are faced with, it is critical that you analyze the risk and react/respond appropriately.
- Hence, in responding to security threats, you need;
  - o First, to know what the threat is
  - o Secondly, understand the objective of the threat e.g. why you are receiving the threat – this lead can help you get to the source of the threat and, how you can avert it
  - o Thirdly, how to respond to the threat
- In short, you need to critically look at the threats and come up with some logical conclusions.
- Some of violations, security threats and risks identified during the contextual analysis report are covered in the following section include;
  - o Aggression
  - o Physical attack
  - o Verbal abuse
  - o Verbal threats
  - o Sexual assault
  - o Harassment
  - o Blackmail
  - o Extortion
  - o Forceful eviction
  - o Discrimination
  - o Wrongful and arbitrary arrests

### PREPARING A SECURITY PLAN

- A security plan is a document that includes preventive and reactive protection measures that improve personal or organizational safety and security. It is the roadmap for safety and security of the organization activities, staff, and primary stakeholders.
- It is meant to;
  - o Reduce the level of threat/risks you are experiencing;
  - o Reduce your vulnerabilities;
  - o Improve your capacities

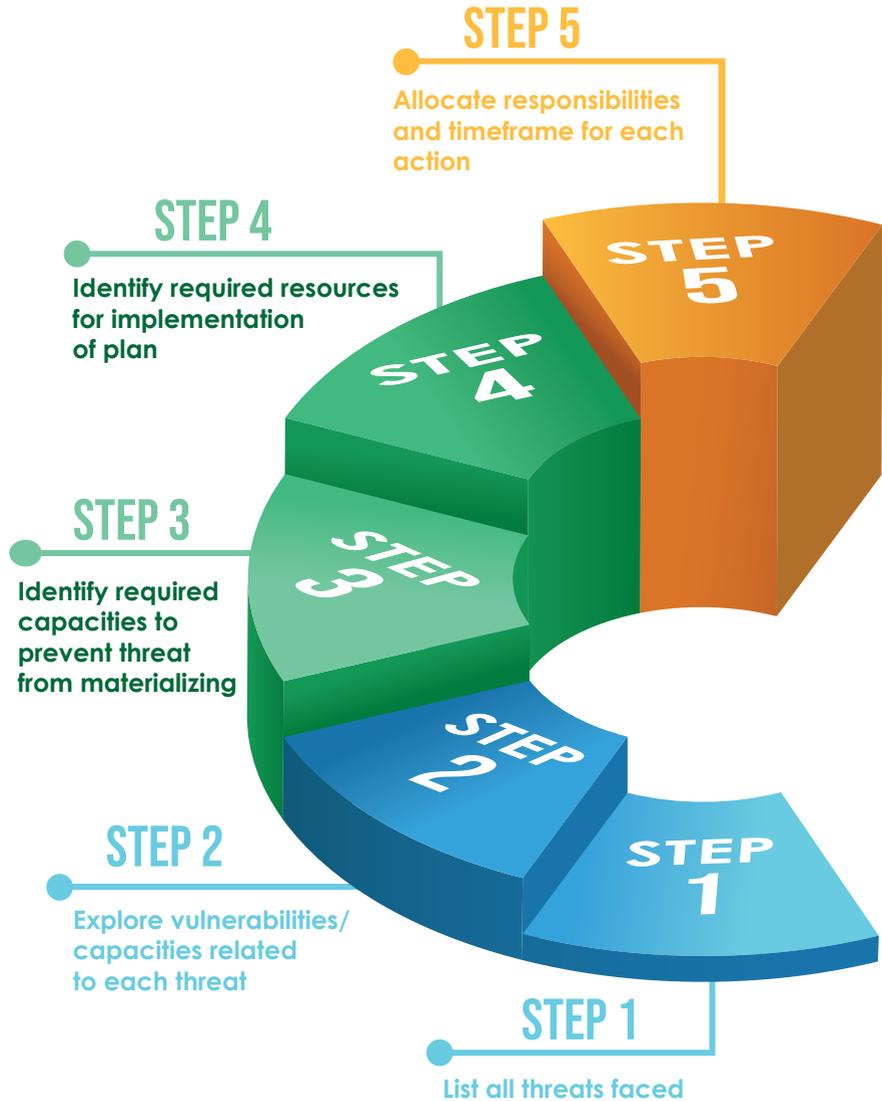
### And who requires it?

- SOGIE HRDs require a security plan in their work. You can develop a good security plan by engaging with your colleagues and/or seeking assistance from potential organizations.
- Organizations also require security plans. The aim of putting office security measures in place is to reduce the risk of unwanted/unauthorized access or protecting your office against a possible attack.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

### How to develop a security plan

- Below are practical steps to follow when developing a security plan.



*Adapted from Stand Up! Security Guide for Human Rights Defenders in Africa*

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

- Identifying your own security objectives – a security plan must fit your actual needs and work space.
- Designing a security plan – your security plan should include day-to-day policies, measures and specific situation protocols

### Organizational security plan

- Organizations need to understand their office vulnerability:
  - o For example, is your office at risk of someone stealing equipment or information?
    - To remove this vulnerability, install a night alarm (electric, if you have access to electricity, or a night watchman, etc.)
    - For possible violent daytime break-in, you can reinforce door railings, install an electronically controlled locking mechanism, etc.
    - Install CCTV
  - o Take measures according to the threats you face and the context you are working in.
- Security is an issue for the whole organization, as well as for the individuals it involves.
- Apart from your organization having a security plan, you also need ownership of the whole process – this is part of the security itself.
- Having a good security plan is meaningless unless it is being followed.
- In order for a security procedure to be followed, everyone in the organization has to embrace it.
- Make sure that you understand the security performance of your organization – this can be done using a security risk management cycle.
- Make sure all staff members participate in designing and improving security rules and procedures
- They should also receive security management
- Above all, develop an organizational culture of security management

## PREVENTION AND RESPONSE TO THREATS

### 1. PHYSICAL ATTACKS/ PHYSICAL ASSAULT

Physical attack is a crime of assault under the laws of Kenya, should you be attacked, you have remedy under the law. An assault is an intentional and unlawful “touching” by the individual committing the assault against the victim. The intentional and unlawful touching can be anything from just touching, sexual or otherwise, all the way to using deadly force resulting in physical injuries or death.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

### Attacks against HRDs are the product of at least three interacting factors:

- The individual attacker. Attacks on HRDs and LGBQ persons are often the product of processes of thought and behavior we can understand and learn from even if they are illegitimate.
- Background and triggers which lead the attacker to see the attack as an option. Most people who attack HRDs see attacking as a way of reaching a goal or solving a problem.
- A setting that facilitates the attack.

By and large, anyone who thinks that attacking a HRD or a LGBQ person is a desirable or a potentially effective way to achieve a goal, is a danger to HRDs including SOGIE HRDs

Before committing the attack, the potential attacker is likely to gather information about their target in terms of the right method, place, time and resources to attack and escape.

### To prevent direct attack, [If the risk of attack is high:]

- Immediately and effectively confront the threat if you can prevent the attack,
- Reduce your exposure to as close to zero as possible, by going into hiding or leaving the area,
- Seek assistance from appropriate SOGIE HRDs or trusted friends

### Preventing physical attacks

- Always be alert and aware of your surroundings and of the people around you. This is called situational awareness.
- Avoid being distracted by your 'smart phone' (e.g. 'texting') or having your ear phones with music on when outdoors.
- Whenever possible, buddy-up/walk in pairs to areas that you are not familiar with.
- Always inform at least one other trusted person (family or friends) if you are going somewhere, meeting someone or traveling, and share the timings and locations you intend to visit as well as any other relevant information that could help ensure your safety.
- Do not get into an elevator with another person if you feel uncomfortable with that person; take the next elevator. If you have to get in, stand next to the control panel so that if you are attacked, you can press the alarm and as many of the control buttons as possible.
- Trust your instincts. If someone or something makes you feel uneasy, get out or get away.
- If intending to visit or move into a new place in an unfamiliar area, ask your friends, who know the place well, to share with you information about the security situation in that location.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

- When meeting a stranger for the first time, consider choosing a public place to meet, inform a trusted friend of the meeting and location. Never invite a stranger to your house nor accept an invitation to theirs.

It is important to know that physical attacks can be avoided or stopped before they manifest. Always maintain a high level of situational awareness wherever you are, this will help you identify changes in your environment and therefore prevent or avoid physical attacks.

### Physical Attacks by Public

If you are under imminent threat of physical attack by the public, exit the area as soon as possible, avoid engaging with the would be attacker(s) and consider heading for a safe public space; for example a mall or supermarket especially if being pursued by the would be attacker(s).

Should the situation change very quickly, get away from the mob! Your entire focus should be on using whatever skill you possess as your asset to FLEE to the nearest safe haven.

In case you do not get the chance to make a quick exit, raise an alarm for help so that some members of the public or even the police on patrol can respond to your distress call.

Always remember that attackers can be male or female of any age; from young children to the elderly. Discounting someone based on age or gender puts you in danger.

*Trust your instincts; they will always lead you the right way.*

### Physical Attacks by family/caregivers

We all have different family set ups and different personalities in our families and thus many incidences of assault occur within the family. Under criminal law the person committing the assault can be prosecuted notwithstanding the fact that it is a family member or caregiver and the seriousness of the criminal charges will depend upon both the degree of the harm intended and the seriousness of the resulting injuries to the victim.

Should a member of your family threaten to assault you, do not take it lightly. Inform and seek the intervention of a friendly member of the family.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

Exit the area and seek refuge at a friend's place or at the house of a friendly member of the family.

If financially independent, consider finding your own space where you are distanced from such threats.

In cases where the family member is educating the victim, the said victim can consider their circumstances and proceed as they may deem right, e.g make a tactical retreat such as separating your personal life from the family space so as to avoid discontinuing of their schooling.

In cases where the victim did not get a chance to exit the location and the physical attack(s) leads to grievous bodily harm or injury, the victim could assess whether to seek legal redress. That is if doing so will not worsen their situation.

### Physical Assault by partner

If you sense you are in immediate danger from your partner, you probably are. You are capable of sensing when things are getting really bad. Flee at once to a safe location or barricade yourself in a room and call friends for help.

Consider thinking about how you can plan for your own safety and happiness. Waiting for abusers to change and trying harder to please them will not work.

If you are a friend or a family member you can do something. Encourage the victim to get to safety and help keep that person safe. Confront the abuser if you can do it safely (you may want to have someone else with you when you do this). Don't accept excuses for violence from people you love.

Call the SOGIE security point person in your area who can reach out to friendly and trained police if the victim cannot. Sometimes this can help stop or reduce the violence.

In cases where the victim did not get a chance to exit the location and the physical attack(s) leads to grievous bodily harm or injury, the victim could assess whether to seek legal redress. That is if doing so will not worsen their situation.



### Responding to physical attack



### ASSAULTS (Physical attack)

Kenya's criminal justice system has spelt out laws against physical attacks otherwise known as assault which states that "Any person who unlawfully assaults another is guilty of a misdemeanor and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year".

If an individual is being physically attacked the first thing to do in order to prevent further injuries is to make a scene. The individual being attacked should scream as loud as possible and try to gain the attention of others around them so that they can get help.

As a last resort, consider fighting your way out of an attack if it is safe to do so. Victims find the strength in the midst of being physically attacked they may kick, punch, scratch or do whatever is necessary to break free from the grasp of the attacker.

It is also crucial that the attacked individual does not allow their attacker to drag them off anywhere. This will make it more likely that the attack will continue and perhaps intensify as well as making it less likely that others will hear them.

However, each situation is different and the individual being attacked may feel that it is best to cooperate so as to prevent possible serious injury or death.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

Once you succeed in freeing yourself from the attacker, consider going directly to the nearest police station and file a report. The sooner you go to the police station, the fresher the information will be in your mind and the more likely it will be that the police officers can locate and arrest the attacker(s).

It is important for evidence to be collected as soon as possible after the assault because any delay could cause the same to be lost. Also witnesses must be identified and their statements taken before their memories fade.

You will suffer trauma from having to recount the incident repeatedly to various authorities such as the police, doctors, Lawyer etc It is important you go with the SOGIE trained security point persons since they have already made contact with friendly police who can respond to SOGIE related attacks.

If injuries have been sustained in the attack, it is important to have them treated at the nearest hospital and a medical report obtained to form part of the evidence against the attacker. Assault often involves both physical and emotional injuries so be certain to consider both medical treatment and psychological treatment. Many times the victim's psychological injuries persist longer than their physical injuries and are more difficult to deal with and resolve.

Take Photographic evidence. Photographs and videos are often the best evidence as to the severity of an assault and bruises, abrasions and swelling soon resolve. Medical records often do not convey the nature and extent of these types of injuries. Continue to take photos and videos as the injuries resolve and be sure to have them dated.

It is common for individuals who have survived physical assault to blame themselves for the same or justify the situation. It is important to realize that abuse is not your fault, being assaulted is not acceptable and you do not deserve to be treated this way no matter what.

In the case of abuse by a partner, if you consider leaving your abuser, make safety plans before you talk about separation. Discuss the abuser's pattern of violence with someone you trust and think about what risks there might be if you talk about leaving. Try to keep enough money in a protected place to use when you need it to get to safety.

Agree on a code word or signal that you can use to let a friend or family member know you need help.

### The laws of Kenya provides for protection of individuals against physical attacks

#### PHYSICAL ATTACK

##### **CHAPTER XXIV – ASSAULTS Section 250 - 251.**

Any person who unlawfully assaults another is guilty of a misdemeanor and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.

##### **Penal Code S.251. Assault causing actual bodily harm**

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor and is liable to imprisonment for five years.

##### **Penal Code S. 234. Grievous harm**

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life

## 2. Verbal Abuse

We cannot avoid verbal abuse because the perpetrators most often than not do not give us a warning that they will target us for verbal abuse. One of the things we can do to stop the verbal abuse is to remove ourselves from the location of the abuser. We should at the very least become a moving target so that we exit that space.

### Responding to verbal abuse

#### General Tips

Should you find yourself in a situation where someone is verbally abusing you, consider ignoring the abuser and walking away from the area where the abuser is.

There will inevitably be situations in which walking away from the abuser will be unsuccessful as the abuser may decide to pursue you, if this approach does not work, call out the abuser.

Look them in the eyes with a serious posture and firmly state, "shida ni gani?" (What is the problem?) or simply, "unataka nini?" (what do you want) is more powerful. Once you call out an abuser, walk away from

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

them before they can put themselves together again. This helps draw away the attention from you and focus the same on the verbal abuser which gives you the opportunity to quietly and quickly move away from the location.



### Verbal Abuse by Public

Should you find yourself in a situation where a stranger or group of strangers is/are verbally abusing you, ignore the abuser(s) and walk away from the area.

Should the abuser(s) start pursuing you as you walk away, quickly assess your environment and identify and walk into a safe haven like a restaurant or supermarket, allow yourself some time before you exit so that the abuser(s) can leave or call for help while still inside the safe haven.

Consider changing course as soon as a stranger starts to abuse you in public, do not give any attention to them and just keep moving.

When you are being insulted, mocked, yelled at, threatened, or otherwise verbally abused, take a deep breath and maintain your composure as you walk away. Remind yourself that nobody has the right to put you down, and that what is happening is not something you deserve.

### Verbal Abuse by family/caregivers

Verbal abuse leaves no physical scars, but the psychological damage it causes can last a lifetime.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

Abusers often wrap their anger in humor, which allows them to claim you are being overly sensitive when you call them on it.

It is quite difficult but should you find yourself in a situation where a family member is verbally abusing you, don't pay attention to the verbally abusive words. Let them go through one ear and out the other.

The worst thing that you can do is believe what your verbal abuser is telling you as they could affect many aspects of your life if internalized.

You may consider stepping back or stepping away from the abusive family member at least for a while. If you cannot literally leave, then virtually leave by mentally and emotionally disengaging from the abuser. One of the hardest things in dealing with an abusive family is creating space between you and family members. Often in families it feels like you can't take personal space. Do not feel guilty for taking personal space because you need it in order for you to heal and understand yourself better. It is very important to create healthy boundaries with family members who don't feel that boundaries are necessary. You may do this by not answering your phone when the abusive family member calls, emails you or texts you.

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Seek counseling. Verbally abusive people use their words and actions to keep others confused and off balance. They are often model family members in between verbal assaults, admitting fault and vowing to change. Unfortunately, the cycle soon begins all over again. Victims often need professional help to see the situation clearly and take the steps needed to address it.

### Verbal Abuse by partner

Notice how abusers try to deny our reality, claiming that their abusive behavior is somehow our fault. For example, a partner might tell the other that if she/he would just stop nagging him/her all the time, he/she wouldn't lose his/her temper. Abusers want to see themselves as good people, and blaming the victim allows them to maintain that illusion. Always remember that you are not responsible for the abuse.

Always remember that verbal abuse is not likely to stop on its own, episodes of violence usually become more frequent and more severe with time.

It is important to break the silence. Try to talk about it with someone you trust and who will believe you.

Seek professional help from a qualified counselor who is knowledgeable about SOGIE partner abuse. A counselor with the above qualities may

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

help you address the pertinent issues of abuse with more comfort and focus.

### Responding to verbal threats

We encounter many different threats over the course of our life. Some threats are immediate and violent. Other threats are non-immediate, but just as potentially harmful. Evaluate the decision and figure out what you need to do to keep yourself safe. Act quickly, calmly, and rationally.

Gauge the urgency of the threat. Decide how certain you are that the threatening person will follow through on his or her words.

Evaluate your situation. If the threat is immediate, then quickly and calmly look around you for potential defense mechanisms and escape routes. If the threat is more abstract, then try to get a clearer picture of what exactly is going on. Make sure that you understand why you're being threatened and what the actual risk is.

### Depending on the situational context, you can take various steps:

- o Raise an alarm if in a public place where you can get help
- o If cornered with no options try to de-escalate the situation so that you can safely get away from the assailant
- o If the threats are by phone, record the conversation and note the phone number
- o If the threats are by writing, generate copies of the same and maintain them as proof

Always ensure to make an official complaint regarding any threats you receive, share the information with your security focal point or family members to ensure that the issue at hand is known to others.

### The laws of Kenya provides for protection of individuals against verbal abuse

Verbal abuse

Verbal threats

Offensive Messages

Harassment

#### **SECTION 238 of the Penal code Intimidation and molestation:**

Any person who intimidates or molests any other person is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

#### **Penal Code S.223. Threats to kill**

(1) Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

### 3. Preventing sexual assault

Sexual assault can happen to women, men, transgender and gender non-conforming persons. It is a criminality under the law and is referred to as rape. Predators take advantage in order to commit this heinous act, but this can be avoided or significantly reduced by taking various steps.

Trust your instincts. If your gut is telling you that you should not be alone with someone, leave. If you feel the party or social gathering you are at is getting a little too out of control, get out. If you are starting to get uncomfortable by how someone is looking at you or what they are saying to you, leave immediately.

Be prepared. Before you go out make sure your phone is fully charged and has adequate airtime. Carry some emergency cash and keep it separate from what you intend to spend, and have the number of a taxi company or family member or friend programmed in your phone.

Be aware of your alcohol consumption. If you are going to have a drink, know your limits. This will help you make responsible decisions and maintain an acceptable level of alertness. Perpetrators take advantage of us when we are overly high.

If you do have a drink, don't let it out of your site. You never know when someone might slip something into your drink. If you leave it unattended, get a new drink. Never accept a drink from someone you don't know. If walking alone. Keep your eyes scanning – stay alert and pay attention to your surroundings.

**Keep your ears listening** – avoid having music playing in your ear phones

**Keep your feet moving** – walk with a purpose

**Choose a smart route** – try to stick to well-traveled areas even if it is not the most direct path

**Using a taxi** – consider seating at the back right behind the driver and before you enter always check that the taxi door does not have its child lock on.

Also consider using taxis from a reputable company. Take down the registration and model and where possible the driver's number and share with a friend or family member. Try to utilize the same taxi company and driver that you are comfortable with.

**If on a Date:**

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

Tell a friend where you are going

Don't compromise your standards – Set your boundaries and be firm. Always remember that consent to sexual activity can be withdrawn at any time.

If your date is making you uncomfortable – call a friend or family member and use a code word, or, if you can, make an excuse and leave.

If you are starting to get uncomfortable by how someone is looking at you or what they are saying to you, leave immediately.

Set your boundaries and be firm. Always remember that consent to sexual activity can be withdrawn at any time.

Avoid consuming your drink if you haven't had it in your site since you ordered it. Date rape drugs can be easily slipped into an unattended beverage leaving no visible trace or odor. If you have to step away from your drink, either finish your drink or ditch it and order a fresh drink.

Be wary of any person offering to drop you or walk you home, most sexual assault incidents are perpetrated by people we know.

### Responding to sexual assault

The options for response to a sexual violence are limited and strictly up to the victim.

There is no right or wrong way to react. In all cases, the primary objective is to survive.

The options available to the victim of a sexual violence are determined by the context.

The option of running away for example is not available in cases of custodial sexual violence however some options do include the following:

- **Submit:** If the victim fears for their life, they may choose to submit to the crime. Submission is a form of passive resistance and in no way should lead to later incrimination that the victim gave their consent.
- **Active resistance:** Try any type of physical force you can muster to fight off the aggressor, such as striking, kicking, biting, scratching, shouting and running away.

In all cases, do whatever you must to survive. Go with your instincts. No

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

one knows how they will react in such a situation and your way to react will be right for you and the given situation.

### After the act of sexual violence has been committed

Do not shower as this would get rid of any evidence required to charge the perpetrator.

Visit the nearest hospital as soon as possible and seek medical attention. The doctors will carry out necessary tests and write a medical report based on the results of the said tests.

Make an official report to the SOGIE HRD security point person and the police regarding the assault and give identities of perpetrators if known.

**For the SOGIE community, lack of sensitivity by the police and health care gives makes it difficult to successfully institute legal proceedings against perpetrators of sexual violence. Always identify and use friendly police officers. The local SOGIE security point person must be involved since they have contacts of friendly police officers and health facilities.**

**The laws of Kenya provides for protection of individuals against sexual assault**

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### Sexual assault

#### Sexual offences act PART I I. Rape, Grievous Sexual Assault and Marital Rape

4-41) A person (hereinafter called "the offender"?) commits the offence of grievous sexual assault upon another (hereinafter called the "victim") where, in the circumstances specified in subsection (3, the offender-

- (a) penetrates the vagina or anus of the victim with-
  - (i) a body part other than the penis of the offender; or
  - (ii) an object manipulated by the offender;
- (6) causes another person to penetrates the vagina or anus of the victim by-
  - (i) a part other than the penis of that person;

### Sexual assault

or

- (ii) an object manipulated by that other person;
- (c) places his penis into the mouth of the victim;
- (8) causes another person to place his penis into the mouth of the victim;
- (e) places his or her mouth onto the vagina, penis or anus of the victim; or
- (j) causes another person to place his or her mouth onto

The vagina, vulva, penis or anus of the victim.

- (2) Subsection (1)(a) and (b) do not apply to penetration carried out in the course of a search authorized by law or for bonafide medical purposes.
- (3) The circumstances referred to in subsection (1) are that any of the acts specified in paragraphs (a) to (j) of that subsection is carried out-
  - (i) without the consent of the victim; and
  - (ii) knowing that the victim does not consent to the act or recklessly not caring whether the victim consents or not; or
- (b) carried out upon a victim under the age of sixteen Years.
- (4) For the purposes of subsection (3), consent shall not be treated as existing where the apparent consent to the act is-
  - (a) extorted by physical assault or threats or fear of physical assault to the victim or to a third person; or
  - (b) obtained by false and fraudulent representation as to the nature of the act or the identity of the offender.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

### 4. Responding to harassment

First and foremost, always assess the situation if you feel unsafe. Ignore the harasser, walk away and call for help.

If safe to do so, be very direct and name the behavior the harasser is using and state that you do not appreciate it and it is wrong for him/her to harass you. Use very strong body language, look the harasser in the eyes and speak in a strong clear voice, project confidence and calm. Even if you do not feel that way, it is important to appear calm, serious and confident.

Avoid responding to diversions, questions, threats, blaming or guilt-tripping. Stay on your own agenda. Stick to your point. Repeat your statement or leave.

Avoid panicking or losing your temper in order to think objectively and work a way out of your situation before the harasser graduates to violence.

If the harasser is in a car, write down the license plate of the car. Even if you can't see it. Pretending to write it down can scare the perpetrator from stopping. If the harassers are aggressive or threatening and you do write down the license plate number, you can report them to the police.

If harassment is by way of emails, texts or phone calls. Consider preserving the same as evidence that you can present to the police should you decide to pursue the matter legally.

### 5. Preventing Extortion

Extortion is a major security issue for LGBTQ and particularly gay, bisexual, and other men who have sex with men in Kenya which has resulted into financial losses as well as psychological trauma. Sometimes, SOGIE HRDs fall victim to blackmailing and extortion either due to their current work or for other un-related reasons.

Extortion can only take place when the extortionist has leverage to use against you, it is therefore important that you secure your information and personal details, avoid having any data, photos or information that can be used against us in our phones, laptops, wallets and so on. This would help protect you from extortion by people unknown to you.

When meeting people through dating sites and apps, try and find out more about your would-be date and meet in a public place and avoid inviting them to your place or accepting an invitation to go to their place.

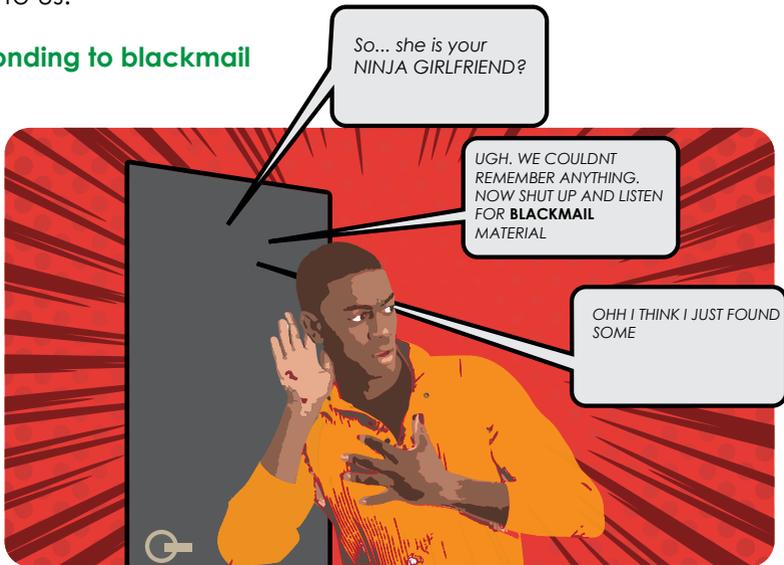
## PREVENTION AND RESPONSE TO PHYSICAL RISKS

Posting of too much information or photos on social media platform too can be used to aid extortion. Be a hard target by not exposing sensitive info or photos to being accessed easily by people, the less is known about you the more difficult it is that you will be extorted by a stranger.

Always ensure your phone is locked with complex passwords to protect your phone book, gallery and messages. Avoid saving your family's number under very obvious titles like mum, dad and so on.

It is however important to note that sometime we are blackmailed by our family members, ex partners, friends and such caliber of people very close to us.

### Responding to blackmail



Make an official report regarding the extortion and obtain an Occurrence Book (OB) number from the police.

You can also name and shame the would extortionists by publicizing their names, photo, their conduct as well as the fact that you have reported the matter to the police and include the OB number.

Assess the circumstances. Opportunists may attempt to create an extortion situation on a flimsy premise. They could have overheard a sensitive conversation and are attempting to exploit it, or could be in possession of photos of a sensitive nature and looking to expose them if demands are not met.

Assessing the situation requires that you be honest and introspective. Ask yourself about how damaging the information is and whether the extortionist poses a real threat to you or someone close to you.

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

If the extortion is in writing or you have evidence regarding the same, use it to report to the police or speak to a lawyer to handle the matter. If the threats being made could impact your physical safety, you must inform law enforcement at once. Even if no immediate action is taken, having the threats on record can help your case if legal action is ever needed.

Discuss your situation with a friend you trust or speak to your SOGIE HRD/ security focal person. When faced with a problem, our anxieties can cause us to exaggerate the situation. At times like this, it is a good idea to get the advice of a trustworthy and honest person; this can bring to perspective the situation. Even if they are unable to help you find a solution, there is an emotional benefit to knowing you are not facing this situation alone.

Take away the leverage. If you recognize that the information the extortionist possesses does not pose a significant threat, reveal the information yourself before the extortionist has the opportunity and that will render the information valueless.

Preserve all evidence of extortion. Maintain legible photos emails or texts of all contact between yourself and your blackmailer. Save voice mails and record phone conversations. As this will help law enforcement to determine if your case can be prosecuted.

Never take matters into your own hands since by injuring, persecuting, or otherwise attempting to harm the blackmailer, you implicate yourself in criminal activity and diminish the likelihood of receiving justice.

### 6. Responding to extortion



## PREVENTION AND RESPONSE TO PHYSICAL RISKS

Always remember, it is important to protect your person and report extortion right away. Talk to a lawyer or an organization that responds to threats directed at SOGIE HRDs immediately extortion manifests.

Agreeing to pay money will only make matters worse because once the criminal realizes that you are willing to pay they will make further demands in an attempt to drain your cash and victimize you further.

The police are known to be very extreme and insensitive when extorting money and have variously laid trumped up charges on those who do not cooperate with their act. Try to get the name and force number and specifics (about the officer(s) so you can use the same to institute a report later or you can use other legal means to expose the officer.

You could also offer to accompany the officer to the police station to settle the matter. This usually discourages an officer who is trying to threaten you with fake charges.

Remember that trying to bribe or bribing an officer is a crime, so always remember that the same officer could turn it against you.

### The laws of Kenya provide for protection against extortion.

#### Extortion

#### Chapter XXVIII—Robbery and Extortion

**295.** Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.

**297.** (1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years.

### Extortion

**299.** Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, is guilty of a felony and is liable to imprisonment for fourteen years.

### 7. Responding to forceful eviction

Forced Evictions constitute a gross violation of a range of human rights under the Kenya constitution which can be pursued under the criminal law. However, we can take steps to avoid forced evictions.

Build good relations with your landlord or his next of kin who holds sway (his son/daughter, who is your age). This ensures that help, whether in the form of intervention or in the form of police is just one phone call away. Forced evictions don't just happen, with heightened situational awareness; you can catch the situational involvement in your environment before it morphs into forced eviction. Should you not have the opportunity to realize that the situation is evolving towards forced eviction, take steps to protect yourself and your assets.

- o Immediately contact the landlord (if he/she is not involved) and detail them of the situation and request their urgent intervention
- o Immediately reach out to organizations that have response mechanisms for HRDs including SOGIE HRDs
- o Assess if the case can be reported to the police, and if it can please do.
- o You may opt to vacate the premise (depending on your situational analysis) and avoid an altercation.

If being forcefully evicted by a parent, the options of dealing with that would be quite minimal especially if you are over 18 years of age. Reach out to organizations that have response mechanisms for HRDs.

### 8. Responding to discrimination

Depending on the situation, SOGIE HRDs experiencing discrimination or inappropriate treatment may choose which authority to approach to report the matter. For instance, if discriminated against in public healthcare you can look for the matron and report the same for action

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

and or report to the existing relevant constitutional commissions or organizations which can then engage with that institution.

When reporting discrimination, be very direct and name the behavior the discriminator is using and state that you do not appreciate and it is wrong for him/her to discriminate you. Use very strong body language, look the perpetrator in the eyes and speak in a strong clear voice, Project confidence and calm. Even if you do not feel that way, it is important to appear calm, serious, and confident. This will cause the perpetrator to be held accountable for their actions in most cases.

If the person discriminating has a name badge or identity, refer to them by name in all instances, this will cause them to feel uncomfortable and will mostly seek to appease you.



### The laws of Kenya provide for protection against discrimination

#### Discrimination

**Article 27 of the Constitution of Kenya provides that,**

1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

### Discrimination

3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
9. Responding to wrongful and arbitrary arrests

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### 9. Responding to wrongful and arbitrary arrests

#### Reacting to arrests

In case you are arrested, it is always advisable to remain calm.

If you have opportunity, immediately communicate to your colleagues, friends or other authorities to intervene. (focus on organizations and entities that have mechanisms to respond to HRDs including SOGIE HRDs)

If you choose to object to the arresting officer, you may worsen your situation.

If you do speak, make effort to maintain a cordial demeanor, especially for SOGIE HRDs, and do not get into an argument. Just have a reasonable discussion, if the officer is interested. Remember, anything you say may be used against you and possibly lead to additional charges. However, record/document the sequence of events, details of the arresting officers and charges, if any.

If the detention takes place in a non-gazetted holding area, insist on being transferred to a recognized facility and be officially booked.

When being arrested by plainclothes police officers avoid resisting and instead explain to them that in this day there are too many criminal elements and imposters therefore while you are not

## PREVENTION AND RESPONSE TO PHYSICAL RISKS

resisting arrest, you wish to see some identification so as to be sure that you are dealing with genuine officers.

Should the would be officers refuse to identify themselves then you can create a scene to attract members of the public, this could deter the said officers especially if they are imposters.

You can then take the opportunity to inquire from the officers the reason for your arrest the proceed to call for assistance



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### The laws of Kenya provide for protection against arbitrary arrests

#### Wrongful and arbitrary arrests

**Article 27 of the Constitution of Kenya provides that,**

1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

### Dealing with police threats

By and large, Kenyan police have a record of threatening and harassing HRDs. This may be in the form of arbitrary arrest, illegal detentions, and refusal or making it difficult to record complaints e.t.c. Thus, it is critical that you have information on what to do in case of police misconduct. You can report such misconduct by;

- o Filing a complaint with the local police department or with higher bodies [just in case you feel it may endanger you] such as the following:
  - o A different local police station where you feel more comfortable
  - o Independent Policing Oversight Authority (IPOA)
  - o Ethics and Anti-Corruption Commission (EACC)
  - o Ombudsman - Commission on Administrative Justice (CAJ)
  - o Kenya National Commission on Human Rights (KNCHR)
  - o National Gender and Equality Commission (NGEC)

Remember, it is an offence and dereliction of duty if a police officer does not record your complaint. Should any police officer refuse to record your complaint, report the matter to the independent police oversight authority

(IPOA) using this link <http://www.ipoa.go.ke/complaints-form/>

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When you suspect that SOGIE HRD has been taken against his/her will, i.e., detained

- Detention should be dealt with from three points of view:
  - o from the point of view of the detainee(s)
  - o from the point of view of the organization upon which the detained persons depend,
  - o from the point of view of the family and relatives of the detainee(s) in respond reduce the likelihood of a detention occurring.

## DIGITAL SECURITY

Digital technology is a benefit to SOGIE HRDs and other human rights groups, allowing them easier communications, greater efficiency and more opportunities. However, with any benefits come certain dangers. For example, cyber security threats face every user of digital technology. In fact, the stakes are higher for human rights defenders due to the nature of their digital activities.

The biggest threat you face isn't from an attacker, it's YOUR complacency. Digital security is the protection of systems, networks and data & is a critical issue for everyone as it helps us to ensure;

- o Security of your devices
- o Security of data on your computers, flash disks, external drives, and mobile phones
- o Security of data moving through networks
- o Security of your online and offline accounts
- o Security of your mobile phones

Rapid technological developments have provided great areas of new opportunity and potential sources of efficiency for organisations and individuals. These new technologies have also brought unprecedented threats from which we need to attain effective cyber security level which should be proportional to the risks faced by each individual or organisation; and should be based on the results of a risk assessment.

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### WHY MUST WE PROTECT OUR DEVICES AND DATA?

We must ensure to protect our devices and data to avoid:

- o Exposing ourselves and other staff members to risks such as blackmail, physical attacks, threats, and possible arrest and prosecution.
- o Civil suits against the organization or individuals within the organization & even the organization's partners.
- o Loss of data which can lead to possible freezing of the organization's assets and accounts or closure of the organization resulting into loss of employment and possible prosecution of staff.
- o Loss of data which can lead to possible syphoning of funds from individual or organizations' accounts.
- o Identity theft that could lead to cleaning out of bank accounts, generation of fictitious orders, emailing of indecent material or literature

### TYPES OF ATTACKS

Organizations' and individuals face two types of cyber-attack:

1. Deliberate attacks based on their high profile or the kind of work they engage in and thus appear to have either valuable data or

data that can be used for blackmail/extortion or could provide some other publicity benefit if exposed.

2. Attacks by opportunists because an automated scan detects the existence of exploitable vulnerabilities. Virtually every Internet-facing entity will have exploitable vulnerabilities unless it has been specifically tested and secured.

### HOW IS OUR DIGITAL SECURITY BREACHED?

#### ○ *Viruses*

**Aim:** Gain access to, steal, modify and/or corrupt information and files from a targeted computer system.

**Technique:** A virus is a small piece of code that can replicate itself and spread from one computer to another by attaching itself to another computer file.

#### ○ *Worms*

**Aim:** Exploit weaknesses in operating systems to damage networks and deliver payloads that allow remote control of the infected computer/tablet/phone.

**Technique:** Worms are self-replicating & do not require a program to attach themselves to. They continually look for vulnerabilities & report back to the worm author as weaknesses are discovered.

#### ○ *Spyware/adware*

**Aim:** Take control of your computer and/or collect personal information without your knowledge.

**Technique:** Spyware is installed on your computer when you open attachments, click links or download infected mail or links.

#### ○ *Trojans*

**Aim:** Create a 'backdoor' on your computer/tab/phone/by which information can be stolen and damage caused.

**Technique:** A Trojan virus is a program that appears to perform one function (for example, virus removal) but actually performs malicious activity when executed.

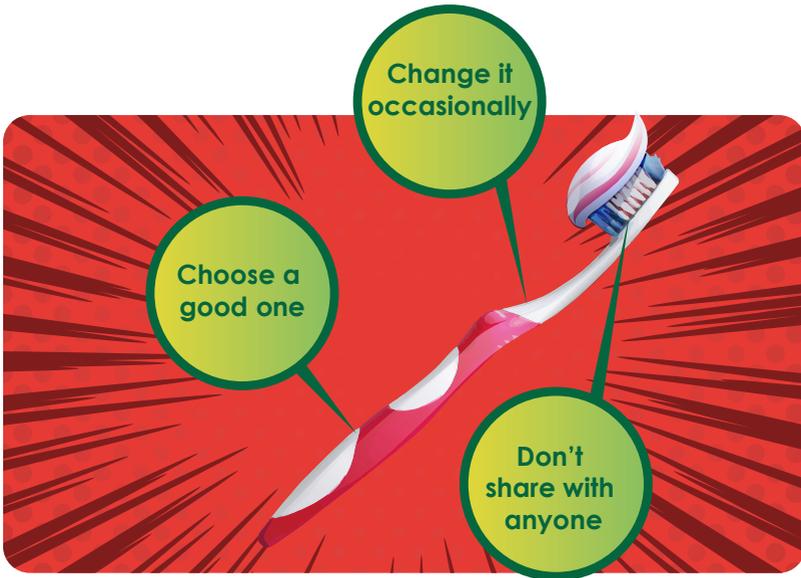
### How do we protect our devices and data?

#### ○ *Strong/Complex Passwords*

DON'T use names/numbers of your dog, family members, street address and birthday and ensure to use passwords that include a mix of upper and lower-case letters, including special characters.

Maintain a list of passwords in a safe place, and change them regularly.

**DON'T** keep reusing your passwords.



### o *Encryption*

Encryption is the most effective way to achieve data security. To read an encrypted file, you must have access to a secret key or password that enables you to decrypt it.

Always ensure to encrypt your devices in order to protect your data.

You can use encryption software such as truecrypt or veracrypt

### o *Browsing anonymously*

When visiting LGBTI sites, you can browse anonymously using software called TOR. TOR is free software which you can download and install on your laptop.

### o *Don't be tricked into giving away confidential information*

Don't act on or reply to emails or phone calls requesting confidential personal or organizational information. It's easy for an unauthorized person to call us and pretend to be a HRD/colleague or a partner.



- *Don't use an unprotected computer*

When you access sensitive information from a non-secure computer, like one in an Internet café or a shared machine at home, you put the information you're viewing at risk.

Make sure your computer is running the latest approved security patches, antivirus and firewall.

- *Don't leave sensitive info lying around the office, house or car*

Don't leave printouts containing private information or photos on your desk, in open areas in at the house or in your vehicle. Lock them away or shred/burn them if you no longer need them. It's very easy for a visitor to glance down at your desk and see sensitive documents or access sensitive documents or photos in your house or vehicle.



- o *Lock your computer and mobile phone when not in use*

Always lock your computer and mobile phone when you're not using them. Your phone/laptop/tablet contains work documents, personal/sensitive photos and other important things, and we want to make sure they stay safe and secure.



- o *Be cautious of suspicious emails and links don't let curiosity get the best of you.*

Always delete any suspicious emails and links that are sent to you. Even opening or viewing these kinds of emails and links can compromise your computer and create unwanted problems without your knowledge.

Remember, if something looks too good to be true, it probably is not good at all.

- o *Don't allow people to use or plug in personal devices onto your devices*

Don't allow third parties to plug in personal devices like USB flash drives, MP3 players and smartphones onto your devices. These devices can be compromised with code waiting to launch as soon they are plugged into your computer.

- o *DON'T trust friends, family and associates with using your personal computer when you are not present.*

- o *Don't install unverified programs on your devices*

Malicious applications often pose as legitimate programs, like games, tools or even antivirus software. They aim to fool you into infecting your computer or network.



- *ICT Policy for organizations*

An ICT policy should be put in place. This policy should guide both the usage and handling of the organization's data and ICT equipment.

- *Risk assessment based on reported incident*

An incident reporting, recording and analysis mechanism should be put in place to ensure monitoring and improved solutions towards ICT security

## PART 4: ANNEXES

### Annex 1: Toolkit for risk assessment and safety measures

Protection International's New Protection manual for Human Right Defenders offers the following guidelines which SOGIE HRDs can adopt for purposes of assessing likely risks ahead of any potentially dangerous protection assignment.

The guidelines produced below are framed as questions and have been slightly tweaked for context.

- Is the socio-political environment safe for doing your work as SOGIE HRD or HRO?

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- As a defender, what are the key issues that undermine your work?

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- Who are the interested parties or actors in relation to these key issues?

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- How might your work affect, negatively or positively, the interests of these key interested parties?

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- How might you react if you became targeted by any of these actors and their supporters due to your work?

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- How are HRDs, especial SOGIE HRDs and HRDs working on SOGIE issues, perceived in your area?

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## ANNEXES

- How have other HRDs fared in this location; like are there any precedents that can inform your safety strategy?

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The above set of questions should help you to access not just the likely threats to your safety, but also, and more crucially your vulnerabilities and capacities.

### Annex 2: Reporting forms

Nature of incident [e.g. physical attack, intimidation, threatening calls, arrest, verbal abuse, sexual harassment, etc.]

(Please specify)

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Date and time of incident:

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Location of incident: (as exact as possible)

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Identify person involved and their details, e.g. dressing, vehicle

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## ANNEXES

Witnesses (name and contact)

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Description of the incident, ideally in chronological order

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Action taken (what did you do immediately)

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What support is required:

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Full name:

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Name of your organization, if affiliated to any group/community

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**For official use only**

Initial recommendations

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Does the incident point to a pattern?

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Indicate name of person assigned to follow up and the timelines

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**Annex 4:**

Reference of Existing Laws on Violations often experienced by HRDs

<p><b>Physical attack</b></p>	<p><b>CHAPTER XXIV – ASSAULTS Section 250 - 251.</b>                  Any person who unlawfully assaults another is guilty of a misdemeanor and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.</p> <p><b>Penal Code S.251. Assault causing actual bodily harm</b>                  Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor and is liable to imprisonment for five years.</p> <p><b>Penal Code S. 234. Grievous harm</b>                  Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life</p>
<p><b>Verbal abuse</b></p> <p><b>Verbal threats</b></p> <p><b>Offensive Messages</b></p> <p><b>Harassment</b></p>	<p><b>SECTION 238 of the Penal code</b>                  Intimidation and molestation: Any person who intimidates or molests any other person is guilty of an offence and is liable to imprisonment for a term not exceeding three years.</p> <p><b>Penal Code S.223. Threats to kill</b>                  (1) Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.</p>
<p><b>Verbal abuse</b></p> <p><b>Verbal threats</b></p> <p><b>Offensive Messages</b></p> <p><b>Harassment</b></p>	<p><b>Sexual offences act PART I I. Rape, Grievous Sexual Assault and Marital Rape</b></p> <p>4-41) A person (hereinafter called "the offender"?) commits the offence of grievous sexual assault upon another (hereinafter called the "victim") where, in the circumstances specified in subsection (3, the offender-</p> <p>(a) penetrates the vagina or anus of the victim with-</p>



## Physical attack

- (i) a body part other than the penis of the offender; or
- (ii) an object manipulated by the offender;
- (6) causes another person to penetrate the vagina or anus of the victim by-
  - (i) a part other than the penis of that person;
  - or
  - (ii) an object manipulated by that other person;
- (c) places his penis into the mouth of the victim;
- (8) causes another person to place his penis into the mouth of the victim;
- (e) places his or her mouth onto the vagina, penis or anus of the victim; or
- (j) causes another person to place his or her mouth onto The vagina, vulva, penis or anus of the victim.
- (2) Subsection (1) (a) and (b) do not apply to penetration carried out in the course of a search authorized by law or for bonafide medical purposes.
- (3) The circumstances referred to in subsection (1) me that any of the acts specified in paragraphs (a) to (j) of that subsection is-
  - (a) carried out-
    - (i) without the consent of the victim; and
    - (ii) knowing that the victim does not consent to the

act or recklessly not caring whether the victim consents or not; or

  - (b) carried out upon a victim under the age of sixteen

Years.

- (4) For the purposes of subsection (3), consent shall not be treated as existing where the apparent consent to the act is-
  - (a) extorted by physical assault or threats or fear of physical assault to the victim or to a third person; or
  - (b) obtained by false and fraudulent representation as to the nature of the act or the identity of the offender.

### Annex 5:

#### Protection networks

##### - For LGBTI persons

- Rural areas
- Urban areas
- Refugee camps

##### - SOGIE HRDs

- Rural areas
- Urban areas
- Refugee camps

##### - HROs

- Rural areas
- Urban areas
- Refugee camps

## BIBLIOGRAPHY

- **Front Line Defenders:** Workbook on Security - Practical steps for HRDs at risk.
- **Protection International:** guide for facilitators - Tool for people interested in facilitating training processes to develop protection capacities in HRDs.
- **Protection International (2010):** Protection Manual for LGBTI Defenders
- **Protection International (2014):** Human Rights Defenders at High Risks - Security considerations for their families and personal lives
- **Protection International:** New protection manual for HRDs - Manual with additional knowledge and tools for HRDs to help them improve their understanding of security and protection.
- **Umbrella** - A free self-guided learning app available for Android.
- **Stand Up!** Security Guide for Human Rights Defenders in Africa, 2017
- **Defending Human Rights:** A resource book for human rights defenders (2nd ed.)
- A Practical Guide to Protecting Your Identity and Security Online and When Using Mobile Phones (2011) Link: [http://www.protectionline.org/IMG/pdf/fcea379753a53a03bf\\_ofm6bnld6.pdf](http://www.protectionline.org/IMG/pdf/fcea379753a53a03bf_ofm6bnld6.pdf)
- **Research on The Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya.** (<https://www.galck.org/wp-content/uploads/2017/01/Research-on-the-lived-experiences-of-LBQ-women-in-Kenya.pdf>)





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For LGBTQ persons, SOGIE HRDs and  
Human Rights Organizations working  
on SOGIE issues in Kenya