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Kenya's National Assembly Must Reject the Proposed Anti-Homosexuality Bill

As a network of more than 1,000 members advocating, promoting and defending sexual and reproductive rights worldwide, especially of those who are most marginalized, the Women's Global Network of Reproductive Rights (WGNRR) calls on the Kenyan National Assembly to reject the highly worrisome draft bill relating to foreign and national LGBTQI¹ individuals. WGNRR urges the government of Kenya to uphold the country's human rights obligations under international law, which require Kenyan authorities to protect all people from violence, discrimination, and other human rights violations.

The proposed bill, recently presented before the National Assembly through a petition by the Republican Liberty Party, contains numerous harsh and horrific provisions prohibiting all forms of sexual relations between people of the same sex, among them that any foreigner who commits a homosexual act be stoned in public, while Kenyans committing the same act be jailed for life.

WGNRR strongly opposes the draft bill, as any bill that denies LGBTQI individuals the same human rights afforded to other persons is not only extremely problematic but in direct violation of international human rights standards. As noted by the United Nations High Commissioner for Human Rights, all people, including LGBTQI persons, are entitled to enjoy the protections provided for by international human rights law.² These rights, moreover, apply not only to nationals of a given country, but to all individuals within a State's territory.³ And in the spirit of the 1995 Beijing Platform for Action, individuals' human rights include the "right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."⁴ Individuals of diverse sexual orientation and gender identity thus cannot be discriminated against on these grounds, and are entitled to enjoy the full range of human rights recognized and enshrined in international and regional treaties, as well as national laws.

As stated by Human Rights Bodies, laws used to criminalize private, adult, consensual same-sex sexual relations violate rights to privacy and to be free from discrimination.⁵ That the provisions of the drafted bill also call for such horrific sentences such as public stoning and life imprisonment entail that the bill additionally stands in clear violation of the right to life, the right to security of person and protection from torture and ill-treatment, and the right to the preservation of dignity, all of which are protected by the Constitution of Kenya, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention

¹ In using the term LGBTQI, we refer to individuals who identify as lesbian, gay, bisexual, transgender, queer, and/or intersex, as well as individuals of other diverse sexual orientations and gender identities.

² See UNHCHR Report "[Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity](#)," A/HRC/19/41, 17 November 2011, Para. 5.

³ See the [International Covenant on Civil and Political Rights](#), Art. 2.1.

⁴ See the 1995 [Beijing Platform for Action](#), Para. 96.

⁵ See UNHCHR Report "[Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity](#)," A/HRC/19/41, 17 November 2011, Para. 14.

Against Torture, and the African Charter on Human and Peoples' Rights. By ratifying the above international and regional treaties and entering the international community, moreover, the Kenyan government has undertaken the obligation to promote, protect and fulfill the human rights of all individuals within its territory, and as such is obligated to prevent discrimination; violence; torture, and other cruel, inhuman or degrading treatment based on sexual orientation and gender identity.⁶

Furthermore, any law that prohibits LGBTQI individuals from exercising the same human rights afforded to other persons will only aggravate stigma and prejudice towards the LGBTQI community, and reinforce existing climates of hatred and intolerance towards LGBTQI individuals. Moreover, allied activists and women human rights defenders⁷ would be placed at risk of continued harassment and various forms of violence, as they are often perceived to be challenging accepted socio-cultural norms, traditions, and perceptions that may be pervasive within their communities. Such laws violate governments' most basic obligations to the rights and wellbeing of individuals within their territory, which are unacceptable and unjustifiable.

We therefore urge the Kenyan government and National Assembly to:

- Reject the proposed bill immediately in order to respect and fulfill Kenya's international and regional human rights obligations, furthering the growth of democracy and non-discrimination.
- Conform its domestic laws to the international treaties and human rights standards to which Kenya has committed, thereby helping to ensure recognition and respect of universal human rights, including the sexual rights of LGBTQI individuals.
- Take all urgent and necessary measures to implement the recommendations from the Working Group on the Universal Periodic Review,⁸ namely to:
 - decriminalize homosexuality;
 - provide for the protection and equal treatment of LGBTQI individuals;
 - repeal all legislative provisions which criminalize sexual activity between consenting adults; and
 - Protect women human rights defenders from any interference or threat to their right to defend human rights - including sexual rights- from State or non- State actors.

It is high time for LGBTQI individuals in Kenya to live a life free from violence and discrimination!

⁶As stated by the Committee Against Torture [General comment no. 2 \(CAT/C/GC/2\)](#), para. 21, "the protection of certain minority or marginalized individuals or populations especially at risk of torture is part of the obligation to prevent torture or ill-treatment. State Parties must ensure that, in so far as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, **gender, sexual orientation, transgender identity**, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum seekers, refugees or others under international protection, or any other status or adverse distinction." (emphasis added)

⁷ The term 'Women Human Right Defender (WHRD)' includes women activists; men who defend women's rights; lesbian, gay, bi-sexual, and transgender (LGBT) human rights defenders; and groups committed to the advancement of women's human rights and sexual rights. For more references see http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/WHRD_IC_Global-Report_2012.pdf.

⁸ Please see the 2010 [Report of the Working Group on the Universal Periodic Review: Kenya](#), paras. 101.43 and 103.5.