

ACCELERATING ACCESS TO JUSTICE FOR LGBTQ PERSONS IN 5 KENYAN COASTAL COUNTIES

**THE CENTRE FOR MINORITY RIGHTS
AND STRATEGIC LITIGATION TRUST
(CMRSL)**

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ABOUT CMRSL

The Centre for Minority Rights and Strategic Litigation (CMRSL) is a Charitable Trust incorporated under the Trustees (Perpetual Succession) Act Cap. 164 Of the Laws of Kenya.

It seeks to reduce discrimination and violence against Gender and Sexual Minority (GSM) persons, enforce equality, dignity, inclusiveness, human rights and protection of GSM persons in Kenya.

MISSION STATEMENT

- ✓ We are a Charitable Trust dedicated to supporting GSM persons in Kenya access Justice, through strategic litigation, legal representation, advocacy and civic education.

VISION STATEMENT

- ✓ A community where GSM persons enjoy all rights and freedoms as guaranteed in the Supreme Constitution of Kenya (2010)

For more information, visit our website: <https://cmrsl.org/>



LEGAL AID CLINICS

Centre for Minority Rights and Strategic Litigation (CMRSL) aims to offer early access to confidential legal aid and protection of GSM persons to protect and advance their rights and legitimate interests by:

- ✓ Advising them on their legal rights and obligations and the working of the legal system vis a vis those rights and obligations,
- ✓ Assisting them in every appropriate way by taking legal action to protect their interests,
- ✓ Seeking to uphold their human rights and fundamental freedoms as guaranteed under the Supreme Constitution of Kenya (2010), and;
- ✓ Respecting their interests at every step of the way.

LITIGATION

- ✓ By filing impact litigation cases, CMRSL aims to uphold the human rights and freedoms of GSM persons as guaranteed in the Kenyan Constitution (2010), seek redress for violations perpetuated against victims as well as effect societal change.

ADVOCACY

- ✓ CMRSL strives to take part in the changing of discriminatory laws, policies practices and attitudes by engaging individuals, organizations, government agencies and human rights institutions.

CIVIC EDUCATION

- ✓ To enable GSM persons understand their rights and obligations under the law, the center will carry out civic education amongst them. This will empower them to avoid conflicts with the law while at the same time taking advantage of any opportunities available for them in the law.

THE PROJECT

28th February 2021 marked the end of the Centre for Minority Rights and Strategic Litigation's (CMRSL) 5 month project named *Accelerating access to Justice for LGBTQ persons in the Kenyan coastal counties of Kwale, Taita Taveta, Mombasa, Kilifi and Lamu* which was financially supported by the Government of Canada under the Canada Fund for Local Initiative (CFLI) programme.



The project's main objective was to improve access to justice for Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) persons in these 5 counties. In Kenya, LGBTQ individuals face 5-14 years imprisonment for same-sex relations, under laws that are discriminately enforced against them. This disproportionate application of the law, coupled with strong homophobic sentiment, eliminate any legal protections for LGBTQ persons, leading to discrimination and violence being perpetrated against them.

For example, in Mombasa County alone, between January 2020 and September, 2020, we had documented 9 cases of arbitrary arrests, 5 blackmails, 3 persons charged in 2 criminal cases and 3 cases of violence perpetrated against LGBTQ victims.

Due to barriers created by the above socio-legal factors, these violations go mostly un-redressed. Other barriers are in areas of family, succession, identification, education, access to services and among others.



PEERS & PARALEGAL TRAININGS

The project sought to mitigate these challenges within the LGBTQ community through:

- Training **48** paralegals and peers from the 12 LGBTQ organizations in the 5 coastal counties on human rights violations, monitoring and documentation and access to justice for LGBTQ persons.
- Providing the trained paralegals with both legal and financial support for movement and communication to enable them monitor, document and link clients to the justice system.
- Providing Legal aid through legal aid clinics to victims of human rights violations and discrimination amongst members of the 12 LGBTQ organizations in the 5 coastal counties.
- Targeted Litigation on LGBTQ rights defense by prosecuting **3** petitions in the High Court to enforce rights and freedoms of LGBTQ victims of human rights violations.

The project was implemented from October 2020 and ran through to February 2021 across the 5 Coastal counties in partnership with Pema Kenya, Hapa Kenya-Mombasa, Hapa Kenya-Taita Taveta, UKWELL, Tamba Pwani, Malindi Desire, Amkeni Malindi, Muamko Mpya, Rainbow Women of Kenya, Coast women for Women, Wacha Health and Pwani Transgender Initiative and lawyers from the Mombasa Law Society.

At the start of the project, each of the 12 organizations sent 4 violence response persons/paralegals, in total 48, who were trained for 2 days on Human Rights violations, monitoring and documentation and access to justice.

An analysis of the pre-training and post-training questionnaires filled by the paralegals/outreach workers/peers trained showed an improvement of 38% in knowledge on access to justice as well as monitoring, documentation and reporting processes of human rights violations.



“We thank The Centre for offering the legal team and Security Response team from both HAPA Kenya Mombasa and Taita Taveta an opportunity to attend training on LGBTQ access to justice”

- **Jamal Kyana, Executive Director, HAPA Kenya**

“This was an empowerment training that has refreshed me as a paralegal, the knowledge on how to approach violations directed towards gender and sexual minority groups while ensuring the security and wellbeing of this vulnerable community”

- **Jasmine Victor, Paralegal, Pema Kenya**

LEGAL AID CLINICS

After the training, the 48 paralegals/peers were for 5 months, accorded legal support and a monthly communication and movement stipend to enable them effectively monitor, document, and link victims of human rights violations to the justice system.

Consultation by the trained paralegals/outreach workers/peers with the CMRSL on behalf of their LGBTQ clients on issues of access to justice and documentation increased from about 1 monthly to more than 10 monthly, immediately following the training. 6 LGBTQ organizations who were not monitoring or documenting LGBTQ rights violations started or expressed interest in starting a documenting or a monitoring process.

“I’d like to appreciate The Center for making the process of following up cases easy on our part by providing allowances to be used in communication and as transport when responding to cases. This has lessened the problems we (paralegals) face when following up of cases, now we can easily link victims to justice”

- **Kelvin Ochieng’, Paralegal, Malindi Desire**



Our call for volunteer *pro-bono* advocates from Mombasa Law Society attracted 30 *pro-bono* advocates. To enable clients of the trained paralegals together with victims of violence and discrimination access justice through legal aid, CMRSL hosted 12 legal aid clinics for each of the 12 LGBTQ organizations under the project. Victims of human rights violations accessed legal aid and legal counselling. The Legal Clinics employed one-on-one method of interaction between the advocate and the victim to ensure confidentiality and privacy. These legal services were offered by 22 volunteer lawyers out of the 30 that who had volunteered from the Mombasa Law Society.

By the end of the project, the volunteer advocates had managed to attend to 234 LGBTQ victims of violence and discrimination from the Coastal region, thus linking them to justice and redress.

Over 40 more clients have accessed legal aid through the paralegal/peer referral network.

“Through interacting with the Victims of Human Rights violations in the Legal Clinics I offered my services in, It came to my realization that Sexual and Gender Minorities go through so much discrimination in Kenya but never gets redress. This calls for policy changes in our institution and repealing of discriminatory Laws to nurture a Kenya that anyone and everyone is free and equally protected by the rule of law.”

- **Barbra Ayiko, Volunteer Pro-bono Advocate**

“Thank You Center, now at last I Know what steps to follow in changing my ID names”

- **S.P, Clinic Attendant, Pwani Transgender Initiative Legal**

TARGETED LITIGATION ON LGBTIQ DEFENCE

By the end of the project, CMRSL had prosecuted 2 petitions and partly prosecuted 1, all in the High Court at Mombasa. We also defended 2 accused persons in 1 criminal case at the Mombasa Chief Magistrate's court.

(a) *Mombasa High Court Petition number 18 of 2019, M.K Vs. The Kenya Film Classification Board and AG.* This petition challenged the Kenya Film Classification Board decision to ban the movie "Rafiki" on the basis that the movie features gay theme contrary to the law, culture and moral values, legitimizes "lesbianism", depicts resilience of youngsters involved in "lesbianism", promotes homosexuality among other grounds. The petition challenged this ban on the basis that the same is contrary to the values of the constitution and that it violates the constitutionally guaranteed rights to equality and freedom from discriminating and the freedom of expression. Judgement was delivered on 19th April, 2021, in which the petition was unfortunately dismissed.

We have since filed a notice of appeal from the judgement.

(b) *Mombasa High Court Petition number 19 of 2019, M.K Vs. AG.* This petition challenged the constitutionality of Sections 162, 163 and 165 of the Kenyan Penal Code on the basis that the said statutory provisions violate the right to privacy and human dignity guaranteed under the Constitution. Judgement was delivered on 19th April, 2021, in which the petition was unfortunately dismissed.

We have since filed a notice of appeal from the judgement.

(c) *HCCHRPET/8/2021, Jow Vs the Director of Public Prosecutions and 3 Others.* The petitioner was charged in Msa Chief Magistrate's Court Sexual Offences No. 30 of 2020, with committing the offence of "unnatural offence contrary to Section 162(c) of the Penal Code".

This petition challenges forced anal and HIV examinations on the basis that they infringe on the right to human dignity, privacy, freedom and security of the person, among other rights and freedoms guaranteed in the Constitution and Treaties. This suit also charges that the enforcement of Section 162 (C) the Penal Code against the petitioners is in violation of the right to privacy and human dignity among others guaranteed in the Constitution. The petition also seeks damages for violations of the named rights and freedoms.

This petition is pending hearing.

(d) *Msa Chief Magistrate's Court Sexual Offences No. 30 of 2020, R Vs BK and Another.*

The accused are charged with committing the offence of "unnatural offence contrary to Section 162(c) of the Penal Code".

This matter is pending hearing



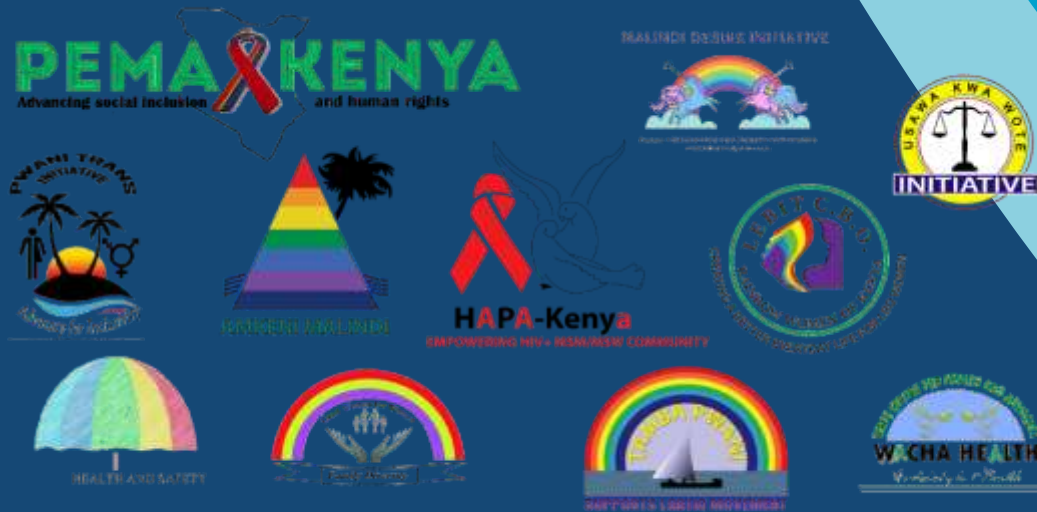
During the implementation of the whole project, the needs of LBQ women and transgender community were given a closer focus owing to their unique legal situations. Participation of women in the project was encouraged through creation of safe spaces, use of female advocates and facilitators and close consultation with LBQ and Transgender organizations. Analysis of the data showed that there is need to empower the lawyers being engaged with knowledge on the very unique barriers that stigma and discriminatory application of laws, place on access to justice for LGBTQ persons.

The Lawyers also reported a community not fully aware of its rights, hence the need for education on this area. The project impacted LGBTQ persons and organizations serving this vulnerable community in different ways e.g. More organizations are reporting and documenting cases of injustices, more members are aware of their rights and more victims of injustice are seeking redress.

We still see opportunities in engaging and sensitizing lawyers for effective legal aid, training the community on their rights and assisting victims to obtain redress, engaging LBQ and Transgender communities using differentiated methods to determine how best to respond to their legal needs. We will also strive to continue supporting the paralegals and their organizations to effectively obtain justice for victims of human rights violations.

We would like to extend our warm appreciations towards the Canadian Government for funding the project, Volunteer advocates, our paralegal network and partner organizations for supporting us to deliver the *Accelerating access to Justice for LGBTQ persons in the Kenyan coastal counties of Kwale, Taita Taveta, Mombasa, Kilifi and Lamu*

Special thanks to our partners during this project



“We would like to extend our warm appreciations towards our funders, Volunteer advocates, our paralegal network and partner organizations for making project Accelerating access to Justice for LGBTQ+ persons in the Kenyan coastal counties of Kwale, Taita Taveta, Mombasa, Kilifi and Lamu a tremendous success.” – Michael Maundu, Trustee, the Centre

