



**THE INTERNATIONAL
PRIDE CENTRE**

PROTECTION, RIGHTS, INCLUSION
IN DISPLACEMENT & EMERGENCIES

KENYA

TARGETING SOGIESC MINORITIES IN HUMANITARIAN SETTINGS

LEGAL ANALYSIS & RECOMMENDATIONS FOR AID AGENCIES



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Acknowledgments: All of the refugee-led and Kenyan LGBTQIA+ organisations who helped to facilitate the key informant interviews and focus group discussions carried out as part of this research, including Entrepreneur Empowerment and Advocacy–Health Initiative, Trans Advocacy Network, Refugee Trans Initiative, Matasia Trans Capability, Joyful Hope Resource Platform, Positive Initiative Kenya, KNESWO Feminist Initiative, Nature Network, Refugee Independence, Zoros Centre, Minority Defenders, Heart Out Queer Advocacy Network, Hideout Network, Wanjiku Talks Queer, Refugee Independence, Freedom House Initiative, Hapa Kenya, Kydesa, and Transisters.

Layout and design: Sisonke Kalipa, Carpe Diem Software Group

Suggested citation: International PRIDE Centre (2025) 'KENYA - Targeting SOGIESC Minorities in Humanitarian Settings: Legal Analysis and Recommendations for Aid Agencies', available at: www.pridecentre.org.

About The PRIDE Centre: The PRIDE Centre (Protection, Rights, Inclusion in Displacement and Emergencies) provides legal and policy analysis, preparedness, and programming tools for aid workers, NGOs, and emergency response agencies to ensure inclusive programming for LGBTQIA+ persons in emergency, humanitarian, and development settings. The PRIDE Centre focuses on countries experiencing acute and protracted crises, in which the space for LGBTQIA+ rights and expression has become increasingly restricted.

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Introduction

This report is intended to give aid actors working in humanitarian, crisis, and displacement settings in Kenya a clear understanding of the legal environment related to increasing their engagement with LGBTQIA+ populations. The PRIDE Centre concludes that **aid organisations and their donors have legal obligations, within Kenya and under international law, to ensure that LGBTQIA+ individuals are able to access their services on an equal basis.** This report includes a list of recommendations to assist aid organisations in meeting these obligations in practice.

Under Kenyan, regional, and international law, **aid agencies who provide basic services to displaced or disaster-affected people are required to uphold rights to non-discrimination, and to take all feasible steps to prevent human rights violations associated with their programming,** including in non-camp settings. These legal obligations require aid organisations to proactively ensure all people can access their services, regardless of their sexual orientation, gender identity or expression, or sex characteristics (SOGIESC), and that violations committed against LGBTQIA+ individuals in relation to these services are addressed and redressed.

There is a misconception amongst many aid organisations working in Kenya that there are legal restrictions to targeting, working with, or advocating for LGBTQIA+ populations. This is not true. Such activities are **permitted, constitutionally protected, and often, legally required** – as has been consistently confirmed by the Kenyan courts.

There is a tendency for aid organisations providing services to refugees and asylum seekers (hereafter cumulatively referred to ‘refugees’) to work primarily or exclusively with those residing within established refugee camps. Some are under the impression that NGOs are not legally permitted to work with refugees living without authorisation in urban areas. As the majority of LGBTQIA+ refugees live outside of the camps for safety, this has severed many of them from essential aid. In reality, NGOs are permitted to provide services to refugees wherever they reside; Kenyan courts have confirmed that **denying assistance to urban-based refugees is unconstitutional.**

New restrictions imposed by the US government’s expanded *Mexico City Policy* make it more difficult for non-US-registered organisations who accept US funding to identify, access, and provide services to transgender and gender non-conforming (TGNC) people. However, organisations in this position **retain human rights and non-discrimination obligations** under Kenyan, regional, and international law, as well as, often, the legal regimes of the country and/or region in which they are registered. Organisations that opt to comply with the US policies in order to access funding may be in violation of these laws, and could be subject to legal consequences.

The analysis of The PRIDE Centre is that humanitarian and development actors in Kenya have the practical ability, ethical responsibility, and legal obligation to more proactively include diverse SOGIESC populations in their programming and operations – and that they can do so without accumulating additional funding or resources.

Background and methodology

This briefing is one of three to be released by The PRIDE Centre relating to the Kenyan context, including one [focused on the issues pertaining to refugee registration for LGBTQIA+ asylum seekers](#) (December 2025), and a forthcoming report on the experiences of queer people in displacement. As part of the research process, The PRIDE Centre conducted key informant interviews (KIIs) and focus group discussions (FGDs) with LGBTQIA+ asylum seekers and refugees living in and around Nairobi, Mombasa, Limuru, and Nakuru between September 2025 and February 2026. **In total, our team spoke to 229 LGBTQIA+ individuals from 21 organisations, including 138 refugees or asylum seekers.** The PRIDE Centre also sought the views and perspectives of Kenyan and international aid workers for this research, including through interviews, bilateral meetings, and three workshops for NGO leadership held between September 2025 and January 2026.

In the interests of capturing the voices of interviewees as faithfully as possible, their quotes been included in this report exactly as they were transcribed by The PRIDE Centre researchers – without corrections to improve accuracy or grammar.¹

Context: LGBTQIA+ refugees and asylum seekers in Kenya

In humanitarian and displacement settings, LGBTQIA+ communities struggle disproportionately to access aid and humanitarian services. In Kenya, these settings include refugee camps, communities of refugees and asylum seekers living outside of camps, and responses to natural disasters and extreme weather events. This briefing concentrates primarily on the experiences of refugees and asylum seekers. It must be acknowledged, however, that SOGIESC minorities affected by climate-related disasters and internal displacement are also likely to be disproportionately affected and less able to access support, and that there is very little information available about these communities or the challenges they face. In addition, The PRIDE Centre considers SOGIESC minorities who are displaced as the result of banishment or violence against them by their communities and families or other groups to be Internally Displaced Persons (IDPs), based on [UNHCR's definition of IDPs](#).

Kenya hosts more than 832,000 registered refugees and asylum seekers who have fled conflict and persecution in countries including Sudan, Somalia, South Sudan, Ethiopia, and the DRC.² The PRIDE Centre's population estimate methodology estimates that at least 5% of any population are from a SOGIESC minority, meaning that **the number of LGBTQIA+ refugees amongst these populations is at least 41,600.** In addition, Kenya hosts 4,312 registered refugees and asylum seekers from Uganda. Research conducted by the PRIDE Centre suggests that **the majority of the Ugandan refugees and asylum seekers in Kenya are from a SOGIESC minority.** These numbers refer only to arrivals registered with UNHCR – there are also tens of thousands of people fleeing conflict and persecution living in Kenya who have not formally sought refugee status, documentation, or claimed asylum.³

¹ These quotes were given during KIIs and FGDs and transcribed by a notetaker from PRIDE – usually in English or Swahili, languages spoken by PRIDE staff, though sometimes through a translator.

² UNHCR (2026) 'Operational Portal - Data - Kenya' available at <https://data.unhcr.org/en/country/ken>

³ HIAS (2025) 'Refugees in Kenya: What You Need to Know', available at <https://hias.org/news/refugees-kenya-what-you-need-know/>

832,000

Non-Ugandan registered refugees

41,600

Non-Ugandan LGBTQIA+ estimate

4,312

Ugandan registered refugees

Over 85% of registered refugees and asylum seekers in Kenya are settled in Turkana and Garissa counties, where the Kalobeyei settlement and Kakuma and Dadaab refugee camps are located. New arrivals in Kenya who seek asylum on the basis of their SOGIESC status are systematically told by the Department of Refugee Services (DRS) that they must live in Kakuma refugee camp. In Kakuma, violence against the community is relentless and often extreme.



I tried to stay in Kakuma, and it was much worse [than Nairobi]. My friend was recently killed there. You feel like you are living in a lion's den.

Gay male refugee living on the outskirts of Nairobi



In the camp, our daily life was full of discrimination and beatings.

Trans woman refugee living on the outskirts of Nairobi



We cannot live in the camps. Every day, you hear that someone has died.

Trans woman refugee living on the outskirts of Nairobi

For this reason, **most openly identifying LGBTQIA+ refugees do not live in the camp**, instead staying in Nairobi, Mombasa, Kisumu, Eldoret, the outskirts of these cities, and other urban and peri-urban areas. In these locations, they **survive largely without the assistance of aid agencies** – leaving the vast majority heavily reliant on negative coping mechanisms and struggling to get by. Community leaders estimate that 85-90% of LGBTQIA+ displaced persons in Kenya are reliant on sex work for survival.

Beliefs about legal framework amongst aid workers

At workshops held for international aid sector leadership in Nairobi, the PRIDE Centre asked participants how legally permissible they thought it was under Kenyan law to do programming that explicitly targets LGBTQIA+ communities. The results, depicted below, indicate a persistent belief that conducting such programming would be legally complicated – not entirely prohibited, but not fully legal, either.

Nairobi workshop	Participants asked to rank from 1 (completely illegal) to 10 (completely legal)
25-26 September 2025; 26 respondents	How legally permissible is it to do programming with LGBTQIA+ people in your country of focus? 4.9
18-19 November 2025, 19 respondents	How legally permissible is it to do programming with LGBTQIA+ people in your country of focus? 4.5

* Quotes below are from: FGD with LGBTQIA+ RLO, 29 September 2025; FGD with trans RLO, 3 November 2025.

In interviews with NGO representatives and LGBTQIA+ refugees, it also became apparent that many organisations who work with refugees and asylum seekers **provide services only to those living in the refugee camps**. Some actors from international aid agencies were under the **incorrect impression** that this was mandated by Kenyan law. Other organisations made services available to refugees living in urban areas, but **only if they have an ‘urban pass’** from the government permitting them to do so. As detailed below, since 2018, applications for this pass by LGBTQIA+ asylum seekers have been consistently denied.

Interviews with queer refugees living in and around Nairobi indicated that the inability to access services by NGO and UN service providers is a consistent and severe challenge.⁵ For refugees and asylum seekers based outside of Nairobi, it was notable that most were not even aware of mainstream refugee or aid organisations operating in the country, including UNHCR, or of their right to apply for asylum and refugee status or access humanitarian aid.⁶



For those who are trying to seek services, when the government sees your document, they will tell you that all the services are available in the camp. Even the UN agencies and the INGOs, they will say that they cannot help us if we don't live in the camp. But the camp is not safe.

Nairobi-based refugee



In the urban area, you feel more safe. But when you call [redacted organisation name], or try to reach out to [redacted organisation name], they will tell you – our programming is only for refugees in the camp or who have an urban pass. ... I would rather not die in the camp.

Nairobi-based refugee



The people who really helped me have been the LGBTQIA+ community. They have raised money for me to get medical treatment. I have really been struggling to get access to health-care. The only way I am able to get treatment is through relying on the members of my community.

Mombasa-based refugee



⁵ Quotes below are from: FGD KNESWO 29 September 2025; FGD Wanjiku Talks Queer (I), 7 November 2026 (refugees and mix of Kenyans).
⁶ Quote below from: FGD with refugees in Mombasa, 9 February 2026.

Kenyan laws relevant to SOGIESC minorities

This section examines the laws and policies in place in Kenya that discriminate on the basis of SOGIESC status; those that provide the community some level of protection; and those with specific relevance to LGBTQIA+ asylum seekers going through the process of refugee status determination (RSD) and/or resettlement.

Laws that discriminate on the basis of SOGIESC

Law	Content
The Penal Code (1930) ⁷	<ul style="list-style-type: none"> • ‘Carnal knowledge against the order of nature,’ punishable by 14 years imprisonment. This has been interpreted by the courts to mean penetrative sex between men. It also makes ‘indecent practices between males’ (interpreted as non-penetrative sex) punishable by five years’ imprisonment. ⁸ • Includes the colonial-era criminalisation of being ‘idle and disorderly,’ punishable by up to one years’ imprisonment.⁹ It is this Article, more than those criminalising same sex intimacy, that has most commonly been relied on by police to target and harass the LGBTQIA+ community. • Criminalises ‘personation’¹⁰ –historically used to target trans people. In 2025, a court found that arresting a trans person under this provision without any other evidence of criminality violated their constitutional rights. Current Kenyan precedent therefore dictates that this Article cannot be used to arbitrarily arrest trans people.
The Criminal Procedure Code (1930) ¹²	Gives police officers the right to conduct arrests, without a warrant, of ‘any person whom he finds in a street or public place during the hours of darkness and whom he suspects upon reasonable grounds of being there for an illegal or disorderly purpose , or who is unable to give a satisfactory account of himself.’ ¹³
Film and Stage Plays Act (1962) ¹⁴	Gives discretion to the Kenya Film Classification Board (KFCB) to determine what films and plays will be allowed to be shown within Kenya. ¹⁵ In 2014, the Board tried to ban any films depicting LGBTQIA+ content; this was overturned by the Court of Appeal in 2026, which ruled blanket bans to be unconstitutional, and held that the KFCB must classify, rather than censor. ¹⁶
Constitution (2010)	Defines the right to marry as the right to marry a person of the opposite sex. ¹⁷

The primary piece of legislation negatively impacting the LGBTQIA+ community in Kenya is the Penal Code, inherited from a British colonial law codified in the 1890s. As in numerous other former British colonies, the Kenyan Penal Code makes ‘carnal knowledge against the order of nature’ punishable by a 14-year prison sentence. In 2019, these sections of the Penal Code were challenged in a case before the High Court, which argued they violated the rights to equality, dignity, privacy, health, and security under the

⁷ Ibid, Art 183

⁸ Ibid, Art 382

⁹ SC v Director of Public Prosecutions & 3 others; Amka Africa Justice Initiative & another (Interested Parties) [2025] KEHC 11929 (KLR) Delivered by Justice RN Nyakundi at High Court at Eldoret on 12th August 2025

¹² Criminal Procedure Code (Cap. 75), Laws of Kenya, assented to 28 May 1930, commenced 1 August 1930 (as amended).

¹³ Ibid, Article 29

¹⁴ Films and Stage Plays Act (Cap. 222), Laws of Kenya, 1962 (commenced 1963) (as amended).

¹⁵ Ibid, s 16.

¹⁶ A. Potts (2026) ‘Kenya overturns blanket ban on LGBTQIA+ content in films’ Q News, available at <https://qnews.com.au/kenya-overturns-blanket-ban-on-lgbtqia-content-in-films/>

¹⁷ Constitution of Kenya, Art 35(2)

Kenyan constitution.¹⁸ The High Court quashed the challenge, finding the law to be constitutionally sound – a ruling that is currently under appeal.

In practice, **it is rare for Kenyan authorities to pursue prosecutions or convictions of individuals under the sections of the Penal Code criminalising homosexuality.** Charges, if they are pursued, are more likely to be laid using the vague ‘illegal and disorderly’ provisions, or other criminal acts that police may allege having evidence to support – which community members say can be anything from prostitution to drug use. As one interviewee put it, *“It can be loitering, idle and disorderly, etc... If you are a smart prosecutor, you have a whole Penal Code to rely on.”*¹⁹ In most cases, police action against individuals perceived to be LGBTQIA+ **does not progress to laying charges or pursuing prosecutions.**



“Most of the time, the police is just using the Penal Code for extortion. They will try to gauge how versed you are in understanding your rights. ... If they think you are a person who they can extort money from, then they will use that against you. Because of fear, a lot of people will pay what they are asked to pay. Even though it actually will not go to court.”

Kenyan LGBTQIA+ activist, Nairobi



The provision of services to LGBTQIA+ populations and advocacy for LGBTQIA+ rights are not criminalised in Kenya. Unlike Uganda’s Anti-Homosexuality Act and other anti-LGBTQIA+ laws introduced across Africa in recent years, Kenyan law does not criminalise the “promotion of homosexuality” – a broad provision that some NGO activities may be considered to fall afoul of. In Kenya, service provision and advocacy activities relating to LGBTQIA+ communities are legal and constitutionally protected.

Laws that impose obligations to ensure equal access to rights and services

Law	Content
Constitution (2010)	<ul style="list-style-type: none">• Article 27 protects the rights of every person in Kenya (not only citizens) to equality and freedom from discrimination on <i>any</i> grounds. Though it does not explicitly mention SOGIESC, Kenyan courts have repeatedly determined that LGBTQIA+ people are protected from discrimination on the grounds of their SOGIESC under this Article.• Imposes an obligation on all state actors to address the needs of vulnerable groups within society, including marginalised communities – which the courts have interpreted to include both refugees and SOGIESC minorities.• Confers concrete legal rights that are enforceable in court, including the rights to dignity, freedom and security of the person, privacy, freedom of association,

¹⁸ EG & 7 Others v Attorney General [HC Petition 150 & 234 of 2016, consolidated, [2019] eKLR)

¹⁹ Ibid.

	<p>freedom of the person, privacy, freedom of association, freedom of expression, health, housing, adequate food, education, and against torture and ill-treatment. These Articles have been relied on by LGBTQIA+ people in Kenyan courts to assert their rights to receive services from the government; to freedom of expression and association as queer people; and against harassment and mistreatment. The majority of these cases have ultimately been successful.</p>
Health Act (2017) ²⁰	<ul style="list-style-type: none"> Obliges healthcare providers to provide their services <i>'to the best of their knowledge within their scope of practice and ability, to every person entrusted to their care or seeking their support'</i>,²¹ and criminalises refusals to provide emergency care to those who need it. This is relevant because queer refugees trying to access healthcare in urban areas report being frequently turned away, informed they can only access services in Kakuma – even in emergency cases.
HIV policy ²² and law ²³	<ul style="list-style-type: none"> HIV policy recognises Key Populations (vulnerable to HIV) as including men who have sex with men (MSM) and transgender individuals, and HIV law contains protections against discrimination against groups vulnerable to HIV. The law also establishes the HIV tribunal: the only HIV-specific statutory body in the world with a mandate to adjudicate cases involving HIV-related human rights violations.²⁴
Basic Education Act (2013) ²⁵	<ul style="list-style-type: none"> Imposes obligations all educational institutions to take affirmative steps to ensure the inclusion of marginalised children - which jurisprudence makes clear would include LGBTQIA+ children and the children of LGBTQIA+ parents. Makes discriminating against children on 'any grounds whatsoever' a criminal offence – an unusually broad and strong legal protection.
Children Act (2022) ²⁶	Contains numerous protections of the rights of intersex children, making Kenya a leader in this area across the region.
Computer Misuse and Cybercrimes Act (2018) ²⁷	Criminalises cyber harassment, defined to include detrimentally affecting or grossly offending a person, or causing them fear of violence.

Kenyan courts have confirmed that most of the rights enumerated in the Constitution **are also enjoyed by refugees and asylum seekers**,²⁸ and repeatedly found that the right to non-discrimination in the Constitution includes discrimination based on SOGI-ESC. **LGBTQIA+ individuals are therefore entitled to all the rights in the constitution, and in all other domestic legislation, on an equal basis** to everyone else within the country's territory.²⁹

²⁰ Health Act, No. 21 of 2017

²¹ Ibid, Art 12.

²² Kenyan Ministry of Health (2020) 'Kenya AIDS Strategic Framework II: 2020- 2025', available at https://nsdcc.go.ke/wp-content/uploads/2021/01/KASFII_Web22.pdf, p 26.

²³ HIV and AIDS Prevention and Control Act, No. 14 of 2006 (Laws of Kenya).

²⁴ Arasa et al (2022) 'Challenging HIV Criminalisation in the East African Community: A Brief for Parliamentarians', available at https://arasa.info/wp-content/uploads/2022/07/Policy_Brief_final.pdf, p

²⁵ Basic Education Act, No. 14 of 2013

²⁶ Children Act, No. 29 of 2022

²⁷ Computer Misuse and Cybercrimes Act, No. 5 of 2018

²⁸ Kituo Cha Sheria v. AG (2013). Where the Bill of Rights is intended to apply only to Kenyans, it refers to the rights of 'all citizens', rather than 'all people'. The rights to vote, enter Kenya, and reside anywhere within its territory, for example, are limited to citizens.

²⁹ National Gay & Lesbian Human Rights Commission v Non-Governmental Organisations Co-ordination Board & Others (Supreme Court of Kenya, 2023); EG & 7 Others v Attorney General (High Court of Kenya, 2019); Baby 'A' (Suing through her Mother E.A.) & Another v Attorney General & 6 Others (High Court of Kenya, 2014); S.C. v Director of Public Prosecutions (High Court of Kenya, Eldoret, 2025).

Under Article 27 of the Constitution ‘every person’ is considered equal before the law and therefore is deserving of protection and dignified treatment, regardless of sexual orientation or gender identity.

SC v Director of Public Prosecutions [2025]³⁰

In its landmark 2023 judgment affirming the right of freedom of association for all members of society, the Supreme Court of Kenya **upheld the right of LGBTQIA+ organisations to exist, register, and conduct programming.**³¹

Article 21(3) imposes an obligation on all State organs and all public officers to address the needs of vulnerable groups within society including members of minorities and marginalised communities. Given that the right to freedom of association is a human right, vital to the functioning of any democratic society as well as an essential prerequisite enjoyment of other fundamental rights and freedoms, we hold that this right is inherent in everyone **irrespective of whether the views they are seeking to promote are popular or not.**

Eric Gitari v. NGO Coordination Board [2021]³²

Kenyan courts have also upheld the rights of LGBTQIA+ petitioners in the following cases:

- In *Baby 'A' & another v Attorney General & 2 others*,³³ the High Court **ordered the expedited registration of an intersex child** who had been denied a birth certificate and directed the Attorney General to develop a statutory framework governing the registration of intersex children. This judgment is widely credited with triggering subsequent legislative and policy protections for the intersex population, including the first statutory definition of ‘intersex’ in Kenyan law.
- In *National Gay and Lesbian Human Rights Commission v Attorney General & others*,³⁴ Mombasa’s Court of Appeal ruled that the use of **forced anal examinations on men suspected of same-sex conduct is unconstitutional.**
- In *JM & Centre for Minority Rights and Strategic Litigation v Inspector General of Police & others*,³⁵ the High Court of Mombasa issued interim **orders restraining anti-LGBTQIA+ activists**³⁶ from calling for harm done to LGBTQIA+ people, their expulsion from Kenya, or the closing of closure of organisations serving LGBTQIA+ communities.
- In *SC v Director of Public Prosecutions & 3 others; Amka Africa Justice Initiative & another*,³⁷ the High Court in Eldoret found that the arrest, detention, and inhumane

³⁰ Above n 2, para 162.

³¹ Eric Gitari v. Non-Governmental Organizations Co-Ordination Board & 4 Others. [2015] eKLR, Petition No. 440 of 2013

³² Ibid, para 70.

³³ Petition 266 of 2013, [2014] KEHC 8495 (KLR)

³⁴ Court of Appeal, Mombasa, 22 March 2018

³⁵ HCCHRPET No. E048 of 2023, High Court at Mombasa

³⁶ The respondents named in the case include the ‘Anti-LGBTQ+ Movement’, described as a ‘national lobby group’ in court documents. The group is comprised primarily of Christian and Muslim religious leaders from Kenya’s coastal regions. Its funding sources are not publicly available. However, the group operates within a broader ecosystem of US evangelical and conservative Christian funding that has been extensively documented in the Kenyan and East African context.

³⁷ Constitutional Petition No. E015 of 2019, [2025] KEHC 11929 (KLR), High Court at Eldoret, Nyakundi J, 12 August 2025

treatment of a transgender woman violated her constitutional rights, and suggested that the Parliament enact a **Transgender Protection Rights Act**.

Laws relevant to refugee settlement

Law	Content
Refugees Act (2021) ³⁸	<ul style="list-style-type: none"> Requires Kenya to provide asylum to individuals persecuted for their ‘membership in a particular social group’. UNHCR Guidelines provide that persecution on the basis of SOGIESC should be considered persecution on this basis.³⁹ Kenyan authorities previously had a practice, though not an official policy, of recognising asylum claims on this basis. Since 2018 they have stalled decision-making on these cases. Envisages having ‘designated areas’ of Kenya for refugees to live in, rather than camps – likely due to the ruling by the Supreme Court that requiring refugees to live in refugee camps is unconstitutional. This has not yet been implemented. Grants refugees in Kenya the right to work. In practice, this right is contingent on procuring the required government documents – a bureaucratic and logistical hurdle that precludes most refugees, with the challenges being highest for the most marginalised. Sets out the RSD process (enumerated in more detail below).
Refugees Regulation (2024) ⁴⁰	<ul style="list-style-type: none"> Provides more detail on the RSD process (as discussed below). Provides that the Refugee Commissioner may exempt persons from residing in a designated area for health, safety, or ‘social wellbeing’ grounds. In practice, the vast majority of refugees are required into live in camps – rather than ‘designated areas’ – and LGBTQIA+ refugees who apply to live in urban areas consistently have these applications ignored or refused.

Kenya’s regime for processing and recognising refugees consists primarily of the Refugees Act,⁴¹ which sets out the refugee status determination (RSD) process for asylum seekers; and the Refugees Regulation,⁴² which contains more detailed rules for the Act’s practical implementation. **The full enforcement of these instruments requires the implementation of the Shirika Plan** – a policy announced in 2024 by the UNHCR and the government of Kenya, which proposes folding the refugee camps of Dadaab and Kakuma into municipalities administered by Garissa and Turkana counties. The Kalobeyei settlement, established in Turkana in 2016, pilots this model – both refugees and host communities live in the settlement, and receive some services from NGOs, but with an increased emphasis on self-reliance. The full details of the Shirika Plan have not yet been made available.

Though the Refugees Act does not explicitly state that SOGIESC forms a basis on which a person can claim asylum, it is expressly enacted to give effect to the Refugees Convention– which, along with other international and regional human rights treaties ratified by Kenya, forms part of Kenyan law.⁴³ UNHCR, which is the authoritative source on the

³⁸ Refugees Act, No. 10 of 2021 (Cap. 173), Laws of Kenya, assented to 17 November 2021, commenced 21 February 2022.

³⁹ UNHCR (2012) ‘Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees’, available at www.refworld.org/policy/legalguidance/unhcr/2012/en/89548

⁴⁰ The Refugees (General) Regulations, 2024 (Legal Notice 39 of 2024)

⁴¹ The Refugees Act, 2021 (No. 10 of 2021)

⁴² The Refugees (General) Regulations, 2024 (Legal Notice 39 of 2024)

⁴³ Refugees Act (2021), preamble, interpretation section, s28(1); Constitution of Kenya (2010), Art 2.

interpretation of the Refugee Convention, has stated in its *Guidelines on International Protection No. 9* that **persecution on the grounds of sexual orientation and gender identity should be considered to be persecution due to membership in one of the ‘other social groups’** referenced in the Convention, and therefore be grounds for granting asylum. Though the Kenyan government does not have a publicly accessible written policy on this, in practice, it **does grant refugee status on the basis of SOGIESC**. Until 2018, LGBTQIA+ refugees were also being recognised as facing significant protection risks during their stay in Kenya, and were therefore being **prioritised for RSD and resettlement**.⁴⁴

Today, however, it is widely known that an informal, unwritten policy exists that prevents LGBTQIA+ refugees in Kenya from progressing through the RSD process, receiving refugee status, or being resettled to a third country. Amnesty International and the National Gay and Lesbian Human Rights Commission (NGLHRC) released a report in 2023 citing evidence that the process of giving RSD interviews to LGBTQIA+ applicants has been deliberately slowed by the Department of Refugee Services (DRS) since 2018. In addition to having their RSD process stalled, LGBTQIA+ asylum seekers report that since 2022, **applications they have made to be permitted to reside in urban areas, rather than in Kakuma refugee camp, have been ignored or denied**.⁴⁶

I have been here for ten years and am waiting seven years for an interview. More people started to arrive since 2023, and they have never received asylum seeker documents, no mandates, no refugee status. ... DRS is not moving these cases forward.

Trans woman, Nairobi

I have been to DRS so many times. They just won't give me an appointment. They asked me if I was LGBTQ. I said yes. They told me, you're going to delay. You're not going to get resettled.

Gay man, Nairobi

You have the right to apply to be a refugee in the urban centres. But the LGBTQIA+ refugees don't get that. We used to get it. Up until 2022. But not anymore. When we got the new government, it changed.

Trans woman, Nairobi

The process for obtaining refugee status set down in the Refugee Act and the Regulation are set out below, along with details in the corresponding column about the practice in reality.

Process described by the Act and Regulation	What happens in reality
<ul style="list-style-type: none"> Person entering Kenya must make an application to seek asylum to an officer from the Department of Refugee Services (DRS), 	<ul style="list-style-type: none"> Though most are permitted to register as an asylum seeker, some report that they are refused this initial appointment by DRS

⁴⁴ Amnesty International and National Gay and Lesbian Human Rights Commission (2023) "Justice like any other person": Hate crimes and discrimination against LGBTI refugees, available at www.amnesty.org/en/documents/afr32/6578/2023/en/, p 23.

⁴⁶ Amnesty International and National Gay and Lesbian Human Rights Commission (2023) "Justice like any other person": Hate crimes and discrimination against LGBTI refugees, available at www.amnesty.org/en/documents/afr32/6578/2023/en/, p 23.

who will collect the person's information and question them **only to ensure they pose no danger to the Kenyan public, and with strict regard to their dignity.**⁴⁷

- After this initial appointment, the applicant will be issued an asylum seekers pass, valid for 90 days.⁴⁸
- The applicant will then be called for a refugee status determination (RSD) interview. (There is no time limit given on this, but the 90-day timeline on the asylum seekers pass suggests that the applicant would be called for an RSD interview within 90 days of their application.)⁴⁹
- After the RSD interview, **a decision will be made within 90 days** (but extensions may be granted in exceptional circumstances).⁵⁰
- An RSD application may be expedited if the applicant has heightened protection needs.⁵¹

staff saying they do not register LGBTQIA+ refugees.

- Many report being asked **de-meaning questions** during their initial appointment, or lectured about their perceived immorality by DRS staff.
- Once they receive their asylum seekers pass, **queer refugees wait years for an RSD interview** – with all but 3 of the 138 refugees interviewed by the PRIDE Centre never progressing to this stage. Some have been waiting for over 10 years.
- Until 2018, LGBTQIA+ refugees were considered to be at particular risk, given the violence they face in the camps. Their applications were expedited – still not taking the legislatively mandated 90 days, but often being processed in around one year. Since 2018, these applications have been purposefully stalled.

Openly LGBTQIA+ refugees are systematically assigned to live in Kakuma refugee camp, where certain aid organisations conduct some programming for them. As noted above, however, life in the camp is extremely dangerous for SOGIESC minorities, leading the majority to seek shelter in urban areas. Living in these areas without the correct documentation is challenging, and adds to the refugees' insecurity. *"If you are arrested with documentation that states you need to be in the camp, you are arrested and taken to the camp,"*⁵² explained one interviewee, summarising what our team heard from many of those we interviewed based in or around Nairobi.

Since 2024, the lack of movement on queer refugees' RSD applicants, in combination with the relentless violence, discrimination, and lack of access to services in Kenya, **has led hundreds of people to travel to South Sudan in the hope of accessing improved protection or alternative resettlement pathways.** In the course of our research, The PRIDE Centre interviewed both people living in Nairobi who were considering taking this route; and people who have travelled to Gorom refugee camp, outside of Juba, and were trying to get into the resettlement stream from there. Both categories of interviewees said they knew of people who, after travelling to South Sudan, had been resettled in Canada.⁵³

⁴⁶ Quotes below from: FGD JHRC, 29 September 2025; Positive Initiative FGD, 4 November 2025

⁴⁷ Refugees Act, s 25 – 27; Refugees Regulation, Reg 4

⁴⁸ Refugees Act, s 23; Refugees Regulation, Reg 6

⁴⁹ Refugees Act, s 12; Refugees Regulation, Reg 9 -10

⁵⁰ Refugees Act s 12; Refugees Regulation, Reg 9

⁵¹ Refugee Regulation, Reg 16.

⁵² Positive Initiative FGD, 4 November 2025

⁵³ Quotes below from: Positive Initiative FGD, 4 November 2025; Online FGD with trans women in Gorom camp, South Sudan, 26 January 2026

Conditions in Gorom are extremely difficult. The camp was built to accommodate around 2,500 people, but currently hosts more than 20,000.⁵⁴ Since February 2026, the UN has warned that South Sudan is on the brink of another civil war, with civilians ‘bearing the brunt of a spike in indiscriminate attacks, including aerial bombardments, deliberate killings, abductions and conflict-related sexual violence.’⁵⁵ A group of 400 LGBTQIA+ refugees living in Gorom camp have been told they can not access registration and are not eligible for any humanitarian assistance, including medical, food, shelter, or protection assistance. Representatives of this group say they have even been told not to contact hotline numbers, including UNHCR and INGO hotlines, any more to request assistance to protection.

More information about the challenges faced by LGBTQIA+ refugees when trying to progress through the RSD process, apply for exemptions to live in urban areas, and seek resettlement, can be found in our report, [Kenya’s Legal Framework and Its Impact on LGBTQIA+ Refugees and Asylum Seekers](#).

There are some people who left to go to get resettled on Wednesday. There are some people who are in the process. ... It used to be that people were going to the US, but now that Trump is in, all that has stopped. People are now going to Canada.

Trans woman refugee,
Gorom camp, South
Sudan

Many refugees have gone to South Sudan. There, the process is working. They go there, and then they go to Canada. They started going there last year [2024]. I know two that are in South Sudan right now, and they say the process is moving. And I know two that are in Canada.

Trans women refugee,
outskirts of Nairobi

My partner went to South Sudan last year in 2024. He got resettled to Canada.

Trans women refugee,
outskirts of Nairobi

Draft anti-LGBTQIA+ legislation

In 2023, Kenyan MP George Peter Kaluma tabled the Family Protection Bill to the Kenyan Parliament. The proposed law criminalises a large suite of actions relating to SOGI-ESC identities, expressions and gatherings, and not only makes it mandatory to report suspected contraventions of the Act, but allows for ‘citizens arrest’ of those suspected of violating it.⁵⁶ The original version of the Bill proposed extreme sentences – including, in certain circumstances, the death penalty, which Kenya has had an unofficial moratorium on since 1987.⁵⁷ In late 2025, the Bill was amended to reduce these sentences and remove the death penalty. It is the understanding of The PRIDE Centre that Kenyan LGBTQIA+ civil society organisations have been advocating directly with Parliamentarians to prevent this Bill from going to vote.

⁵⁴ Peace Winds America (2025) ‘Emergency Response Underway in South Sudan’s Gorom Refugee Settlement’ available at [peacewindsamerica.org](https://www.peacewindsamerica.org)

⁵⁵ UN High Commissioner for Human Rights (2026) ‘South Sudan is forgotten crisis that demands world’s attention - Türk’ available at www.ohchr.org/en/statements-and-speeches/2026/02/south-sudan-forgotten-crisis-demands-worlds-attention-turk

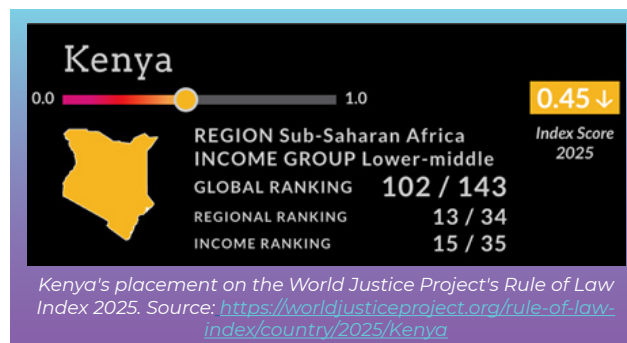
⁵⁶ Family Protection Bill (2023), ILGA World Legislative Database. Available at: [https://database.ilga.org/api/downloader/download/1/KE%20-%20LEG%20-%20Family%20Protection%20Bill%20\(2023\)%20-%20OR-OFF\(en\).pdf](https://database.ilga.org/api/downloader/download/1/KE%20-%20LEG%20-%20Family%20Protection%20Bill%20(2023)%20-%20OR-OFF(en).pdf)

⁵⁷ K. Muwanga (2025) ‘Towards the abolition of the death penalty in Kenya’ Oxford Law Blog, available at <https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2025/07/towards-abolition-death-penalty-kenya>

Even with the reduced sentences in the new version of the Bill, it would, if passed, become one of the harshest pieces of anti-LGBTQIA+ legislation in the world. Additionally, its broad criminalisation of the 'promotion', 'normalisation', and 'encouragement' of homosexuality; its criminalisation of any activity intended to bring about a 'change of public perception' relating to these issues; and the imposition of a duty to report – even in cases where professional confidentiality rules would usually apply – **would have the effect of criminalising many types of NGO programming, whether specifically targeted at LGBTQIA+ communities or not.**

Enforcement

Since the World Justice Project's Rule of Law Index began in 2015, Kenya has consistently ranked around the middle of countries in sub-Saharan Africa⁵⁸ – generally comparing poorly to countries within the region on police corruption and impartiality within the criminal justice system, but favourably on enforcement of civil rights and judicial independence.⁵⁹



Police corruption, extortion, and abuse, particularly against marginalised groups, is well documented, and was consistently described by interviewees as being one of their most pressing concerns. Interviewees also complained about failures to enforce some of Kenya's protective legal frameworks. "We have good Acts," acknowledged one Kenyan participant in an FGD. "It's not a question about do we have good laws. It's a question of them being implemented."⁶⁰

At the same time, Kenya's judiciary – particularly amongst the higher courts – has retained its independence, leading to the International Commission of Jurists to identify it as the 'most robust institution among the three arms of government'.⁶¹ **There is a long-established and vigorous culture of strategic constitutional litigation in Kenya, and civil society organisations have successfully used the courts to protect rights across a wide range of areas – including in the LGBTQIA+ rights cases described above.**

Obligations of aid agencies and donors

Aid agencies operating in Kenya bear human rights obligations arising not only from the Kenyan constitutional and statutory law, but also international human rights law, African regional law, the domestic and regional laws applicable to donor states, and the contract law governing each of their grant agreements.

Obligations of aid agencies under Kenyan law

Article 20 of the Kenyan constitution makes clear that non-state actors have an obligation not to violate the constitutional rights of those residing in Kenya. This means that **aid agencies have, at the very least, a negative obligation to respect the rights of beneficiaries.** Some domestic laws also impose **positive legal obligations on entities, including UN agencies and NGOs, who provide services such as healthcare or education.**

⁵⁸ It is currently ranked 13th of 34 countries.

⁵⁹ World Justice Project (2026) 'Rule of Law Index: Interactive Information', available at <https://worldjusticeproject.org/rule-of-law-index/global/2025/Kenya/undefined>

⁶⁰ FGD with various LGBTQIA+ organisations in Nairobi, 7 November 2025

⁶¹ T. Mburu (2025) 'Balancing Act: Judicial Accountability and Independence in Kenya's Legal Landscape', ICJ, available at <https://icj-kenya.org/news/balancing-act-judicial-accountability-and-independence-in-kenyas-legal-landscape/>

Health Act & Supreme Court jurisprudence

Obliges non-governmental healthcare providers to provide medical care to LGBTQIA+ patients without discrimination.

Criminalises organisations who refuse to provide emergency medical care, regardless of the patient's legal status or ability to pay.

HIV and AIDs Prevention and Control Act

Makes it a criminal offence for organisations providing health or education programming to discriminate for reasons relating to a person's HIV status.

Makes it a criminal offence for the organisation to discriminate on this basis within its own workplace.

Basic Education Act & Supreme Court jurisprudence

Requires organisations running educational programming to take affirmative steps to ensure the inclusion of LGBTQIA+ children and the children of LGBTQIA+ parents.

Makes it a criminal offence for an organisation to discriminate against such students.

The de facto policy preventing LGBTQIA+ refugees from obtaining refugee status or living in urban areas **does not legally restrict aid organisations providing services to LGBTQIA+ asylum seekers that have not been given refugee status, nor from providing services to asylum seekers living outside the camp.** To the contrary, Kenya's Court of Appeal found in *Attorney General v. Kituo Cha Sheria (2017)*⁶² that **the government is constitutionally prohibited from directing organisations to withhold assistance to refugees and asylum seekers living in urban areas.** The court found that forcing people who are in danger in the camp to live there regardless, and denying services to refugees and asylum seekers living in urban areas, are violations of their rights.⁶³ It also affirms **the role of UNHCR and other aid agencies in ensuring these rights are able to be accessed by refugees and asylum seekers, wherever they live.**



Due to their position, refugees are considered vulnerable. That the State can direct organisations and other bodies not to provide assistance to urban refugees is directly inconsistent with its special responsibility towards vulnerable persons under Article 21(3), [in addition to] undermining the right to dignity.

Attorney General v. Kituo Cha Sheria [2013]⁶⁴



CORE CONCLUSION FOR AID AGENCIES:

Aid organisations that provide healthcare, food assistance, education and other social services have a legal obligation to provide these services in a way which ensures all members of their target population can access them without discrimination on any basis, including SOGIESC status. This obligation applies both within and outside camp settings. In some cases, discriminating against service users on the basis of their SOGIESC will constitute a criminal act.

⁶² Attorney General v Kituo Cha Sheria & 7 others [2017] KECA 773 (KLR)
⁶³ Attorney General v Kituo Cha Sheria & 7 others [2013] KEHC 5406 (KLR)

⁶⁴ Ibid, para 69

Obligations of aid agencies under regional and international law

Though aid organisations are not bound by the full suite of obligations imposed on states under international law, they have **residual human rights obligations towards the populations they serve**.⁶⁵ These obligations are particularly well-defined within African regional law, which goes further than other international law regimes in imposing duties on non-governmental entities.⁶⁶ The African Commission has held that non-state actors participating in the provision of social services are ‘subject to strict requirements under the [African] Charter’, including the requirement **‘to exercise human rights due diligence to ensure that all their operations do not interfere with the enjoyment of human rights or facilitate abuse of rights by any third party.’**⁶⁷ According to the Commission, ‘exercising human rights due diligence’ requires organisations to do the following:⁶⁸

Put in place internal mechanisms to regularly assess any adverse impacts their operations, practices, and services may have on human rights



Consult with affected groups and provide platforms for meaningful participation before, during and after the project cycle



Disclose financial and operational information to the public in an accessible and transparent manner



Refrain from imposing or facilitating policies that would nullify or impair State capacity to meet international human rights obligations

UN agencies and other international organisations (IOs) have been confirmed by the International Court of Justice (ICJ) to be subjects of international law. This means that they **can be held liable for violating international law**, in a similar way to states.⁶⁹ The International Law Commission’s (ILC) Articles on the Responsibility of International Organizations confirms that IOs may commit ‘internationally wrongful acts’ through both acts and omissions.⁷⁰

⁶⁵ See MAYA JANMYR, PROTECTING CIVILIANS IN REFUGEE CAMPS: UNABLE AND UNWILLING STATES, UNHCR AND INTERNATIONAL RESPONSIBILITY 257 (2013); Reparation for Injuries Suffered in the Service of the United Nations, adv. opinion, 1949 I.C.J. 174.

⁶⁶ African Charter, Art. 27; ACHPR (2019) ‘Advisory note to the African group in Geneva on the legally binding instrument to regulate in international human rights law, the activities of transnational corporations’, available at <https://achpr.au.int/en/news/communiqués/2019-11-04/advisory-note-african-group-geneva-legally-binding-instrument>; ACHPR (2022) ‘General Comment 7: State Obligations Under the African Charter on Human and People’s Rights in the Context of Private Provision of Social Services’, available at <https://achpr.au.int/en/documents/2022-10-20/general-comment-7-state-obligations-under-african-charter-human>

⁶⁷ ACHPR (2022) ‘General Comment 7: State Obligations Under the African Charter on Human and People’s Rights in the Context of Private Provision of Social Services’, available at <https://achpr.au.int/en/documents/2022-10-20/general-comment-7-state-obligations-under-african-charter-human>, p. 35.

⁶⁸ ACHPR (2022) ‘General Comment 7: State Obligations Under the African Charter on Human and People’s Rights in the Context of Private Provision of Social Services’, available at <https://achpr.au.int/en/documents/2022-10-20/general-comment-7-state-obligations-under-african-charter-human>, p. 48.

⁶⁹ Interpretation of Agreement of March 1951 between the WHO and Egypt, adv. opinion, 1980 ICJ 90.

⁷⁰ Even if the Articles on the Responsibility of International Organizations (ARIO) are not customary international law, they are arguably “general principles of law” that are binding on IOs under the ICJ’s 1980 advisory opinion and ICJ Article 38(1)(c). See Interpretation of Agreement of March 1951 between the WHO and Egypt, adv. opinion, 1980 ICJ 90; ICJ art. 38(1)(c).

Jus cogens norms

Fundamental, overriding and absolute principles of international law, which cannot be altered through any other instrument or agreement.

IOs and their officials are generally protected from most legal liability by privileges and immunities.⁷¹ **These privileges and immunities are limited to official acts, however – and acts considered to contravene human rights that have attained *jus cogens* status under international law can never be considered official.**⁷² The right to life and the prohibition against torture are *jus cogens norms*.⁷³ The High Court of Kenya has also recognised the right to non-discrimination as having attained *jus cogens* status.⁷⁴ Thus, IOs can be held liable for acts that violate the right to life, the prohibition against torture, and arguably the right of non-discrimination, and would be unable to assert privileges and immunities as a defence.

CORE CONCLUSION FOR AID AGENCIES:

All aid organisations operating in Kenya must undertake ‘human rights due diligence’ to comply with their obligations under regional and international human rights law, including undertaking the steps enumerated above. The immunity of UN agencies may be pierced in cases where *jus cogens* rights have been violated – meaning that their actions could be challenged in court.

Obligations of aid agencies and donors under their own laws

Donor entities have legal obligations under the laws of their own countries and regional systems – and often pass these obligations down to grantees through contractual agreement. This section focuses on laws and policies in place in the EU, Germany, and the US, as three of the largest donors to the humanitarian sector in Kenya. The EU and Germany are subject to EU and German laws requiring that their foreign aid expenditure abide by certain human rights standards, including the prohibition of discrimination on the basis of SOGIESC. The US, by contrast – which has abdicated its previous position as the world’s largest humanitarian donor, but still gives enough to retain substantial influence – has made receipt of its funds contingent on US laws and policies that roll back protections for transgender people and other marginalised groups. These new policies by the US do not nullify the previously existing obligations held by aid agencies and their grantees under multiple legal regimes – including those in their own countries.

European Union

The EU and its Member States are the biggest providers of humanitarian and development aid to Kenya.⁷⁵ The EU delivers its humanitarian support through ECHO (the European Civil Protection and Humanitarian Aid Operations) and through the Directorate General for International Partnerships, or IntPa. Through ECHO, the EU has supported the provision of **food assistance, healthcare, water, protection, and education** in Kakuma and Dadaab refugee camps, as well as the integration of refugees into national systems – including healthcare systems – in Kalobeyei settlement.⁷⁶

⁷¹ UN agencies are protected by a specialized Convention which provides for immunity from ‘every form of legal process’ unless waived in a particular case: Article III, Section 4 of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.

⁷² Regina v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte, 2 All ER 97 (House of Lords, March 24, 1999).

⁷³ Teraya Koji, Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-derogable Rights, European Journal of International Law 917, 927 (2001).

⁷⁴ International Law Commission, Report of the International Law Commission on the work of its seventy-first session (2019).

⁷⁵ EEAS (2025) ‘The European Union and Kenya’, available at www.eeas.europa.eu/kenya/european-union-and-kenya_en?is=352; European Commission (2026) ‘European Civil Protection and Humanitarian Aid Operations: Kenya’, available at https://civil-protection-humanitarian-aid.ec.europa.eu/where/africa/kenya_en

⁷⁶ Ibid; European Union (2019) ‘Enhancing self-reliance for refugees and host communities in Kenya’, available at https://trust-fund-for-africa.europa.eu/our-programmes/enhancing-self-reliance-refugees-and-host-communities-kenya_en

Both the EU and its member states are bound by its constitutive documents – particularly the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) – as well as regulations that are passed by the European Parliament and the Council of the EU.⁷⁷ The EU also regularly enters into binding bilateral or multilateral treaties with other states. Generally, organisations receiving EU funding enter into binding contractual relationships with the European Commission, governed by the EU Financial Regulation and the applicable model grant agreement. **The model grant agreement requires grantee organisations to implement their programmes in accordance with the same legal obligations that apply to the EU.**

Law	Contents
TEU	Art 21 provides that EU actions shall be guided by principles including 'the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, [and] the principles of equality' .
TFEU	Prohibits discrimination in EU actions, including on the basis of sexual orientation.
Regulation 2021/947 (the 'Cooperation Regulation') ⁷⁸	Gives effect to Art 21 of the TEU by mandating a human rights-based approach (HRBA) to foreign aid that: <ul style="list-style-type: none"> • Supports 'right holders in claiming their rights', with a focus on poorer, marginalised and vulnerable people and groups'. • Is guided by the principles of 'leaving no one behind', equality and non-discrimination on any grounds.⁷⁹
European, Commission Staff Working Document: Applying the HRBA to International Partnerships (2021) ⁸⁰	Sets out the components of a HRBA , which include the requirements to: <ul style="list-style-type: none"> • Perform a context analysis before funding a particular project to identify possible sources of discrimination and structural barriers to the realisation of human rights. • Continuously monitor projects for human rights risks. • Implement appropriate mitigation measures. • Establish clear and accessible complaints procedures for those who could be subjected to human rights violations. • The Working Document directs that if human rights risks are identified through the risk assessment process, one mitigation measure the EU may employ is to engage in a dialogue with the partner government about the importance of human rights.⁸¹ However, if the risk of human rights violations is high, this is not sufficient – instead, the EU must make concrete interventions to reduce human rights violations itself.⁸²
"Samoa Agreement" between EU and the OACPS; Africa Regional Protocol ⁸³	Requires Parties to the agreement, including the EU and Kenya, to 'secure a high level of protection and assistance' to forcibly displaced persons, including ensuring that they have safe access to basic services without discrimination. ⁸⁴ <p>If a party to the Agreement believes that another party has</p>

⁷⁷ Types of EU Law, EUR. COMM'N (2025), https://commission.europa.eu/law/law-making-process/types-eu-law_en.

⁷⁸ EU Regulation (2021) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument.

⁷⁹ Ibid.

⁸⁰ European Commission, Commission Staff Working Document: Applying the Human Rights Based Approach to EU International Partnerships, SWD(2021) 179 final, Brussels, 30 June 2021.

⁸¹ Ibid, 21.

⁸² Ibid, 27.

⁸³ Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States (OACPS), of the other part, known as the "Samoa Agreement".

⁸⁴ Samoa Agreement (Africa Regional Protocol), OJ (L 2023/2862), art. 79 §1, 3.

failed to fulfil any of the obligations, they may notify that party of their intent to engage in Article 101 dispute resolution procedures. These require the responding state to investigate the allegation and engage in consultations with the complaining state to reach a solution.⁸⁵ If the states cannot ultimately reach an agreement, they can suspend the Agreement.

EU instruments and procedures

The obligation to follow a HRBA requires EU institutions, EU countries, and EU-funded entities to take affirmative steps to proactively identify and mitigate the risks faced by LGBTQIA+ individuals within the programmes they implement or fund.⁸⁶

CASE STUDY:

In the 2021 Commission Working Document on the Human Rights-Based Approach, the Commission cited a vocational training project in Sudan as an example of successful implementation of the HRBA.⁸⁷ In that case, the EU provided funding for the project, which was implemented by an independent organisation. The EU was notified that few disabled individuals were participating in the programme. Concluding that this violated the principles of the HRBA, the Commission intervened; convened a working group to address the inaccessibility of the program; and ensured that accommodations were provided so that individuals with disabilities were supported to participate in it.⁸⁸

Alleged violations of EU instruments by the bodies of the European Commission can be challenged through the Court of Justice of the EU (CJEU), and/or to the European Ombudsman. Alleged violations of EU instruments by EU-funded NGOs can be challenged as **contractual violations** under the state law governing that contractual relationship.

The Samoa Agreement

On April 10, 2024, the European Parliament consented to the provisional application of the Partnership Agreement between the European Union and its Member States and the Members of the Organisation of African, Caribbean and Pacific States (OACPS), known as the 'Samoa Agreement.'⁸⁹ Under this agreement, **the EU can take steps to address a host state's failure to protect LGBTQIA+ refugees through the dispute resolution process provided for in Article 101.** If a party to the Agreement believes that another party has failed to 'fulfil any of the obligations,' they may notify that party of their intent to engage in Article 101 dispute resolution procedures.⁹⁰ This notification obligates the responding party to investigate the situation and work with the complaining state to achieve a 'mutually acceptable solution.'⁹¹ If the states cannot ultimately reach an agreement, they can suspend the Agreement in part or in full.⁹² **This dispute resolution process provides a straightforward forum for the EU to advocate for the protection of LGBTQIA+ individuals in countries and contexts receiving EU funding.**

⁸⁵ Ibid.

⁸⁶ See Ibid at 6 (listing sexual orientation and gender identity as a prohibited ground for discrimination).

⁸⁷ Ibid at 29.

⁸⁸ Ibid at 29.

⁸⁹ See Beverly Barrett, The Samoa Agreement, AMERICAN UNIVERSITY SCHOOL OF INT'L SERVICE (Dec. 11, 2024), <https://www.american.edu/sis/centers/transatlantic-policy/policy-briefs/20241211-samoa-agreement-caribbean-economic-development-and-eu-partnership.cfm>.

⁹⁰ Samoa Agreement (General Part), OJ (L 2023/2862), art. 101, § 5.

⁹¹ Ibid.

⁹² Ibid § 8.

CORE CONCLUSION FOR EU INSTITUTIONS, EU COUNTRIES, & EU-FUNDED ENTITIES:

EU institutions, EU states, and the organisations they fund have obligations to adopt a HRBA when supporting and implementing foreign assistance programmes. This requires undertaking **context and risk analyses** to identify possible risks for marginalised groups, **including SOGIESC minorities**, for all programmes. **Complaints mechanisms** for reporting human rights violations must be established and must be safe and accessible for LGBTQIA+ individuals. Where risks are identified or credible complaints are received, the EU and its partners must consult with those affected to determine how these may be **mitigated or redressed**. Options exist for the EU and its members states to address violations against LGBTQIA+ communities through Article 101 of the Samoa Agreement.

Germany

Germany has long been a key stakeholder in Kenya's refugee response, in part due to its robust support for UN agencies, including UNHCR. In 2024, it was the second largest donor to UNHCR globally – larger than the EU, and second only to the United States.⁹³ **Though this section focuses on German law, analogous arguments can be made about other EU states, most of which have regulations governing their own independent external action.**⁹⁴

Germany's Federal Ministry for Economic Cooperation and Development (BMZ) imposes certain mandatory requirements of human rights due diligence on all foreign aid spending. Mirroring the European system, the primary vehicle through which to meet these obligations is the implementation of a HRBA. German policy documents contain more exacting standards for HRBAs than those set down by the EU. These include the following requirements:⁹⁶

All projects must undergo a **human rights risk assessment** during the design phase. If a particular project is likely to "strengthen one human right" but will interfere with another, the planners must propose how to navigate this.

Data on human rights outcomes for each project must be maintained.

A **human rights complaints mechanism** that is accessible to affected and at-risk populations must be established.

BMZ conducts **random qualitative evaluations** of projects to ensure the HRBA is being fully implemented.

BMZ must **engage in dialogues** with partner states when adverse human rights effects are identified. If these do not adequately address the concerns, BMZ must develop an appropriate response - which could include stepping up cooperation with CSOs, or suspending or terminating the cooperation.

⁹³ UNHCR (2025) 'Germany', available at www.unhcr.org/europe/sites/europe/files/2025-03/bi-annual-fact-sheet-2025-02-germany.pdf. How this picture has changed in 2026, given the sweeping foreign aid cuts by both the US and Germany, is not yet clear - but at the UNHCR pledging conference in December 2025, Germany, but not the US, continued to be recognised as a top pledging country to the agency: UNRIC (2025) 'Early donor support tops \$1 billion for UNHCR 2026', available at <https://unric.org/en/early-donor-support-tops-1-billion-for-2026-but-widening-funding-gaps-leave-millions-at-risk/>

⁹⁴ See generally Commission Staff Working Document — Tool-Box: A rights-based approach, encompassing all human rights for EU Development Cooperation, SWD(2014) 152, 30 April 2014 at 12 (discussing examples of human rights due diligence frameworks in Finland, Germany, Austria, Denmark, Spain, and Sweden).

⁹⁵ FED. MINISTRY FOR ECON. COOP. AND DEV., HUMAN RIGHTS STRATEGY FOR GERMAN DEVELOPMENT POLICY (2024) at 4, 16.

⁹⁶ FED. MINISTRY FOR ECON. COOP. AND DEV., HUMAN RIGHTS STRATEGY FOR GERMAN DEVELOPMENT POLICY (2024) at 4, 16, 20; FED. MINISTRY FOR ECON. COOP. AND DEV., GUIDELINES ON INCORPORATING HUMAN RIGHTS STANDARDS AND PRINCIPLES, INCLUDING GENDER, IN PROGRAMME PROPOSALS FOR BILATERAL GERMAN TECHNICAL AND FINANCIAL COOPERATION (2013) [hereinafter BMZ GUIDELINES FOR COOPERATION], at 2, 12, 18, 19, 22.

Non-discrimination is one of the key pillars of Germany's HRBA.⁹⁷ BMZ working documents specifically identified the risk of human rights violations occurring where **'certain groups are stigmatised by society and thus have no access to health services [or education,']** and have stated that if state actors 'specifically aim to exclude members of certain groups or political opponents from services,' **they would not be eligible for funding.**⁹⁸ This non-discrimination principle explicitly applies to SOGIESC-based discrimination.⁹⁹

Decisions, acts, and omissions made by BMZ in its funding decisions can be challenged through the complaint mechanisms operated by its implementing agencies, the German Agency for International Cooperation (GIZ) and KfW Development Bank. BMZ is required by German law to ensure these complaints mechanisms are accessible to populations affected by BMZ programmes and operations.¹⁰⁰ These acts may also be subjected to parliamentary scrutiny by the Bundestag Committee on Economic Cooperation and Development, to which the BMZ Minister is accountable.¹⁰¹

CORE CONCLUSION FOR GERMANY AND OTHER DONORS:

Donor states must review their own policy documents and the requirements of their own human rights due diligence processes. Some donors, like Germany, will have internal requirements that are more onerous than those mandated by the EU or international human rights law. Decisions made by donors may be challenged through their own internal complaints procedures, and/or through their own judicial or administrative review processes.

United States

The US has historically ranked as the world's largest humanitarian donor. Until 2024, it provided approximately 60% of the humanitarian aid received by Kenya¹⁰² and 40% of the global budget of the UNHCR.¹⁰³ In 2025, the US government (USG) announced sweeping aid cuts that reduced its UN humanitarian contributions from as much as \$17 billion in recent years to \$2 billion – **leaving a funding vacuum that no other donor has come close to filling.** The current USG has also begun **subjecting its foreign assistance to certain conditions,** reflecting domestic ideological political agendas opposing diversity, equity and inclusion (DEI) and transgender rights.

On 26 February 2026, all recipients of USG funding became subject to an expanded version of its 'Mexico City Policy' (known as the '*Mexico City Policy Rule*'). The new policy extends existing prohibitions on US foreign assistance to abortion, sexual health and family planning services to also encompass programmes that promote what the administration labels **'gender ideology' – which the administration uses to refer to the idea that a person's gender can be different to their sex assigned at birth**¹⁰⁴ - and DEI (which traditionally refers to 'Diversity, Equity, and Inclusion', but which the USG claims stands for 'Discriminatory Equity Ideology').¹⁰⁵ The primary relevance of this policy from the per-

⁹⁷ Ibid at 12.

⁹⁸ BMZ GUIDELINES FOR COOPERATION at 3.

⁹⁹ See FED. FOREIGN OFF. AND FED. MINISTRY FOR ECON. COOP. AND DEV., FEDERAL GOVERNMENT LGBTI INCLUSION STRATEGY FOR FOREIGN POLICY AND DEVELOPMENT COOPERATION (2021) at 2 (describing how Article 21 of the EU Charter, Article 3 of the German Basic Law, Article 14 of the ECHR, and Article 2 of the ICCPR all prohibit discrimination against LGBTQIA+ persons).

¹⁰⁰ Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz).

¹⁰¹ Federal Ministry for Economic Cooperation and Development (BMZ) (2026) 'Development policy in Parliament', available at <https://www.bmz.de/en/ministry/structure-and-organisation/development-policy-in-parliament-34910>

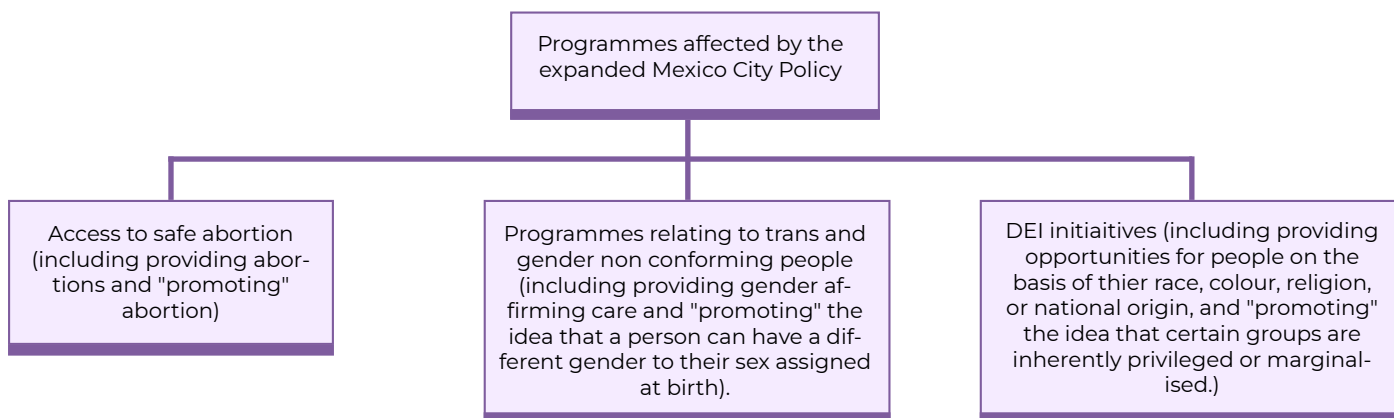
¹⁰² Kenya received \$359.2 million in humanitarian aid, with the US being by far the largest donor, contributing \$207 million (almost or 60% of the total): A. Halakhe (2025) 'A Way Forward as Aid Cuts Threaten Progress for Refugee Integration in Kenya', Refugees International, available at www.refugeesinternational.org/reports-briefs/a-way-forward-as-aid-cuts-threaten-progress-for-refugee-integration-in-kenya/

¹⁰³ Donare (2025) 'The Largest Humanitarian Donors', available at https://donare.info/en/background/largest_humanitarian_donors; L. Carretero (2025) 'After US funding freeze, UNHCR concerned about 'dramatic consequences' for refugees' InfoMigrants, available at www.infomigrants.net/en/post/63596/after-us-funding-freeze-unhcr-concerned-about-dramatic-consequences-for-refugees

¹⁰⁴ US State Department (27 January 2026) 'Combating Gender Ideology in Foreign Assistance', Public Notice: 12931, available at www.federalregister.gov/documents/2026/01/27/2026-01516/combating-gender-ideology-in-foreign-assistance

¹⁰⁵ US State Department (27 January 2027) 'Combating Discriminatory Equity Ideology in Foreign Assistance Rules', Public Notice 12932, available at: www.federalregister.gov/documents/2026/01/27/2026-01517/combating-discriminatory-equity-ideology-in-foreign-assistance-rules

spective of LGBTQIA+ inclusion is that it **prohibits the provision of gender affirming care to transgender and gender non-conforming (TGNC) people** for all organisations receiving USG funding; and that for organisations based outside the US, it also **prohibits the ‘promotion’ of the ‘ideology’ that transgender people exist**. (Organisations registered within the US are given more flexibility because they are protected by US constitutional protections on freedom of speech.)



The policy provisions on ‘gender ideology’ and ‘DEI’ each prohibit two categories of activities: one which relates to implementing specific activities; and another relating to the ‘promotion’ of these ‘ideologies’, which is broadly and opaquely defined. The contents of these provisions are described briefly below. For a more comprehensive analysis of the expanded Mexico City Policy Rule, and how it will impact LGBTQIA+ communities in humanitarian settings, please read our analysis, [US Mexico City Policy Rule Expansion and Its Implications for LGBTQIA+ Inclusion: Explainer and Recommendations](#).

Conduct prohibited	Applies to	How this is defined
<i>Providing gender affirming medical care</i>	All programming by all organisations receiving USG funding, regardless of whether that specific programme receives USG funding.	Gender affirming medical care is defined to include medical or surgical interventions to affirm a person’s gender. Unlike the definition of gender-affirming care provided by the WHO, ¹⁰⁶ it does not encompass social, psychological, or behavioural interventions for transgender and gender non-conforming (TGNC) people.
<i>Promoting ‘gender ideology’</i>	All programming by organisations receiving USG funding registered outside the US, regardless of whether that specific programme receives USG funding. Programmes by US-registered organisations that are receiving US funding	The policy defines ‘gender ideology’ as one ‘that replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity’ – thereby specifically targeting TGNC identities. What constitutes ‘promotion’ is left vague, but a non-exhaustive list includes: <ul style="list-style-type: none"> • Providing information about gender-affirming care. • Advocating with governments for greater legal protections for TGNC people.¹⁰⁷

¹⁰⁶ WHO (2026) ‘Gender incongruence and transgender health in the ICD’, available at: www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd

¹⁰⁷ Above n 1, in section (F) (Definitions), definition of ‘promoting gender inequality’: “Lobbying, pressuring, or encouraging a foreign government to provide special legal status or protections based on gender identity”.

		<ul style="list-style-type: none"> Acknowledging gender diversity in sexual and reproductive health (SRH) education/ training initiatives.¹⁰⁹
Engaging in 'DEI-related discrimination'	All programming by all organisations receiving USG funding, regardless of whether that specific programme receives USG funding.	Defined this as any acts which create distinctions between people on the basis of (1) race, (2) colour, (3) religion, or (4) national origin , including as inclusion or preference criteria for 'employment, contracting, program participation, resource allocation, or similar activities or benefits.' ¹¹⁰
Promoting 'DEI ideology'	<p>All programming by organisations receiving USG funding registered outside the US, regardless of whether that specific programme receives USG funding.</p> <p>Programmes by US-registered organisations that are receiving US funding.</p>	<p>The policy refers to 'discriminatory equity ideology', which it defines as categorising a group of people as 'privileged' or 'oppressed' by primary reference to their race, colour, religion, sex, or national origin (the same categories listed as constituting DEI discrimination, but with the addition of sex).</p> <p>The absence of a comprehensive definition of what would constitute promotion under this section makes it difficult to predict what programmes would be prohibited under this provision, but programmes that acknowledge power imbalances along racial or gender lines could be targeted.</p>

This new policy specifically discriminates on the basis of gender identity by targeting gender affirming care and any advocacy on behalf of TGNC people. It does not discriminate on the basis of sexual orientation. Despite this, past experience with both anti-LGBTQIA+ policies and previous iterations of the Mexico City Policy suggest that it is likely that organisations will react to the imposition of this policy by **broadly excluding all LGBTQIA+ communities from their programming.**

Removing access to services for transgender people or any other members of the LGBTQIA+ community would contravene the obligations of US-funded organisations under multiple other legal frameworks. **None of the legal regimes discussed in this briefing carve out exceptions for where donor requirements oblige implementers to contravene established human rights obligations.**

CORE CONCLUSION FOR AID ORGANISATIONS AFFECTED BY THE MEXICO CITY POLICY:

The introduction of USG funding conditions does not suspend the legal obligations that apply to aid organisations and donors under every other source of law analysed in this brief. Organisations operating in Kenya remain bound by Kenyan constitutional and statutory law, African regional law, general international law, their contractual obligations to other donors, and, where applicable, the domestic law of their country of registration. These obligations require them to ensure that transgender people, and all other LGBTQIA+ individuals, can access their services on an equal basis.

¹⁰⁸ Ibid: "Conducting a public-information campaign... regarding acceptance of gender ideology".

¹⁰⁹ Ibid: "Using or teaching sex education materials (including books, curricula, media, etc.) that include gender ideology, such as the idea that it is possible to change one's sex, to be born in the wrong body, or instructing on the use of pronouns that do not correspond to an individual's sex."

¹¹⁰ Above n 2, section (F) (Definitions).

Conclusion and recommendations for aid agencies

In the PRIDE Centre's engagements with aid organisations in Kenya, we regularly encounter **two misconceptions** about the legal frameworks applicable to LGBTQIA+ inclusion in humanitarian responses: first, that it is legally complicated or challenging to explicitly target LGBTQIA+ populations in aid programming; and second, that organisations are barred from providing aid and services to refugees and asylum seekers who are living outside the camps and who have not been granted an urban pass.

In reality, providing services to urban-based refugees, including those without documentation allowing them to live in these areas, is legal, constitutionally protected, and often – such as when refugees need emergency medical care – statutorily mandated, with criminal penalties for failure to comply. Kenyan law also obligates aid organisations to provide their services without discrimination on the basis of SOGIESC. Thus, while many aid actors are worried that it may be illegal to include **LGBTQIA+ populations in their programming**, in reality, it is illegal not to.

The legal rights of LGBTQIA+ populations to equal access to services are operationalised through corresponding **legal obligations on the state and non-state actors who provide and fund these services**. These obligations require aid organisations and their donors to take proactive steps to ensure LGBTQIA+ communities are included in programming and service delivery; to conduct human rights due diligence to reduce the possibility of human rights violations associated with their programmes; to ensure LGBTQIA+ populations are consulted in the design of their programmes and given the opportunity to submit complaints if violations occur; and to respond proactively to both identified risks and allegations of abuse. **These obligations are not suspended for organisations that are subject to the expanded Mexico City Policy.**

To ensure compliance with these obligations, the PRIDE Centre makes the following recommendations, applicable to UN agencies, NGOs, INGOs, and donors.

1. Review current programming for compliance with all legal obligations.

All aid organisations operating in Kenya should conduct a review of their current programming to assess whether they are meeting the legal obligations set out in this report. As this report demonstrates, these obligations are not aspirational — they are legally enforceable, and in some cases their breach attracts **criminal liability, civil liability**, or both.

2. Ensure non-discriminatory service delivery.

Aid organisations providing social services must ensure that LGBTQIA+ individuals are able to access these without discrimination. **This is a legal obligation; not a policy choice.**

3. Provide services to urban refugees regardless of documentation status.

Service providers, including medical facilities, should not refuse services to refugees living outside of camps on the grounds that they lack refugee or urban documentation authorising them to reside in urban areas. In some contexts, such refusals **constitute a criminal offence.**

4. Support refugee-led LGBTQIA+ organisations and shelters

Make flexible funding available to refugee-led LGBTQIA+ organisations, who are the primary source of support and services to LGBTQIA+ refugee communities. Resource shelters to enable them to meet the basic needs of their residents, including shelter, food, healthcare, and protection, counselling, information and legal assistance.

5. Advocate with the Government of Kenya to resolve registration issues.

Leverage diplomatic and technical entry points with the Government of Kenya to lift the de facto freeze on processing LGBTQIA+ refugee applications, allowing access to third country resettlement options, and permitting them to live in urban areas and access critical services.

6. Insist on and support efforts to ensure inclusion and protection of LGBTQIA+ refugees in the Shirika Plan

Refugee-serving organisations and their donors should:

- Facilitate consultations between the Government of Kenya, UNHCR, and the LGBTQIA+ refugee and asylum seeker community regarding the Shirika Plan.
- Insist on the formal acknowledgement of LGBTQIA+ refugees and asylum seekers within the Plan.
- Negotiate exemptions, on a protection basis, for LGBTQIA+ refugees and asylum seekers from being required to settle in Shirika-designated communities in Turkana.
- Resource extensive training for security personnel, police, and local officials on appropriate and dignified treatment of LGBTQIA+ persons.

7. Implement human rights due diligence.

Donors and implementing organisations should:

- Regularly assess the risks of SOGIESC-related exclusion and human rights violations associated with their programmes;
- Develop tailored mitigation measures for SOGIESC-related risks;
- Consult LGBTQIA+ communities before, during, and after the programme cycle; and
- Integrate findings from these engagements into programme design and management.

8. Follow all applicable HRBA requirements.

The EU, member states, EU-funded organisations, states that have their own human rights-based approach (HRBA) requirements, and organisations subject to the laws of those states, must follow the HRBA that applies to them.

9. Establish accessible third-party complaints mechanisms.

Donors and aid organisations must put in place safe and accessible third-party complaints procedures for LGBTQIA+ individuals who have experienced discrimination or been denied services in the programmes they run or fund. They must engage with LGBTQIA+ civil society to design mechanisms that are safe and accessible to the community.

10. Review funding agreements with other donors for conflicting obligations.

Organisations that are subject to the Mexico City Policy, and who also receive funding from the EU, Germany, or other donors with human rights due diligence requirements, must review their grant agreements to identify conflicting obligations. Where conflicts exist, legal advice should be sought. Organisations should be vigilant in questioning whether the actions they have taken to comply with the Mexico City Policy Rule are truly required, or whether they are the result of fear-based over-compliance.

11. Donors should enforce their own human rights conditionalities.

The EU, Germany, and other donors with legal obligations to apply a HRBA should ensure grantees are complying with their contractual obligations towards LGBTQIA+ service users. This includes monitoring for signs of SOGIESC-based exclusion or violations, engaging with implementing partners where exclusion or violations are identified, and making clear that the human rights conditionalities within grant agreements can and will be enforced.

The International PRIDE Centre

The PRIDE Centre (Protection, Rights, Inclusion in Displacement & Emergencies) provides legal and policy analysis, preparedness, and programming tools for emergency response agencies to ensure inclusive programming for LGBTQIA+ persons in emergency, humanitarian, and development settings. For questions about this briefing or to discuss how the PRIDE Centre may be able to support your operations, please contact InternationalPrideCentre@pridecentre.org.

Acronyms

BMZ	Germany's Federal Ministry for Economic Cooperation and Development
CJEU	Court of Justice of the EU
CSO	Civil society organisation
DEI	Diversity Equity and Inclusion
DRS	Department of Refugee Services
ECHO	European Civil Protection and Humanitarian Aid Operations
IntPa	EU Directorate General for International Partnerships
FGD	Focus group discussion
GBV	Gender-based violence
GIZ	German Agency for International Cooperation
HRBA	Human Rights-Based Approach
(I)NGO	(International) Non-governmental organisation
ICJ	International Court of Justice
IDP	Internally Displaced Person
ILC	International Law Commission
IO	International Organisation
JRS	Joint Refugee Service
KFCB	Kenya Film Classification Board
KII	Key informant interview
LGBTQIA+	Lesbian, Gay, Bisexual, Trans, Queer, Intersex, Asexual, and other identities
MSM	Men who have sex with men
NGLHRC	National Gay and Lesbian Human Rights Commission
NHIS	National Health Insurance Scheme
RLO	Refugee-led organisation
RSD	Refugee status determination
SRH	Sexual and reproductive health
SOGIESC	Sexual orientation, gender identity or expression, and sex characteristics
OACPS	Organisation of African, Caribbean and Pacific States
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TGNC	Transgender and gender non-conforming
UNHCR	United Nations High Commission for Refugees
USG	US Government
WHO	World Health Organisation



The PRIDE Centre is rooted in a foundation of anti-racism and aid decolonisation across all outputs and operations. We embrace SOGIESC communities in all their diversity, inclusive of indigenous understandings of non-CIS sexual identity and gender expression and identity.

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Activity supported by the
Canada Fund for Local Initiatives
Activité réalisée avec l'appui du
Fonds canadien d'initiatives locales

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The PRIDE Centre wishes to thank the Global Human Rights Clinic at the University of Chicago Law School for their assistance on conducting the research for this report.