

HUMAN  
IS MY  
IDENTITY

# QUARTERLY DISCRIMINATION INDEX

Quarter 1, 2024

KENYA



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## ACKNOWLEDGEMENT

Amnesty International Kenya acknowledges the tireless efforts of its staff in researching, drafting, reviewing, and editing this Discrimination Index. Their commitment to human rights and their expertise have been instrumental in shaping this critical report.

We also extend our heartfelt appreciation to all the victims and survivors of discrimination, whose experiences and stories have inspired us to work towards a more just and inclusive society. This Discrimination Index is dedicated to you as we continue to advocate for the rights and dignity of all individuals, regardless of background or identity.

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## INTRODUCTION

### Why is the Discrimination Index Important?

A recent opinion poll commissioned by Amnesty International Kenya and Tribeless Youth has revealed that one in every two Kenyans has experienced discrimination, and 54% of those who experienced it did not take any action against it. These findings point to an alarming level of discrimination in the country. The poll aims to improve the understanding of discrimination, which is defined as the unjust or prejudicial treatment of people based on their age, sex, disability, sexual orientation, or ethnicity. In today's world, systemic inequalities and discrimination continue to persist; Amnesty International Kenya stands as a beacon of hope that is committed to reducing the injustices and fostering a society where every individual is treated with dignity and respect. Discrimination is when individuals or groups are systematically disadvantaged and denied the same opportunities, rights, or privileges that others enjoy. This can take many forms, including reduced access to education, economic opportunities, income inequality, healthcare access, representation in decision-making, access to justice, and social interaction. Discrimination perpetuates social inequalities, reinforces power dynamics, and undermines fundamental principles of fairness, dignity, and human rights.

In 2024, AIK aims to reduce hate speech and crime by 10% in order to promote respect for diversity and equality. An index will periodically assess Kenya's discrimination levels to measure progress towards this goal. The index will also measure the prevalence and nature of discrimination across various demographics, regions, and sectors.

### Why is Addressing Discrimination Urgent?

Our opinion poll found that 58% of respondents felt bad after experiencing discrimination. Of those, 32% reported experiencing mental health issues, 24% faced social exclusion, and 24% experienced other human rights violations due to discrimination. These numbers highlight the need for a comprehensive tool to measure progress in combating discrimination. Despite the efforts of organisations like AIK, hate speech and discriminatory practices are still prevalent. A systematic assessment, conducted periodically, is crucial to track the effectiveness of interventions and identify areas that require urgent attention. The Discrimination Index is vital in providing empirical data to inform evidence-based advocacy and policy reform initiatives. It can create awareness and hold duty-bearers accountable.

## OBJECTIVES AND SCOPE

The discrimination index is a tool that aims to measure discrimination prevalence across critical indicators such as gender, sexual orientation, age, and disability. It utilises data from media reports and secondary sources to develop a robust measurement tool. The priority groups for this index are youth, women, people with disabilities (PWDs) and individuals identifying across diverse sexual orientations, gender identities and expressions (SOGIE).

The index seeks to provide insight into the prevalence and dynamics of discrimination within contexts by leveraging existing datasets. This will contribute to evidence-based policymaking, advocacy efforts, and program interventions to combat discriminatory practices and promote equity and social justice.

### Objectives

- i. To develop a measurement tool to assess the prevalence of discrimination in Kenya across critical indicators such as gender, sexual orientation, age and disability.
- ii. To pinpoint sectors where discrimination is most pronounced, enabling targeted intervention strategies.
- iii. To utilise findings to raise public awareness about prevalent forms of discrimination and advocate for policy changes or advocacy-based initiatives.
- iv. To provide evidence-based insights to guide Amnesty International Kenya's advocacy efforts, ensuring they are targeted and responsive to the most pressing discrimination issues.

## Methodology

- i. Data collection through media tracking and secondary data collection to gather information on experiences and perceptions of discrimination.
- ii. Develop a discrimination index based on key indicators, assigning weights to different forms of discrimination based on their impact and prevalence.
- iii. Compile and analyze the data quarterly, producing a comprehensive report highlighting trends, emerging issues, and recommendations.

## SUMMARY OF DISCRIMINATION

1. Discrimination continues to persist as a legal and social issue. It intersects with factors such as gender, age, sexual orientation, gender identity and disability, resulting in tens of reported and unreported human rights violations.
2. At least 500 women have been killed between 2016–2015, with their gender being a motivating factor. The majority of those murdered were below the age of 35 years and were killed by intimate partners or people known to them.<sup>1</sup>
3. Identity-based discrimination continues to persist, with at least 133 individuals facing discrimination, based on their pregnancy and health statuses, by the Kenya Revenue Authority, a government agency, against constitutional and statutory provisions.
4. Social media platforms continue to be used as platforms perpetuating gender, sex, and social and economic status discrimination.
5. Only 13 out of 47 counties (28%) have complied with Section 65(1)(e) of the County Government Act on ensuring that not more than thirty per cent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county. Ten dominant ethnic communities occupy a significant proportion, with 45 communities in total.<sup>2</sup>
6. Only 1% of the County Public Service comprises Persons Living with Disabilities.<sup>3</sup>

## Discrimination Against Women

In Kenya, women experience discrimination in various spheres, including employment, education, and access to healthcare. Gender-based violence remains prevalent, with women disproportionately affected by domestic abuse, sexual assault, and harmful cultural practices.

In the first quarter of 2024, femicide cases were reported across the country. According to statistics from the Africa Data Hub, between 2016 and 2023, over 500 women have been killed. The majority of those murdered were below the age of 35 years and were killed by intimate partners or people known to them.<sup>4</sup> Additionally, a reliable source who sought anonymity informed Amnesty International Kenya that women in conservative communities and religious setups continued to experience discrimination and even killings based on discriminatory gendered norms.

Femicide is the most brutal manifestation of gender-based violence. It is unacceptable and must never be normalised. For the quarter one analysis, AIK reviewed and recorded 33 media reports detailing violence perpetrated against women throughout the country.

### *Number of Cases Between January 2024 – March 2024*

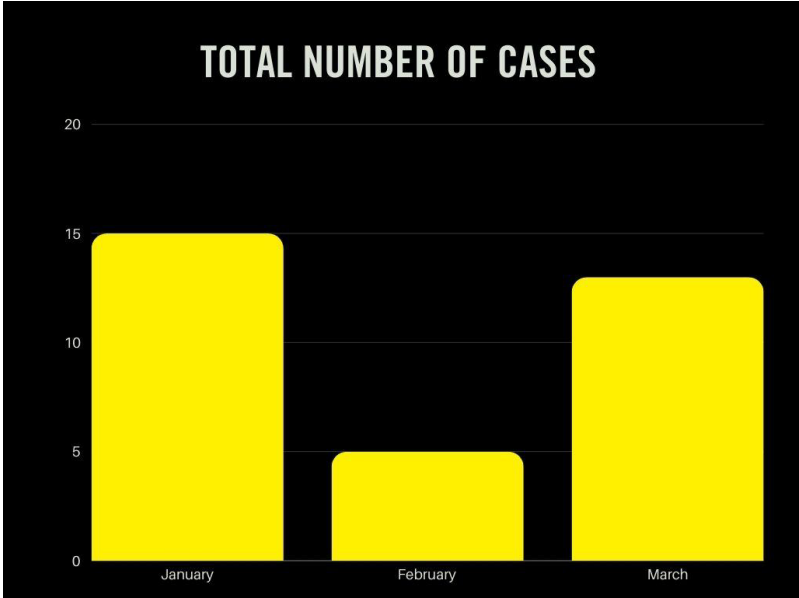
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<sup>1</sup> Africa Data Hub, Silencing Women Online Database

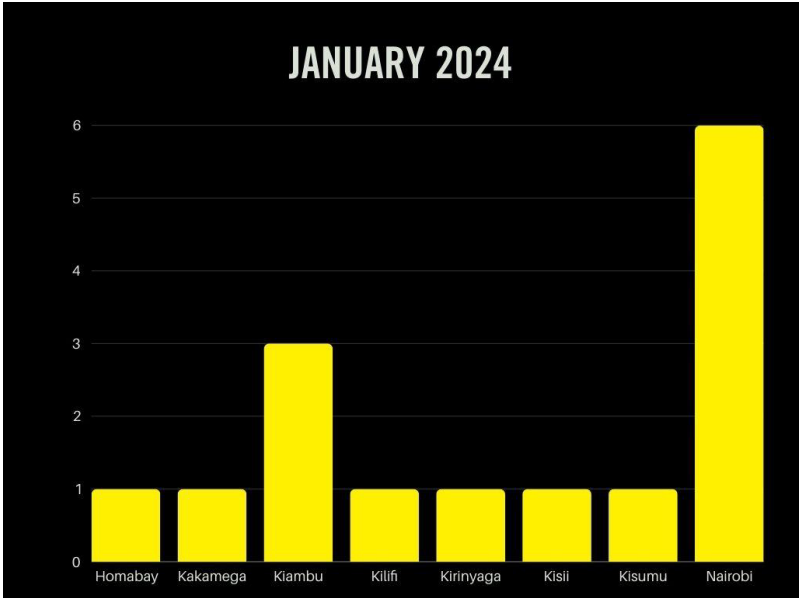
<sup>2</sup> National Cohesion and Integrity Commission's Ethnic and Diversity Audit of the County Public Service 2023 indicates that there is unequal distribution of employment opportunities in the County Public Service.

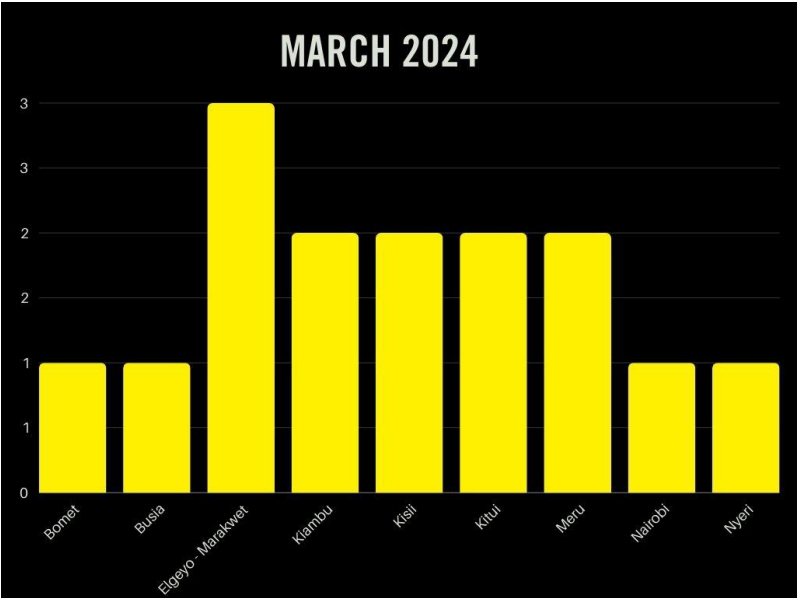
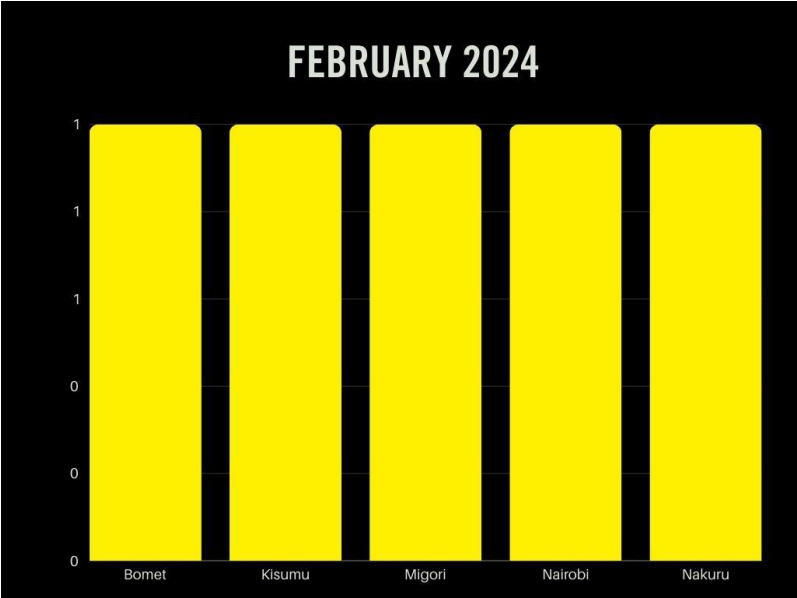
<sup>3</sup> The National Cohesion and Integrity Commission's Ethnic and Diversity Audit of the County Public Service 2023

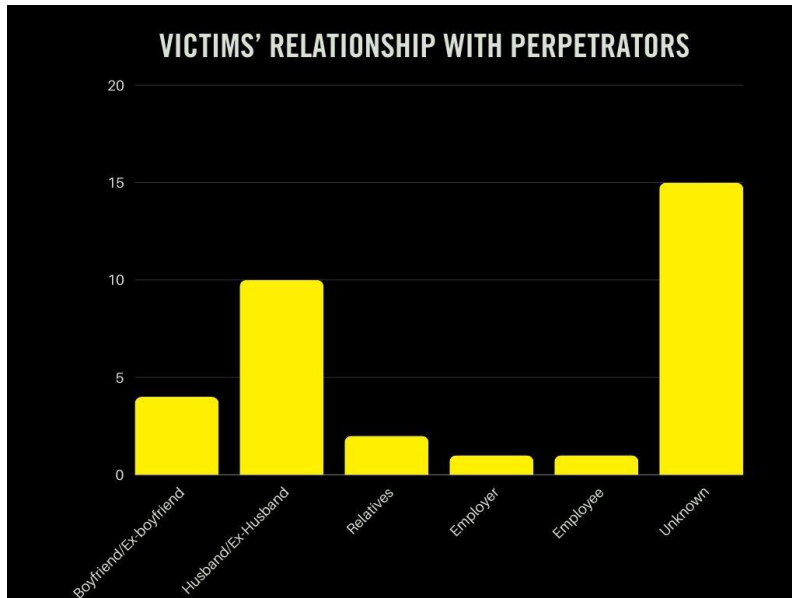
<sup>4</sup> Africa Data Hub, Silencing Women Online Database



*Case Distribution by County Between January 2024 – March 2024*







### Discrimination Against Youth

Kenya's youth face discrimination in employment, education, and political representation. The National Cohesion and Integrity Commission's Ethnic and Diversity Audit of the County Public Service 2023 indicates opportunities in the County Public Service. Ten dominant ethnic communities occupy a significant proportion, with 45 communities in total. This means that only 13 out of 47 counties (28%) have complied with Section 65(1)(e) of the County Government Act on ensuring that not more than thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county. This is a significant determining factor when it comes to the employment of youth since they hold most of the entry-level positions.

In March 2024, two state corporations came under scrutiny over skewed hiring processes that will potentially disadvantage the youth. The Kenya Revenue Authority rejected one hundred and thirty-three job seekers on account of their pregnancy and HIV status. 133 recruits were subjected to forced testing. The hiring process also seemed to favour two major tribes. Further, the National Social Security Fund managing trustee revealed to the Senate Equal Opportunity and Regional Integration Committee that five dominant ethnic communities hold 74.25 per cent of the workforce. High rates of youth unemployment exacerbate socio-economic inequalities, leading to disenfranchisement and limited access to opportunities. According to the Kenya National Bureau of Statistics, unemployment was 4.90 per cent within the last quarter of 2022.

In Kenya, discrimination against youth extends beyond skewed hiring processes to encompass restrictions on personal expression, particularly evident in banning certain dress codes in university settings. In February 2024, Moi University released guidelines on dressing, banning miniskirts, cropped blouses or shirts, ripped trousers, and all forms of plastic shoes, among others. The directive seems to have been replicated by the Technical University of Mombasa in March 2024, further including their ban on "sexually revealing clothing", caps or hats and clothes that are adorned with political symbols or images. This imposition not only infringes upon the fundamental principle of bodily autonomy but also compromises youth freedom of expression, identity, and individuals' integrity. Dictating what students can or cannot wear, institutions risk perpetuating harmful norms that prioritise conformity over

individuality and enforce a culture which is generally discriminatory in the sense that they apply in a sexist way as it is prone to abuse and more heavily enforced on women.

Discrimination based on age also manifests in societal perceptions that undermine the capabilities and contributions of young people, hindering their ability to shape their futures and participate meaningfully in decision-making processes.

### Discrimination Against Persons of Different Sexual Orientations and Gender Identities

LGBTQ+ individuals in Kenya encounter pervasive discrimination and violence due to prevailing societal stigma and legal prohibitions against same-sex relations. Discrimination against individuals based on their sexual orientation, gender identity, and expression leads to marginalization, harassment, and denial of basic rights, including access to healthcare and housing.

In February and March 2023, there were two online reported cases of physical assault leading to grievous bodily harm. Reactions from the online community uncovered the growing normalization of violence against the LGBTQ+ community. The cases could be more, considering the level of underreporting that has often been seen regarding the community. In February 2024, anti-LGBTQ+ lobby groups and religious organisations reaffirmed their position that the rights and freedoms of the LGBTQ+ community are “alien”, not just to Africans but to “anyone with a moral fibre in their being.”<sup>5</sup> They oppose amendments to the Penal Code that would decriminalise same sex relations and propose hiring of religious leaders in public schools to “fight” homosexuality. Further, the Family Protection Bill, being popularised but is yet to be tabled in parliament, contains punitive provisions that stigmatise, criminalise and incarcerate Kenya’s sexual minorities. The Bill also proposes a ban on gay Pride parades, assemblies, street marchers, cross-dressing in public and all LGBTQ-related activities.

These incidents underscore the broader pattern of discrimination and violence faced by LGBTQ+ individuals in Kenya, highlighting the pressing need for comprehensive measures to combat homophobia, promote acceptance, and ensure the safety and dignity of all members of society.

### Discrimination Against Persons with Disabilities (PWDs)

Persons with disabilities in Kenya confront multiple barriers to social inclusion and equal participation in society. Discrimination against PWDs manifests in inaccessible infrastructure, limited employment opportunities, and lack of access to essential services such as education and healthcare. The National Cohesion and Integrity Commission’s Ethnic and Diversity Audit of the County Public Service 2023 indicates that there is limited representation of persons with disabilities within the public service (1%).

Negative attitudes and stereotypes further marginalise PWDs, impeding their autonomy and perpetuating cycles of dependency. Efforts to address discrimination against PWDs require comprehensive measures to promote accessibility and awareness-raising campaigns to challenge misconceptions and foster a more inclusive society.

## LEGAL AND POLICY ANALYSIS

Discrimination based on gender, age, disability and sexual orientation, gender identity and expression remain a significant challenge, despite legislative and policy efforts aimed at promoting equality and combating discrimination. This legal and policy analysis examines some current legal frameworks and policies specific to addressing discrimination towards women, youth, people with disabilities and individuals identifying across diverse SOGIE.

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<sup>5</sup> Washington Blade, [Kenyan MPs to consider anti-LGBTQ measures when Parliament reconvenes](https://www.washingtonblade.com/2024/02/23/kenyan-mps-to-consider-anti-lgbtq-measures-when-parliament-reconvenes/) ([washingtonblade.com](https://www.washingtonblade.com/))

Non-discrimination is a national value, and the government is mandated to proactively protect human rights (Article 20 CoK). Article 27(2) calls for legislative measures to redress discrimination. Article 27 (4) of the Constitution of Kenya states that no person shall be discriminated against based on gender, sex, color, religion, conscience, marital status, pregnancy, health status, ethnic or social origin, color, age, disability, culture, dress language or birth. The Constitution of Kenya guarantees equality and freedom from discrimination (Article 27), human dignity (Article 28), the right to freedom and security of the person (Article 29), and protection from slavery, servitude and forced labour (Article 30). It further provides that fundamental rights and freedoms may not be limited (Article 25). These rights underpin the commitment to nurturing and protecting the well-being of the individual, the family, communities, and the nation, as indicated in the preamble of the Constitution and the national values in Article 10.

### Women

- i. The Constitution of Kenya guarantees equal rights and opportunities for women, including in political, economic, and social spheres (Article 27, 38, 40, 43, 60 CoK).
- ii. The Sexual Offences Act (2006) makes provisions on sexual offences, including their definition and punishment thereof, protecting women against sexual and gender-based violence.
- iii. The Protection Against Domestic Violence Act (2015) provides for the protection and relief of victims of domestic violence.
- iv. The Matrimonial Property Act (2013) provides for the rights and responsibilities of spouses in relation to matrimonial property. This includes the definition of monetary and non-monetary contributions, protecting women from financial abuse and discrimination within marital relationships.
- v. The National Policy on Gender and Development (2019) sets legislative and administrative measures to address the existing gaps in the realisation of gender equality and women's empowerment.
- vi. The Women Enterprise Fund offers accessible and affordable financial and innovative business support to Kenyan women.

### Youth

- i. Article 55 of the Constitution of Kenya obligates the state to take measures, including affirmative action programmes, to ensure that the youth have access to relevant education and training, have opportunities to participate in political, economic and social aspects of life, access employment and are protected from harmful cultural practices and exploitation.
- ii. The Kenya Youth Development Policy (2019) seeks to provide an opportunity for improving the quality of life for the youth in Kenya through their empowerment and participation in economic and democratic processes and in community and civic affairs.
- iii. The Youth Enterprise Development Fund champions the creation of employment for the youth through enterprise development.

### Persons of Different Sexual Orientations and Gender Identities

The spirit and letter of Article 27 require that all persons are protected from discrimination regardless of their sex, gender, identity or other grounds. This article should be interpreted as widely as possible to create room for all people and prevent discrimination. The legal framework does not explicitly protect against discrimination based on SOGIE, and same-sex relationships remain criminalised under the Penal Code (Section 162, 163 and 165). Further, marriage in Kenya is only provided for persons of opposite sexes (Article 45 of the Constitution of Kenya).

However, recent years have seen some progress, with landmark court rulings affirming the rights of LGBTQ+ individuals. For instance, in *NGO Co-ordination Board Versus Eric Gitari & 4 others [2023 eKLR]*, the Supreme Court of Kenya pronounced itself on the freedom of association, finding that denying the registration of the National Gay and Lesbian Human Rights Commission was unconstitutional.

## Persons with Disabilities (PWDs)

- i. Article 54 (1) of the Constitution of Kenya highlights the rights and entitlements of persons with disabilities, including: -
  - The right to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning.
  - The right to access educational institutions and facilities for persons with disabilities integrated into society to the extent compatible with the person's interests.
  - The right to reasonable access to all places, public transport and information.
  - The right to use Sign language, Braille or other appropriate means of communication.
  - The right to access materials and devices to overcome constraints arising from the person's disability.
- ii. Article 54 (2) of the Constitution of Kenya obligates the state to ensure the progressive implementation of the principle that at least five per cent of the members of the public in elective and appointive bodies are persons with disabilities.
- iii. The Persons with Disabilities Act (2003) provides for the rights and rehabilitation of persons with disabilities and seeks to equalise opportunities for persons with disabilities. The Act forbids discrimination against PWDs.

## Legal and Policy Gaps

It is important to thoroughly review existing legislation, identifying and rectifying critical gaps to give full effect to the provisions of Article 27. Specifically, we advocate for substantive amendments to key laws, aligning them with constitutional provisions to combat discrimination in all its forms. These include: -

- i. Expand the purpose of the National Cohesion and Integration (NCI) Act to encourage national cohesion and integration by outlawing all forms of discrimination as set down under Article 27 of the Constitution.
- ii. Redefine and expand the functions of the National Cohesion and Integration Commission (NCIC) to empower it with resources to act against all forms of discrimination, including homophobia and xenophobia.
- iii. Amend the Penal Code to identify femicide as a stand-alone offence. The recognition of femicide as an offence within the penal code will allow the government to prioritise the investigation and prosecution of femicide cases.
- iv. Amend the Employment Act 2007 section 6 (2) which reads, "An employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment."
- v. Enact regulations to operationalize the Protection Against Domestic Violence Act 2015.
- vi. Amend the Refugees Act 2021 section 19(2) which reads "Subject to subsection 19(1) a refugee or an asylum seeker engaging in a conduct that is in breach or is likely to result in breach of public order or contrary to public morality under the law irrespective of whether the conduct is linked to his claim for asylum or not, may be expelled from the Kenya by an order of the Cabinet Secretary."
- vii. Amend the Community Groups Registration section 12(b) which reads "The Director may reject an application under section 9 if— (b) the Director has reasonable cause to believe that the applicants have among their objects, the pursuit of an unlawful or immoral cause or purpose that is prejudicial to the peace, welfare or good order of the community or is likely to carry out unlawful or immoral actions."

## RECOMMENDATIONS

Building upon the findings and insights garnered from the Discrimination Index, it becomes evident that targeted interventions and policy reforms are imperative to foster a more inclusive and equitable society. The following recommendations are put forth, aiming to uphold fundamental human rights and promote social justice for all individuals, irrespective of their age, gender, sexual orientation, or disability status.



- i. Advocate for substantive amendments to key laws to align them with constitutional provisions (Article 27) and combat discrimination in all its forms.
- ii. Address discriminatory hiring processes within the public service and advocate for diversity and inclusion in workplaces across all industries.
- iii. Challenge discriminatory practices and policies within public educational institutions and public spaces to safeguard the freedom of expression and identity for all individuals.
- iv. Regularly conduct comprehensive assessments of discrimination levels to track progress, identify areas requiring urgent attention, and advocate for targeted intervention strategies.
- v. Launch public awareness and sensitisation campaigns to challenge stereotypes, misconceptions, and harmful cultural practices contributing to discrimination.
- vi. Kenya to withdraw its reservations on the African Charter on Human and Peoples' Rights on the rights of women in Africa.

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Riverside Studios, Riverside Lane, Off Riverside Drive

P.O. Box 1527 - 00606 Nairobi, Kenya

Email: [amnesty.kenya@amnesty.or.ke](mailto:amnesty.kenya@amnesty.or.ke)

Website: [www.amnestykenya.org](http://www.amnestykenya.org)