

**EMERGENCY RESPONSES
TO GENDER-RELATED
RIGHTS VIOLATIONS**

**THE RAPID RESPONSE
FUND IN KENYA**



ABOUT FRONTLINE AIDS

Frontline AIDS wants a future free from AIDS for everyone, everywhere. Around the world, millions of people are denied HIV prevention, testing, treatment and care simply because of who they are and where they live. As a result, 1.5 million people were infected with HIV in 2020 and 690,000 died of AIDS-related illness.

Together with partners on the frontline, we work to break down the social, political and legal barriers that marginalised people face, and innovate to create a future free from AIDS.

ABOUT THE RAPID RESPONSE FUND

The Rapid Response Fund (RRF) helps organisations and individuals to tackle HIV-related human rights challenges, including stigma, discrimination and threats of violence. Established in 2016, the Rapid Response Fund has so far granted \$4.4 million in more than 500 grants direct to community-led organisations working across 45 countries. This emergency support has helped tens of thousands of people who are marginalised and affected by HIV.

The RRF was established with funding from the Elton John AIDS Foundation to ensure that lesbian, gay, bisexual and transgender (LGBT+) people in emergency situations that are affecting their access to HIV treatment, prevention, care and support services get the support they need to protect their health, well-being and security. Since the end of 2019 the RRF has been funded by diverse income sources. In 2020 it was expanded to support COVID-19 responses for marginalised communities most affected by HIV, including people living with HIV, sex workers, LGBT+ people and people who use drugs.

The RRF re-launched in October 2021 with a new model through which Frontline AIDS continues to reach those left furthest behind. This new phase was possible with continued support from Irish Aid, Gilead Sciences and The Swedish International Development Cooperation Agency. This new model seeks to support organisational resilience in places where HIV-related human rights work is threatened, strengthen capacity for local emergency responses, and influence donors to make community responses a central part of HIV-related human rights programmes.

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INTRODUCTION

HUMAN RIGHTS BARRIERS TO HIV SERVICES

Progress on unlocking human rights barriers that stop people accessing HIV services is uneven across locations and communities most affected by HIV. This progress is also unstable and insecure. There are ongoing and emerging threats to human rights, including increased funding and mobilisation of anti-gender movements, the deepening of inequalities (not least due to the impact of COVID-19), the presence of harmful yet stubborn gender norms, and the discrimination and violence that arise from them.

Yet marginalised communities most affected by HIV, the organisations representing and supporting them, and the activists working with and for their rights frequently lack the resources they need to urgently respond to cases of stigma and discrimination, sexual and gender-based violence, and other gender-related human rights violations. They also lack the resources to mobilise against new harmful practices, policies and laws, and attacks on civil society organising. This not only threatens individual lives, it also puts at risk existing social, legal and political protections of people's rights and undermines HIV and human rights programming and advocacy work.

THE RAPID RESPONSE FUND

Frontline AIDS' Rapid Response Fund (RRF) addresses marginalised communities' lack of resources to tackle urgent HIV-related human rights challenges. Over the past 5 years it has issued over 500 emergency grants worth over \$4.4m in 45 countries and supported a diverse range of community-based organisations to strengthen their capacities.

Findings from evaluations of the RRF conducted in 2019 and 2021 recommended decentralising the grant-making model so that decision-making and grant holders are accountable to community members and peers. Decentralising the model offers the opportunity to improve the speed, value for money, sustainability and accountability of emergency responses to HIV-related human rights violations. It is also in line with calls to shift power from international organisations to local organisations led by and working closely with communities most affected by HIV. Moreover, over the past five years, an increasing number of community-led organisations have been trialling and operating their own emergency response funds. This study aims to help Frontline AIDS understand how it can best support such initiatives by examining the need for and access to emergency responses to sexual and gender-based violence and other gender-related human rights violations, as well as the relevance and impact of the RRF to date.

THE RAPID RESPONSE FUND IN KENYA

This case study examines the relevance and impact of the RRF in Kenya to help assess whether future in-country emergency response funds in Kenya and elsewhere are viable. It reviews the context of responses to sexual and gender-based violence in Kenya, grant holders' experience of accessing the RRF, and what marginalised communities need to be able to effectively prevent and respond to gender-based rights violations. It also provides recommendations for adapting the RRF to a de-centralised, in-country emergency response mechanism.

The analysis draws on insights from Kenyan organisations that accessed the RRF between 2016 and 2021. In that 5-year period, 84 emergency and challenge grants were made to 43 organisations supporting marginalised groups affected by HIV.¹ Between 2016 and early 2020, the fund exclusively served organisations led by or working closely with LGBT+ people. Since adapting to the COVID-19 pandemic, the fund has also served organisations led by and working closely with people living with HIV, people who use drugs and sex workers.

Emergency grants (for activities between one to three months) and challenge grants (for activities between one and six months)² were issued for housing, health, legal and livelihood support, immediate care after an experience of sexual or gender-based violence, psychosocial support, security measures, sensitisation, training and advocacy. The most frequent type of support provided by Kenyan grants was emergency housing and basic relief for individuals, as is the case for all countries where the RRF is available.

Kenya was selected for this case study because it generated the second highest number of applications to the RRF over the five years. Additionally, the level of civil society organising in Kenya, and the existing community infrastructure for human rights responses, makes it a suitable context to reflect on the opportunities presented by decentralising the RRF.



¹ For an overview of the grants awarded in Kenya across all RRF cycles see Annex 2. etc

² Emergency grants had a lower maximum value. Challenge grants were available for a higher value and often supported advocacy activities. A small number of 'proactive grants' were also provided via invitation from Frontline AIDS to organisations, or consortia of organisations, where there was a chronic need and opportunity for impact across a six-month period.



EMERGENCY RESPONSES TO GENDER-RELATED RIGHTS VIOLATIONS IN KENYA

CONTEXT

The legal and policy environment

Below is a brief analysis of the laws and policies in Kenya that shape the rights of marginalised communities and provide a legal framework for responding to sexual and gender-based violence and other gender-related human rights violations (referred to throughout the rest of this case study as 'gender-based rights violations').

National laws

The Kenyan Constitution contains a progressive Bill of Rights that guarantees basic rights and freedoms for all. This includes the rights to privacy, freedom of assembly, association and expression, non-discrimination, and the highest attainable standard of health. The Constitution makes no explicit mention of sexual orientation and gender identity or sex work as protected grounds. But the enshrined protection of rights and freedoms of all people in the Constitution – the superior law of the land – means that all other laws and policies, whether in existence or under development, can be tested via legal challenges to assess their conformity to these human rights standards.

In the last decade Kenya has seen the enactment of new laws and policies that provide additional layers of protection against gender-based rights violations. These include the 2015 Protection Against Domestic Violence Act and a national policy devised in 2014 for preventing and responding to gender-based violence. Parliament has taken action to strengthen protective legislation, for example, through the 2006 Sexual Offences Act. There has also been community-led action to repeal old laws, such as the 2009 Penal Code of Kenya, which contribute to increased discrimination, violence and abuse against LGBT+ people, sex workers and other marginalised communities.

National policies

The Second Kenya AIDS Strategic Framework (KASF II) 2020/21-2024/25 outlines the Government's HIV strategy over the next five years. In its recommendations on comprehensive HIV prevention packages for female sex workers, men who have sex with men, people who inject drugs and transgender people³ it recognises the need to address stigma, discrimination and violence against these communities. KASF II also recognises gender-based violence prevention and post-violence care for adolescent girls and young women. This national policy has laid the foundations for the rights of marginalised communities to access services for sexual and gender-based violence and sexual and reproductive health (SRHR).

Barriers to realising the rights of marginalised communities

Despite this seemingly progressive environment, sex workers and LGBT+ people in Kenya continue to experience gender-based rights violations. The following highlights the main contributing factors.

³ These are marginalised groups that the Kenyan government refers to as 'key populations' (meaning a population group most affected by HIV). It is important to note that people are disproportionately affected by HIV because they are marginalised not because they are part of a certain population group.

Law enforcement perpetrating rights violations

The existence of petty offences in Kenya's penal code and county by-laws, such as those of 'loitering', 'impersonation' and 'false pretence', are repeatedly used to violate the rights of marginalised communities. National and county police weaponise these laws to harass and arbitrarily arrest transgender people and sex workers, among others, often to solicit bribes. The long history of law enforcement being the perpetrators of rights violations means sex worker and LGBT+ communities do not trust them. This means that, where energies could be focused on strengthening referral networks to prevent and respond to gender-based rights violations to include law enforcement, resources must instead be spent on sensitisation trainings for the police before they are looped into such systems.

An uncoordinated response

Despite many national policies and frameworks recognising the need for multi-sector partnerships to support communities most affected by HIV, there is limited co-ordination between the different actors responsible for responding to sexual and gender-based violence and HIV in Kenya. This limitation means government actors are missing opportunities to partner with LGBT+, sex worker and other marginalised communities to support community-led and informed services to prevent and address gender-based rights violations. Partnership working is also needed to increase awareness among government actors about the link between gender inequality and sexual and gender-based violence and the laws that exist in Kenya to address such violence.

Opposition to the promotion of human rights

In Kenya, there continues to be active, organised and well-coordinated opposition to work that seeks to promote and protect the rights of LGBT+ people, sex workers and other marginalised communities. This opposition exists in movements that are pro-family, pro-life, right-wing conservative, anti-gender and anti-SRHR. These movements are well resourced and use harmful messaging that has been developed in the USA and Europe and disseminated across the Global South. This opposition attacks not only LGBT+ and sex worker led/serving organisations and initiatives, but all actors that support inclusive, human rights approaches.⁴

The impact of COVID-19

For communities that often share living space and resources, such as LGBT+ refugees and migrant sex workers, and sex workers in general whose livelihoods depend on close contact, the disruptions caused by the COVID-19 pandemic have been huge. The tough and ad-hoc COVID-19 restrictions the Kenyan Government brought in have greatly increased these communities' risk of gender-related rights violations and exposure to HIV. This is due to various factors, including economic pressures upon individuals, families and households, the inability to leave unsafe homes and the closure of shelters and services.⁵ Local mechanisms exist in Kenya that respond to gender-based rights violations. These are run by various actors, including public and private hospitals, county governments, SRHR NGOs and LGBT+ and sex worker-led and/or serving organisations.

⁴ Graff, A and Korolczuk, E (2021). *Anti-Gender Politics in the Populist Moment*, Routledge, UK.

⁵ See Frontline AIDS (2020). *Crackdown in Lockdown*, available at <https://frontlineaids.org/resources/crackdown-in-lockdown/> and Human Rights Watch (2021). *"I Had Nowhere to Go" Violence Against Women and Girls During the Covid-19 Pandemic in Kenya*, available at <https://www.hrw.org/report/2021/09/21/i-had-nowhere-to-go/violence-against-women-and-girls-during-covid-19-pandemic-kenya>.

EXISTING MECHANISMS THAT RESPOND TO GENDER-BASED RIGHTS VIOLATIONS

Local mechanisms exist in Kenya that respond to gender-based rights violations. These are run by various actors, including public and private hospitals, county governments, SRHR NGOs and LGBT+ and sex worker-led and/or serving organisations.

A lack of resources

For public – and even private – hospitals, which act as referral points for people who experience sexual or gender-based violence who require medical attention, resources are thinly spread and compete with other priorities, especially since health budget decisions have been devolved to county level.⁶ This means hospitals are unable to provide the specialised care required by LGBT+ people, sex workers and other people from marginalised communities who experience gender-based rights violations. County government-run recovery centres and safehouses are also inaccessible for marginalised communities for the same reasons. SRHR NGOs provide a combination of urgent responses beyond recovery services, including removing people from dangerous situations, safe housing, and mental health support, but are also limited by a lack of resources to meet the specific needs of marginalised communities.

For organisations led by or supporting LGBT+ people and/or sex workers the following tailored emergency response mechanisms exist:

- A nationally coordinated, regional cluster-based emergency response mechanism that supports LGBT+ people to leave dangerous situations, be referred to services, access medical attention, temporarily relocate and receive psychosocial support
- A national rapid response that focuses on unlawful arrests and forceful evictions which offers direct legal representation for LGBT+ people, including refugees
- A pan-African regional violence monitoring, tracking and referral mechanism for sex workers. This supports Kenyan sex-worker organisations to coordinate referral networks and trains them to respond to sexual and gender-based violence affecting sex workers

These mechanisms exist as programmes or projects within wider organisations. None are stand-alone mechanisms, and as such organisations have to justify sustaining these programmes against competing priorities. Often, these response programmes run out of funds and so have to apply to international funding mechanisms in the same way as organisations seeking support to respond to an individual incident or emergency. In cases where networks and coalitions run response programmes for their membership and constituents, they will refer member organisations to international funding mechanisms while providing recommendations and/or acting as points of verification for funders. This slows down the speed of the response, a crucial element of emergency support, and adds to the workload of organisations that are already stretched thin for human resources.

⁶ See Collum, R. et al (2018), 'Priority setting for health in the context of devolution in Kenya: implications for health equity and community-based primary care', *Health Policy and Planning*, 33, p.729–742.

The dispersed and unreliable nature of funding for emergency responses to gender-related rights violations is compounded by the lack of a quality monitoring structure for the management of gender-based violence, and by weak linkages between policy and implementation in the areas of gender-based violence, SRHR and HIV. Poor evidence collection, and supporting programmes to create referral chains to respond to gender-based rights violations, makes it difficult to resolve cases and achieve access to justice.

Community responses

Gaps in the application and resourcing of law and policy have resulted in community-led organisations to setting up alternative response mechanisms to address the gender-based rights violations that affect them, whereby trusted community members act as emergency responders. Intricate systems have been built that involve community actors receiving alerts on violations, verifying cases, making collective decisions, conducting urgent responses and referrals and reporting violations, while also trying to find resources to support these processes.

These community-led mechanisms generate evidence that can be used to support court cases that attempt to change discriminatory laws, and to advocate for legislative and policy reforms. Indeed, some progress has been made through Kenya's courts in getting favourable legal judgements, such as preventing the use of forced anal examinations to acquire evidence of homosexual sex⁷, and a court order has been made confirming the freedom of association for LGBT+ organisations⁸. But all other attempts to reform Kenyan law to protect human rights for have failed, with courts citing a lack of evidence for their judgement. The prime example here is the Repeal 162 case, which sought to decriminalise same-sex conduct.⁹

⁷ See Human Rights Watch (22 March 2018), 'Kenya: Court Finds Forced Anal Exams Unconstitutional' [accessed December 2021].

⁸ See Human Rights Watch (28 April 2015), 'Kenya: High Court Orders LGBT Group Registration' [accessed December 2021].

⁹ KELIN (2019), *Justice Denied: No To #Repeal162*. Available at www.kelinkenya.org/wp-content/uploads/2019/06/Justice-Denied-No-to-Repeal-162.pdf.

RELEVANCE AND IMPACT OF THE RAPID RESPONSE FUND

LGBT+ and sex worker communities interviewed for this case study were aware of a few other international emergency response funding mechanisms in addition to the RRF. But respondents felt these systems had limitations in terms of either eligibility criteria or form and structure. They saw the RRF as being a cut above these other funds.

Respondents observed that there is no alternative funding model in Kenya similar to the RRF – namely, one that specifically responds to HIV and emergency responses in relation to gender and human rights, which serves across LGBT+ and sex worker communities, and covers the entire process of emergency responses, from receiving incident alerts to verification, urgent response and referrals, follow-up and access to justice.

As a staff member of an organisation that received an RFF grant commented:



“The Rapid Response Fund offered support that enabled us to collect evidence to ensure victims can build and follow up on the cases. Additionally, it helped in driving and pushing for other hidden cases of violations.”

The RRF provides direct support to individuals via community-based organisations, whereas similar funds tend to support the organisations themselves. This has enabled it to be more flexible and better able to respond to communities' unmet and emerging needs. For example, the RRF has offered humanitarian support to sex workers and other people from marginalised communities who were vulnerable to violations during disruptions caused by COVID-19.

Respondents expressed a need for further flexibility so that responses can address people's mental health needs alongside their needs for physical safety and security. The flexibility demonstrated by the RRF in response to COVID-19 is likely to be useful in future crises. Describing the unpredictability of attacks against LGBT+ people, sex workers, and other marginalised people, a Frontline AIDS partner and leading Kenyan HIV service provider said:



“The RRF programming needs to be even more adaptive and have the flexibility to change with the evolving context... it needs to be able to very quickly morph to pre-empt and respond to an existing threat.”

The RRF has contributed to cross-regional advocacy work, especially through challenge grants. The fund's support has enabled organisations working with criminalised populations to lobby the Kenyan Government to move towards a more enabling legal environment, one that supports human rights monitoring work, including the tracking of anti-LGBT+ movements and strategies.

RRF grantees said work supported by challenge grants had been instrumental in engaging with national and global networks and campaigns that rally for greater public support of sex workers' and LGBT+ people's rights. For example, a grant issued to a Frontline AIDS partner that was heavily involved in the Repeal 162 case (see footnote 7) supported coordination work and efforts to counter misinformation in the media through positive engagement with media outlets and community outreach.

RRF Kenya grantees reported that support from the RRF led to:

- The removal of barriers to enable marginalised communities to access HIV, post-violence, and SRHR services
- The creation of safer and friendly spaces for vulnerable groups
- A change in discriminatory attitudes held by a range of stakeholders
- The promotion of laws that prevent gender-based violence from escalating
- Increased engagement of LGBT+ and sex worker-led groups with decision-making platforms
- Transgender organisations being able to gather enough evidence to successfully advocate for transgender people to be included as a separate group in national HIV and AIDS programming, rather than being classified as men who have sex with men



MOVING TO A LOCALISED RAPID RESPONSE FUNDING MECHANISM

There is a clear need for continued support for emergency responses to gender-based rights violations in Kenya, given the frequency of such violations, how they disproportionately affect marginalised communities, and the lack of effective and sustainable state-led responses (especially emergency responses).

This study recommends that the RRF continues to support organisations in Kenya responding to cases of stigma, discrimination, violence and other human rights violations that affect access to HIV services, but adjusts the way in which it provides this support. Given the existing network of organisations that have capacity to deliver emergency responses in Kenya, it is viable and desirable to establish a localised rapid response funding mechanism.

A localised response mechanism would enjoy an in-depth, contextual understanding of the actors, systems and structures that help to drive, and could also help to end, gender-based rights violations, and so would be better positioned to design effective and efficient programmes and change the legal and policy environment. A localised fund would also reduce the time it takes to verify emergency cases, and to issue emergency grants once cases are verified.

Creating an effective localised system requires marginalised communities to be at the centre of its conceptualisation and design. This process would need to be co-managed by local community organisations and funders and informed by relevant evidence when deciding the types of interventions the fund would support and the level of flexibility it needs. It would also need to establish an in-country fund manager that is unbiased and highly integral to the process.

The need for the fund to be community-led goes hand-in-hand with the capacity building. Current Kenyan RRF grant recipients have varying levels of experience and capacity, and access to beneficial partner networks. But all expressed the need for continuous capacity strengthening during the study, particularly in risk management, advocacy and organisational strengthening. RRF partners also expressed a need for opportunities and spaces to share skills and knowledge. Providing this could create a more united movement to further the rights of marginalised communities.

Above all, the RRF's grantees value the fund's flexibility and because they are listened to. These values should be central to any localised fund and, when cascaded down, should establish a system that is responsive to community-led organisations representing a diverse range of people in need of prompt and accessible lifesaving support. This is key for ensuring marginalised people's safety and security as well as for strategic advocacy work to address sexual and gender-based violence and other human rights violations.



RECOMMENDATIONS FOR FRONTLINE AIDS

To strengthen emergency responses to gender-related rights violations in a sustainable and effective manner, an in-country rapid response funding mechanism in Kenya would need to consider the following:

A Community centred design process

- a Establish a co-creation space that brings together organisations led by LGBT+ people, sex workers and other marginalised communities (plus their allied networks and key partnerships), and Frontline AIDS (and other funding partners).
- b Ensure that the interventions decided upon are responsive, contextual and informed by the learnings and evidence generated through the response experiences of all communities.
- c Flexibility and adaptive programming should be key features in conceptualisation and design.

B Robust decision-making model :

- a The final decision-making model needs to be aware of and cater for the challenges presented by movement in the political landscape and competition for resources.
- b It is vital that all communities and types of organisations are represented when making final decisions on grants.
- c Decision-making should be supported by a strong verification mechanism.

C Stand-alone fund

- a The localised fund should be independent of any potential beneficiary in terms of its administration and staffing. If a network/coalition/alliance is selected by members as a potential fund manager, this entity should be excluded from delivering emergency response interventions in order to ensure independent coordination and reporting.

D Use the existing strengths of Kenyan organisations

- a The localised fund should build on existing local mechanisms run by organisations led by LGBT+ people, sex workers and other marginalised communities.
- b Any new local fund should foster increased co-ordination between the existing different mechanisms.

E Have a strong evidence generation and advocacy component

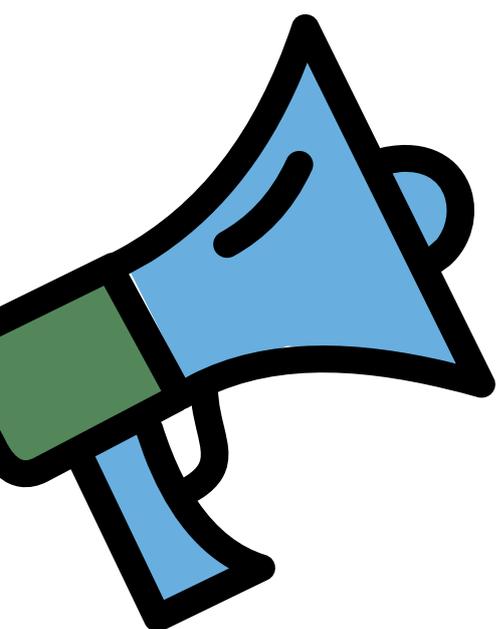
- a From the very start, the mechanism should seek to document cases in a way that provides evidence for advocacy and strategic litigation.

F Have a strong capacity strengthening component

- a A localised mechanism should have a capacity strengthening function that recognises and seeks to address the training needs of organisations that are responding to sexual and gender-based violence.
- b The capacity strengthening function must include ensuring the recipient organisations' ability to maintain the confidentiality of people whose rights have been violated.

G Have a strong monitoring, evaluation and learning component

- a A strong monitoring, evaluation and learning plan should be in place to ensure clear objectives and means of verifying results. This should support not only the evaluation of the localised mechanism's performance but also contribute to building evidence for the wider case of funding emergency responses to gender-based rights violations as a core part of HIV-related human rights programming.



ANNEXES

Annex 1: Methodology and approach

The independent consultants used the following tools and processes to collect data for this case study.

A Desk review

A purposive sample of 10 grant documents from organisations serving various LGBT+ and sex worker communities in Kenya were analysed. This information was categorised into overarching themes and cross-referenced in structured and formal interviews. Two previous evaluations of the RRF were also consulted as part of the desk review: one produced at the end of 2019 and covering the first three years of the fund's operation; and the other produced at the start of 2021 and covering the COVID-19 emergency grants issued through the RRF.

The desk review also sought to understand the legal framework (law and policy) under which programming for sexual and gender-based violence and HIV occurs in Kenya. The consultants looked at a number of laws, policies and other relevant studies providing information on the national outlook and the outlook of two sample counties (Kisumu and Nairobi).

B Interviews and focus group discussions

Structured formal interviews took place with four Kenyan RRF grant recipients. Interviewees were part of national and regional organisations working with LGBT+ people, sex workers and other marginalised people in the context of HIV programming in Kenya. Two focus group discussions, each with six organisations represented, were also conducted.

Annex 2: Grant overview

RRF grants disbursed to Kenya 2016-2021, by the main targeted community or group.

Types of grants ¹⁰ :	Emergency: 67 Challenge: 17
Value of grants:	Between \$484 and \$20,064 .
Number of grants by main targeted community/group:	Gay and bisexual men and other men who have sex with men: 12 Refugees and asylum seekers: 22 Transgender people: 5 Sex workers: 14 People who use drugs: 1 People living with HIV: 2 LGBT+ people (no specified sub-population target): 18 Other, including authorities: 10

¹⁰ Emergency grants had a lower maximum value and were to support urgent action between one to three months. Challenge grants were available for higher value and to support action between one to six months. Challenge grants were often for advocacy activities.



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