

**'No Room For You':**

**The Right to Political Participation  
for SOGI Communities In Kenya**

**And Bangladesh**



ReportOUT



**ReportOUT Response to UN Independent Expert on Sexual  
Orientation and Gender Identity: Call For Input. April 2024**



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Registered Charity Number (England and Wales): 1185887

# A Statement from ReportOUT's Chair & Lead Trustee, Human Rights Research

Dear Graeme Reid,

It is a privilege to submit ReportOUT's response to your call for contributions to your Report on Electoral Participation and Sexual Orientation and Gender Identity.

Founded in 2019, ReportOUT is a human rights research organisation in the United Kingdom that documents the lived experiences of SOGIESC (Sexual Orientation, Gender Identity, Expression and Sexual Characteristics) people and communities in different nations across the globe. We use our research to inform the public, educate others and to influence governments and organisations about SOGIESC human rights infringements.

By the end of H1 2024, ReportOUT will have published six 'deep dive' projects into the lived experiences of SOGIESC communities in Uganda, Zimbabwe, Belize, Morocco, Ethiopia and Mongolia, with further projects to follow on countries including Mexico, Bangladesh, Kenya Nigeria and Pakistan. These include both 'deep dive' projects and thematic reviews on such subjects as so-called 'conversion therapy' practices and the trans and non-binary lived experience. We are proud to be an entirely volunteer-led charity, with volunteers and trustees originating from over thirty nation-states, two of whom contributed to this report.

Our submission to this study focuses on Kenya and Bangladesh and how the two countries through their respective legislation and practices address the question of political and electoral participation and SOGI. We trust that our research, compiled by our dedicated team of global volunteers will be a valuable contribution to your final report and we thank you and your team's work for investigating this under-researched topic that resonates so profoundly in countries across the globe today.

**Drew Dalton.**  
**Chair of Trustees.**

**Phil Thomas**  
**Lead Trustee, Human Rights Research**



**Drew Dalton**  
Chair of  
Trustees

Drew (He/Him) is the founder and currently the Chair of ReportOUT. He has spent the last 20 years working within the NGO sector on both a national and international level in a range of varied roles. Alongside this, he is a qualified teacher, and is currently working as an academic and social researcher. Drew has a degree in BSc (Hons) Sociology and Social Research, MSc Social Research, MA Gender Research and a PhD in Sociology. Drew has featured on various media outlets, including the BBC, Channel 4 News and the New Arab.



**Phil Thomas**  
Lead Trustee,  
Human Rights  
Research

Phil (He/Him) became a Trustee of ReportOUT in November 2022. He is passionate about geopolitics and SOGI histories around the globe and has undertaken research for ReportOUT on a diverse range of countries including Mongolia, Afghanistan and Ukraine. Phil holds a Masters in International Relations from University of Cambridge (UK), MBA from Duke University (USA) and a BA in Modern Languages from University of Durham (UK)



# About ReportOUT



# Who are ReportOUT?

Since 2019, ReportOUT have been at the forefront of protecting the human rights of sexual and gender minorities in the United Kingdom and globally. As a registered charity in England and Wales (registered charity number 1185887) we are **fearless, determined and relentless** in our belief that human rights are fundamental to advancing the lives of sexual and gender minorities, and their communities.

We recognise that we need to succeed in our aims and objectives by also using principles from international development alongside human rights frameworks, and we believe that both of these approaches should **always include sexual and gender minorities as part of them**. We align all of our work with Agenda 2030, in that no one should be left behind.

## **ReportOUT's official aim and objectives are:**

To promote human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations) throughout the world for sexual and gender minorities by all or any of the following means:

- Eliminating infringements of human rights;
- Research into human rights issues;
- Raising awareness of human rights issues;
- Educating the public about human rights;
- Monitoring abuses of human rights;
- International advocacy of human rights;
- Providing technical advice to government and others on human rights matters.

## **Our guiding principles:**

- **Principle 1:** No one should be left behind in delivering the articles set out in the Universal Declaration of Human Rights.
- **Principle 2:** Every person has a part to play in achieving the goals and targets set out in the United Nations Sustainable Development Goals.
- **Principle 3:** Positive change should be led by communities within a nation state and ReportOUT will support them to do this.

# Contributing Researchers



**Arnold Ochieng Oginga (Kenya).** Arnold is an Advocate of the High Court of Kenya; a Constitutional Law, Human Rights, Electoral justice, and Tech Law expert, and litigates and consults in these fields. He is the CEO and Founder of Ochieng Oginga & Company Advocates and Co-founder of IDEAT Tech Policy Africa which deals with complex and varied areas of Constitutional law, Human Rights in the digital age among others. He is a Certified Sexual and Gender Minority Rights Practitioner; Certified Disability Rights Practitioner; & Certified Social, Cultural, and Economic Rights Practitioner, certified by the University of Pretoria, Centre for Human Rights, South Africa. Arnold is also currently an LLM candidate at the University of East London, United Kingdom. Alongside his Human Rights research with ReportOUT, he is also a volunteer advocate and legal researcher at TrustLaw foundation.



**Winfred Makaba (Kenya)** is an advocate of the High Court of Kenya and proprietor of Makaba and Company Advocates, where she actively practices as a litigation counsel and legal consultant in Nairobi, Kenya. She specializes in Human Rights law, Constitutional law and general practice, accumulating valuable experience by practicing in various courts and offering legal consultation services to individuals, companies, and organizations locally and internationally. In addition to her role as a Human Rights Researcher at ReportOUT, she is a certified mediator proficient in dispute resolution techniques.

# ReportOUT's Response to UN Call For Input



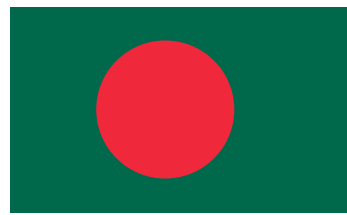
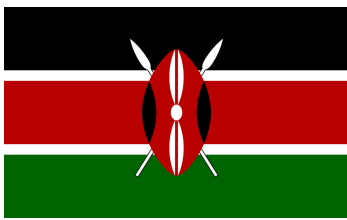
# A Note on Methodology and Approach

We have chosen to focus our response on two countries, Kenya and Bangladesh: two countries with which we have extensive lived and research experience and where a demonstrable link can be found on SOGI and political participation.

Our response will consider Questions [1], [2], [6], [8], and [11].

**Word Count (excluding question titles and bibliography) 2,312 words**

NB: ReportOUT uses SOGIESC (Sexual Orientation, Gender Identity, Expression and Sexual Characteristics) and SOGI within our terminology in this response to refer to sexual and gender minorities.



ReportOUT. (2024) *No Room For You: The Right to Political Participation For SOGI Communities in Kenya And Bangladesh*. Gateshead: ReportOUT

# No Room for You

**Does your country have any laws, policies, or practices that, explicitly or implicitly, ban or restrict suffrage rights in ways linked to beliefs about sexual orientation, gender identity, or other broader concepts of sex or gender that may include SOGI in some form?**

- a. If such laws include limitations on the right to vote or to stand for office linked to de jure or de facto factors linked to gender identity or sexual orientation, please identify the mechanism by which disenfranchisement is created? (I.e., exclusion because of criminal conviction or application of morality provisions?)**
- b. What other exclusions intersect with these exclusions de facto or de jure? (I.e. marital status? registration in party? literacy tests?)**
- c. Do the administrative practices and procedures allow for change of notation of sex or gender in the official documents that serve for identification of voters? Have there been cases in which people were deprived of the right to vote or stand for office because of such inaccuracies in the identification documents?**

In Kenya, same-sex relations are penalized under the Penal Code while the Constitution and other laws prohibit same-sex relations and only identifies three genders namely, male, female and intersex persons – there is no formal recognition of non-binary or transgender identities. Under Article 27 of the Constitution of Kenya, 2010, the law makes express preference to the male and female genders as it provides that ‘women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and special spheres.’ In that regard, sub-clause 8 thereof mandates the government to take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. As it stands therefore the law primarily focuses on the male and female genders and thereby by implication, excluding those are intersex or non-binary from the same level of protection as cisgender males and females. In regard to the formation and participation in the affairs of political parties, Article 91 of the Constitution of Kenya, 2010, however underscores the guiding principles for political parties to include respect for all persons’ rights to participate in the political process, including minorities and marginalized groups; and the respect and promotion of human rights and fundamental freedoms, and gender equality and equity, among other principles. However, this does not extend to support SOGIESC candidates or allowing issues relevant to these communities to be represented within the political cycle.

In Bangladesh, same-sex relations are also criminalized (under Section 377 of the Bangladesh Penal Code, 1860 – a relic of Victorian colonial law). However the law recognizes the right to political participation by transgender women and intersex persons, with a third gender officially recognised since 2013. A distinct subculture of transgender women and intersex persons, most often – but not always – identified as hirijas, are widely recognized and accepted. Hijiras are born male or intersex persons but identify as female and dress traditionally female clothing. In 2018, the government created an option for ‘third-gender’ on voter lists. According to the UN Women Advocacy Brief (UN Women Bangladesh Country Office), in the 17th amendment to the Constitution of Bangladesh, Section 65 has reserved and secured parliamentary seats for women for another 25 years without any direct election.



# No Room for You

By implication therefore, the Constitution by reserving seats only for the female gender outright limits opportunities for third-gender political candidates.

**Are there any laws, policies, or practices that, explicitly or implicitly, ban or restrict participation of persons in any elements of the electoral process, such as campaign events or media coverage, linked to sexual orientation and/or gender identity – including in relation to broader restrictions on speech, association, assembly or otherwise?**

**a. In particular, are there examples of how administrative practices and procedures ban or restrict electoral participation of LGBT persons by relying on the assumption of two genders?**

In Kenya, the criminalization of same sex relations imposes a limitation on such other rights by implication in that it has created an environment whereby persons have to hide their sexual orientation and gender identity as a result of fear of victimization or prosecution by the authorities. Section 5 of the Elections Act No. 24 of 2011, recognizes the right of every citizen having attained the age of eighteen years to be eligible for registration as a voter. The law does not therefore impose any such restrictions or limitation on the right to be registered as a voter on any such grounds on SOGI albeit lack of trust in state institutions commonly felt by SOGI Kenyans is likely to suppress participation in the political and electoral process, a situation exacerbated by the proposed 2023 Family Protection Bill discussed in the following section.

Similarly, in Bangladesh, the law permits the registration of all persons eligible to vote as voters. According to the (UNDP, 2023), the registration of trans, non-binary, and intersex candidates may raise specific challenges, especially since their gender identity and affirmed name do not always match those in their official IDs. As per their inclusion mandates, a growing number of election bodies have registered trans candidates according to their gender identity and/or affirmed name, in line with the principle of self-determination such as in Bangladesh, an advancement not available to third-gender and intersex candidates in many other nation states.

**If there are no current laws, policies, or practices as described above or of concern, have there been attempts or incentives in the last ten years (2014–2024) to introduce such explicit or implicit restrictions? If so, who were the actors/groups/individuals or organizations behind these attempts, and what is the current situation?**

In Kenya, in the year 2023, a proposed Family Protection Bill sought to impose various restrictions and limitations on the enjoyment of fundamental rights and freedoms on the basis of SOGI. The Bill was and is being pushed by religious leaders and some Members of Parliament, which seeks to introduce various restrictions and limitations on the right to freedom of expression, association, and the right to assembly, demonstration, picketing, and petition, among others. Under the pretence of 'protecting the family', the bill introduces various limitations of fundamental rights and freedoms which by extension will largely impact on the right to political participation in electoral processes based on SOGI. Such laws would prevent SOGI issues, including basic human rights, to be promoted and argued for as part of standard electoral politics. The Bill is currently pending before Parliament and it borrows heavily from the recently enacted Anti-Homosexuality Act of Uganda, 2023.

# No Room for You

**Do politicians or other public actors (including religious and cultural leadership) engage in propagating the sense of moral panic for political gain through denigrating persons based on their real or perceived sexual orientation and gender identity (for instance in the context of advocacy for certain legislation, electoral smears of opponents, or otherwise)? Have there been political or legislative campaigns focused on SOGI issues? What were the political motivations behind them?**

The politicization of sexual orientation and gender identity has been a contentious issue globally, with politicians and public figures often exploiting societal prejudices for political gain. This has not been an exception in Kenya and Bangladesh. This has been characterized by the exploitation of societal prejudices and the manipulation of public discourse for political ends. Politicians, public figures and religious figures in these countries have utilized homophobic and transphobic rhetoric to advance their agendas, as well as the implications for SOGI rights and democracy.

Politicians and other public actors have frequently engaged in the propagation of moral panic by denigrating individuals based on their real or perceived sexual orientation and gender identity. This often takes the form of hate speech, intolerant rhetoric, and fearmongering aimed at instilling societal anxieties about sexual and gender minority individuals. Such tactics are commonly employed during advocacy for or against certain legislation, electoral campaigns, and public discourse on social issues.

Kenyan society is strongly religious and socially conservative. In the recent years there has been a rise of anti-SOGI rights' voices who are attacking the human rights of sexual and gender minority people by particularly framing their rights as a threat to the health, safety and wellbeing of children and society. Such moral panic can be seen as a cornerstone behind the 2023 Family Protection Bill. At the forefront of these voices are political and religious leaders who propagate moral panic by crafting narratives based on misinformation and selective interpretations of human rights, religious teachings, cultural beliefs and scientific evidence that create a divided over-simplistic worldview of 'good people' vs 'bad people' in society.

People regarded as "good" are those who uphold the heterosexual, patriarchal family values whilst the "bad" people are the sexual and gender minorities in society and their defenders. They claim their intentions is to protect citizens from an alleged 'anti-African agenda' that seeks to morally and spiritually corrupt Kenyan society.

In 2015, Kenya's then deputy president and current president publicly declared there is "no room" for homosexuality in Kenyan society, he stated that Kenya is a Republic that worships God and that the government believes that homosexual relations are unnatural and un-African (Reuters, 2015) This heavily implied that sexual and gender minorities in the country are unreligious and therefore immoral.

The Kenyan Family Protection Bill 2023, was proposed to parliament by an influential legislator. This proposed bill seeks heavily criminalize and punish same-sex acts. Further as per the Bill, owners of premises used for same-sex relations may be fined \$14,000 (£11,000) or serve a seven-year jail term if the bill becomes law.

# No Room for You

This bill seeks to impose various restrictions and limitations on the enjoyment of fundamental human rights and freedoms on the basis of SOGI (AfricaNews, 2023).

On the other hand, the religious and anti-SOGI groups have clearly and openly discriminated the sexual and gender minorities terming them “sick”, pedophiles and in need of treatment. This is a sad and worrying trend as it increases stigma and discriminating which in turn might lead to violence and even fear of accessing services within health facilities.

In 2019, Kenya Catholic doctors’ association (KCDA) together with CitizenGo petitioned to have intersex people removed from the census despite intersex persons being recognized by the Constitution of Kenya, 2010, and claimed that being intersex was a disability. They further claimed that the inclusion of intersex persons in the census was an attempt to deconstruct the Kenyan social fabric and introduce the foreign and deviant ideologies of homosexuality and transgenderism. (Admin, 2021). Such attempted erasure can be seen as a direct consequence of moral panic induced by organised religion to deny a sexual minority the most basic of rights.

Dr. Wahome Ngare the chairperson of Kenya Catholic doctors’ association (KCDA) swore an affidavit in court saying all lesbian, gay and bisexual people were recruited through sexual abuse and were likely to be abusers of children. The presiding moderator of the Presbyterian Church of East Africa, has been widely reported saying: “We [PCEA] denounce all forms of sins which include, but not limited to homosexuality and lesbianism and devil worship” (Standard Group PLC, n.d.). There is extreme anti-SOGI community prejudice among religious leaders in Kenya. Given the pervasiveness of religion in Kenya, it is unlikely that improving the lives of SOGI persons will possible without religious leaders adopting a considerably less prejudicial discourse.

In Bangladesh, the politicization of SOGI has occurred within the context of a complex socio-political landscape shaped by religious conservatism and authoritarianism. Despite there being legal provisions protecting the rights of transgender individuals, societal attitudes remain deeply conservative, and SOGIESC individuals face significant discrimination and violence. In 2018, a report by Human Rights Watch in Bangladesh focused on the lived experience of transgender men. This demonstrated many fear for their safety, as mere visibility can be life-threatening and isolating due to social stigma, conservative religious beliefs and family values that create a hostile environment for SOGIESC individuals.

The report also highlighted a disturbing societal context in Bangladesh. Assailants carry attacks on activists and gender minorities with relative impunity. At the same time, the government of Bangladesh has carried out a sustained clampdown on freedom of expression, prosecuting many for their social media content. In 2016, the murder of two SOGI rights activists, Xulhaz Mannan and Tonoy Mahbub had a long-term chilling effect. Shortly after the murders, the Bangladeshi home minister noted that one of the victims had “worked to promote gay rights” emphasizing that “this does not fit in our society.” In the aftermath of the murders and weak government response, many SOGI activists went into hiding while others permanently fled Bangladesh (Human Rights Watch, 2018).

# No Room for You

Politicians have occasionally exploited anti-SOGI sentiments to bolster their political support, although direct engagement with SOGI issues in public discourse is relatively limited compared to other countries in the region.

Comparatively, both Kenya and Bangladesh have experienced political exploitation of SOGIESC communities but there are notable differences in the nature and extent of such activities. In Kenya, homophobic rhetoric is more overtly employed by politicians to mobilize the conservative populations, whereas in Bangladesh, the politicization of SOGI is often subtler and indirect due to the prevailing socio-cultural context. Additionally, the role of religious and cultural leaders in shaping public opinion varies between the two countries, with religious conservatism exerting a stronger influence in Kenya. Despite these differences in approach, politicians and public figures in both countries have exploited societal prejudices surrounding SOGI for political gain and favour, perpetuating discrimination and hindering progress.

**Do you have any examples of good practices, policies or interventions that:**

**a. Made political space for the entry of non-traditional candidates across gender and sexuality?**

The introduction and recognition in 2013, by the Government of Bangladesh of the 'third-gender' category for Hijiras, which was codified in 2014 presents a positive step towards the recognition and enforcement of political rights for the sexual minorities and recognition of third-genders that have histories and cultures dating back centuries. In 2018, the government created an option for 'third-gender' on voter lists. This can and should be emulated in countries with similar historic third-genders as an example of good practice to drive improved SOGI political participation.

## **Conclusion**

In a conservative society such as Bangladesh, both women and sexual minorities have not enjoyed the same level of freedom as cisgender men, restricting opportunities for SOGI individuals to participate within the electoral and political process, particularly for lesbian and bisexual women, whose social space of acceptance is extremely limited through both sexist and homophobic prejudice (Sida, 2014), which this curtails their participation in electoral processes. The recognition of an official third-gender in Bangladesh brings hope for the further full realization of the political rights and participation for other sexual minorities.

Kenya's situation is not identical, as the law serves to actively persecute sexual and gender minorities, despite there being some nominal – if contested – recognition of intersex populations. Such persecution by nature restricts both open and free political discussions of SOGI related issues and the promotion of basic human rights and, by extension, serves to limit participation within the wider political process, a loss to Kenyan society as a whole.

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First published in 2024

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