

GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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Tactical Technology Collective

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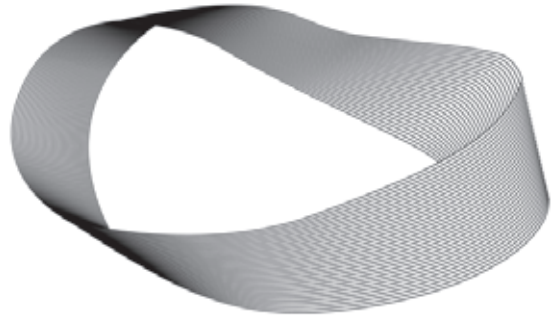
*In this time of fear called peace
In this place of dying called vision
We have chosen
To survive*

Witness #120, International Criminal
Court (ICC) Witness Project¹

Introduction

A Möbius strip is a flat ribbon twisted once, and then attached end-to-end to form a circular twisted surface. Imagine an insect walking along its surface;² at the beginning of the circular journey the insect is clearly on the outside, but it traverses the twisted ribbon without ever lifting its legs from the plane and ends up on the inside surface. This analogy is one way to think about experiences of visibility through technology.

The Möbius strip perspective challenges the binaries of visible/invisible and suggests that one is not just the opposite of the other, but they are different “folds” in the same fabric – a digital weave, if you like. The Möbius strip is also a good analogy to explain what we have learnt while researching³ the risks and barriers faced by lesbian, gay, bisexual, transgender and queer (LGBTQ) Kenyans online, a community which faces significant



social marginalisation. One of the main themes that emerge is that while social media and digital technologies offer spaces for voice and visibility, LGBTQ people also struggle to manage visibility in order to mitigate the risk of exposure. This research by Tactical Tech is evidence of the practical difficulties in securing anonymity online, and is used to trouble the idea that access to the digital is an unqualified benefit for activists. Through the research we also examined the competing registers of visibility that are the result of using technology, and suggest the value in maintaining diverse ways of seeing and revealing both online and offline.

LGBTQ visibility in Kenya

Homosexuality is still very much a taboo subject in Kenya. Surveys conducted by the Pew Charitable Trust indicate that 88% of Kenyans view homosexuality as unacceptable, and only 3% find homosexuality acceptable – the remaining 9% view homosexuality as not a moral issue.⁴ This places Kenya among the 10 countries least likely to accept homosexuality in the world. One local informant explained that because identifying as LGBTQ is not illegal, but engaging in same-sex sexual activity is, police use other existing laws to hold people perceived to be queer in custody or to extort money from people who are not aware of their rights.

Kenyan society simultaneously renders its LGBTQ citizens both visible and invisible. On the one hand, same-sex sexual activity is criminalised and yet, the government “allows” Pride marches and events to take place. When a small but powerful

1 The ICC Witness Project is a collection of poetry from Kenyan citizens involved with accountability for the post-election violence in 2007-2008. iccwitnesses.tumblr.com/post/52380449989/witness-120

2 Elizabeth Grosz uses this metaphor in her book *Volatile Bodies* to explore if it is possible to think about sexuality and the body through philosophy and feminism in something other than binary terms. She does so in order to help “rethink the relationship between the inside and the outside of the subject, its psychical interior and corporeal exterior by showing not their fundamental identity or reducibility, but to show the torsion of one into the other... the uncontrollable drift of the inside into the outside and the outside into the inside.” Grosz, E. (1994). *Volatile Bodies: Toward a Corporeal Feminism*. Bloomington: Indiana University Press.

3 This report is based on a research study supported by a grant from the Making All Voices Count (MAVC) consortium. In this study, Tactical Tech conducted semi-structured interviews with 25 LGBTQ activists and human rights defenders in Kenya between October 2014 and March 2015.

4 Pew Charitable Trust. (2013). *The Global Divide on Homosexuality*.

group such as the “anti-gay caucus” in parliament calls for the “stoning of gays”,⁵ Kenyan society buries its head in the sand, neither giving support nor speaking out.

In Kenya the state can charge individuals suspected of committing same-sex sexual acts with a criminal offence and a penalty of up to 14 years imprisonment.⁶ Although convictions rarely occur, this has a chilling effect on the LGBTQ community, resulting in them having to hide their identities. The lack of social acceptance also tacitly encourages online and offline violence. Many in the LGBTQ community face threats and violence, including blackmail and harassment by police officers and others.⁷ Additionally, evictions of LGBTQ individuals from their homes are common.⁸

Historically, as a marginalised group, queer people worldwide have been the subjects of surveillance as a way of identifying, naming, tracking, and ultimately controlling them.⁹ At the same time invisibility is also often part of the experience of being queer and amounts to not being acknowledged within society. The need to negotiate and manage the dual needs for visibility and anonymity is not new. In societies where being LGBTQ is not accepted, many people have to remain undetected in the mainstream and at the same time remain visible to those who they would consider part of their own community. Tactics for “passing as straight” may include dressing and presenting oneself in a certain way, or having an opposite-sex partner to conceal one’s same-sex orientation. While “passing for straight,” an LGBTQ person may still use and respond to the speech and body language unique to their community. LGBTQ subcultures and communities around the world can also have unique terms, gestures, and personal presentation styles that distinguish them.¹⁰

The relative invisibility of LGBTQ people has shaped popular activist strategies in Europe and North America such as “coming out of the closet” and Pride marches.¹¹ Yet, as artist Terre Thaemlitz says speaking on these highly visible yet increasingly co-opted strategies: “Queerness is something other than Pride™.” And according to academic researcher Jason Ritchie, the idea that making the invisible visible is a necessary pathway to securing LGBTQ rights is not universally applicable,¹² and coming out is perhaps best experienced as a gradual process – rather than a single moment of revelation.

Visibility through technology and data

Visibility is about “being seen” in the sense of being recognised or acknowledged, and therefore “counted”. “Being visible” is considered important because it allows the realities of injustice or violence against a particular marginal group or identity to be recognised and acknowledged. Digital technologies are commonly used to document information about and for marginal groups in order to make claims about rights violations. Popular examples of this are Harassmap,¹³ a mapping platform that allows women to make street-based sexual harassment visible.

“Being counted” also has a flip side for marginal communities. In Kenya much of the 2007-2008 post-election violence fell along ethnic lines. However, respondents to our research explained that while collecting ethnic data may pose the risk of exposing people from marginalised ethnicities by making them known, the collection of such data enables marginal groups like smaller ethnic communities which were not counted in the 1999 census¹⁴ to be recognised and to demand resource allocation and political representation.¹⁵ Without such empirical evidence, these groups argue, it becomes near impossible to document and monitor patterns of violence against them and political disenfranchise-

5 Wafula, C. (2014, 9 August). Draft bill proposes harsh penalties against gays. *Daily Nation*. mobile.nation.co.ke/news/Republican-Liberty-Party-Bill-Homosexuality/-/1950946/2414002/-/format/xhtml/-/supigkz/-/index.html

6 Vourlias, C. (2014, 5 September). ‘Stories of Our Lives’ Sheds Light on Kenya’s Gay Community. *Variety*. variety.com/2014/film/festivals/stories-of-our-lives-lgbt-kenya-community1201299178

7 Kenyan Human Rights Commission. (2011). *The Outlawed Among Us*.

8 Stewart, C. (2013, 18 July). Kenya making progress, but anti-gay violence continues. *Erasing 76 Crimes*. 76crimes.com/2013/07/18/kenya-making-progress-but-anti-gay-violence-continues

9 Weeks, J. (2000). *Making Sexual History*. Polity Press; and Monahan, T. (2009). Dreams of control at a distance: gender, surveillance and social control. *Cultural Studies Critical Methodologies*, 9(2), 286-305.

10 Tewksbury, R. (1996). Cruising for sex in public places: The structure and language of men’s hidden, erotic worlds. *Deviant Behavior*, 17, 1-19; and Brown, G. (2008). Ceramics, clothing and other bodies: affective geographies of homoerotic cruising encounters. *Social & Cultural Geography*, 9(8).

11 Chauncey, G. (1994). *Gay New York: Gender, Urban Culture, and the Makings of the Gay Male World, 1890-1940*. New York: Basic.

12 Ritchie, J. (2010). How do you say “coming out of the closet” in Arabic? Queer activism and the politics of visibility in Israel-Palestine. *GLQ: Gay and Lesbian Quarterly*, 16(4).

13 Harassmap. harassmap.org/en

14 In addition to not counting smaller ethnic groups, the final figures for the 1999 Census were never released. See BBC. (2009, 24 August). Kenya begins contentious census. *BBC News*. news.bbc.co.uk/2/hi/africa/8217637.stm

15 Nyambura-Mwaura, H. (2009, 25 August). Ethnic Question in Kenya census stokes suspicions. *Reuters*. www.reuters.com/article/2009/08/25/ozatp-kenya-census-idAFJOE5700GP20090825

ment. Concerns about visibility and anonymity are familiar to people who are marginal in their society.¹⁶

Visibility is also understood in terms of accessibility to institutional resources, and in terms of those institutions “being seen”, “open” and “transparent”. The public sharing and dissemination of information by public institutions makes them visible in the sense of transparency.

Amid the complexity of these different meanings of being visible, online visibility comes with both benefits and trade-offs. Being visible through data and technology can deny anonymity, which many activists need in order to be safe and effective.¹⁷ When a group is more visible and identifiable, this may come with a higher risk of violence or discrimination.¹⁸

LGBTQ visibility online

The digital environment has emerged as an important space for Kenyan LGBTQ people to meet, socialise, form friendships, mobilise and organise. The popularity of the digital among LGBTQ people is also a result of ubiquitous mobile phone ownership in Kenya, where usage continues to be among the highest per capita in the developing world.

An estimated 80% of Kenyans have mobile phone access¹⁹ and 67% of phones sold in Kenya

are smartphones.²⁰ Among lower-income Kenyans, sharing of smartphones is common. Facebook remains the number one social network in Kenya. In 2014, approximately four million Kenyans were on Facebook, about 10% of the total Kenyan population.²¹ Access is not equally distributed across class and geography, however, and in this way visibility begins with access. In contexts where phones and tariffs are deemed too expensive, or where internet access is slow or non-existent, regular digital visibility or presence is not even an option. Facebook has emerged not only as a place to connect with friends and relatives, but also as a place to socialise and meet new sexual partners. Dating apps and platforms like Grindr and Gay Romeo have also become popular within the men-who-have-sex-with-men (MSM) community.

The careful management of online visibility through photos on social media is a response to violations that have occurred. In one interview we did in Kenya as part of our research, Josie²² narrates the harrowing story of being outed to her family via social media because of a friend’s careless tagging of a photograph of a party she was at. The fallout was harsh and Josie was sent away from her small hometown to Nairobi, where she could not as easily be identified by her family. In another instance, a journalist for a Kenyan tabloid, on the hunt for a “juicy” story got access to a closed Facebook group and reported on a mock “beauty pageant” taking place in which butch women were being ranked and rated for their attractiveness. The “journalist” posted the names, pseudonyms, pictures, and links to personal Facebook profiles of “contestants” without their consent.

Social stigma due to criminalisation and the strong influence of religion and culture make closeted MSM vulnerable to blackmail and extortion. Closeted gay men and MSM share seemingly benign yet sensitive personal information online – occupation, address, personal details – before actually meeting up in person. Blackmailers pose as dates and potential lovers, extract the information they need and then use this as leverage in extortion attempts by threatening to out an individual to their family. It is also common for blackmailers to arrange for other people to walk in on sexual acts, only to demand money in exchange for either refraining from committing acts of violence or not outing the

16 Eubanks, V. (2007). Trapped in the Digital Divide: The Distributive Paradigm in Community Informatics. *Journal of Community Informatics*, 3(2); and Eubanks, V. (2014). Big data and human rights. In Seeta Pena Gangadharan (Ed.), *Data and Discrimination: Collected essays*. New America Foundation.

17 Ganesh, M., & Hankey, S. (2015). Fibrecultures journal. Forthcoming July 2015; also see, for example, the struggle to control digital traces of activists in the Hong Kong protests of late 2014. In this case the challenge was managing and making the right decisions about the dual needs of anonymity and visibility. For those protesters who had been underground for many years prior to the street protests, it was important to remain undetected; however, it was also an opportunity for these movements to become more active. The choice to become actively involved risked complete exposure partly due to how our digital traces never really disappear. For additional information see: Guarnieri, C. (2014, 2 October). What Protesters in Hong Kong (and Anywhere Else) Should Know About FireChat. *Global Voices*. advocacy.globalvoicesonline.org/2014/10/02/the-adoption-of-firechat-and-threats-to-hong-kong-protesters

18 See the case of Egyptian police using Grindr and similar applications to triangulate, identify and arrest LGBTQ users. Grindr removed the “show your distance” option in Egypt in response to privacy advocates raising concerns with the feature, although this was later reintroduced. Similarly, in Lebanon, police are using WhatsApp to target and entrap gay men. For more information see Sheils, C. (2014, 1 September). Egyptian Cops Using Grindr to Hunt Gays. *CairoScene*. www.cairoscene.com/LifeStyle/Egyptian-Cops-Using-Grindr-To-Hunt-Gays; Aravosis, J. (2014, 1 September). “Grindr” gay smartphone app turns off “distance” option in face of privacy concerns. *AMERICAblog*. americablog.com/2014/09/gay-grindr-smartphone-app-turns-distance-option-privacy-complaints.html; and Mamba. (2014, 28 August). Police using WhatsApp to entrap gay men. *Mamba Online*. www.mambaonline.com/2014/08/28/police-using-whatsapp-entrap-gay-men

19 Poushter, J., & Oates, R. (2015). *Cell Phones in Africa: Communication Lifeline*. Pew Research Centre.

20 Tripp, C. (2014, 16 April). 67% of mobile phones sold in Kenya are smartphones. *IT News Africa*. www.itnewsafrika.com/2014/04/16/67-of-mobile-phones-sold-in-kenya-are-smartphones

21 Kaigwa, M., Madung, O., & Costello, S. (2014). *Nendo 2014/15 Social Media Trend Report*. Nendo. report.nendo.co.ke

22 Not her real name.

person to employers and family members. Research findings indicate that although online dating was popular at first within the MSM community, due to widespread blackmail many have moved to meeting people offline in LGBTQ-friendly venues.

Other ways of seeing

The mainstream media plays a role by either ignoring the actual realities of LGBTQ life in Kenya, or by sensationalising it and creating negative, trivialised portrayals. In May 2015, for instance, a Nairobi-based newspaper ran a front-page story about Kenya's "Top Gays, Lesbians".²³ Though many LBQ women have been invited to speak in mainstream media forums, not one woman has chosen to speak for fear of social stigmatisation. One respondent in our research says "everyone wants to see a Kenyan lesbian," meaning that both in mainstream media and in activist circles, there is a high degree of exclusion of LBQ women – to the extent that the very presence of LBQ women in Kenya is, jokingly, questioned. The homophobia and lack of social support make it difficult for LBQ women to be prominent in society.

One of the questions that respondents in our research study found hard to answer was: "What are the popular blogs, Tumblrs, YouTube channels that you enjoy [as an LGBTQ person] or are popular in the LGBTQ community in your city?" We were trying to understand the productive, creative use of social media by the LGBTQ community in Kenya and how it is used by LGBTQ people to create and shape their own identities. There were not many of these our respondents could point to, however, and we were curious as to why. The presence of paid, well-designed, big media blogs and celebrity bloggers and journalists had shaped the perception that blogging was a privileged activity and that blogs had to look a certain way in order for them to be good or popular.

There has been a significant increase in queer activism in Kenya over the past few years. While social media platforms offer predictable, uniform ways of engaging online, many LGBTQ Kenyans are creatively using platforms and different media in non-intended manners to create and promote unique versions – and visions – of themselves. This not only involves witnessing their lives and others in their community, but the creation of new narratives to articulate their identities and desires. This

active and productive storytelling offers new ways of seeing and knowing a community.

Stories of Our Lives is a 2014 film directed by Jim Chuchu that chronicles queer experiences in Kenya.²⁴ *Invisible: Stories from Kenya's queer community* by Kevin Mwachiro is a collection of writing.²⁵ None on Record is an incubator for multi-media storytelling about queer life across Africa.²⁶ AFRA, Art for Radical Acceptance, is a queer women's art and performance collective.²⁷

Stories of Our Lives, was shown at the Toronto and Berlin international film festivals in 2014-2015 and achieved some prominence among audiences both domestically in Kenya and internationally. The film is comprised of five fictional vignettes, drawn from personal narratives, which document the experiences of Kenya's LGBTQ communities. It differs from more commonplace sensationalised depictions of LGBTQ Kenyans. *Hollywood Reporter* finds the film covers a variety of LGBTQ experiences "from tragedy to comedy, unrequited love to defiant romantic bliss."²⁸ Despite premiering at the Toronto International Film Festival in 2014, the film was banned in Kenya and criticised by the Kenyan Film Classification Board for "obscenity, explicit scenes of sexual activities and [for promoting] homosexuality, which is contrary to [Kenya's] national normals and values"²⁹ – a categorisation usually reserved for extreme pornographic films, such as pornography involving children.

Additionally, the film's producer George Gachara was arrested on charges of violating Kenya's Films and Stage Plays Act,³⁰ although these charges were subsequently dropped. Despite the ban, and perhaps because of it, the film has been widely circulated through informal networks in Kenya and has contributed to a greater awareness of and interest in LGBTQ experiences among Kenyans. Speaking about the film, one respondent explained: "The one opportunity that came with the banning of the film is that it got really big outside of Kenya. Within Kenya they say it's prohibited to be distrib-

24 www.thisisthenest.com/soul

25 Mwachiro, K. (2015). *Invisible: Stories from Kenya's queer community*. Goethe Institute Kenya.

26 noneonrecord.com

27 <https://www.facebook.com/afra.kenya>

28 Dalton, S. (2014, 4 October). 'Stories of Our Lives': Film Review. *The Hollywood Reporter*. www.hollywoodreporter.com/review/stories-lives-film-review-787641

29 Vourlias, C. (2014, 5 September). 'Stories of Our Lives' Sheds Light on Kenya's Gay Community. *Variety*. variety.com/2014/film/festivals/stores-of-our-lives-lgbt-kenya-community1201299178-1201299178

30 Hivos. (2015, 29 March). Forbidden Kenyan love stories told in the Netherlands. *Hivos*. <https://www.hivos.org/news/forbidden-kenyan-love-stories-told-netherlands>

23 Senzee, T. (2015, 14 May). Kenyan Paper Shamed for Its 'Top Gays' List. *The Advocate*. www.advocate.com/politics/media/2015/05/14/kenyan-paper-shamed-its-top-gays-list

uted amongst ourselves, but every movie when it's banned is watched more. So lots of people here are watching it. That's what happens."

Ground-up, independent uses of digital media like these offer choices in how to reveal and hide aspects of a community, as well as to play with the idea of visibility as well. The use of information management and security strategies in doing this is critical because the risks that exist offline and online are also real.

If the digital can be likened to "folds" on a Möbius Strip, rather than as enacting a binary online/offline, visible/invisible reality, then the ways in which LGBTQ people use technology and media can be thought of as remaining indistinct and evading exposure while simultaneously carving out spaces for visibility and agency. This is both a challenge and an opportunity in the journey for rights and self-awareness.

Action steps

The following action steps can be suggested for Kenya:

- Build bridges with other LGBTQ activist communities, both within Kenya and also abroad.
- Map the needs of LGBTQ communities to ensure technology choices respond to community needs.
- Learn about and adopt digital information management and security strategies.

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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