



Kenya - Researched and compiled by the Refugee Documentation Centre of Ireland on 1 June 2010

Information on the treatment of homosexuals in Kenya. Whether homosexual people are accepted by society. Whether they are subjected to harassment or violence. Whether homosexuality is illegal in Kenya. Whether this law is enforced.

A 2006 *Immigration and Refugee Board of Canada* response to an information request, in a paragraph headed "Status of homosexuality", states:

"According to various recent sources, homosexuality is illegal in Kenya. Under the law, which makes no mention of sex between women, sex between men is punishable by 5 to 14 years in prison. The United Nations Human Rights Committee has expressed concerns that homosexuality is considered 'unnatural' by Kenyan authorities and is prohibited under the law. However, the Kenyan Minister of Health has reportedly stated that her government has no intention changing the existing laws. The government's position reflects the position of Kenyan churches." (Immigration and Refugee Board of Canada (25 August 2006) *KEN101591.FE – Kenya: The attitude of society in general, and of government authorities in particular, toward homosexuals (2005-August 2006)*)

In a paragraph headed "State protection and other available resources" this response states:

"According to the representative of Gay Kenya, a Kenyan gay rights advocacy association and a member of the International Lesbian and Gay Association (ILGA), since homosexuality is a crime in Kenya, legal protection is not possible as long as the current law remains unchanged. However, he pointed out that he is not aware of any case of a person being punished for homosexuality, explaining that it is difficult to find incriminating evidence since the people concerned, those who are lesbian, gay, bisexual or transgender (LGBT), usually have sex behind closed doors." (Ibid)

A 2009 *Immigration and Refugee Board of Canada* response, in a paragraph headed "Treatment by Society", states:

"Many homosexuals in Kenya believe they must hide their sexual orientation for fear of arrest, discrimination and rejection even from their own families. Many Kenyan homosexuals lead double lives, marrying partners of the opposite sex and having children in order to blend into society." (Immigration and Refugee Board of Canada (12 November 2009) *KEN103226.E – Kenya: Situation of homosexuals; legislation, state protection and support services (2007 - September 2009)*)

In a paragraph headed "Treatment by Authorities" this response continues:

“The GALCK Manager observed that the current president has not commented on matters relating to homosexuality so there is no clear governmental direction on the issue, resulting in some government sections ‘being cautiously accepting’ while others, such as the police, being more ‘aggressive’ in their dealings with the gay community.” (Ibid)

In a section titled “Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity” the *United States Department of State* country report on Kenya for 2009 states:

“The penal code criminalizes ‘carnal knowledge against the order of nature,’ which is interpreted to prohibit homosexual activity and specifies a maximum penalty of 14 years’ imprisonment. A further statute specifically criminalizes male-to-male sex and specifies a maximum penalty of 21 years’ imprisonment. However, there were no reported prosecutions of individuals for sexual orientation or homosexual activity during the year. Lesbian, gay, bisexual, and transgender advocacy organizations, such as the Gay and Lesbian Coalition of Kenya, were permitted to register and conduct activities. There was frequent and widespread societal discrimination based on sexual orientation during the year. In 2007 the Council of Imams and Preachers of Kenya and other civic leaders condemned homosexuality and argued against legalizing gay marriages. A group in Mombasa created the Muslim Youth Pressure Group to oppose homosexuality in 2007.” (United States Department of State (11 March 2010) *2009 Human Rights Report: Kenya*)

An article published on the Zambia-based website *African Veil* notes:

“The law books help create the ambivalence. Two separate penal codes relate to the gays in Kenya and the archaic laws can lead to a 5 to 14 year jail term. They are rarely enforced, but penal code 162 and 165 are an effective threat hanging over the gay community. “They have a weapon to which they defend themselves,” says Pauline Kimani, a leader of an umbrella organization for gays in Kenya. ‘Ending the sodomy laws would be up to members of parliament,’ says Kenyan government spokesman Dr. Alfred Mutua, ‘and they represent the people.’ Gay rights is a non-starter for Kenyan politicians and attempts to repeal the laws have ended practically before they began. The Kenyans who elect the MPs are mostly on their side. A few people defend gay rights on the streets of Nairobi. But many say that gays shouldn’t have rights, are ‘un-African,’ and not good Christians.” (African Veil (15 May 2008) *‘We live in fear,’ say gays in Kenya*)

An article published by *The Guardian* states:

“Over the last couple of months, the gay community in Kenya, long used to living in secrecy and guilt, has become bolder. It has started coming out of the closet in a bid to shed the stigma associated with homosexuality. Newspapers have been carrying stories of people who are openly gay and who are not ashamed to talk about their experiences. Writing in one of the local dailies, a columnist described the London couple as heroes for daring to come out in the open. ‘Some time in the future, Kenyans may even come to view them as heroes,’ she wrote. But the more conservative section of Kenyans chooses to regard this as an urban problem, prevalent among a permissive city society. There are those who are still openly hostile to the gay community. They argue that homosexuality is completely un-African and that those engaging in it

have lost their African values.” (The Guardian (4 November 2009) *Stand up, be counted and go to jail*)

An article published by the pro-gay website *Behind the Mask* states:

“Kenyan police are investigating an assault case following an incident where a gay activist was allegedly attacked by his neighbours in Nairobi, because he publicly expressed his opinion to support gay rights. Peter Wanyama, a human rights activist working with Other Sheep – Kenya, a gay rights advocacy Christian organisation, in a police statement said that a section of his neighbours kicked and hit him with blows, accusing him of being gay.” (Behind the Mask (13 October 2009) *Near Death Experience for Pro Gay Activist*)

An article from the Kenyan newspaper *Daily Nation* reports:

“Even before the week in which Kenyan gay and lesbian issues came to the fore at the just-concluded World Social Forum (WSF) was over, the backlash against the homosexual community had begun. Some of the first reactions came from the Council of Imams and Preachers of Kenya (CIPK) meeting in Mombasa. CIPK secretary-general Sheikh Mohamed Dor was reported to have asked the Government to clamp down on homosexuals beginning with those speaking at the the forum, whom he said should be arrested by police.” (Daily Nation (28 January 2007) *Kenya: Backlash Against Gays And Lesbians Starts*)

A report from the *Gay and Lesbian Coalition of Kenya* notes:

“Although being homosexual is not a crime in Kenya, the police with the help of the public have continued to arrest people suspected of being homosexuals. Most of the people have been arrested from their offices or as in the case of two of the men, while boarding public transport - each in a different location. Reports from Mombasa indicate local politicians are actively involved in the exercise of identifying people suspected to be homosexuals. On Monday 15th Feb, media reports indicated that police in the coastal town have beefed up security operations, with the intention of identifying and arresting suspected homosexuals. Public facilities and clubs suspected of hosting homosexuals will be closed down - reports indicate.” (Gay and Lesbian Coalition of Kenya (15 February 2010) *Gay Attacks in Mombasa - Developing Story*)

An *ABC News* article reports:

“In Kenya, homosexuality isn't just socially unacceptable -- it's illegal. The penalty for homosexual acts for men is seven years in prison. But openly gay men, referred to as 'queens,' are more likely to be beaten by homophobic Kenyans than arrested. 'I know someone who had a beer bottle shoved up his a--,' Steve said. Despite the consequences, there is still a substantial gay population in Nairobi. It's hard to find exact numbers, but there are enough that they have now founded an organization called the Gay and Lesbian Coalition of Kenya. Steve is a member. Though they are demanding their rights, group members are forced to 'walk a fine line,' said Steve, who worries about getting arrested. The group is trying to force the government to

recognize the rights of homosexuals without causing a backlash.” (ABC News (5 May 2008) *Searching for Love Where Being Gay Is a Crime*)

A *BBC News* report states:

“Homosexuality is illegal in Kenya and punishable by up to 14 years in jail. A BBC reporter in Mombasa says police began a crackdown on the gay community last week following anti-gay protests. The rallies were apparently sparked by US President Barack Obama's condemnation of planned anti-gay legislation in neighbouring Uganda. The Uganda bill calls for long jail terms or the death penalty for some gay people. Kenyan gay rights activists have protested about rising violence against homosexuals, saying public attitudes are condoned by the authorities.” (BBC News (17 February 2010) *Kenya 'gay union' suspects freed*)

Another *BBC News* report on an incident which occurred in Mtwapa in February 2010 adds:

“Police in Mtwapa, just north of the Kenyan coastal town of Mombasa, say they have arrested five men whom they accuse of being homosexuals. District officer George Matandura said two of the men had been found with wedding rings, attempting to get married, in Kikambala beach resort. The other three men were handed to the police by members of the public; two of them had reportedly been beaten. Homosexuality is illegal in Kenya but arrests are extremely rare. Crowds gathered outside the police station where the men were taken in protest at the presence of alleged homosexuals. The wedding was reportedly due to take place at a private villa in the resort, but locals heard of the plans and alerted the police, who raided a house and arrested the men.” (BBC News (12 February 2010) *Police arrest five 'gay' Kenyans*)

See also a *Daily Nation* article which states:

“Police on Friday rescued three men accused of being gays in Mtwapa town in Kilifi district from hundreds of angry youth baying for their blood. Subsequently, a same-sex marriage that was planned to take place in the coastal town failed to take off as two men who announced the wedding went into hiding. Police were forced to intervene to save the three men who residents had accused of being ‘notorious gays’ who were behind the spread of the practice in the town. Two men suspected of being a couple by residents were flushed out of their apartment within the town and police found wedding rings on their fingers. Police also dramatically rescued a another man and managed to rush him to Mtwapa police post.” (Daily Nation (12 February 2010) *Kenya: Police Save Men from Anti-Gay Crowd*)

A report from *Human Rights Watch* notes:

“On February 12, an armed mob of 200 to 300 people surrounded the KEMRI health center. Witnesses told Human Rights Watch that a man called ‘Faridi,’ an organizer of the mob, said a KEMRI staff member was homosexual because he wore a T-shirt promoting safer sex. In response, police who were at the scene took him and another KEMRI staffer into custody. Earlier the same day, Faridi, with police, forcibly entered another private individual's home, claiming that the two people in the house were homosexual. Police

took the two into custody, too. Local activists have informed Human Rights Watch that none of the men were charged and they have all since been released, and that the police were attempting to protect them from violence by taking them into custody. The mob beat senseless another man who was approaching the health center and was about to set him on fire when the police arrived and took him into custody as well. A large crowd gathered outside the police station where the five were being held. A religious leader addressed the mob, saying all homosexuals should be driven out of Mtwapa, and another speaker encouraged the mob to not bother bringing homosexuals to the police but rather to take the law into its own hands, witnesses said. Other speakers said that homosexuals had appeared in Mtwapa when KEMRI opened its offices there. Smaller groups reportedly went to the homes of other people suspected of being gay and threatened them." (Human Rights Watch (17 February 2010) *Kenya: Halt Anti-Gay Campaign*)

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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Behind the Mask

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