



## Kenya - Researched and compiled by the Refugee Documentation Centre of Ireland on 12 December 2013

### Treatment of LGBT people including legal status and police protection

In January 2013 *Freedom House* states:

“Consensual same-sex sexual activity is criminalized in Kenya, with a maximum of 21 years in prison for sex between men” (Freedom House (January 2013) *Freedom in the World 2013 - Kenya*).

Commenting on events of 2012, a report published in April 2013 by the *United States Department of State* notes:

“The penal code criminalizes ‘carnal knowledge against the order of nature,’ which is interpreted to prohibit consensual same-sex sexual activity and specifies a maximum penalty of 14 years’ imprisonment. A separate statute specifically criminalizes sex between men and specifies a maximum penalty of 21 years’ imprisonment. Police detained persons under these laws, particularly suspected sex workers, but released them shortly afterward. There were no reported prosecutions of individuals for same-sex sexual activity during the year. Police statistics for 2011 indicated 114 ‘unnatural offenses,’ down from 154 in 2010. LGBT advocacy organizations, such as the Gay and Lesbian Coalition of Kenya, were permitted to register and conduct activities. However, societal discrimination based on sexual orientation was widespread and resulted in loss of employment and educational opportunities. Violence against the LGBT community also occurred, particularly in rural areas and among refugees. NGO groups reported that police intervened to stop attacks but generally were not sympathetic to LGBT individuals or concerns” (United States Department of State (19 April 2013) *Country Reports on Human Rights Practices for 2012, Kenya*, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons/Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity).

In May 2013 the *International Lesbian, Gay, Bisexual, Trans and Intersex Association* notes the following legislation, stating:

“The Penal Code (as amended by Act No. 5 of 2003) 175 ‘Section 162. Any person who— (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or is guilty of a felony and is liable to imprisonment for fourteen years: Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if— (i) the offence was committed without the consent of the person who was carnally known; or (ii) the offence was committed with that person’s consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.’ ‘Section 163. Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.’ ‘Section 165. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any

male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for - five years.” (International Lesbian, Gay, Bisexual, Trans and Intersex Association (14 May 2013) *State-Sponsored Homophobia 2013: Kenya*, p.50).

A report issued in June 2013 by *Amnesty International* notes:

“The new Kenyan constitution came into force on 27 August 2010. Although the constitution explicitly excludes same-sex couples from the definition of marriage, it heralds positive developments for LGBTI rights in three ways. First, it contains an extensive Bill of Rights with an affirmative duty on the state to promote and fulfil the rights enumerated therein; second, it explicitly incorporates international laws into Kenya’s domestic law; and third, it stipulates that ‘[a]ny law, including customary law, that is inconsistent with [the] Constitution is void to the extent of the inconsistency, and any act or omission in contravention of [the] Constitution is invalid.’ Furthermore, although the constitution does not explicitly mention sexual orientation or gender identity, it outlaws discrimination ‘on any ground.’” (Amnesty International (25 June 2013) *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa*, p.17).

This document also states:

“In Kenya, LGBTI individuals are not usually arrested for offences directly related to same-sex conduct. However there have been a number of arrests of LGBTI people under other laws, such as loitering, soliciting, or impersonation. Amnesty International was told that sometimes individuals are threatened with arrest under the provisions of the Penal Code that criminalize same-sex relations for the purposes of extortion by the police” (ibid, p.22).

It is also pointed out in this document that:

“There have been a number of reported cases of Kenyan girls who have been perceived as acting ‘too masculine’ and as a result have been expelled from their schools or beaten up by other students” (ibid, p.48).

A report published in July 2013 by *Erasing 76 Crimes* states:

“Kenyans are gradually becoming more tolerant of LGBT people, but a violent anti-gay campaign is currently under way, says the Gay and Lesbian Coalition of Kenya (GALCK)” (Erasing 76 Crimes (18 July 2013) *Kenya making progress, but anti-gay violence continues*).

This publication also points out that:

“There have also been cases where girls have been expelled from public schools for alleged lesbianism, despite the globally recognized health and socio-economic impact of prematurely terminating girls education. In February 2012, 8 girls were expelled from a high school in Kilifi and in June 2013 6 girls expelled from a school in Muranga” (ibid).

In November 2013 the *Kaleidoscope Trust* notes:

“In Kenya, consensual same-sex practices between are criminalised under the Penal Code, punishable by up to 14 years imprisonment. Female same-sex practices are

not explicitly prohibited in legislation, though – like gay men – they face considerable stigma and prejudice. LGBTI people do not enjoy protection from discrimination under Kenyan law” (Kaleidoscope Trust (10 November 2013) *Speaking Out: The rights of LGBTI citizens from across the Commonwealth - Kenya*, p.20).

This report also notes:

“Although the existing sodomy laws are hardly ever used there are reports of harassment by police seeking to blackmail or extort money from them” (ibid, p.20).

It is also pointed out in this document that:

“Stigma against women who have sex with women has greatly contributed to their marginalisation, impacting almost all aspects of their daily lives. There has reportedly been an increase in incidents of “corrective” rape and sexual violence against lesbian and bisexual women” (ibid, p.20).

A report issued in February 2012 by the *Equal Rights Trust* states:

“Discrimination against LGBTI persons is a serious problem in Kenya, and one which has a strong impact on the lives of those affected” (Equal Rights Trust (February 2012) *In the Spirit of Harambee. Addressing Discrimination and Inequality in Kenya*, p.114).

This report also states:

“Among the root causes of the disadvantages faced by many LGBTI individuals are the high levels of stigma and prejudice which prevail against those whose sexual orientation or gender identity does not conform to societal norms” (ibid, p.115).

In 2011 the *Kenya Human Rights Commission* notes:

“Same sex sexual practices remain criminalized in Kenya, and even though there are few convictions based on sections 162 to 165 of the Penal Code that criminalize these practices, LGBTI persons are routinely harassed by the police, held in remand houses beyond the constitutional period without charges being preferred against them, and presented in court on trumped-up charges” (Kenya Human Rights Commission (2011) *The Outlawed Among Us*, p.21).

This publication also points out that:

“Stigma and discrimination are the major problems that LGBTI persons in Kenya face” (ibid, p.24).

The report also notes:

“LGBTI persons in high school or college students are punished, suspended or expelled from school on grounds of ‘actual’ or suspected sexual orientation or gender identity” (ibid, p.32).

## References

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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.

## Sources Consulted

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