



Australian Government
Refugee Review Tribunal

Country Advice

Kenya

Kenya – KEN38008 – Bisexuals –
Homosexuals – Societal attitudes – Support
organisations – Legal provisions –
Religious groups – Mob violence – State
protection – Internal relocation

20 January 2011

1. Please provide background information on the bisexual and homosexual community in Kenya, including estimates of proportion / population.

While no information was found on the bisexual community, almost all of the information on the homosexual community could be applied to them. The scarcity of information on the background of the homosexual community, including its size, is likely due to the community being largely underground. Members of the community mention that they must live double lives and remain largely invisible.

The Kenyan public held several misconceptions about the homosexual community in Kenya. This included a perceived link between a gay lifestyle, the growth in the male sex trade and the idea that gay men want to convert others and “grow their number”. The gay community refutes this arguing that “Gay life is also about love and many gay men stick on one partner and that is it”.¹ The homosexual community is also characterised by its victimhood due to attacks and hate-mongering combined with government inaction, according to Human Rights Watch (HRW).²

Due to attacks and hate-mongering, the homosexual community in Kenya is largely underground. HRW states that “several people have gone into hiding; others are preparing to flee their homes at a moment’s notice”.³ BBC News reported in 2006 that “a secretive gay scene had developed in certain pubs and clubs in Nairobi” as a result of sex between men being punishable by long prison sentences.⁴ A July 2010 article quotes a gay man who states that there are not many places to meet gay people saying “It’s more like gay death, not gay life in Nairobi”. The coordinator of a local gay and lesbian rights organisation adds that “People live double lives here. There’s a life you live with your straight friends and the life you live as a gay person... We are vulnerable, we are neglected, and we don’t have any

¹ Robinson, N. 2010, ‘Gay pride and prejudice in Kenya’, *BBC*, 16 June – Attachment 1

² Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2

³ Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2

⁴ UK Home Office 2008, *Country of origin information report: Kenya*, 30 April, p20 – Attachment 3

visibility”. The discussion was held in a Nairobi hamburger bar which was considered to be more “gay-friendly”.⁵

No information was found on estimates of the proportions or size of the homosexual population in Kenya. There is nothing to suggest that the proportion of homosexuals in Kenya’s population is any different from that of other countries.

2. Deleted.

3. Please provide information on the current laws on bisexuality and homosexuality in Kenya, including whether it is illegal to be bisexual or homosexual and the penalty for conviction of an offence under the relevant laws. Please also include information on the enforcement of the laws by the relevant authorities.

Homosexuality is illegal under the Kenyan penal code. However, sources indicate that individuals are rarely prosecuted for committing homosexual acts. While the relevant sections of the code do not mention bisexuals specifically, the laws can be taken to apply to them in terms of any homosexual acts they may commit as bisexuals.

The US Department of State Report on Human Rights Practices in Kenya states unequivocally that “[t]he law criminalizes homosexual activity”.⁶ The sections of the penal code that criminalise homosexuality are as follows:

162. Any person who:

(a) has carnal knowledge of any person against the order of nature; or

...(c) permits a male person to have carnal knowledge of him or her against the order of nature, 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.

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, with or without corporal punishment.

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

⁵ ‘Being gay in Kenya’ 2006, *Reuters*, 22 February – Attachment 4

⁶ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11

guilty of a felony and is liable to imprisonment for five years, with or without corporal punishment.⁷

The US DOS report states that section 162 is interpreted to prohibit homosexual activity and specifies a maximum penalty of 14 years imprisonment, and that article 165 carries a maximum penalty of 21 years imprisonment.⁸

Enforcement

Despite the provisions under the penal code criminalising homosexuality, the laws are “rarely enforced”⁹ with the US DOS noting that there were no reported prosecutions of individuals for sexual orientation or homosexual activity in 2009.¹⁰ A July 2010 article noted that with anti-privacy laws preventing police from entering an individual’s house, “most of Kenya’s gay community can avoid conviction, as long as they stay out of the public eye”.¹¹

The Tribunal requested advice from DFAT on this matter on 1 October 2010; a response was received on 4 November. In relation to the legality of homosexuality in Kenya, DFAT advised the following:

Post spoke to a Senior Magistrate from the Thika Law Courts, who advised that homosexuality is not illegal in Kenya, and one cannot be charged with this offence. The only time it is used in court is in a divorce case, but even then the accuser has to be able to prove it of the accused.¹²

Articles 162-165 of the Kenyan criminal code as outlined above would appear to contradict the advice of the Senior Magistrate consulted by Post. The Magistrate may have been guided by the absence of prosecutions of homosexuals.¹³ Also, the Magistrate may have been referring to the condition of homosexuality which is technically not illegal, rather than homosexual acts, which are.¹⁴ Treatment of female homosexuals under these provisions is less clear, however; Kenyan law does not specifically mention sexual activities between women.¹⁵

⁷ Government of Kenya 2009, *The Penal Code Revised Edition 2009 (2008)*, Kenya Law Reports website <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf> – Accessed 8 November 2010 – Attachment 12; ‘Laws of Kenya on Same-Sex Sexuality’ 2009, Gay and Lesbian Coalition of Kenya website, 9 June

http://galck.org/index.php?option=com_content&view=article&id=26:laws&catid=12:legal&Itemid=12 – Accessed 27 October 2010 – Attachment 13

⁸ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11

⁹ UK Home Office 2008, *Country of origin information report: Kenya*, 30 April, p20 – Attachment 3

¹⁰ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11

¹¹ Clarke, J. 2010, ‘Not safe to come out’, *Mail and Guardian Online (South Africa)*, 26 February – Attachment 14

¹² Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1207 – Kenya: RRT Information Request: KEN37523*, 4 November – Attachment 4

¹³ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11

¹⁴ ‘Laws of Kenya on Same-Sex Sexuality’ 2009, Gay and Lesbian Coalition of Kenya website, 9 June, Articles 162 and 165

http://galck.org/index.php?option=com_content&view=article&id=26:laws&catid=12:legal&Itemid=12 – Accessed 27 October 2010 – Attachment 13

¹⁵ Anstis, S. 2009, ‘Sex Workers’ Rights in Kenya: “It’s Better to Be a Thief Than Gay in Kenya”’, *Toward Freedom*, Global Gayz Gay Kenya website, 6 August <http://www.globalgayz.com/country/Kenya/view/KEN/gay-kenya-news-and-reports-2009#article13> – Accessed 8 November 2010 – Attachment 15

Article 162 (a) may, however, be applicable here. Further, the 2006 *Sexual Offences Act* makes no mention of same-sex relations.¹⁶

An article published on African gay advocacy website *African Veil* in May 2008 notes that while rarely enforced, articles “162 and 165 are an effective threat hanging over the gay community”.¹⁷

4. Please provide information on treatment of, and attitude toward, homosexuals by general society in Kenya, including traditional attitudes.

A number of sources were located that indicate that society’s treatment of and attitude toward homosexuals is characterised by discrimination, stigmatisation and misinformation. Advice received from DFAT on 4 November 2010 advised the following in relation to treatment of homosexuals in Kenya:

Post advises that homosexuality is not acceptable to the majority of Kenyans and a homosexual would likely suffer from harassment, discrimination and public rejection. This is true of both male and female homosexuals, but most particularly of males.¹⁸

The Tribunal also received advice from Richard Vokes, a senior lecturer in anthropology at the University of Canterbury, New Zealand and Research Associate of the Institute of Social and Cultural Anthropology at the University of Oxford, UK. Mr Vokes advised that social treatment of homosexuals in Kenya is “the African norm”; that is “intolerant public, scolding and accusatory media. No public space allowed”.¹⁹

The US Department of State notes that while no prosecutions of Kenyan citizens for sexual orientation or homosexual activity were reported to have occurred in 2009, there was frequent and widespread societal discrimination based on sexual orientation.²⁰ A July 2010 article from a South African news service discussed homosexuals with a Christian member of the Kenyan public. He is quoted as saying “I hate them...It’s no wonder they hide, otherwise they would be beaten. If my son was gay, he would be my enemy for life”. When asked about whether as a Christian does he not think this is at odds with the tenets of love and understanding inherent in the faith, he is said to have shrugged, “defiantly flip[ped] his palms skywards” and said “It’s just not in our culture”.²¹

Tradition and Religious Attitudes

¹⁶ Government of Kenya 2006, *The Sexual Offences Act: No 3 of 2006*, Kenya Law Reports website <http://www.kenyalaw.org/family/statutes/download.php?file=Sexual%20Offences%20Act.pdf> – Accessed 8 November 2010 – Attachment 16

¹⁷ “We live in fear’, say gays in Kenya’ 2008, *African Veil* website, 18 May <http://www.africanveil.org/kenya024.htm> - Accessed 9 November 2010 – Attachment 17

¹⁸ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1207 – Kenya: RRT Information Request: KEN37523*, 4 November – Attachment 4

¹⁹ Vokes, R. 2010, Email to RRT Country Advice Re: Homosexuals in Kenya, 7 November – Attachment 18

²⁰ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11

²¹ Clarke, J. 2010, ‘Not safe to come out’, *Mail and Guardian Online (South Africa)*, 26 February – Attachment 14

Religion plays a major role in shaping public opinion toward homosexuality, especially in rural areas. Influential religious leaders and groups are particularly vocal in their denunciation of homosexuality in Kenya. Gay advocacy website *African Veil* notes that:

Kenya is a country of faithful people and religion plays a defining role in homophobia in Kenya. Seventy percent of the country is Christian and there is a sizeable Muslim and Hindu population...More traditional denominations in Africa are also conservative.²²

Groups such as the Council of Imams and Preachers of Kenya have strongly condemned homosexuality and argued against the legalisation of gay marriage.²³ In Islam, the Qur'an is said to forbid homosexual acts.²⁴ The US DOS reports that a group in Mombasa has recently formed a Muslim Youth Pressure Group to oppose homosexuality.²⁵

The Catholic and Protestant churches in Kenya, including Anglicans, “condemn homosexuality as sinful”.²⁶ A Preacher at Parklands Pentecostal Church, for example, is quoted by *African Veil* as referring to homosexuality as “an abomination that is totally unacceptable by God who formed us not to function in that way”.²⁷ Western evangelical Christian groups are also reported to be involved in spreading anti-gay sentiment and misinformation about homosexuality within Kenya. US-based Christian “ex-gay” organisation, *Homosexuals Anonymous Fellowship Services* (HAFS) is reported to have conducted visits to Kenya in 2009 and 2010 to educate communities about the “curing” of homosexuality through prayer and therapy.²⁸ HAFS Director, Doug McIntyre, is reported to have spoken to nearly 10,000 students and educators in Kenya in November 2009 and planned to return in March 2010 to conduct more seminars.²⁹ Independent media website *Alternet* reported in March 2010 that US-based anti-gay organisations were working with evangelical Christian groups in Kenya, distributing images of prominent gay and lesbian rights activists in the country with their contact information and “Not Wanted” printed on posters.³⁰

Homosexuality is thought to be un-African. Former Kenyan president Daniel Arap Moi once said “Homosexuality is against African norms and traditions, even in religion it is considered a great sin”. In some traditional beliefs, homosexuals are said to be cursed or bewitched.³¹ Richard Vokes noted that “overt persecution is unusual, although families will often seek

²² “We live in fear’, say gays in Kenya’ 2008, African Veil website, 18 May
<http://www.africanveil.org/kenya024.htm> - Accessed 9 November 2010 – Attachment 17

²³ “We live in fear’, say gays in Kenya’ 2008, African Veil website, 18 May
<http://www.africanveil.org/kenya024.htm> - Accessed 9 November 2010 – Attachment 17

²⁴ ‘Being gay in Kenya’ 2006, *Reuters*, 22 February – Attachment 4

²⁵ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11

²⁶ ‘Being gay in Kenya’ 2006, *Reuters*, 22 February – Attachment 4

²⁷ “We live in fear’, say gays in Kenya’ 2008, African Veil website, 18 May
<http://www.africanveil.org/kenya024.htm> - Accessed 9 November 2010 – Attachment 17

²⁸ Besen, W. 2010, *Globetrotting Anti-Gay Characters with Character Issues*, Truth Wins Out website, 3 March
<http://www.truthwinsout.org/blog/2010/03/7346/> - Accessed 3 November 2010 – Attachment 19

²⁹ Besen, W. 2010, *Globetrotting Anti-Gay Characters with Character Issues*, Truth Wins Out website, 3 March
<http://www.truthwinsout.org/blog/2010/03/7346/> - Accessed 3 November 2010 – Attachment 19

³⁰ Craigwell, A. 2010, ‘Christian churches and U.S.-based anti-gay promotion in Kenya’, *Alternet* website, 12 March
<http://blogs.alternet.org/antbern/2010/03/12/christian-churches-and-u-s-based-anti-gay-promotion-in-kenya/> - Accessed 10 November 2010 – Attachment 39

³¹ ‘Being gay in Kenya’ 2006, *Reuters*, 22 February – Attachment 4

spiritual assistance to try to purge anyone suspected of homosexuality of their ‘disease’”.³² On 25 October 2010, John Idriss Lahai, a University of New England PhD candidate in Peace Studies was contacted for advice on the treatment of homosexuals in Kenya. Mr Lahai’s advice states that the overwhelming majority of Kenyans view homosexuality as a Western practice that compromises Kenyan identity, and one that must be rejected and eradicated.³³

Misinformation about Homosexuality

Prevailing public attitudes toward homosexuality in Kenya are characterised by misinformation and stigmatisation that is encouraged and propagated by the mainstream media. An article published in popular Kenyan newspaper the *Daily Nation* in August 2010, for example, illustrates the bias toward and lack of understanding of homosexuality in Kenya.³⁴ The article reports on “increasing lesbianism among schoolgirls” which is attributed to “lack of training in managing...sexuality” and lack of self-control. The article quotes the views of a clinical psychologist who states that homosexuality and lesbianism are “learned behaviours” which can be “unlearned”. The article compares homosexuality to drug and alcohol abuse and claims that rehabilitation is necessary.³⁵

Changing Attitudes?

Reports on social attitudes towards homosexuality in Kenya contained conflicting information about whether public sentiment is slowly liberalising, or hardening.

BBC News reported in June 2010 that since anti-gay violence erupted in the town of Mtwapa in February 2010 (to be discussed in Question 6), attitudes toward homosexuality have hardened and “are driving gays and lesbians underground”.³⁶ Mtwapa is an area traditionally considered more liberal and open-minded than the rest of the country; however, the town currently has a district commissioner pushing for Kenya to follow Uganda’s example, where an MP has introduced a private member’s bill calling for life sentences, and death in some cases, as punishment for homosexual acts.³⁷

A *Time* magazine article from November 2009 notes that Kenyan attitudes towards homosexuals are considered more liberal than the rest of sub-Saharan Africa (outside South Africa); nevertheless homosexuals “still face overwhelming hostility in the country”.³⁸ The reaction to the highly publicised marriage of two Kenyan men in Britain in 2009 was illustrative of these attitudes; the men were widely reported in Kenyan media sources as being

³² Vokes, R. 2010, Email to RRT Country Advice Re: Homosexuals in Kenya, 7 November – Attachment 18

³³ Lahai, J. I. 2010, Email to RRT Country Advice Re: Homosexuals in Kenya, 28 October. – Attachment 19

³⁴ Kweyu, D. 2010, ‘The dilemma of lesbian schoolgirls’, *Daily Nation*, 10 August

<http://www.nation.co.ke/Features/Living/The%20dilemma%20of%20lesbian%20schoolgirls%20%20%20/-/1218/974220/-/view/printVersion/-/Is2cy4/-/index.html> - Accessed 28 October 2010 – Attachment 20

³⁵ Kweyu, D. 2010, ‘The dilemma of lesbian schoolgirls’, *Daily Nation*, 10 August

<http://www.nation.co.ke/Features/Living/The%20dilemma%20of%20lesbian%20schoolgirls%20%20%20/-/1218/974220/-/view/printVersion/-/Is2cy4/-/index.html> - Accessed 28 October 2010 – Attachment 20

³⁶ Robinson, N. 2010, ‘Gay Pride and Prejudice in Kenya’, *BBC News*, 16 June

<http://www.bbc.co.uk/news/10320057> - Accessed 10 November 2010 – Attachment 1

³⁷ Robinson, N. 2010, ‘Gay Pride and Prejudice in Kenya’, *BBC News*, 16 June

<http://www.bbc.co.uk/news/10320057> - Accessed 10 November 2010 – Attachment 1

³⁸ Wadham, N. 2009, ‘In Fight Against AIDS, Kenya Confronts Gay Taboo’, *Time*, 7 November

<http://www.time.com/time/world/article/0,8599,1936514,00.html> – Accessed 10 November 2010 – Attachment

a shame to the country and their parents were harassed in public.³⁹ In the same month a 2009 report by the Canadian Immigration and Refugee Board (IRB) noted that:

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 in to society.⁴⁰

An article published in the *Hindustan Times* in April 2007 further confirms the difficulties of being openly gay, noting that “there can be no talk of a visible gay community in Kenya. There are neither bars nor clubs hoisting the rainbow flag...Even gay activist[s] do not talk to their families about their sexuality”.⁴¹

5. Please provide information on whether there is mob-violence whereby groups of the public attack bisexuals or homosexuals.

There were reported incidents of mob-violence at least one of which was started by rumours. Human Rights Watch discussed mobs killing not only those suspected of being gay but also those defending the human rights of gays.⁴² In February 2010 anti-gay protests and mob-violence broke out in the coastal town of Mtwapa.⁴³ The violence followed unsubstantiated rumours about a gay wedding that were picked up by local and national media. Several Imams and Muftis instructed their congregations to expose homosexuals in Mtwapa. Sheikh Ali Hussein of the Council of Imams and Preachers of Kenya and Bishop Lawrence Chai of the National Council of Churches of Kenya held a news conference in which they demanded an investigation into the Kenya Medical Research Institute (KEMRI), a government health centre in Mtwapa that provides community HIV/AIDS services. The religious leaders criticised the government for providing counselling services to “criminals” and demanded that the centre be shut down. They also promised to “flush out gays”. Subsequently, KEMRI was surrounded by an armed mob of 200-300 people.⁴⁴ People were dragged out from the waiting room of the clinic and beaten.⁴⁵ A number of staff members, volunteers, clients and suspected homosexuals were taken into police custody. Witnesses claimed that police were attempting to protect them from violence by detaining them; however, news reports said the men were asked to submit to forensic examinations to determine if they were homosexual.⁴⁶

The following reports were located of Kenyan homosexuals being subjected to violent behaviour in their communities due to their sexual orientation:

³⁹ Wadham, N. 2009, ‘In Fight Against AIDS, Kenya Confronts Gay Taboo’, *Time*, 7 November <http://www.time.com/time/world/article/0,8599,1936514,00.html> – Accessed 10 November 2010 – Attachment 21

⁴⁰ Canadian Immigration and Refugee Board 2009, *KEN103226.E Kenya: Situation of homosexuals, legislation, state protection and support services*, 12 November http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?l=e&id=452629 – Accessed 8 November 2010 – Attachment 22

⁴¹ ‘Homosexuals come out in Kenya’ 2007, *Hindustan Times*, Indo-Asian News Service, 29 April - Attachment 40

⁴² Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2

⁴³ Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2

⁴⁴ Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2

⁴⁵ Robinson, N. 2010, ‘Gay pride and prejudice in Kenya’, *BBC*, 16 June – Attachment 1

⁴⁶ Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2

- An article on activist Ann Njogu published in the *Huffington Post* in March 2010 reports that her organisation's work in "taboo areas" including sexuality and the rights of homosexuals, has resulted in arrest, beatings, sexual assault by police, and threats from politicians;⁴⁷
- Lesbian Gay Bisexual Transgender (LGBT) advocacy website *LGBT Asylum News* reported in March 2010 on continuing threats to homosexuals in Kenyan coastal areas related to the KEMRI health centre in Mtwapa;^{48 49}
- South African publication *Mail and Guardian* reported in February 2010 that homosexuals are regularly beaten and male sex workers are harassed for bribes by council officials;⁵⁰
- Gay advocacy website *Behind the Mask* reported in October 2009 that an employee of a Christian gay activist organisation had been attacked by neighbours;⁵¹
- *ABC News* reported in May 2008 that openly gay men are more likely to be beaten by homophobic Kenyans than arrested;⁵²
- African gay advocacy website *Behind the veil* reported in May 2008 on the commonness of beatings of openly gay men and notes that most victims are too afraid to report such incidents to the police.⁵³

6. Please provide information on the treatment of homosexuals and bisexuals by the state authorities, particularly the police, in Kenya.

Treatment of homosexuals by state authorities has been milder than that by society at large. Despite this, mistreatment does occur. As noted above, despite the criminalisation of homosexuality under the penal code, no prosecutions for homosexual activity are reported to have occurred in recent years.⁵⁴ A Canadian Immigration and Refugee Board response on Kenyan homosexuals from 2009 includes correspondence with the Manager of the Gay and Lesbian Coalition of Kenya (GALCK), who 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

⁴⁷ Walsh, J. 2010, 'Courage, and Heart, on Behalf of Kenya's Women', *Huffington Post*, Human Rights Watch Website, 10 March <http://www.hrw.org/en/news/2010/03/10/courage-and-heart-behalf-kenyas-women> - Accessed 4 November 2010 – Attachment 23

⁴⁸ Canning, P. 2010, 'Continuing threats to gays on Kenya's coast', *LGBT Asylum News*, 10 March <http://madikazemi.blogspot.com/2010/03/continuing-threats-to-gays-on-kenyas.html> - Accessed 3 November 2010 – Attachment 24

⁴⁹ Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2; Kenya 'gay union' suspects freed' 2010, *BBC News*, 17 February <http://news.bbc.co.uk/2/hi/8520906.stm> - Accessed 9 November 2010 – Attachment 25; Bocha, G. 2010, 'Kenya: Police Save Men from Anti-Gay Crowd', *Daily Nation*, All Africa website, 12 February <http://allafrica.com/stories/201002120910.html> - Accessed 9 November 2010 – Attachment 26.

⁵⁰ Clarke, J. 2010, 'Not safe to come out', *Mail and Guardian Online*, 26 February – Attachment 14

⁵¹ Behind the Mask, 2009, *Near Death Experience for Pro Gay Activist*, Behind the Mask website, 13 October, quoted in: Refugee Documentation Centre (Ireland) 2010, *Information on the treatment of homosexuals in Kenya*, 1 June <http://www.unhcr.org/refworld/topic.4565c22523.4565c25f28d.4c0f5d452.0.html> – Accessed 9 November 2010 – Attachment 13

⁵² Hughes, D. 2008, 'Searching for Love Where Being Gay is a Crime', *ABC News*, 5 May <http://abcnews.go.com/print?id=4719894> – Accessed 9 November 2010 – Attachment 14

⁵³ "We live in fear", say gays in Kenya' 2008, African Veil website, 18 May <http://www.africanveil.org/kenya024.htm> - Accessed 9 November 2010 – Attachment 17

⁵⁴ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11

sections “being cautiously accepting” while others, such as the police, being more “aggressive” in their dealings with the gay community.⁵⁵

While Human Rights Watch alleged that “government is sitting silent while mobs try to kill human rights defenders and assault people they suspect are gay”⁵⁶ the GALCK Manager is quoted as noting that:

...it has to be said the police have on numerous occasions rescued individuals who faced imminent danger of public lynching because of their real or presumed sexual orientation.⁵⁷

Advice received by the Tribunal from John Idriss Lahai of the University of New England in October 2010 states that “politicians have been in the forefront [sic] to combat homosexuality in the country”. Mr Lahai also advised that the relevant sections of the penal code that criminalise homosexual activity are used to extort and blackmail suspected homosexuals, using the threat of arrest and or imprisonment to extract bribes.⁵⁸ The use of blackmail and extortion by authorities to target suspected homosexuals is also noted by gay advocacy groups.⁵⁹

Richard Vokes advised the Tribunal in November 2010 that the authorities in Kenya have “complete intolerance” of homosexuality, and notes that there is no legal protection for homosexuals from mistreatment or persecution. While the new constitution does include human rights-based provisions that could be used to protect homosexuals, there is not yet legislation to enforce the provisions.⁶⁰ The new constitution was signed into law by President Mwai Kibaki in August 2010. Gay advocacy websites report that the gay community celebrated stipulations in the new Constitution that the state shall not directly or indirectly discriminate against minorities and marginalised groups.⁶¹ What constitutes a minority or marginalised group under Kenyan law is not specified, however.⁶² In an interview with *LGBT Asylum News* in October 2010, GALCK Director David Kuria states:

I do not think Kenya has changed very much. Yes we have recently enacted a new constitution that has a rather expanded Bill of Rights and has various mechanisms

⁵⁵ Canadian Immigration and Refugee Board 2010, *KEN103226.E Kenya: Situation of homosexuals, legislation, state protection and support services*, 12 November http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?l=e&id=452629 – Accessed 8 November 2010 – Attachment 22

⁵⁶ Human Rights Watch 2010, *Protect Health Workers, Activists; Condemn Mob Violence, Incitements to Hate*, 17 February – Attachment 2

⁵⁷ Canadian Immigration and Refugee Board 2010, *KEN103226.E Kenya: Situation of homosexuals, legislation, state protection and support services*, 12 November http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?l=e&id=452629 – Accessed 8 November 2010 – Attachment 22

⁵⁸ Lahai, J. I. 2010, Email to RRT Country Advice Re: Homosexuals in Kenya, 28 October – Attachment 19

⁵⁹ Kuria, D. 2010, *Contesting Lesbian, Gay & Transgender Rights*, Gay Kenya website, 6 September <http://www.gaykenya.com/news/weekly-columnist/david-kuria/3776.html> - Accessed 3 November 2010 – Attachment 27

⁶⁰ Vokes, R. 2010, Email to RRT Country Advice Re: Homosexuals in Kenya, 7 November – Attachment 18

⁶¹ Ware, K. 2010, ‘Kenyan Gays Celebrate New Constitution’, Behind the Mask website, 30 August <http://www.mask.org.za/kenyan-gays-celebrate-new-constitution/#more-2087> – Accessed 4 November 2010 – Attachment 28; Diallo, M. 2010, ‘New Kenyan Constitution Ratified’, *Voice of America*, 6 August

<http://www.voanews.com/english/news/africa/Kenyas-New-Constitution-Ratified-100158209.html> - Accessed 4 November 2010 – Attachment 29

⁶² Government of Kenya 2010, *The Constitution of Kenya: Revised Edition 2010*, National Council for Law Reporting, Kenya Law Reports Website

<http://www.kenyalaw.org/Downloads/The%20Constitution%20of%20Kenya.pdf> – Accessed 9 November 2010 – Attachment 30

for redress when rights are violated, but it still does not mention sexual orientation or gender identity as protected grounds for non-discrimination. In fact many were of the view that if the draft had attempted to do that it would have been shot down.⁶³

Treatment of homosexuality by Kenyan authorities appears to have relaxed incrementally in recent years, from outright denial of the existence of homosexuality to acknowledgement (though not acceptance). In November 2009, for example, *Time* magazine reported that the Kenyan government intended to launch a survey of gay attitudes and behaviours in its three biggest cities in 2010. The survey is reported to be focused on addressing the high rate of HIV infection in the country (7%), and will involve a series of behavioural questions to men who have sex with men, as well as male and female sex workers and intravenous drug users.⁶⁴

Harassment of suspected homosexuals by Kenyan authorities is reported to occur regularly. In September 2010, aid organisation *Action Canada for Population and Development* (ACPD) made a statement at the 15th Session of the Kenyan Human Rights Council in conjunction with Kenyan NGOs Minority Women in Action and the Coalition of African Lesbians and Pan Africa ILGA. The statement expresses “disappointment that the Kenyan government has rejected recommendations to take measures to provide for the protection and equal treatment of lesbian, gay, bisexual, transgender and intersex persons” and states that “The criminalisation of consensual same-sex conduct encoded in Sections 162 and 165 of the Penal Code fuels stigma, discrimination and violence against sexual minorities”. ACPD goes on to note that LGBT Kenyans are “repeatedly discriminated against and continue to face threats and violence as well as torture, ill-treatment and harassment at the hands of public authorities”.⁶⁵

The authorities permit lesbian, gay, bisexual, and transgender advocacy organizations to register and conduct activities.⁶⁶ Gay advocacy websites have reported on the intention of David Kuria, General Manager of GALCK, to run for the position of Senator in 2012 in Kiambu County, which indicates an expansion in the public space allowed for gay citizens. Kuria is the first openly gay Kenyan to attempt to enter politics.⁶⁷ It may be of note, however, that his official website and campaign blog make no mention of his sexual orientation, of the

⁶³ Canning, P. 2010, ‘History made as gay man stands for Kenyan Senate’, *LGBT Asylum News*, 10 October <http://madikazemi.blogspot.com/2010/10/history-made-as-gay-man-stands-for.html#more> – Accessed 3 November 2010 – Attachment 31

⁶⁴ Wadham, N. 2009, ‘In Fight Against AIDS, Kenya Confronts Gay Taboo’, *Time*, 7 November <http://www.time.com/time/world/article/0,8599,1936514,00.html> – Accessed 10 November 2010 – Attachment 21

⁶⁵ Nzioka, D. 2010, *LGBTI Rights Statement at Kenya UPR*, Gay Kenya website, 23 September <http://www.gaykenya.com/news/3790.html> – Accessed 3 November 2010 – Attachment 32

⁶⁶ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Kenya*, 11 March, Section 6 – Attachment 11; Kuria, D. 2009, *History of LGBTI Movement in Kenya, and Way Forward*, Gay and Lesbian Coalition of Kenya website, 6 May http://galck.org/index.php?option=com_content&view=article&id=17:history&catid=9:activism&Itemid=9 – Accessed 3 November 2010 – Attachment 24

⁶⁷ Matsebula, P. 2010, ‘Gay Kenyan David Kuria Runs for Senator’, Behind the Mask website, 8 October <http://www.mask.org.za/gay-kenyan-david-kuria-runs-for-senator/#more-2483> – Accessed 4 November 2010 – Attachment 33; Canning, P. 2010, ‘History made as gay man stands for Kenyan Senate’, *LGBT Asylum News*, 10 October <http://madikazemi.blogspot.com/2010/10/history-made-as-gay-man-stands-for.html#more> – Accessed 3 November 2010 – Attachment 31

rights of homosexuals, or even of his current position as Director of Kenya's largest gay advocacy organisation.⁶⁸

Official responses to pro-gay attitudes within the political ranks were illustrated in October 2010 when government Minister Esther Murugi who called for greater acceptance of gays by society. Murugi was widely criticised by the public and influential religious leaders and accused of promoting "un-African" acts and asked to resign. More than 74 churches are reported to have petitioned the President to sack Murugi, calls echoed by Muslim leaders, the national media and politicians.⁶⁹

7. Please provide information on the protection of, and support services for, homosexuals and bisexuals in Kenya.

Information was found on the following lesbian, gay, bisexual, and transgender advocacy organisations: Gay and Lesbian Coalition of Kenya (an umbrella group comprising Gay Kenya, Minority Women in Action (MWA), TOMIK, Ishtar MSM, Artists For Recognition and Acceptance (AFRA-Kenya) and Transgender Education and Advocacy (TEA)), and Galebitra. Authorities permitted these organisations to register and conduct activities.⁷⁰

8. Please provide information on whether there are any areas within Kenya where the treatment of homosexuals or bisexuals is more tolerant (with a view to the reasonableness of relocation to such an area).

Information found suggests that what little tolerance there is for homosexuals or bisexuals in Kenya, is found in the more urban areas. The coastal town of Mtwapa is known for having a relatively "open-minded and liberal atmosphere" when it comes to homosexuality. Many gay men are said to have moved there as a result. A gay Kenyan was cited in an article stating "For a long time, gay people have been coming into the area openly and going to their own bars and night clubs without problem". The aforementioned violence and the increasingly vocal and mobilised anti-gay campaign have, however, overshadowed this in the last year. This was partly the result of the bars and clubs in Mtwapa having been upsetting some locals and being made into a campaign issue in local elections.⁷¹

The capital Nairobi is also described as "far more tolerant than the rest of the country". While there are no openly gay bars in Nairobi one club in town is said to have a balcony designated

⁶⁸ 'About the Senator' 2010, David Kuria for Senator website

<http://www.kuriaforsenator.com/about%20the%20senator.php> – Accessed 9 November 2010 – Attachment 34;

'About Senator David Kuria Mbote' 2010, Senator David Kuria Mbote blog <http://senatorkuria.wordpress.com/> - Accessed 9 November 2010 – Attachment 35

⁶⁹ Bocha, G. and Wa Ndungu, W. 2010, 'Kenya: Churches Want Murugi Sacked Over Gay Remarks', *Daily Nation*, AllAfrica website, 3 October <http://allafrica.com/stories/201010040002.html> - Accessed 10 November 2010 – Attachment 36; 'Kenya: Religious outrage over minister's support of gay rights' 2010, *IRIN News*, 6 October <http://www.irinnews.org/report.aspx?ReportId=90685> – Accessed 10 November 2010 – Attachment 37; Nzioka, D. 2010, *Leave Esther Murugi ALONE!*, Gay Kenya website, 3 October <http://www.gaykenya.com/news/3804.html> - Accessed 3 November 2010 – Attachment 38

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⁷¹ Robinson, N. 2010, 'Gay pride and prejudice in Kenya', *BBC*, 16 June – Attachment 1

for the gay community. Also certain nights, such as Sundays, are specifically aimed at gays.⁷² The UK Home Office described there being a “gay scene in certain pubs and clubs in Nairobi”, albeit a secretive one.⁷³

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