



Kenya: Researched and compiled by the Refugee Documentation Centre of Ireland on 24 September 2009

Treatment of persons by the police who are homosexual.

Treatment by society generally of persons who are homosexual and the failure of the state to adequately deal with same.

A report by the *US Department of State* under the heading '2008 Human Rights Report: Kenya' subheading 'Other Societal Abuses and Discrimination' states:

"There was societal discrimination against homosexuals and persons with HIV/AIDS during the year. The common view of HIV/AIDS as a stigma made it difficult for many families to acknowledge that a member was HIV-positive, and to date no socially or politically prominent individual has admitted being HIV-positive." (US Department of State (25th February) *2008 Human Rights Report: Kenya*)

A report by the *Home Office UK Border Agency* under the heading 'Country Of Origin Information Key Documents Kenya' subheading 'Lesbian, Gay, Bisexual And Transgender Persons' states: (pg. 20)

"The USSD report for 2007 reported "There was societal discrimination based on sexual orientation. The Council of Imams and Preachers of Kenya (CIPK) and other civic leaders condemned homosexuality and argued against legalizing gay marriages. A group in Mombassa created the Muslim Youth Pressure Group to oppose homosexuality. There was societal discrimination against homosexuals and persons with HIV/AIDS." Sodomy Laws (Kenya) noted that "Sections 162 to 165 of the Penal Code criminalize homosexual behaviour and attempted homosexual behaviour between men, referring to it as "carnal knowledge against the order of nature". The penalty is 5 to 14 years' imprisonment. Lesbian relations are not mentioned in the law." However, in spite of the tough laws, News24 reported on 22 February 2006 that the laws were "rarely enforced". BBC News noted on 13 March 2006 that while sex between men is punishable with long prison sentences, a secretive gay scene had developed in certain pubs and clubs in Nairobi. (BBC News, 13 March 2006)" (Home Office UK Border Agency (30th April 2008) *Country Of Origin Information Key Documents Kenya*)

A response by the *Immigration and Refugee Board of Canada* under the heading 'Kenya: The attitude of society in general, and of government authorities in particular, toward homosexuals (2005-August 2006) KEN101591.FE' states:

"According to various recent sources, homosexuality is illegal in Kenya (News24.com 22 Feb. 2006; BTM 31 May 2006; African Veil 24 June 2006; Gay Kenya 4 Aug. 2006). Under the law, which makes no mention of sex between

women (News24.com 22 Feb. 2006), sex between men is punishable by 5 to 14 years in prison (ibid.; BTM 31 May 2006; see also African Veil 24 June 2006). The United Nations Human Rights Committee has expressed concerns that homosexuality is considered "unnatural" by Kenyan authorities and is prohibited under the law (UN 15 March 2005). However, the Kenyan Minister of Health has reportedly stated that her government has no intention changing the existing laws (BTM 31 May 2006). The government's position reflects the position of Kenyan churches (ibid.). "(Immigration and Refugee Board of Canada (25 August 2006) *Kenya: The attitude of society in general, and of government authorities in particular, toward homosexuals (2005-August 2006 KEN101591.FE)*)

It also states under the heading 'Society's attitude toward homosexuals'

"An article published on 22 February 2006 citing the results of a 2005 poll in Kenya (the Research Directorate was unable to obtain a copy of the poll) indicates that 96 percent of respondents viewed homosexuality as being against their beliefs (News24.com 22 Feb. 2006). Corroborating sources note that, because of the "discrimination and stigmatization" they face in Kenya (African Veil 24 June 2006; Gay Kenya 4 Aug. 2006; US 8 Mar. 2006, sect. 5; News24.com 22 Feb. 2006), homosexuals keep "a low profile" (ibid.; see also Gay Kenya 4 Aug. 2006). They often have to live double lives (ibid.; News24.com 22 Feb. 2006) to avoid being disowned by their family and friends or being fired by their employers (ibid.; African Veil 24 June 2006; Pretoria 13 July 2006)." (ibid)

It also states under the heading 'State protection and other available resources'

"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 (4 Aug. 2006). 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 (Gay Kenya 4 Aug. 2006). Another source also states that the law prohibiting homosexuality is rarely enforced in Kenya (News24.com 22 Feb. 2006).

However, the Gay Kenya representative stated that, since homosexuality is a criminal offence, homosexuals in Kenya are always vulnerable: their private lives may be violated at any moment because the police have the right to enter a house when they suspect that a crime is being committed (Gay Kenya 4 Aug. 2006)." (ibid)

It also states:

"According to some sources, a few NGOs in Kenya advocate for gay rights, such as Gay Kenya (ibid.; ILGA 2006), GALEBRITA (ibid.; News24.com 22 Feb. 2006; BTM 25 July 2006) and the Gay and Lesbian Coalition in Kenya (GALCK) (ibid.). An article from the Internet site of Behind the Mask, an African gay rights

organization (BTM n.d.), mentions the recent creation of Minority Women in Action (MWIA), an organization advocating for the rights of lesbians and other minority and marginalized women in Kenya (BTM 25 July 2006). That same article states that the MWIA "aims to become a haven to many lesbians" who are subjected to discrimination in Kenya because of their sexual orientation" (ibid)

A article by Mwangi Githahu for the *Daily Nation* under the heading 'Kenya: Backlash Against Gays And Lesbians Starts' states:

"Nairobi — 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.

Members of the gays and lesbians lobby demonstrate to demand their rights.

Said the statement in part: "The Muslim community is against homosexuality because the vice is ungodly. Both the Koran and the Bible condemn the vice."

The Kenya Anti-Rape Movement founder, Ms Fatma Anyanzwa, said calls for the recognition of same-sex relationships should be ignored, and instead efforts made to counsel those practising it.

The self-confessed lesbians and gays, she said, were victims of psychological, social and material disadvantages that they could not handle and were finding escape in the very problem they have." (Mwangi Githahu Daily Nation (28 January 2007) *Kenya: Backlash Against Gays And Lesbians Starts*)

It also states:

"Mr Lawrence Mute of the Kenya National Commission on Human Rights said that the official watchdog had a responsibility to protect the rights of all Kenyans, including the gays and lesbians.

The commissioner pledged support for homosexual men and women sacked from employment or expelled from educational institutions on the grounds of their sexual orientation. Prof Tamale told the gathering that getting homosexual acts between consenting adults decriminalised was the most vital issue for gays and lesbians in East Africa" (ibid)

References:

Home Office UK Border Agency (30th April 2008) *Country Of Origin Information Key Documents Kenya*

http://www.homeoffice.gov.uk/rds/country_reports.html#countries

(Accessed 24th September 2009)

Immigration and Refugee Board of Canada (25 August 2006) *Kenya: The attitude of society in general, and of government authorities in particular, toward homosexuals (2005-August 2006)* KEN101591.FE

<http://www2.irb->

[cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=450565](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=450565)

(Accessed 24th September 2009)

US Department of State (25th February) *2008 Human Rights Report: Kenya*

<http://www.state.gov/g/drl/rls/hrrpt/2008/af/119007.htm>

(Accessed 24th September 2009)

Daily Nation (28 January 2007) *Kenya: Backlash Against Gays And Lesbians Starts* (Mwangi Githahu)

<http://allafrica.com/stories/printable/200701290774.html>

(Accessed 24th September 2009)

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:

All Africa

Amnesty International

European Country of Origin Information Network (ECOI)

Freedom House

Google

Human Rights Watch

Immigration and Refugee Board of Canada

Integrated and Regional Information Networks (IRIN)

Lexis Nexis

Refugee Documentation Centre Query Database

UK Home Office

UNHCR Refworld

US Department of State