



Kenya - Researched and compiled by the Refugee Documentation Centre of Ireland on Wednesday 14 October 2015

Treatment of homosexuals/bisexuals by police/state

A report issued in June 2015 by the *United States Department of State* commenting on events of the preceding year notes that:

“The constitution and law prohibit discrimination based on race, gender, disability, language, or social status. Government authorities did not effectively enforce many of these provisions, and discrimination against women; lesbian, gay, bisexual, and transgender (LGBT) persons; individuals with HIV/AIDS; persons with disabilities; persons suspected of witchcraft; and certain ethnic groups was a problem. There was also evidence that some national and local government officials tolerated, and in some instances instigated, ethnic violence. The law criminalizes homosexual activity” (United States Department of State (25 June 2015) *2014 Country Reports on Human Rights Practices – Kenya*).

This document also states that:

“The constitution does not explicitly protect LGBT persons from discrimination on the basis of sexual orientation or gender identity. 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. Statistics presented in the National Assembly in March indicated police had opened files on 595 "unnatural offenses" cases since 2010, including 49 in 2014. According to a 2014 report issued by the Gay and Lesbian Coalition of Kenya and the National Gay and Lesbian Human Rights Commission, between 2012 and 2014 there were eight prosecutions of gay men on indecency charges. LGBT organizations reported police more frequently used public order laws (e.g., disturbing the peace) than same-sex legislation to arrest LGBT individuals. Police frequently harassed, intimidated, or physically abused LGBT individuals in custody. Authorities permitted LGBT advocacy organizations to register and conduct activities. There were reports, however, that some organizations registered under modified platforms to avoid being denied registration by the government. Legal efforts by Mbugua, born Andrew Mbugua, to change her legal name and gender identity continued. Violence and discrimination against LGBT individuals was widespread. According to a report by journalist Denis Nzioka during the year, LGBT individuals were especially vulnerable to blackmail and rape by police officers and individuals who used LGBT websites to locate victims. LGBT individuals were especially vulnerable to harassment, intimidation, and discrimination in employment, occupation, education, and housing. Human rights and LGBT rights organizations noted that victims were extremely reluctant to report abuse or seek redress. According to a 2011 study, *The Outlawed Amongst Us*, by the Kenya Human Rights Commission, 89 percent of LGBT individuals who revealed their sexual orientation were disowned by family and friends. There were reports of forced "medical examination" of LGBT individuals by the police and of forced medical treatment or exorcism to "treat" LGBT individuals. During the year an "antigay" caucus was formed in parliament, although its only

action was to inquire why the government had not taken stronger action against LGBT individuals and organizations. The National Assembly majority leader stated that homosexuality was as serious an issue as terrorism but resisted calls for new anti-LGBT legislation. Several NGOs conducted anti-LGBT political campaigns, including one that announced a drive to collect one million signatures on a petition against homosexuality. While these campaigns resulted in scattered demonstrations, they did not attract widespread support” (ibid).

Reuters in September 2015 notes that:

“Homophobic mobs have repeatedly attacked lesbian, gay, bisexual and transgender (LGBT) people in Kenya but police are unwilling to even attempt to bring the perpetrators to justice, rights groups said on Monday. Homosexuality is taboo in almost all African countries and is punishable by up to 14 years in jail in Kenya. Violence against LGBT people is common in the east African nation, but victims fear reporting hate crimes to the police who, in turn, often refuse to pursue their cases” (Reuters (28 September 2015) *Homophobic mobs attack LGBT people in Kenya with impunity – report*).

In September 2015 *Human Rights Watch* states in a report that:

“Kenya’s Penal Code, a colonial-era relic, criminalizes “carnal knowledge against the order of nature,” widely understood to refer to anal intercourse between men. Government agencies have denied some organizations representing LGBT Kenyans the right to register and operate legally, on the grounds that they allegedly promote illegal behavior, although recent court victories have compelled the authorities to register two such organizations. Politicians and extremist religious leaders seek to bolster their relevance by proposing homophobic legislation and preaching hatred against gay Kenyans. Media houses engage in sensational reporting on “scandals,” sometimes entirely fabricated, involving LGBT people. Although many LGBT people draw on support from friends and family and carve out spaces in which they can live in relative safety, the risk of violence remains present” (Human Rights Watch (28 September 2015) *The Issue is Violence, Attacks on LGBT People on Kenya's Coast*, p.2).

An article issued in October 2015 by *The Guardian* states:

“There have been at least six incidents of mob violence against lesbian, gay, bisexual and transgender (LGBT) people in Kenya since 2008, Human Rights Watch and fellow rights organisation Pema Kenya revealed recently. The local police failed to investigate any of them” (The Guardian (8 October 2015) *Kenya's anti-gay laws are leaving LGBT community at the mercy of the mob*).

References

The Guardian (8 October 2015) *Kenya's anti-gay laws are leaving LGBT community at the mercy of the mob*

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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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