



Kenya

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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I. Introduction

While Kenya has traditionally been more tolerant of LGBT people than neighbouring countries, a recent religious and cultural backlash against LGBT people has jeopardized this progress.

The criminalization of homosexuality, notions of “Africanness,” and religious values are at the heart of anti-LGBT attitudes in Kenya. The LGBT lifestyle is seen as fundamentally unnatural; the Kenyan *Penal Act* provisions defines homosexuality as “against the order of nature.”

When Kenya adopted a new Constitution in August 2010, the LGBT community was optimistic about the possibility of using a provision banning discrimination to promote the equality of LGBT people. However, the power of the Constitution has been called into question by the remarks of Kenyan Prime Minister Raila Odinga, who has made disparaging remarks against LGBT people, and has publicly stated that the Kenyan constitution is not intended to permit gay marriage.

The influence of religion in Kenya is significant. In a 2008 poll, 96% of Kenyan people stated that homosexuality went against their belief system (see “Scholarship” section of this report). In February 2010, religious leaders spoke out against a rumoured gay marriage, leading to an extremely violent backlash against LGBT people across the country.

Several organizations promoting LGBT rights have established themselves in Kenya, although they face barriers to recognition and acceptance.

The Kenyan state has been extremely intolerant of LGBT people. Prime Minister Raila Odinga has stated that “men or women found engaging in homosexuality will not be spared” and that “homosexuals should be arrested and taken to relevant authorities” (see “Media” section of this report). The Kenyan police have attacked LGBT people, and often refuse to follow up on complaints of violence against LGBT people (see “Government Reports” and “NGO Reports” sections of this report).

LGBT people in Kenya also experience severe social discrimination, including being expelled from school, fired from work, refused medical treatment, and cut off from family support.



II. Legislation and Local Application

To access the full text of Kenyan legislation, see: http://www.kenyalaw.org/kenyalaw/klr_home/

1. *The Penal Act*, online: Kenya Law Reports

online: http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

- **Section 162(c) criminalizes homosexual sex between men**
- **Section 162(a) has the potential to criminalize homosexual sex between women**
- **Section 165 is extremely broad – as well as criminalizing “acts of gross indecency” between men, it criminalizes the attempt to engage in or arrange homosexual acts in both public and private**
- **If convicted under section 165, an individual faces up to 5 years imprisonment, with or without corporal punishment**
- These provisions were amended (thus re-evaluated) in 2003, but were kept in force.

162. Unnatural offences

Any person who:

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; 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. Attempt to commit unnatural offences

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. Indecent practices between males

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, with or without corporal punishment.



2. *The Constitution of Kenya*, online: Kenya Law Reports

online: <http://kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf>

- **Section 27 guarantees freedom from discrimination, but sexual orientation is not an enumerated ground**
- **Section 45(2) guarantees the right to marry a person of the opposite sex only**

The Constitution of Kenya was enacted on August 27, 2010. It could be argued that the Penal Code sections criminalizing same sex acts are now unconstitutional, however, sexual orientation is not enumerated as a ground of discrimination under s. 27(4).

27 – Equality and freedom from discrimination

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

45 – Family

(2) Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties

3. Pink News, *Kenyan Police Arrest Gay Men* (18 February 2010)

online: <http://www.pinknews.co.uk/2010/02/18/kenyan-police-release-gay-men/>

- **Six men were arrested on suspicion of planning a gay wedding, but were released for lack of evidence**
- **This is an example of the broad application of section 165 of the *Penal Code***
- **Angry crowds protested the wedding and the men were advised to leave the area for their own safety**

4. *Monica Jesang Katam v Jackson Chepkwony & another* [2011] eKL

online: http://kenyalaw.org/Downloads_FreeCases/82443.pdf

- ✧ **In October 2011, the High Court of Kenya upheld a lower court decision that recognized the validity of a same sex marriage between two women in the case of *Monica Jesang Katam v Jackson Chepkwony & another*.**



- ✧ **However, this marriage was a traditional Nandi cultural practice engaged in for the purpose of obtaining a male heir and not at all sexual or romantic.**

This case involved a dispute over a deceased woman's estate between a woman claiming to be the deceased's wife (the "petitioner") and the deceased's step-son from a previous marriage (her husband had died) and niece (the "objectors"). The objectors argued that the woman was only a servant and not a wife. The deceased was 80 years old when the marriage occurred - a dowry was exchanged and a wedding agreement was signed.

The petitioner's testimony was that the marriage was a ritual "woman-to-woman" marriage, or Nandi traditional wedding, where childless women marry girls in order to obtain a male heir. These marriages are not sexual but are instead recognition of a non-sexual domestic partnership. A man from the woman's deceased husband's family will have sex with the girl in order to produce a male heir.

Judge Maureen Ordero recognized the Nandi cultural practice as a marriage for the purposes of determining succession of the estate.

5. International Lesbian, Gay, Bisexual, Trans and Intersex Association, *Kenya*

online: <http://ilga.org/ilga/en/countries/KENYA/Law>

- **Gays are prohibited from serving in the military and adopting children (whether as an individual or as a member of a same sex relationship)** [*nb: SOGI could not locate a primary source for this information.*]
- **The laws banning homosexuality also apply to transgendered people**

III. Canadian Jurisprudence

Immigration and Refugee Board of Canada Decisions

1. *RPD File No. TA5-12036*, [2006] RPDD No 468

- **Although it is accepted that homosexuality is illegal in Kenya, it is not accepted that all homosexuals are persecuted; there is an active and functioning gay rights movement and the current government is progressive in nature** [*nb: Government at the time was different from the present administration under Raila Odinga*]
- **No persuasive evidence shown to corroborate applicant's personal allegations**

Claimant alleged that in 2004, the police visited the apartment he shared with his homosexual partner in the course of investigating a robbery. After observing that the two men shared one bed and owned 'gay' sex videos, both the claimant and his partner were taken to the police station where they were beaten and told that they would lose their jobs. Police continued to extort the claimant until he left for university in the USA.

In 2005, after coming out to his father, the claimant made inquiries with the Gay and Lesbian Association about making an asylum claim in the USA based on his sexual orientation. He was advised that he would likely find more success in Canada, the Netherlands, or possibly



South Africa. Claimant was accepted to Canadian university and made refugee claim upon arriving in Canada.

Claimant did not establish persecution under section 96 of the *IRPA* or risk to life under section 97 of the *IRPA*. Although homosexuality is illegal in Kenya, not all homosexuals are persecuted: Board member cited active and functioning gay rights movement in Kenya and progressive nature of current government. Board member also found that the claimant was not credible in his account of what happened in Kenya. Also of note is the Board's holding that the "claimant simply lacks the profile to interest anyone in his sexual preferences in Kenya."

2. *Eringo v. Canada (Minister of Citizenship and Immigration)*, [2006] RPDD No 53

- **Claimant was not credible because of inconsistencies in his account of being gay**

Claimant alleged that he had to flee Kenya after his community found out about his homosexuality: he was disowned by his family, expelled from his church, and attacked by a mob. Claim denied on credibility grounds. Board does not believe the claimant's homosexual inclination because he is not exclusively attracted to men, he was married to a woman, and there are other contradictions in his story, such as being able to openly attend gay venues while simultaneously fearing persecution.

(See below; this decision was reversed upon judicial review before the Federal Court)

3. *Kamau v. Canada (Minister of Citizenship and Immigration)*, [2004] RPDD No 772

- **Claimant was not credible: Board did not believe he was gay**
- **Since Kenya is a homophobic country, men claiming to have lived an openly gay lifestyle in Kenya are not credible**

Recorded oral judgment—main points above. (See below; this decision was reversed upon judicial review before the Federal Court)

4. *Ngarah v. Canada (Minister of Citizenship and Immigration)*, [2004] RPDD No 748

- **Claimant found not to be credible because of narrative inconsistencies and a lack of corroborating evidence**

Claim for refugee protection by Kenyan citizen on ground of well-founded fear of persecution based on homosexual identity. Claimant alleged that when he and his partner decided to reveal their sexual orientation, the claimant lost his job and was disowned by his family. Eventually his house was burned down, which resulted in the death of his partner, and he was abused by the police. Claim denied because of lack of credible and trustworthy evidence. Claimant lacked identification, there were inconsistencies between his testimony and the documentary evidence, and he lacked satisfactory explanations for events in his narrative. Board also claimed the claimant's failure to produce corroborating evidence, such as affidavits from family members, further undermined his credibility.

(See below; this decision was reversed upon judicial review before the Federal Court)



5. *Nyaoma v. Canada (Minister of Citizenship and Immigration)*, [2004] RPDD No. 446

- **Claimant found not to be credible because of delay in claiming and conflicting testimony**

Claim for refugee protection by Kenyan citizen on ground of well-founded fear of persecution based on homosexual identity. Claimant alleged that he was caught in compromising positions at school. As a result he was expelled, beaten by fellow students, ostracized by his family, and detained and tortured by the police. Claim denied on credibility grounds. Events in claimant's oral testimony conflicted with documentary evidence and Board did not find the claimant's explanations to be satisfactory. Claimant also delayed in filing for refugee claim, which case law indicates can demonstrate a lack of subjective fear and persecution.

Federal Court of Canada Decisions

1. *Kamau v. Canada (Minister of Citizenship and Immigration)*, [2005] FCJ No 1505

- **Overtaken holding above: "since Kenya is a homophobic country, men claiming to have lived an openly gay lifestyle in Kenya are not credible."**
- **This was based on stereotypical thinking and has no evidentiary foundation.**

Application by Kamau for judicial review of a decision of IRB (see above). Board member had determined that Kamau was not a Convention refugee or person otherwise in need of protection because applicant was not credible and not gay. Application for judicial review allowed. Board member's findings on the applicant's sexual orientation was based on stereotypes without documentary evidence. Further, the Board misinterpreted key evidence.

2. *Ngarah v. Canada (Minister of Citizenship and Immigration)*, [2005] FCJ No. 1882

Application by Ngarah for judicial review of a decision of IRB (see above). Board determine that Ngarah was not a Convention refugee or person otherwise in need of protection because applicant was not credible and did not prove his sexual orientation. Application for judicial review allowed. Board based its decision on a number of inconsistencies and implausibilities in Ngarah's evidence that were patently unreasonable. Cumulative effect of these errors warranted the Court's intervention.

3. *Ithibu v. Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 499

- **Since the applicant was so lacking in credibility, the Board had no duty to consider the objective situation in Kenya for homosexuals, although documentary evidence showed abuses by the Kenyan government.**

Application by Ithibu for judicial review of a decision of the IRB. Ithibu, a citizen of Kenya, claimed a well-founded fear of persecution because of his political activities and his sexual orientation.



The Board found that Ithibu's evidence was not credible and that the personal documents he presented contained many discrepancies which did not support his claim. Ithibu argued that the Board was biased because the member constantly interrupted his testimony and made sarcastic comments. He also argued that the Board demonstrated ignorance and cultural bias when it found that he was not credible because he named African authors when asked to name some authors he had studied in English literature. Ithibu further argued that he was denied a fair hearing because the Board asked his lawyer to permit the refugee hearing officer to ask questions first.

Application for review dismissed. A review of the transcript failed to reveal that the Board constantly interrupted Ithibu. The few interruptions by the Board were to seek clarification and were reasonable. The Board respected the refusal by Ithibu's lawyer to allow the refugee hearing officer to ask questions first. Further, the Board was not bound by the formal rules of a court and was the master of its own procedure. While the Board had no reason to discredit Ithibu because he stated that he studied African authors in an English literature course, this did not denote racism or bias on the part of the Board. The comments of the Board did not raise a reasonable apprehension of bias.

4. *Eringo v. Canada (Minister of Citizenship and Immigration)*, [2006] FCJ No. 1874

- **Being married to a woman should not automatically undermine a homosexual man's credibility with respect to sexual orientation since documentary evidence demonstrates that homosexuals must hide their situation, often by marrying, to avoid persecution in Kenya.**

Application by Eringo for judicial review of a decision of the IRB (see above). Board member determined that Eringo was not a Convention refugee or person otherwise in need of protection because applicant was not credible and was married to a woman.

Application allowed. Applicant's testimony regarding his situation was entirely consistent with documentary evidence demonstrating that homosexuals must hide their situation, often by marrying, to avoid persecution in Kenya. Panel erred in failing to make mention of documentary evidence filed by applicant to support his subjective fear of persecution.

The Board member failed to mention documentary evidence corroborating the applicant's homosexuality, which was a central element to the member's determination that the applicant was not credible. Although it was open to the Board member to find that documents are insufficient to establish applicant's homosexuality, the Member was obligated to consider these documents and to make mention of them in its decision.



IV. Government Reports

1. “Kenya: Situation of homosexuals; legislation, state protection and support services (2007 - September 2009),” Immigration and Refugee Board, Response to Access to Information Request KEN10322.E, 12 November 2009

online: <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452629&l=e>

- ✧ **Many homosexuals in Kenya hide their identity for fear of arrest and social rejection**
- ✧ **Violent attacks have been carried out against LGBT people, and are under-reported**
- ✧ **Issues of homosexuality are becoming more prevalent in public discourse**
- ✧ **Homosexuality associated with the spread of HIV/AIDS**
- ✧ **A number of local organizations work to represent the interests of urban LGBT Kenyans**

This report acknowledges the difficulty of living as an openly gay person in Kenya. At the same time, it points to the discussion of homosexuality in the media and the efforts of local LGBT activists as indications that there is a growing acceptance of LGBT people in Kenya.

The report discusses the religious roots of discrimination against LGBT people, and the connection made in the media between LGBT people and the spread of HIV/AIDS.

2. “The Outlawed Among Us,” Kenyan Human Rights Commission, 2011

Online: http://www.khrc.or.ke/resources/publications/doc_download/14-the-outlawed-amongst-us.html

- ✧ **Human rights violations of LGBTI people are “systematic, highly prevalent and generally not redressed by the state.”**
- ✧ **LGBTI people are verbally and physically abused (including rape) on a routine basis by mobs, gangs and the police**
- ✧ **Law enforcement extort LGBTI people for bribes and sexual favours**
- ✧ **LGBTI persons are routinely harassed by the police, held without charge, and presented in court on trumped-up charges**
- ✧ **LGBTI people are less likely to access health care for fear of discrimination**
- ✧ **Schools have expelled LGBTI students and hospitals have refused to treat LGBT people**
- ✧ **Violence and discrimination is legitimized by the criminalization of homosexuality**

This in-depth report documents human rights abuses against LGBTI people in Kenya. It describes various violent acts against LGBTI people in all regions of Kenya, and traces this violence to homophobic social attitudes perpetuated by religious leaders, politicians, and the *Penal Code*. The state is often the perpetrator of this violence, and the police abuse LGBTI people through physical violence and extortion.

This report recognizes the LGBTI movement, which first appeared in Kenya in 1997. Despite the growing strength of this movement, “Virtually all LGBTI organized groups and individuals face both direct and indirect discrimination from the government.” This report also details the lives of LGBTI people in Kenya, and explains that some LGBTI people marry members of the opposite sex to conceal their sexual orientation.



V. Reports from International Agencies and Non-Governmental Organizations

1. *International Gay and Lesbian Human Rights Commission (IGLHRC)*

“Kenyan Ex-Pat Aims to Help Gay Countrymen,” November 3, 2011

Online: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/iglhrcinthenews/1461.html>

- ⤴ According to Kenyan LGBT political activist and refugee Lourence Misedah:
“No matter what economic and social class, nearly all Kenyans who are perceived to be LGBT or are actually LGBT face being kicked out of school, losing their homes and jobs, suffering from blackmail, performing sexual favors, and other harassment and violence by authorities and community members.”

2. *International Lesbian and Gay Association*

“Kenya: Laws.”

Online: <http://ilga.org/ilga/en/countries/KENYA/Law>

- ⤴ **LGBT people are not permitted to serve in the armed forces**
- ⤴ **Conservative religious attitudes inform a social rejection of LGBT people**
- ⤴ **“Police and government authorities ... have created a culture of extortion and blackmail against people who are known or suspected to be gay,” and “are also unwilling to give protection to LGBTI victims of physical and verbal abuse”**
- ⤴ **Attacks against LGBT people are “quite prevalent, and overtly encouraged by politicians”**
- ⤴ **15% of new HIV infections occurring in Kenya are among men who have sex with men – and “the law continues to make it almost impossible” to set up large-scale HIV prevention or testing programs**

3. *Human Rights Watch*

“Kenya: Halt Anti-Gay Campaign,” February 18, 2010

Online: <http://www.hrw.org/news/2010/02/17/kenya-halt-anti-gay-campaign>

- ⤴ **People identifying as (or merely suspected to be) LGBT, as well as people providing HIV/AIDS-related health services, have been brutally attacked and/or arbitrarily arrested**
- ⤴ **Government has done little to combat or punish these attacks**
- ⤴ **Many of these attacks are motivated by conservative, religious values**

“Letter to the Government of Kenya on Recent Attacks Against Health Workers and Activists,” February 17, 2010

Online: <http://www.hrw.org/news/2010/02/17/letter-kenya-ministry-state-provincial-administration-internal-security>



- ✦ **Open letter to members of the Kenyan government detailing the series of attacks and arbitrary arrests described above**
- ✦ **Addresses the legal climate, stating that “laws criminalizing consensual homosexual conduct among adults violate the ICCPR [International Covenant on Civil and Political Rights]’s protections for private life and against discrimination”**

“This Alien Legacy,” December 17, 2008

Online: <http://www.hrw.org/node/77014/section/2>

- ✦ **Political and religious leaders believe that anti-sodomy laws protect local traditions**
- ✦ **The anti-sodomy laws currently on the books in several sub-Saharan countries are in fact the product of colonial innovation**

4. Gay and Lesbian Coalition of Kenya (GALCK)

Website: <http://galck.org/> ; Facebook page: <http://www.facebook.com/kenyaslgbti>

GALCK is Kenya’s leading LGBT civil society organization established in May 2006 as a registered trust. GALCK describes itself as “a coalition of organizations in Kenya that advocate and lobby for ... LGBTI rights. GALCK also works on creating awareness of the existence of LGBTI in Kenyan society as well as tolerance for sexual minorities.”

“Gay and Lesbian Coalition of Kenya Condemns Closure of Centre in Malindi,” June 27, 2008

Online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/235.html>

- ✦ **Government closed a Kenyan NGO dealing with reproductive health issues, including prevention and treatment of HIV/AIDS**
- ✦ **Local community leaders demanded its closure because the NGO worked with sex workers and men who have sex with men**

“Statement on Equality from Gay and Lesbian Coalition of Kenya,” October 10, 2006

Online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/301.html>

- ✦ **Kenya should conform to its international human rights obligations and the Kenyan Constitution by protecting LGBT people**
- ✦ **Criminalization of homosexuality contributes to daily human rights abuses of LGBT people in Kenya**
- ✦ **Criminalization prevents LGBT people from properly accessing treatment for HIV/AIDS**



5. *Gay Kenya Trust (aka Gay Kenya, G-Kenya Trust)*

Website: <http://www.gaykenya.com/>

One of GALCK's member organizations, Gay Kenya describes itself as a "human rights, media and religious advocacy group for gay, lesbian and bisexual persons in Kenya"; its "ultimate goal is to live in a society that does not define and/or discriminate against persons on grounds of their sexual orientation."

The forum section of the website also offers an analysis of the dynamics—and true extent—of stigma and shame in this context. This reflection was written by David Kuria, formerly the group's Executive Director, who stepped down to become the first openly gay Kenyan to run for political office. He explains that, "on account of this stigma [attached to being gay], I experience discrimination daily. Yet ... **the word stigma ... sanitizes the African notion of *shame***" (emphasis added). He goes on to describe the devastating social impact on his family of his decision to live openly as a gay man.

VI. **Newspaper and Media Reports**

1. "Drastic Life Changes," Jonathan Kalan, GlobalPost.com, December 1, 2011

Online: <http://www.globalgayz.com/africa/uganda/kenya-the-gray-area-of-gay-refugees>

- **Tells the story of 2 gay Ugandan refugees in Kenya**
- **Kenyan government does not grant refugee status to gay applicants, leaving them in legal limbo**
- **Describes Kenya as having anti-gay sentiments, but less virulent than those in Uganda**

2. "Gay rights activist wants to run for Kiambu senator in 2012 elections", Wairimu Michengi, The Star, December 19, 2011

Online: <http://www.the-star.co.ke/lifestyle/128-lifestyle/54572-i-refuse-to-live-a-lie-gay-rights-activist-turned-politican-speaks-out>

- **Interview with first openly gay man to run for office in Kenya**
- **Recounts encountering homophobia at church and from activists at human rights conferences**

3. "Inside the life of Nairobi male sex workers," John Muchangi, The Star, December 1, 2011

Online: <http://www.the-star.co.ke/lifestyle/128-lifestyle/52011-inside-the-life-of-nairobi-male-sex-workers>

- **Male sex workers face challenges including high rates of HIV/AIDS, police abuse including rape, demand for bribes, or arrest, and reluctance by hospitals to treat gay men for STDs**



4. “Coming out of the closet: Kenya’s premier gay magazine out,” Crispus Kabiro, The Star, November 1, 2011

Online: <http://www.the-star.co.ke/lifestyle/128-lifestyle/47218-coming-out-of-the-closet-kenyas-premier-gay-magazine-out>

- **Spotlights *Identity*, an online magazine advocating for LGBT rights and issues**
- **Some authors asked to have their pieces removed for fear of reprisal**

5. “The Gay community demands recognition,” Henry Kibira, The Star, November 1, 2011

Online: <http://www.the-star.co.ke/lifestyle/128-lifestyle/47217-the-gay-community-demands-recognition>

- **Spotlights the efforts of Gay and Lesbian Coalition of Kenya to raise awareness about LGBT issues**
- **Some discussion of tension with the more traditional Kenyan community, but emphasis on the founder's hopes for the future**

6. “History in the making: First gay film festival held in Nairobi,” The Star, September 16, 2011

Online: <http://www.the-star.co.ke/lifestyle/128-lifestyle/40687-history-in-the-making-first-gay-film-festival-held-in-nairobi>

- **LGBTI group Gay Kenya staged the country’s first public gay film festival dubbed “The Out Film Festival”**
- **The two-day free event saw the screening of over 10 LGBTI theme movies**

7. “Just How Many Kenyans Are Gay?” Pauline Odhiambo, The Star, June 21, 2011

Online: <http://www.the-star.co.ke/lifestyle/128-lifestyle/28793-just-how-many-kenyans-are-gay>

- **MP Millie Odhiambo caused controversy by claiming that 15% of her colleagues are gay.**
- **Banned from Parliament for two days for refusing to apologize**

8. “The Week's Top Stories,” Dauti Kahura, The Star, June 11, 2011

Online: <http://www.the-star.co.ke/weekend/siasa/27692-the-weeks-top-stories>

- **Nominees for Chief Justice and Deputy Chief Justice, Drs. Willy Mutunga and Nancy Baraza, denied allegations that they are gay and lesbian under questioning by the vetting committee**



9. "Kenya gay activist criticises Odinga crackdown threat," BBC, November 29, 2010

Online: <http://www.bbc.co.uk/news/world-africa-11864702>

- Kenya's prime minister, Raila Odinga, has said that homosexuals should be arrested
- "We will not tolerate such behaviors in the country... Men or women found engaging in homosexuality will not be spared."
- Odinga's spokesman claimed that he was quoted out of context, and that he had only meant to emphasize that Kenya's constitution did not permit same-sex marriage.

10. "Kenyan Premier calls for arrest of gays," Africa Review, November 29, 2010

Online: <http://www.africareview.com/News/-/979180/1062300/-/i857rvz/-/>

- Odinga told a rally in Nairobi that "if found the homosexuals should be arrested and taken to relevant authorities."
- Added it was "madness" for two men to fall in love with each other when a recent census showed there were "plenty of women" in the country.

11. "Gay Men Being Trafficked in Kenya," Diane Anderson-Minshall, The Advocate, January 2, 2012

Online:

http://www.advocate.com/News/Daily_News/2012/01/02/Gay_Men_Being_Trafficked_in_Kenya/

- Gay and bisexual men in Kenya are being lured into sex trafficking rings in the United Arab Emirates, Qatar, and Saudi Arabia, according to a new report in African LGBT magazine, *Identity*.
- While Kenya passed anti-trafficking legislation last year, homosexuality is still illegal in both the Arab states as well as Kenya, so the men are unable to report abuse to police

12. "Homosexuals seek refuge in Kenya", AFP, February 5, 2012

Online: <http://www.capitalfm.co.ke/news/2012/02/homosexuals-seek-refuge-in-kenya/>

- Spotlights difficulties by Ugandan LGBT refugees in Kenya
- Transgender Ugandan Danie, 31, reports being told by contacts in Uganda that Ugandan intelligence operatives have been trying to track her down in Nairobi

13. "Kenyan Gays Battle Prejudice," Voice of America News, February 2, 2011

Online: <http://www.voanews.com/english/news/africa/east/Kenyan-Gays-Battle-Homophobia---115113734.html>

- Documents anti-gay sentiments among Kenyan citizens including a hairdresser, taxi driver and business man



- **They are quoted condemning homosexuality as forbidden by God, unnatural, inimical to African culture, and worthy of punishment**
- **LGBT Kenyans describe verbal and physical abuse, death threats, harassment of their families and targeting by street gangs, and anti-gay incitement by religious and political leaders**

14. "A family scarred by homophobia," Muchiri Karanja, The Nation, October 22, 2009

Online: <http://www.nation.co.ke/News/-/1056/675940/-/uo2gna/-/index.html>

- **The family of a Kenyan man who married his male partner in London, UK endures harassment from neighbours**

15. "Mob attacks gay 'wedding' party," Galgalo Bocha, The Nation, February 12, 2010

Online:

<http://mobile.nation.co.ke/News/-/1290/860810/-/format/xhtml/-/9ml3cuz/-/index.html>

- **Kenya's would-be first gay wedding was violently stopped by protestors and police on Friday at Mtwapa near Mombasa**
- **Police intervened as dozens of Christian and Muslim youth stormed the apartment where three men, including the gay couple, were living**
- **Police arrested five "suspected homosexuals," including two who were rescued from youths "baying for their blood"**
- **Local police chief later said no charges were filed against the arrested LGBT people**

16. "Kenya: Obama Administration Should First Preach 'Gay Rights' to Republicans," Gitau Warigi, The Daily Nation, December 10, 2011

Online: <http://allafrica.com/stories/201112120228.html>

- **Editorial expresses resentment against US warnings to African nations that America could start applying sanctions to countries that do not respect gay rights**

17. "Muslim leaders in Kenya call for death penalty for gays," Monsters and Critics, June 14, 2011

Online: http://news.monstersandcritics.com/africa/news/article_1645517.php/Muslim-leaders-in-Kenya-call-for-death-penalty-for-gays

- **Muslim leaders in Kenya have called on the government to introduce the death penalty for homosexuals and to boycott their businesses at a workshop attended by more than 150 madrassa teachers**
- **Participants blamed the rising cost of living and a recent drought on the behavior of LGBT Kenyans**



18. "Jimmy Gait: I'm not gay, I have a girlfriend," Catherine Mukei, The Star, March 19, 2012,

Online: <http://www.the-star.co.ke/word-is/word-is/67507-jimmy-gait-im-not-gay-i-have-a-girlfriend>

- **Gospel singer denies allegations that he is gay**
- **Says the thought of being with a man is disgusting and makes him sick**

19. "Family values don't supersede rights of Kenyan gays," Wothaya Jane, January 24, 2012, The Star

Online: <http://www.the-star.co.ke/opinions/others/59437-family-values-dont-supersede-rights-of-kenyan-gays>

- **Communications officer at the Gay Kenya Trust responds to United Republican Party of Kenya's anti-gay "family values" platform**

20. "Factors That Will Shape Politics In 2012," Mwenda Njoka, The Star, December 31, 2011,

Online: <http://www.the-star.co.ke/opinions/mwenda-njoka/55897-factors-that-will-shape-politics-in-2012->

- **Editorial predicts that that a test case seeking to section 45(2) of the constitution, limiting marriage to partners of the opposite sex, inconsistent with the Bill of Rights, will generate a lot of attention in 2012**

21. Catherine Mukei, "Actress Sharon Olago steps up for gay rights", The Star, January 17, 2012

Online: <http://www.the-star.co.ke/word-is/word-is/58436-actress-sharon-olago-steps-up-for-gay-rights>

- **Actress states that addressing HIV/AIDS requires awareness of gay rights**

22. "Gay Pride and Prejudice in Kenya," Nina Robinson, BBC, June 15, 2010

Online: <http://www.bbc.co.uk/news/10320057>

- **Once tolerant community of Mtwapa has become increasingly hostile to LGBT people**
- **Mosque leader tells worshippers that homosexuality is a "sin" which should be "punishable by death."**
- **Kenya Medical Research Institute in Mtwapa was targeted for HIV/AIDS work – those in waiting room were beaten**
- **Kenyan people assume a link between homosexuality and prostitution**
- **Local political leaders call for stricter laws to punish homosexuality**



23. "False Gay Marriage Rumour Sparks Kenyan Riots," Doug Ireland, Gay City News, February 18, 2010

Online:

http://gaycitynews.com/articles/2010/02/18/gay_city_news/news/doc4b7d854836076514227246.txt

- **Religious leaders spread word about a gay wedding in Mtwapa, leading to extreme violence by a mob of 200-300 armed people**
- **Violence included a house-to-house search for gay people, street attacks targeting gay men, and the raid of a medical centre**
- **Previously, a homophobic group invaded a gay club and taunted those at the club**

24. "Kenyan Gays Celebrate New Constitution," Behind the Mask, August 30, 2010

Online: <http://www.mask.org.za/kenyan-gays-celebrate-new-constitution/>

- **Describes LGBTI community's optimism about new constitution, which bans direct and indirect discrimination against minorities and marginalized groups**

VII. **Scholarship**

1. Stephen Charles Kaduuli, "Perceptions of LGBT in Uganda and Africa" Unpublished Working Paper, November 21, 2009.

Online: <http://ssrn.com/abstract=1510822>

- **In Kenya, after the same-sex marriage of two Kenyan men in London, the team writing a new Constitution ruled out enshrining the rights of homosexuals**
- **The marriage outraged religious leaders who described it as "unacceptable and unnatural"**
- **Homosexuality is outlawed in Kenya, and is often condemned as being "un-African" - a 'disease' imported from the West**
- **A poll in Kenya in 2008 showed that 96% of respondents viewed homosexuality as being against their beliefs.**

This article addresses general perceptions of LGBT in Africa, and contains a section on Kenya. The article describes how the family of one of the Kenyan men who wedded another in London set off a storm of controversy across Kenya and a homophobic backlash from neighbours. The mother has now developed a fear for strangers and no longer welcomes them to the family home, and the brothers have endured constant harassment.

The Anglican Archbishop Eliud Wabukala said: "The union is abnormal. As an African and a church leader, I am ashamed. We should advise others not to do the same. According to former Kenyan president Daniel Arap Moi, "Homosexuality is against African norms and traditions, even in religion it is considered a great sin... Kenya has no room for homosexuals and lesbians."



2. Akinyi Margareta Ocholla, “The Kenyan LGBTI Social Movement – Context, Volunteerism, and Approaches to Campaigning,” (2011) 3 J Human Rights Practice.

- **The Kenyan constitution doesn’t prevent discrimination on the basis of sexual orientation**
- **Kenyan society may be described as highly conservative and deeply religious**
- **There have been several reported incidents of physical and sexual assaults meted out on lesbian, gay or transgender individuals in the past five years.**
- **In other instances, young LGBTI individuals may be disowned by their parents, who then also withdraw their support for their education.**
- **Some are suspended or expelled from schools upon being exposed by the school staff.**
- **Many have been dismissed from their jobs or been forced out of their rented houses by landlords.**
- **Certain colleges offering courses in counselling, social work and community development still teach their students that homosexuality is a deviance and a mental illness, despite the fact that it was removed from the list of diseases by the World Health Organization several years ago.**
- **LGBTI groups face barriers in getting set up and registered. These barriers may be imposed by the government.**
- **Organizations must remain vague about their work and must use vague names**
- **Nonetheless, some groups have been established**

The author, an LGBT activist in Kenya, describes her experiences working in the LGBT community. This is an academic version of “notes from the field,” published in a recognized academic journal.