Kenya – Researched and compiled by the Refugee Documentation Centre of Ireland on 19 January 2011.

Information on the legal status of lesbians in Kenya. Information on the current situation and treatment of lesbians in Kenya? What is the government's and society's attitude in relation to this issue? Are lesbians being discriminated against due to their sexual orientation? What NGOs are available to support lesbians in Kenya? Is there free movement within Kenya; would a lesbian experience any legal or practical problems moving within the country? Would police provide protection / services to a woman experiencing problems due to her being a lesbian?

A report by the *United States Department of State* under the heading 'Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity' states:

> "The penal code criminalizes "carnal knowledge against the order of nature," which is interpreted to prohibit homosexual activity and specifies a maximum penalty of 14 years' imprisonment. A further statue specifically criminalizes male-to-male sex and specifies a maximum penalty of 21 years' imprisonment. However, there were no reported prosecutions of individuals for sexual orientation or homosexual activity during the year.
>
> Lesbian, gay, bisexual, and transgender advocacy organizations, such as the Gay and Lesbian Coalition of Kenya, were permitted to register and conduct activities.
>
> There was frequent and widespread societal discrimination based on sexual orientation during the year. In 2007 the Council of Imams and Preachers of Kenya and other civic leaders condemned homosexuality and argued against legalizing gay marriages. A group in Mombasa created the Muslim Youth Pressure Group to oppose homosexuality in 2007." (United States Department of State (11 March 2010) *2009 Human Rights Report: Kenya*)

A report by *Human Rights Watch* under the heading 'Kenya: Halt Anti-Gay Campaign' states:

> "New York) - Kenya's government should act quickly to protect people accused of homosexual conduct and groups offering HIV/AIDS services from vigilante attacks, Human Rights Watch said today in a letter to Kenyan authorities.
>
> The vigilante violence has hit Mtwapa, a coastal town northeast of Mombasa, in recent days and appears to be spreading to Mombasa and elsewhere. Human Rights Watch called on Kenya's government to speak out against the voices that incite hatred and foment the attacks.

> "The government is sitting silent while mobs try to kill human rights defenders and assault people they suspect are gay," said Dipika Nath, researcher in the Lesbian, Gay, Bisexual, Transgender (LGBT) rights program at Human Rights Watch. "Inaction is complicity, and silence can be lethal." (Human Rights Watch (17 February 2010) *Kenya: Halt Anti-Gay Campaign*)

It also states:

> “The attacks and hate-mongering and the government's failure to act have spread fear in the lesbian, gay, bisexual, and transgender community, Human Rights Watch said. Several people have gone into hiding; others are preparing to flee their homes at a moment's notice.” (ibid)

A response by the *Immigration and Refugee Board of Canada* under the heading ‘Legislation’ states:

> “According to articles 162, 163 and 165 of the Kenyan Penal Code, male to male homosexual acts are illegal in Kenya (Kenya 2009, Chap. XV, Art. 162, 163, 165; Sodomy Laws 28 Apr. 2007). Convictions can carry sentences from five to fourteen years imprisonment (Kenya 2009, Chap. XV, Art. 162, 163, 165; BTM 24 Apr. 2009; African Veil 15 May 2008; Sodomy Laws 28 Apr. 2007). Kenyan law does not mention sexual activities between women (Towards Freedom 6 Aug. 2009; Sodomy Laws 28 Apr. 2007). The 2006 Sexual Offences Act makes no mention of same-sex relations (Kenya 2006).Sources indicate that the legislation is rarely enforced (The Guide Mar. 2009; African Veil 15 May 2008; IANS 29 Apr. 2007), but serves "mostly as simple (but powerful) demoralizing mechanisms" for Kenyan homosexuals (The Guide Mar. 2009) and as "an effective threat hanging over the gay community" (African Veil 15 May 2008).” (Immigration and Refugee Board of Canada (12 November 2009) *Kenya: Situation of homosexuals; legislation, state protection and support services (2007 - September 2009) Research Directorate, Immigration and Refugee Board of Canada, Ottawa*)

In a section titled ‘Treatment by Society’ it states;

> “Many homosexuals in Kenya believe they must hide their sexual orientation for fear of arrest, discrimination and rejection even from their own families (GALCK 15 Sept. 2009; The Guide Mar. 2009). Many Kenyan homosexuals lead double lives, marrying partners of the opposite sex and having children in order to blend into society (ASNS 14 July 2009; UN 9 July 2009; The Guide Mar. 2009; IANS 29 Apr. 2007).
>
> Sources note that homosexuals face violence (BTM 29 Apr. 2009; The Guide Mar. 2009; African Veil 15 May 2008). In 15 September 2009 correspondence the Manager of GALCK stated that
>
> [p]eople whose real or presumed sexuality is visible are targets of sometimes very violent attacks - Transgenders unfortunately top the list, hence cases of physical attacks requiring hospitalization are unfortunately all too common.
>
> Reports and articles provide examples of cases of violence; however, sources indicate that many victims of assaults do not report attacks (BTM 29 Apr. 2009; African Veil 15

May 2008). In a May 2009 report, Human Rights Watch (HRW) notes that a Kenyan LGBT rights group "told [them] matter-of-factly that its members were 'attacked by an angry mob who wanted to lynch them and they had to be evacuated under tight security'" (HRW May 2009, 2). In addition, several sources report that in April 2009, a lesbian was assaulted at a night club in an attack which some Kenyan gay activist groups described as a hate crime motivated by homophobia (CISA 18 May 2009; BTM 29 Apr. 2009; ibid. 24 Apr. 2009).” (ibid)

In a section titled ‘Treatment by Authorities’ it states:

> “The GALCK Manager 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 sections "being cautiously accepting" while others, such as the police, being more "aggressive" in their dealings with the gay community (GALCK 15 Sept. 2009). However, the GALCK Manager also noted 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. (15 Sept. 2009)” (ibid)

It also states under the heading ‘Protection and Support Services’

> “There are several non-governmental organizations (NGOs) that address LGBT issues in Kenya (BTM 24 Apr. 2009; IPS 23 Jan. 2007; IANS 29 Apr. 2007). Of these groups, several are part of GALCK (GALCK 7 Oct. 2009a). GALCK promotes information on the rights of homosexuals and encourages members of the gay community to carry its public phone number so it can assist in the defence of anyone who is arrested or under threat of blackmail (GALCK 19 Aug. 2009). Ishtar MSM, founded in 1997, deals with the sexual health rights issues of men who have sex with men (Ishtar MSM n.d; Gay Kenya 20 Aug. 2009.). TOMIK (The Other Me or The Other Men in Kenya) works "behind the scenes" for the decriminalization of homosexuality (BTM n.d.; GALCK 7 Oct. 2009b; Gay Kenya 20 Aug. 2009.). Minority Women in Action (MWA) is a women's group helping lesbians, transgendered people and bisexual women (Gay Kenya 20 Aug. 2009; The Guide Mar. 2009; MWA n.d.). Transgender Education and Advocacy (TEA) advocates for transgender and intersex people (Gay Kenya 20 Aug. 2009; TEA n.d.) Gay Kenya advocates for human rights for the Kenyan LGBT community (GALCK 7 Oct. 2009a; The Guide Mar. 2009).
>
> Other groups who have provided support for homosexuals in Kenya include Urgent Action Fund (UAF), an NGO that provides funding and resources to improve women's rights (UAF n.d.), the aforementioned governmental Kenya National Commission on Human Rights and the non-governmental Kenya Human Rights Commission (GALCK 15 Sept. 2009). As well, Nairobi-based Liverpool VCT (Voluntary Counselling and Testing) (LCVT n.d.) and the Mombasa-based Kenyan branch of the International Centre for Reproductive Health (ICRH), sponsored by the Belgian University of Ghent (ICRH n.d.), provide health related services and information to the gay community (The Guide Mar. 2009).” (ibid)

A report by *BBC News* under the heading ‘Kenya gay activist criticises Odinga crackdown threat’ states:

> “A gay rights activist has criticised Kenya's prime minister for threatening a crackdown on homosexual people.
>
> David Kuria from the Gay and Lesbian Coalition of Kenya told the BBC that Raila Odinga's comments would encourage people to extort money from gay and lesbian people.
>
> On Sunday, Mr Odinga warned that men or women found engaging in homosexual acts would be arrested.
>
> He later said he was only saying the constitution bans same-sex weddings” (BBC News (29 November 2010) *Kenya gay activist criticises Odinga crackdown threat*)

It also states:

> “Mr Odinga said on Sunday: "We will not tolerate such behaviours in the country. The constitution is very clear on this issue and men or women found engaging in homosexuality will not be spared."
>
> Mr Kuria said the prime minister's comments left him "full of sadness".
>
> "We thought in this country we had made a lot of headway," he said.
>
> "People will succumb to extortion, blackmail and violence."
>
> In February, five people were arrested near the resort of Mombasa after reports they were trying to organise a gay wedding, sparking local protests” (ibid)

A report by *Behind the Mask (South Africa)* under the heading ‘Two arrested for bogus lesbianism charge – Kenya’ states:

> “KENYA – 05 November 2009: Two Kenyan lesbians have been released on bail after being allegedly arrested for lesbianism, and later being charged with stealing, an offence which the women refuted suggesting it was blackmail.
>
> According to the co-ordinator from the Solidarity with Communities in Distress (SOLCODI) Program which advocates for the gay and lesbian community, the women are being blackmailed because they are lesbians.
>
> "While we appreciate the media for covering the issues of sexual minority in Kenya, it has also led to uprising rebellion from the society. This has forced many members of the LGBT to live in fear because there security is not guaranteed black mailing is also an issue", said our source from SOLCODI who did not want to be named.
>
> The co-ordinator alleges that the lesbian women had a misunderstanding with a person close to them who then decided to blackmail them by exposing their sexual orientation further accusing them of stealing her possessions.” (Behind the Mask (South Africa) (5 November 2010) *Two arrested for bogus lesbianism charge – Kenya*)

It also states:

> "Homosexuality is still taboo in Kenya with religious leaders saying it is against both African culture and biblical teachings; even though there are there are gay and lesbian people in the country.
>
> Currently in Kenya homosexuality is illegal however lesbian relations are not mentioned in the law. Sections 162 to 165 of the Penal Code only criminalizes homosexual behaviour and attempted homosexual behaviour between men and the penalty is 5 to 14 years' imprisonment" (ibid)

References:

BBC News (29 November 2010) *Kenya gay activist criticises Odinga crackdown threat*
http://www.bbc.co.uk/news/world-africa-11864702?print=true
(Accessed 19 January 2011)

Behind the Mask (South Africa) (5 November 2010) *Two arrested for bogus lesbianism charge – Kenya*
http://www.ein.org.uk/members/country/print.shtml?cmd[113]=x-113-267337
(Accessed 19 January 2011)

Human Rights Watch (17 February 2010) *Kenya: Halt Anti-Gay Campaign*
http://www.hrw.org/en/news/2010/02/17/kenya-halt-anti-gay-campaign?print
(Accessed 19 January 2011)

Immigration and Refugee Board of Canada (12 November 2009) *Kenya: Situation of homosexuals; legislation, state protection and support services (2007 - September 2009) Research Directorate, Immigration and Refugee Board of Canada, Ottawa*
http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452629&l=e
(Accessed 19 January 2011)

United States Department of State (11 March 2010) *2009 Human Rights Report: Kenya*
http://www.state.gov/g/drl/rls/hrrpt/2009/af/135959.htm
(Accessed 19 January 2011)

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
Electronic Immigration Network (EIN)
European Country of Origin Information Network (ECOI)
Human Rights Watch

Refugee Documentation Centre Query Database
Immigration and Refugee Board of Canada
Lexis Nexis
UNHCR Refworld
United Kingdom Home Office
United Nations Human Rights Council
United States Department of State