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Kenya: Situation of homosexuals; legislation, state protection and support services (2007 - September 2009)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Male to male sexual acts are illegal in Kenya (UN 31 Aug. 2007) and homosexuality is widely stigmatized (GALCK 15 Sept. 2009; ASNS 14 July 2009; BTM 26 Jan. 2009; African Veil 15 May 2008). Many Kenyans consider homosexuality to be a concept imported from Western countries (*The Guide* Mar. 2009; African Veil 15 May 2008) and as "un-African" (BTM 12 June 2009; *ibid.* 26 Jan. 2009; African Veil 15 May 2008). Homosexuality is also viewed as "anti-Christian" by some people (BTM 12 June 2009; African Veil 15 May 2008).

Legislation

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).

According to a 5 May 2008 report by American news broadcaster ABC News, openly gay men are "more likely to be beaten by homophobic Kenyans than arrested" (ABC News 5 May 2008). In contrast, the Manager of the Gay and Lesbian Coalition of Kenya (GALCK), an association of prominent lesbian, gay, bisexual and transgendered people (LGBT) rights groups, stated in 17 September 2009 correspondence with the Research Directorate that arrests are "made all the time" with cases coming to GALCK's attention "at least once every month".

Treatment by Society

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).

Nevertheless, some sources have reported a growing acceptance of gays in Kenya in recent years (GALCK 15 Sept. 2009; *The Guide* Mar. 2009; African Veil 15 May 2008). Behind the Mask (BTM), a news website which focuses on gay and lesbian issues in Africa, reports that in August 2008, a national talk show discussed the issue of homosexuality, reportedly for the first time (29 Aug. 2008). In January 2007, during the World Social Forum held in Nairobi, Kenyan gay rights groups went public hosting LGBT delegates from around the world and offering a

"safe space" for both homosexuals and non-homosexuals to learn about gay issues (IANS 29 Apr. 2007; BTM 28 Jan 2007; IPS 23 Jan. 2007; *The Nation* 25 Jan. 2007).

However, according to *The Kenya Post* a Ugandan lesbian activist was heckled and threatened during the Forum (28 Jan. 2007). As well, while the Forum was being held, the Council of Imams and Preachers of Kenya in Mombasa openly condemned homosexuality and questioned why government and police had not done more to enforce the existing laws against homosexuals (*The Kenya Post* 28 Jan. 2007; *The East African Standard* 24 Jan. 2007). According to the Nairobi-based newspaper *The East African Standard*, the group claimed that homosexuality must "be rooted out of the society because it fuels the spread of HIV/AIDS" (ibid.). According to *The Kenya Post*, also in response to the Forum, the founder of the Kenya Anti-Rape Movement denounced same-sex relationships and stated that gays and lesbians needed counselling for their "unnatural" acts (*The Kenya Post* 28 Jan. 2007).

Treatment by Authorities

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)

Various sources cited activists as criticizing the Kenyan government for not paying enough attention to HIV/AIDS prevention and treatment in the gay community (*Daily Nation* 15 Sept. 2009; *Toward Freedom* 6 Aug. 2009; ASNS 14 July 2009; UN 9 July 2009; BTM 26 Jan. 2009). African Science News Service (ASNS), a Nairobi-based website devoted to science journalism, reports that identified men who have sex with men (MSM) or lesbians "will be arrested, denied treatment and suffer humiliation at the hands of healthcare providers" (14 July 2009). Homosexuals may therefore self-medicate or lie to healthcare providers, resulting in incorrect treatment (ASNS 14 July 2009; BTM 26 Jan 2009).

The National AIDS and STD (Sexually Transmitted Disease) Control Programme (NASCOP), a division of the Ministry of Health of Kenya leads the campaign against HIV/AIDS (Kenya n.d.). Its director has publicly advocated for the government to work with the homosexual community and rights groups (UN 9 July 2009; BTM 2 July 2009). In addition, members of the Kenya National Commission on Human Rights (KNCHR), which was established by an Act of Parliament in 2002 to protect and promote human rights in Kenya (KNCHR n.d), have spoken up in the defence of the rights of LGTB people (HRW May 2009, 12; IGLHRC 11 June 2007; BTM 22 May 2009; ibid. Jan 2007). As well, representatives from KNCHR, including its chairperson, were among the experts in international law who adopted the Yogyakarta principles, a set of international human rights principles relating to sexual orientation and gender equality (HRW 25 Mar. 2007).

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).

HRW notes that rights groups are generally urban based and quotes a Kenyan activist as stating "[t]he rural LGBTI people face exclusion and are left out ... There is a basic need for a toll-free hotline to ensure that even those in the rural areas can get access to counseling services" (HRW May 2009, 13).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Oral sources: Attempts to reach representatives of Ishtar MSW, Minority Women in Action (MWA) and TOMIK were unsuccessful.

Internet sources, including: Amnesty International (AI), Asylumlaw.org, GayGuide.Net, Kenya Human Rights Commission (KHRC), PinkNews, United States (US) Department of State.

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