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KEN43366.E

Kenya: The treatment of homosexuals by authorities and by society in general
(November 2002-February 2005)
Research Directorate, Immigration and Refugee Board, Ottawa

Although homosexuality is illegal in Kenya (Behind the Mask n.d.), authorities seldom harass homosexuals (UK 2001). Society, however, shuns those who are openly homosexual, while those who hide their homosexuality appear to be left alone (Behind the Mask 5 July 2003; Globalgayz.com July 2003).

The Law

Under Kenyan law, homosexual behaviour and attempted homosexual behaviour are prohibited by "Sections 162 to 165 of the Penal Code [and] punishable by imprisonment of between five and 14 years, if convicted (Behind the Mask n.d.; see also Afrol News 16 Jan. 2003). The Behind the Mask Website "On Gay and Lesbian Affairs in Africa" states that "[l]esbian relations are not mentioned in the law" (n.d.). Kenyan law also does not recognize same-sex marriage (Behind the Mask 5 July 2003).

Since President Mwai Kibaki came to power in December 2002 (Kenya n.d.), the constitution has been amended to include basic human rights (Globalgayz.com 18 Jan. 2003). The Website Globalgayz.com quotes GALEBITRA, a Kenyan rights group for gays, lesbians, bisexuals and transgendered people, as stating that, although gays are not specifically mentioned in the constitution, basic human rights are an integral part of the constitution and sexual minorities are therefore able to interpret the constitution to include their rights (18 Jan. 2003; Afrol News 16 Jan. 2003). The previous Kenyan president, Daniel arap Moi, had stated that homosexuality was "un-African" (ibid.).

Treatment by Authorities

An article on the Behind the Mask Website quotes Attorney-General Mr. Amos Wako as saying "I want to assure the general public that ... attempts to commit unnatural offences, otherwise known as homosexuality, are criminal offences under the law" (3 June 2004). Concurrently, according to an article on the Afrol News Website, "police [take] action whenever they come across it" (16 Jan. 2003). However, a decision from the United Kingdom Immigration Appeal Tribunal states that although homosexuality is illegal, homosexuals are only prosecuted by the authorities if another offence is involved (UK 2001). Thus, "discreet homosexuals are unlikely to face prosecution or persecution"

(ibid.). The decision goes on to state that "[f]ears of police persecution and social stigmas however keep most Kenyan homosexuals closeted" (ibid.).

Treatment by Society

Although homosexuality is still very much taboo in Kenya and not accepted by society, it is still practised by men and women; women tend to hide it more systematically than do men (Behind the Mask 5 July 2003; see also Afrol News 16 Jan. 2003). Homosexuality is often seen as a foreign concept (Behind the Mask 5 July 2003), and families reject it (Globalgayz.com July 2003). Those who live in rural areas suffer the most (ibid.). The gay community in Kenya is very much underground and invisible (*The Standard* 4 Sept. 2004). Historically, "[g]ays were generally ignored if not quite tolerated by the greater public" (Behind the Mask Sept. 2003).

The Anglican and Catholic churches in Kenya are also dealing with the issue of homosexuality, as they have campaigned against the nomination of Archbishop Robinson in the United States, who is openly gay (*The Nation* 17 Apr. 2004; see also *East African Standard* 30 Jan. 2005; *East African* 15 Sept. 2003). The Anglican Church has gone as far as putting "a ban on congregations accepting funds from the wealthy U.S. Episcopal church" (*The Nation* 17 Apr. 2004).

Additional information on the treatment of gays by the authorities and by society could not be found among the sources consulted by the Research Directorate.

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 additional sources consulted in researching this Information Request.

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Internet sites, including: International Lesbian and Gay Association, Kenya Human Rights Commission.

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