



Refugee Documentation Centre (Ireland)
LEGAL AID BOARD

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Information on the legal status of LGBT people; legal status on membership of the Lesbian, Gay, Bisexual and Transgender and Gay and Lesbian Human Rights Commission

In July 2014 a report published by *Human Rights First* states that:

“Same-sex relationships are punishable with up to 14 years in prison in Kenya... Since the passage of the Ugandan anti-homosexuality law in 2014, LGBT Kenyans have been fearful that similar legislation could be introduced in their country;... members of parliament have formed a caucus to fight homosexuality and to assess why the attorney general has not engaged in more aggressive prosecutions under the existing criminalization statute... Although there are active LGBT organizations in the country, they often face harassment by the police and the government” (Human Rights First (July 2014) *The State of Human Rights for LGBT People in Africa*, p.10).

In January 2015 a document released by *Freedom House* reviewing events of 2014 points out that:

“Consensual same-sex sexual activity is criminalized, with a maximum of 21 years in prison for sex between men. Members of the LGBT (lesbian, gay, bisexual, and transgender) community faced discrimination, abuse, and violent attacks in 2014...” (Freedom House (28 January 2015) *Freedom in the World 2015 – Kenya*).

In April 2015 *Human Rights Watch* points out that:

“The High Court of Kenya, in a groundbreaking decision, ruled on April 24, 2015, that members of a lesbian, gay, bisexual, and transgender (LGBT) rights group could formally register their organization...” (Human Rights Watch (29 April 2015) *Kenya: High Court Orders LGBT Group Registration*).

This document also states:

“The law in Kenya criminalizes “carnal knowledge against the order of nature,” commonly understood to mean anal sex, but no provision forbids people to be lesbian, gay or transgender or to associate in pursuit of common interests” (ibid).

Pink News in April 2015 states:

“Kenya’s High Court has ruled that the government can no longer block LGBT groups from formally registering their organisations. A pro-gay group in the country, the National Gay and Lesbian Human Rights Commission, has fought a long-running legal battle after being blocked from registering as an NGO – leaving them without a number of legal protections. The NGLHRC has had its application to register as an NGO blocked five times since 2012 – with a Non-Governmental Organizations Coordination Board finding that the name of the organisation was “unacceptable” as the Kenyan Penal Code criminalises “gay and lesbian liaisons”. However, the High

Court set a ground-breaking precedent in a ruling today, which found that the groups should be permitted – and that popular morality and religion should not be basis for limiting rights in Kenya” (Pink News (24 April 2015) *Court rules that Kenyan government can't block gay rights groups*).

The *Associated Press* in April 2015 points out that:

“In Kenya, gay sex is a crime, the law forbids sodomy and same sex partners are likely to receive extra attention from police. The Kenya gay community has complained of harassment, which in some cases is violent” (Associated Press (27 April 2015) *Kenya: Court orders government to register gay rights group*).

In May 2015 the *International Lesbian, Gay, Bisexual, Trans and Intersex Association* cites the following legislation, stating:

“The Penal Code (as amended by Act No. 5 of 2003)...

"Section 162. Any person who

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or 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."

"Section 163. 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."

"Section 165. 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." “ (International Lesbian, Gay, Bisexual, Trans and Intersex Association (13 May 2015) *State-Sponsored Homophobia 2015: Kenya*).

A worldwide report issued in May 2015 by the *Office of the High Commissioner for Human rights* notes:

“Concerns regarding the extent and gravity of violence and discrimination against LGBT and intersex persons have been raised repeatedly by United Nations human rights treaty bodies and special procedures” (Office of the High Commissioner for Human rights (4 May 2015) *Discrimination and violence against individuals based on their sexual orientation and gender identity, Report of the Office of the United Nations High Commissioner for Human Rights*, p.4).

This report also states that:

“United Nations human rights mechanisms continue to receive reports of homophobic and transphobic violence committed in all regions” (ibid, p.7).

In May 2015 *Erasing 76 Crimes* notes that:

“As expected, the government of Kenya has filed notice that it plans to appeal a High Court ruling of April 24 that would open the way to official recognition of LGBTI organizations. The government has refused to register such organizations on the basis of Kenyan law prohibiting same-sex intimacy. The April 24 decision came in a case brought by Eric Gitari, executive director of the National Gay and Lesbian Human Rights Commission (NGLHRC). The grounds for the appeal are not yet clear. The notice only stated that the Non-Governmental Organisations Coordination Board and the Attorney General are “dissatisfied” with the High Court’s decision” (Erasing 76 Crimes (20 May 2015) *Kenya moves to appeal courtroom win by LGBTI group*).

A report published in *The Independent* issued in June 2015 states:

“While homosexual acts are illegal in Kenya – being gay is not – the law is only occasionally invoked” (The Independent (6 June 2015) *Kenya’s long, painful road to gay equality*).

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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.

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