

Kenya to rule on gay rights as African neighbours look on

Friday 22 February 2019, by [BURKE Jason](#) (Date first published: 21 February 2019).

Decision has implications for rest of continent, where LGBT people face widespread discrimination

Judges in Kenya's high court will decide on Friday whether to repeal laws criminalising homosexuality, in a potentially historic decision that has implications for the rest of Africa, where LGBT people face widespread discrimination.

"Everyone all over Africa is paying attention. Whatever happens in Kenya will have a direct impact on us all," said Frank Mugisha, an activist based in neighbouring Uganda, where homosexuality is outlawed and authorities have attempted to impose harsher sentences on gay people in recent years.

Religious groups in Kenya have opposed any softening of its colonial-era laws, which punish sexual acts deemed "unnatural" with up to 14 years in prison, but pro-repeal campaigners say they are optimistic.

Lawyers acting for LGBT activists have argued that the laws contravene Kenya's 2010 constitution.

"Our constitution is very progressive but there is legislation in place that is not. Repealing the laws would mean equal recognition ... with rights such as the freedom to exist, to associate, to be free from discrimination. All these rights will finally be recognised for queer people in Kenya," said Lelei Cheruto, of the National Gay and Lesbian Human Rights Commission (NGLHRC).

Hate crimes against gay people – including physical and sexual assault, blackmail and extortion – are common, but most victims are too fearful to go to the police, rights groups say.

"It is a challenge to be gay here because of society. You can be attacked whenever, wherever. There will be protests if we win," said Mombo Ngua, an activist in Nairobi.

Kenya arrested 534 people for same-sex relationships between 2013 and 2017.

According to the NGLHRC, one of the petitioners against the law, there have been more than 1,500 attacks against LGBT Kenyans since 2014.

A 2013 survey found that 90% of the population in Kenya did not think society should accept homosexuality. In several other African countries, levels of disapproval were even higher.

Currently homosexuality is illegal in most countries on the continent. In several, gay people face life imprisonment or the death penalty.

The attempt to get the laws repealed is being opposed by the Kenya Christian Professionals Forum (KCPF), a coalition of Catholic, Protestant and Evangelical churches.

Charles Kanjama, the lead lawyer representing the forum, said homosexuality was “a sexual perversion that is damaging to the individual, the family and the society”.

“When you look at African culture historically, homosexuality has never been tolerated. Many African languages do not even have a word for homosexuality. In Africa there is a strong sense of community and a society has the right to outlaw a behaviour if it is abhorrent and immoral,” Kanjama said.

The court has heard from expert witnesses who said there have long been established traditions of tolerance of homosexuality in Africa.

The campaign to repeal Section 162 received a major boost last year when India’s top court scrapped a law that punished gay sex with up to 10 years in jail in a historic verdict.

Campaigners say Kenya’s laws are used daily to discriminate against LGBT people, making it harder for them to get a job or promotion, rent housing or access health and education services.

“We can’t think that if we win all the problems we face will just disappear ... but abuses are justified by legislation. It will be an important step and it will go a long way to stopping the harassment, discrimination and physical violence that LGBT people face,” said Cheruto.

Last year the high court in Kenya temporarily overturned a ban on the film *Rafiki*, that portrays a lesbian relationship, to allow it to be entered for the Oscars. “I am not convinced that Kenya is such a weak society that it cannot handle a gay theme. There are Kenyans who paid the ultimate price for the freedoms we enjoy today,” Justice Wilfrida Okwany told a packed courtroom in Nairobi at the time.

Uhuru Kenyatta, the president of Kenya, has described gay rights as an issue that was “of no importance to the people of Kenya”. “This is not an issue of human rights, this is an issue of our own base as a culture, as a people regardless of which community you come from,” Kenyatta told CNN in an interview last year.

In neighbouring Tanzania, authorities in Dar es Salaam, the biggest city, have launched a series of crackdowns on gay people in recent years. In the most recent the city’s governor called on citizens to identify homosexuals so they could be arrested, forcing hundreds of people into hiding.

However there has been progress elsewhere, including Angola, which decriminalised gay sex in January. On 15 March, the high court in Botswana will hear a case brought by campaigners challenging the constitutionality of a law punishing same-sex conduct.

“We are crossing our fingers,” said Mugisha of the Kenyan vote. “We hope it will send a signal for those who are moving towards this decision. It may be that many countries will now take this direction. Whatever happens it has been a worthy fight.”

Judges in Kenya’s high court will decide on Friday whether to repeal laws criminalising homosexuality, in a potentially historic decision that has implications for the rest of Africa, where LGBT people face widespread discrimination.

“Everyone all over Africa is paying attention. Whatever happens in Kenya will have a direct impact on us all,” said Frank Mugisha, an activist based in neighbouring Uganda, where homosexuality is outlawed and authorities have attempted to impose harsher sentences on gay people in recent years.

Religious groups in Kenya have opposed any softening of its colonial-era laws, which punish sexual

acts deemed “unnatural” with up to 14 years in prison, but pro-repeal campaigners say they are optimistic.

Lawyers acting for LGBT activists have argued that the laws contravene Kenya’s 2010 constitution.

“Our constitution is very progressive but there is legislation in place that is not. Repealing the laws would mean equal recognition ... with rights such as the freedom to exist, to associate, to be free from discrimination. All these rights will finally be recognised for queer people in Kenya,” said Lelei Cheruto, of the National Gay and Lesbian Human Rights Commission (NGLHRC).

Hate crimes against gay people – including physical and sexual assault, blackmail and extortion – are common, but most victims are too fearful to go to the police, rights groups say.

“It is a challenge to be gay here because of society. You can be attacked whenever, wherever. There will be protests if we win,” said Mombo Ngua, an activist in Nairobi.

Kenya arrested 534 people for same-sex relationships between 2013 and 2017.

According to the NGLHRC, one of the petitioners against the law, there have been more than 1,500 attacks against LGBT Kenyans since 2014.

A 2013 survey found that 90% of the population in Kenya did not think society should accept homosexuality. In several other African countries, levels of disapproval were even higher.

Currently homosexuality is illegal in most countries on the continent. In several, gay people face life imprisonment or the death penalty.

The attempt to get the laws repealed is being opposed by the Kenya Christian Professionals Forum (KCPF), a coalition of Catholic, Protestant and Evangelical churches.

Charles Kanjama, the lead lawyer representing the forum, said homosexuality was “a sexual perversion that is damaging to the individual, the family and the society”.

“When you look at African culture historically, homosexuality has never been tolerated. Many African languages do not even have a word for homosexuality. In Africa there is a strong sense of community and a society has the right to outlaw a behaviour if it is abhorrent and immoral,” Kanjama said.

The court has heard from expert witnesses who said there have long been established traditions of tolerance of homosexuality in Africa.

The campaign to repeal Section 162 received a major boost last year when India’s top court scrapped a law that punished gay sex with up to 10 years in jail in a historic verdict.

Campaigners say Kenya’s laws are used daily to discriminate against LGBT people, making it harder for them to get a job or promotion, rent housing or access health and education services.

“We can’t think that if we win all the problems we face will just disappear ... but abuses are justified by legislation. It will be an important step and it will go a long way to stopping the harassment, discrimination and physical violence that LGBT people face,” said Cheruto.

Last year the high court in Kenya temporarily overturned a ban on the film *Rafiki*, that portrays a lesbian relationship, to allow it to be entered for the Oscars. “I am not convinced that Kenya is such

a weak society that it cannot handle a gay theme. There are Kenyans who paid the ultimate price for the freedoms we enjoy today,” Justice Wilfrida Okwany told a packed courtroom in Nairobi at the time.

Uhuru Kenyatta, the president of Kenya, has described gay rights as an issue that was “of no importance to the people of Kenya”. “This is not an issue of human rights, this is an issue of our own base as a culture, as a people regardless of which community you come from,” Kenyatta told CNN in an interview last year.

In neighbouring Tanzania, authorities in Dar es Salaam, the biggest city, have launched a series of crackdowns on gay people in recent years. In the most recent the city’s governor called on citizens to identify homosexuals so they could be arrested, forcing hundreds of people into hiding.

However there has been progress elsewhere, including Angola, which decriminalised gay sex in January. On 15 March, the high court in Botswana will hear a case brought by campaigners challenging the constitutionality of a law punishing same-sex conduct.

“We are crossing our fingers,” said Mugisha of the Kenyan vote. “We hope it will send a signal for those who are moving towards this decision. It may be that many countries will now take this direction. Whatever happens it has been a worthy fight.”

Jason Burke

[Click here](#) to subscribe to our weekly newsletters in English and or French. You will receive one email every Monday containing links to all articles published in the last 7 days.

P.S.

The Guardian

<https://www.theguardian.com/global-development/2019/feb/21/kenyan-court-set-to-rule-on-decriminalising-homosexuality>