

Global development

Kenya's LGBTQ community wins bittersweet victory in battle for rights

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Supreme court rules for freedom of association but landmark decision sparks backlash from government and churches

The supreme court of Kenya has [criticised the government](#) for failure to register an association for LGBTQ+ people, saying the decision discriminates against the rights of the community.

Although same-sex unions remain illegal in Kenya, the court ruled that everyone has a right of association. It is the culmination of a decade-long legal battle, and a victory for the [LGBTQ+ community](#).

In a majority decision, the court ruled that the non-governmental coordination board was discriminatory and infringed on the community's constitutional right to association by refusing to register any of six names proposed by the community's representatives, among them the National Gay and Lesbian Human Rights Commission and the Gay and Lesbian Human Rights Council.

The government body had said that permitting registration would contravene sections of the country's penal code that criminalise gay and lesbian unions, including a British colonial law laying down a 14-year sentence for anyone convicted of homosexual acts.

"The court was of the view that the [government's] decision was discriminatory and that it would be unconstitutional to limit the right to associate, through denial of registration of an association, purely on the basis of the sexual orientation of the applicants," states the ruling.

It added: "Human rights are inherent and held simply because of being a human. All human beings, including LGBTIQ persons, are entitled to the full enjoyment of all the rights under chapter four of the constitution, not by reason of their sexual preferences as LGBTIQ but as human beings. Just as the rights enjoyed by heterosexuals are not based on their sexual orientation but by virtue of common humanity."

The ruling has been met by strong opposition, mainly from evangelical churches and conservative politicians, while the hashtag [#SayNoToLGBTQinKENYA](#) has been trending for the past week. A [media statement](#) by Calisto Odede, presiding bishop at the Christ is the Answer Ministries, said the ruling could embolden "other illegal practitioners like paedophiles and those involved in incest" to also have the right of association.

"There may be many people who are struggling with different kinds of sexual desires but they have not gone to court for the whole nation to recognise them," states the church, which has a large following in Kenya's urban areas.

The Kenyan church linked the court's ruling to the recent decision by the [Church of England](#) to welcome same-sex couples "unreservedly and joyfully".

Peter Kaluma, an MP allied to the opposition, vowed to table a bill in parliament to prohibit homosexuality and impose stiffer penalties, including life in prison, for those engaged in same sex liaisons.

The ruling will be a bittersweet victory for the LGBTQ+ community in Kenya, whose members have been subject to harassment, exclusion and violence. On 4 January, the body of 25-year-old [Edwin Chiloba](#), an LGBTQ+ rights activist and fashion designer, was found in a metal box on the side of a road near the Rift Valley town of Eldoret.

Kenya's attorney-general said the government will [challenge](#) the supreme court's ruling, insisting that the issue is a matter for public consultations rather than for the courts.

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P.S.

- The Guardian. Fri 3 Mar 2023 06.30 GMT:
<https://www.theguardian.com/global-development/2023/mar/03/kenyas-lgbtq-community-wins-bittersweet-victory-in-battle-for-rights>
- Peter Muiruri's articles in The Guardian:
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