



DANGEROUS
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How influential speakers and social media fuel hate rhetoric in the prevailing narratives towards the LGBTQI+ community.

a context brief

Kendi Gikunda
Njoki Kariuki

Introduction

The conversation on LGBTQI+ rights in Kenya and how the use of dangerous speech within the country has contributed to the escalation of violence against the community is not a new one. Traditional religious and cultural values play a substantial role in the cultivation and continuation of anti-gay sentiments that often result in the harassment, abuse, and death of members of the LGBTQI+ community. In Kenya, political leaders, religious leaders, celebrities and influential figures lead the negative public discourse on LGBTQI+ matters, likely influencing the attitudes of the general public towards the community.

Early history and Pre-Independence era (pre 1963)

Same-sex behaviors were reported in several societies in pre-colonial Africa, but this fact has come to be erased through both colonial impositions and anticolonial struggles. In *Boy-Wives and Female Husbands*, a book examining homosexuality and feminism in Africa, the researchers found "explicit" Bushman artwork that depicts men engaging in same-sex sexual activity. It is also widely known that a great number of Kenyan communities, most notably the Kalenjin, Kuria, Akamba and Kikuyu groups had (or still have) institutions of marriage that allowed older women to marry younger women. These unions served as an avenue through which older women were able to have children if they were barren, access resources such as land and exercise social influence by taking up what were (and still are) commonly considered male positions within patrimonial structures.

According to an article by Eric Mawira, the criminalization of same-sex relations in Kenya dates back to between 1897 and 1902, when the British colonial authorities applied the Indian Penal Code that had been drafted by the British for India, which criminalized same-sex relations.

Dr. Nancy Baraza, in her research in 2013, notes that the criminalization of homosexuality was seen as a means of advancing Christianity, bringing an end to slavery, and civilizing "natives." She argues that this social coercion resulted in the standardization of diverse ethnic sexualities for the ease of dominating and colonizing the locals, with a goal of imposing British moral and Christian religious norms. These laws intended to instill British morals on the people, who were resistant to them. The British thought they required this regulation because "native" societies did not punish "perverse sex" harshly enough. Therefore, a forced re-education in sexual ethics was necessary for the colonized people. As long as settlement societies were in close proximity, "native" viciousness and "white" virtue, according to the imperial rulers, had to be kept apart, with the latter being preserved and praised and the former being policed and kept under check. In order to simultaneously reform the colonized and

protect the colonists from moral shortcomings, anti-sodomy laws were therefore created to set moral standards.

Dr. Baraza observed that these colonial rules that controlled gender and sexual orientation were strongly related to Judeo-Christian theological ideals that eventually replaced African customary laws that acknowledged the harmony of gender, sexuality, and spirituality.

Post-independence Kenya (1963 – present)

Post-independence, Kenyan leaders have continuously asserted that homosexuality is un-African and the result of “western influence”. The anti-sodomy laws promulgated under British colonial rule were adopted by the post-independence government under Jomo Kenyatta, who, as Wanjira Kiama noted in her article in the *Daily Nation*, once claimed that there is no African word for homosexuality. This showed that he believed homosexuality is foreign and totally un-African. His successor, Daniel Arap Moi, echoed this sentiment, saying, “Kenya has no room or time for homosexuals and lesbians. Homosexuality is against African norms and traditions, and even in religion, it is considered a great sin.” Subsequent presidents Uhuru Kenyatta and William Ruto adopted the same stance, with Kenyatta calling gay rights “a non-issue for Kenyans” and Ruto saying that Kenya will never recognize anyone pushing gay and lesbian rights as it is an affront to the faith of its citizens.

Impact of Religion

In Kenya, religion permeates all aspects of daily life and has a significant impact on how the public discusses sexuality in general and same-sex relationships in particular. Leaders of Kenya's three main religions, Islam, Anglican, and Catholic, denounce homosexuality and transgender identification as symptoms of depravity, sickness, and immorality. A study on Kenyan religious leaders' views on same-sex sexuality and gender nonconformity found their perspectives were predominantly negative, with them seeing such practices as sinful. A substantial minority (37%) endorsed the use of violence for maintaining social values, especially regarding homosexuality and gender nonconformity.

False rumor about impending same-sex marriage in Mtwapa

In February 2010, acting on an unfounded rumour of a gay wedding in a local hotel in the coastal town of Mtwapa, a press conference condemning the wedding was held by Sheikh Ali Hussein, regional coordinator of the Council of Imams and Preachers of Kenya, together with Bishop Lawrence Chai, regional representative of the National Council of Churches of Kenya. They told their congregants to demonstrate and to flush out homosexuals from the midst of Mtwapa and to ensure that no gay wedding took

place.

“Come night, come day, we shall not allow that marriage to be conducted in this town tomorrow (Friday). We shall stand firm to flush out gays who throng this town every weekend from all corners of this country,” the religious leaders said in a statement after their meeting.

Dozens of Christian and Muslim youth stormed the apartment where the wedding was to supposedly take place, baying for the occupants’ blood. The police had to intervene and arrest the suspected gay men to save them from the crowd, but the suspected gay men faced no charges.

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Laws about same-sex sexual activity in Kenya

The Kenyan Penal Code of 1930, as revised in 2006, underlines the illegality of homosexuality in Kenya. The penal code statutes describe the principles of criminal law in Kenya. The statutes explain the elements of crimes, the parties to a criminal act, as well as general punishments. It is a compilation of all criminal offences recognized by law as well as the punishment related to the offences stated.

Sections 162, 163 and 165, as outlined below, provides as follows;

162. Unnatural offences

Any person who—

- (a) has carnal knowledge of any person against the order of nature;
- (b) has carnal knowledge of an animal, or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature,

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.

163. Attempt to commit unnatural offences

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**.

165. Indecent practices between males

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**.

The penalty differs depending on what is considered the severity of the crime committed and could range from a minimum of five years to a maximum of fourteen years imprisonment. These sections go against Chapter Four of the Constitution of Kenya, the supreme law of the Republic of Kenya, which outlines the 'bill of rights of each Kenyan citizen and upholds the right to life, equality and freedom from discrimination for all Kenyan citizens. Only men are criminalised under this law.

Decriminalization efforts

Sections 162, 163 and 165 have come under scrutiny, with various organizations and individuals petitioning the Kenyan government to repeal these sections in the famous #Repeal162 Case. Gay men, a lesbian woman, a gay man's mom, and a priest who had seen human rights abuses against LGBTQI+ people in his neighborhood were among the petitioners. The Gay & Lesbian Coalition of Kenya, the Nyanza Western & Rift Valley Network, and the Kenya Human Rights Commission were three further organizations. The petitioners' case was joined by seven interested parties. LGBTQI+ rights activists and men who have sex with men made up the first through sixth interested parties (MSM). The Kenya Legal and Ethical Issues Network on HIV & AIDS, a group that strives to promote equitable healthcare and HIV services for all Kenyans, was the seventh interested party.

Some of the evidence that was submitted included: i) stigma and legal discrimination based on sexual orientation: being refused services, evicted from houses, fired from jobs, threatened with death, and mocked. ii) serious acts of violence against people because of their sexual orientation, such as rape and physical abuse by neighbours and police iii) and being arbitrarily detained frequently, which caused them to hide and live in fear, always fearing detention and persecution simply for being who they are.

The legal argument, among other things, sought the Court to declare sections 162 and 165 of the Penal Code illegal and unconstitutional on the grounds that they violate

people's fundamental rights to privacy and dignity by criminalizing their most private and intimate modes of sexual expression. The petitioners pointed out that this colonially imposed rule punishes LGBTQI+ people for expressing relationships, love, and sexual intimacy—essential aspects of the human experience. The law transgresses constitutionally protected rights by doing this.

The case was against the state, and the state presented evidence from Dr. Johnson Kilonzo Mutiso who told the Court that; *people are not "born gay" and that sexual orientation can be "unlearned" through "gender reparative therapy."* He claimed that the continued criminalization of same-sex sexual activity is justified by MSM's susceptibility to HIV. The state contended that invalidating this statute will have a significant negative impact on Kenya's legislative, social, cultural, and religious activities, defining homosexuality as "despicable and disrespectful to traditional morals." Additionally, the state contended that the statute was not discriminatory because it was sufficiently clear and applied to both heterosexuals and homosexuals.

According to the court, decriminalizing same-sex intercourse on the basis that it is voluntary and occurs in private between adults would be in violation of Article 45's stated provisions (2). According to the court, the petitioners' claim that they weren't asking to be permitted to engage into a same-sex marriage was irrelevant because, if approved, it would result in same-sex people living together as couples. Such connections would be against the letter and spirit of the Constitution, whether they were formal or informal, private or public, thereby throwing out the claim. The petitioners later filed an appeal before Kenya's Supreme Court; this case is also known as the "#Repeal162 Case."

2023 Supreme Court ruling

In 2013, Eric Gitari, co-founder and former executive director of the National Gay and Lesbian Human Rights Commission (NGLHRC), challenged the refusal of the NGO Coordination Board to register the organization due to its name containing the words "gay" and "lesbian". The High Court ruled in favor of NGLHRC in 2015, citing their right to association, but the NGO Board appealed the decision. The Court of Appeal upheld the ruling in 2019, but the Board filed an appeal in the Supreme Court.

On February 24th, 2023, the Supreme Court ruled that NGLHRC must be allowed to register as an NGO, stating that it is unconstitutional to deny registration based on the sexual orientation of the applicants. This decision aligned with previous judgments from the High Court and the Court of Appeal.

The Supreme Court ruling stated: "Just like everyone else, [LGBTIQ+ people] have a right

right to freedom of association which includes the right to form an association of any kind.”

It continued: “It should be noted however that all persons, whether heterosexual, lesbian, gay, intersex or otherwise, will be subject to sanctions if they contravene existing laws, including Sections 162, 163 and 165 of the Penal Code.”

However, the ruling caused a moral panic among many Kenyans, with "homosexuality" and "LGBTQ" trending on Twitter up to four days after the decision. Social media saw heated debates, with news stories about the ruling garnering thousands of comments, many of which were mocking LGBTQ people. The highest officials in the country also opposed NGLHRC's victory. President William Ruto respected the court's verdict but stated that homosexuality remains "unacceptable" in Kenya, while deputy president Rigathi Gachagua called it "satanic".

Prevailing attitudes of Kenyans towards the LGBTQ community

The prevailing attitudes of the Kenyan public towards homosexuality remain negative, and most are unwilling to accept members of the LGBTQI+ community. This is primarily due to religion permeating social life and playing a vital role in framing the public discourse on sexuality. The political and religious elite also often characterize homosexuality as being against African tradition and have repeatedly directed hateful and derogatory comments at the LGBTQI+ community. A 5-year study done by the Pew Research Centre showed that at least 86% of Kenyans still refuse to accept homosexuality as part of society. From a population that reveres religion and uses it as a gauge for righteousness, words from influential speakers keep the public dependent upon political and religious leaders for a common sense of self. The fourth president and the fifth president have both expressed that gay rights are “a non-issue” and they are of no importance to Kenyans. These statements, coupled with reluctance by the authorities to offer protection to anyone suspected of being gay, as highlighted in, *“THE ISSUE IS VIOLENCE: Attacks on LGBT people on Kenya’s Coast”* have led to a context in which 53% of LGBTQI+ people report having been victims of violent attacks, arson, rape, malicious damage to property, death threats and stalking.

The use of the term “gay agenda,” adopted from the American Christian right, is very prevalent in Kenya. Talks of there being a push for homosexual practices to be normalized and glorified in order to indoctrinate children have become a permanent fixture in public discourse. To this end, the ban on all movies with LGBTQI+ content by the Kenya Film Classification Board (KFCB) in September 2022 was met with a largely positive response, with people praising the Board on its steps to “protect the children ” from harmful influence. This is seen from a post by Pastor TMwangi, an influential gospel musician turned minister, in September 2022 stating, *“KFCB Bans All Movies with*

LGBTQ+ Content in Kenya Hallelujah Media is a gate and it must be guarded"that received over 2.8K comments most of which were rejoicing and thanking God for the move.

The Anti-Homosexual Draft Bill and attacks against LGBTQ members

From a report on *"The Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya"*, the National Gay & Lesbian Human Rights Commission observed a dangerous spike of violence against LGBTQI+ people in Kenya in March 2014, following the formation of the parliamentary 'anti-gay' caucus which called for citizens' arrest of 'gays and lesbians'. Violent incidents steadily increased immediately after the presentation of the proposed 'Kenya Anti-Homosexuality Draft Bill' in July 2014. According to the draft legislation, "foreign gays" would be publicly stoned, repeat offenders would get life sentences, and lesbian sexual practices would be specifically criminalized. The Bill was not accepted by Parliament, but it did spark growing violence against LGBTQI+ women, as seen below:

"I was publicly undressed by some "bodaboda" (motorcycles that are used as a public form of transport in Kenya) guys in Kasarani ... I am butch; I always dress in a masculine way that day I was going to school. I found the motorists at the stage, they were always there, and some were even my friends. I knew their faces and would sometimes say hi as I passed them. That day they just started shouting at me, asking if I was a boy or girl...they were many... they surrounded me and started grabbing me and tearing off my clothes. They were laughing. They tore off my shirt and were pulling my trousers. Some women who sell vegetables in the nearby kiosks intervened. They covered me up in "lesos" (a traditional fabric that has different patterns) and walked me home... This happened in broad daylight." [Leila, 18th May 2015 Nairobi]

Transgender fashion icon Letoya Johnstone has been severally attacked on several occasions because of her sexual orientation. The latest incident occurred on 1st June 2022; from her Facebook timeline, where she shared videos and a police report number, she lamented, *"Transphobic attacks still happening. I can't believe I was being beaten in broad daylight and no one was helping me. People in Muthiga in Kikuyu were just staring. I had to break away using my own strength. A group of young boys doing the unthinkable to me. My body hurts everywhere."*

On the 17th of April 2022, Sheila Lumumba, a queer, non-binary person, was violently raped and murdered in their home in Nyeri in what many said to be a show of "trying to cure them of lesbianism". A few months earlier, in September 2021, Erica Chandra, a transgender woman, was brutally murdered and dumped by the road in Westlands. Unfortunately, these are not isolated incidents, with a large part of the Kenyan public either not condemning or outright condoning such acts.

Changing the narrative and moving forward

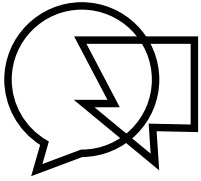
From online discussion forums, there is an indication that there are a lot of people of different sexual orientations who keep it a secret due to the existing societal narratives, as seen in this comment on Kenyan influencer Amakove Wala's Facebook timeline, *"I have a very handsome, very gay friend. Out of the closet, gay. Kenyan. He openly admits, publicly actually, that majority of his sexual partners are Rich, Married Kenyan Men. not pot-bellied wababaz. Noooo Golfing, hiking, gym fanatic hot professional, well-moneyed corporate men. Married ones. In Kenya. To Kenyan Women."*

As the prevailing narratives are questioned and people are becoming more tolerant, as seen in a Facebook conversation on Njeri Wa Migwi's timeline, an activist and human rights defender, on the gender identity of her co-founder at the organization USIKIMYE, homosexuality may become a non-issue as purported by the fourth and fifth Kenyan presidents; but until then, the rights and safety of the LGBTQI+ community must be upheld and protected.

Definition of Terms

Wababaz - Kiswahili slang term used to define older rich gentlemen.

LGBTQI+ - Lesbian, Gay, Bisexual, Trans, Queer and Intersex



About the authors

Njoki Kariuki is a research and communications professional. Her work is focused on conflict mitigation, migration, and advocacy for marginalized persons. As a researcher, she focuses on ways through which women are impacted economically by projects and businesses they interact with. She holds a degree in International Business Management and is currently the social media coordinator for r0g_agency, where she works with programs in Kenya, Uganda, Cameroon, South Sudan, Ghana, and The Gambia.

Kendi Gikunda is a practitioner in conflict mitigation and peacebuilding with experience working with refugees, internally displaced people, marginalized people, and local communities. She is currently the architect of the Social Media Hate Speech Mitigation Field Guide at the #defyhatenow initiative, where she has worked with programs in South Sudan, Uganda, Ethiopia, Cameroon, Kenya, and Germany. She is also currently studying Public Policy and Management at Strathmore University, Nairobi.

About this report

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