

# Chapter 3

## A Comparative Analysis of Anti-LGBT+ Oppression in Kenya and the United States

**Ciarra I. Hastings Blow**  
*Prairie View A&M University, USA*

### **ABSTRACT**

*Kenya and the United States were built off the same values and beliefs of English colonialism. The introduction of anti-sodomy laws within the legal systems has created a barrier between the LGBT+ community and the government. In Kenya specifically, the public creates division among LGBT+ youth by committing heinous offenses against them such as honor killings, rape, and arranged marriages solely to maintain a heteronormative appearance to the community. In the United States, the 100% increase in the murders of transgender individuals has confirmed there is a long way to go for equality. However, there have been significant changes, such as the election of Lori Lightfoot, Chicago's first black female openly gay mayor. The Penal Codes in Kenya have gone up for debate several times, and each time the idea of doing away with such laws is shot down. This chapter breaks down the differences and similarities between Kenya and the United States and how their anti-sodomy laws have shaped their LGBT+ youth today.*

### **INTRODUCTION**

According to Dugmore (2015), Kenya is among many homophobic countries still present within Africa. Going as far as to place a sweeping ban on movies, shows, and news articles showcase homosexual activities/behaviors (Madowo, 2018). The

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cultural and religious dictatorship over the country leads people to believe that homosexuality is abnormal and a Western concept that is infecting the impressionable people of Kenya (Mucherah et al., 2016). The discourse young gays and lesbians of Kenya face daily without any end in sight makes the fight for the decriminalization of homosexual behavior seem hopeless. Kenyan homophobia behavior can be traced back to their colonial roots from the English era (Gloppen & Rakner, 2020).

This chapter's primary focus is on the history of the criminalization of the lesbian, gay, bisexual, and transgender (LGBT) community in Kenya and how these laws negatively affect Kenyan youth. The continued criminalization of homosexuals in Kenya stems from English colonialism and is still present within the Kenyan Constitution. In comparison to the United States, Kenya is still in the stone age of human rights towards the LGBT community, especially the youth. An argument of how laws for/against the LGBT community are different between the United States and Kenya is outlined. There will also be comparisons made of how both countries are still similar in their treatment of this marginalized community.

The chapter begins by examining the history of anti-LGBT+ laws that surround the Penal Code and British Colonialism. Homosexuality in Kenya focuses on the laws being examined and how these laws have begun to change or how they have remained the same. The examination will be followed by a critical analysis of how laws have shaped Kenya into what is known today.

## **BACKGROUND**

According to feminist scholar Niara Sudakasa (1986), pre-colonial societies were not deemed rigid. In the case of the Lovedu people in what is modern-day South Africa, there were Supreme Rain Queens who was praised above all else. This was before the patriarchal system could take control (Elnaiem, 2021). According to the Dean of the faculty of law in Makerere University Uganda, Sylvia Tamale, the *mudoko dako*, also known as effeminate males, were treated as women, and encouraged to marry other men. The *Chibados* or *Quimbanda* of Angola were men believed to carry female spirits through anal sex (Tamale, 2013).

Europeans documented women marrying women in 40 precolonial African societies for many centuries. The idea of women being the "husband" was unheard of and perplexed Europeans. Writings from anthropologist Eileen Jensen Krige (1974) show that women who inherited wealth often engaged in homosexual marriages to satisfy themselves (Elnaiem, 2021). Around 1681, historians learned that Europeans grew uncomfortable with Africans homosexual practices and deemed them "filthy and dirty" for men dressing as women (Elnaiem, 2021). This led to Europeans labeling the act of men having sex with other men as "sodomy." *Jinbandaa* from

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