

# #Repeal162 and Queer Waiting: Living Indefinitely In, And With, Despair

“Yesterday when I got the news I was feeling as if my life was over, but they were all sending me lots of encouraging messages.” - Kenneth Macharia, [inews](#)

“We are already winning through our visibility. We are reclaiming spaces, showing up.” - Njeri Gateru, [Otherwise? Podcast Live Recording](#)

Before his last asylum appeal was rejected, I imagine Kenneth Macharia awaited the British state’s decision regarding his asylum status reluctantly. I imagine that he scrolled through his email inbox hoping only to find spam and business as usual, knowing that banality creates a sense of continuity. I imagine that during the rugby games leading up to October 2018, he dug his toes into the ground a little harder as he crouched to catch pictures of his rugby team in action, each time waiting for the broken mud to give way to roots that would somehow wrap themselves around his foot, physically anchoring them to the ground, right there in Glastonbury, where it felt safer to work whilst queer, to love whilst queer, to be queer.

Maybe he thought, if not him, maybe the Home Office would listen to its own land. I imagine he did what it took to avoid the pain that must come with being stuck between two places that were intent on resisting his desire for home; two places that unsaw him - Black, Kenyan and queer - struggling to elongate every second so that he could resist the brevity of time and be home a little longer, a little safer. I imagine, he spent that time warding off the sharp “hopelessness” that comes with being told: [“you have no basis to stay at \[home\] and you are expected to make arrangements to leave \[home\] without delay.”](#) I imagine he brainstormed methods to resist the panic that he knew would ensue when he found the words to admit to himself that he might be made to wait for a letter that would put him and his relative queer safety on notice for a 6th and final time.

I don’t know, I imagine.

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In the period of time between when the Kenyan high court was supposed to offer its decision on whether it would repeal the colonial-era penal codes (Penal Codes 162 and 165) which criminalized gay sex, and when it would actually deliver its ruling, queerness, for me, was unthought of, unaccounted for - blank. If queerness is “a rejection of a here and now, and an insistence on potentiality or concrete possibility for another world,” as Jose Muñoz defines it in his critical work *Cruising Utopias: The Then and There of Queer Futurity* in a tweet published on February 22<sup>nd</sup>, the day the court postponed the date of its judgement delivery to May 24<sup>th</sup>, that February 22<sup>nd</sup> acts as the last digital trace of my thinking, feeling, reading or doing queerness for a while. Instead I would do, feel and live through fear - my own immobilizing investment in the present, and a refusal to think beyond it.

In that last tweet, I wrote: “The postponement of the #repeal162 ruling has me thinking about how waiting, postponement, produces anxiety, slow panic, etc. and how debilitating it is for us, not just as queer individuals, but as a community.” Sensing my despair, a Twitter friend replied that this delay was standard for cases brought before superior Kenyan courts. However, given the affective resonances of this case, its stakes and the Kenyan state’s history of marking queer people as “non-issues” - as *things* to be considered after “corruption,” after “development”, after “tribalism,” and so on - bureaucracy as a rationalization for this delay was not sufficient. Though pragmatic, his words did not do what I needed them to do. They did not abate the anxiety, slow panic, etc. that was brewing in my chest, and spilling over into my thoughts, work, relationships - my (queer) living. They did not shake me out of that in-between state, where it felt like I was floating in stasis with neither words nor breath circulating, just blank.

In fact, it isn’t that his words *did not do* what I needed them to do, instead it is that they *couldn’t*. Their meaning could not be stretched to suture the gaping psychic and physical wounds that so many of us Kenyan queers had incurred at the hands of the state and the people that should have loved us. They instead functioned as a reminder of the waiting that had been done and that which was to come - the waiting we are *still* doing, and the loss that has been generated in the wake of those long pauses.

Here I want to trace the meaning of waiting - queer waiting. I want to think through what it means to make people wait and what it means to wait in anticipation, when at best what is being waited for lies somewhere between a sentence to live indefinitely *in despair* and a chance to live *with it*.

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Friday February 22<sup>nd</sup> was anything but business as usual for queer Kenyans, and yet for the Kenyan High Court it was. With the chances of loss more palpable than that of a positive ruling, I needed to be able to *feel* unperturbed, without the distractions of impending school and work deadlines. So that week, holed up in my dorm room far away from home, I worked continuously, attempting to finish as much work as possible before Friday.

When Friday arrived, I repeatedly refreshed my social media newsfeeds and dragged as many tweets out of my shaky fingertips as possible, hoping that intellectual engagement could upend the physical distance between me and the queer community at home. I thought that maybe psychic proximity could make up for what I could not force distance to do, but it couldn't and the loneliness I felt only festered. Instead, those tweets worked to fill up time. They shrunk each second of panic as the Justice announced the delay into something more acute - pain that was sharp and intense, but brief. The adrenaline as each angry word jutted out of my hands momentarily masked the impact of the long and destructive etymology of the Justice's words - they delayed feeling, they put loss on hold.

In [an article](#) in The East African recounting the announcement, writer Sam Kiplagat explains that the ruling was delayed because "some judges had been busy." Specifically, Kiplagat quotes High Court Justice Chacha Mwilu as stating, "We plan to meet in April if all goes well and see whether we can come up with a decision. You do not appreciate what the judges are going through." In the same article, Kiplagat goes on to recall President Uhuru Kenyatta stating "President Uhuru Kenyatta has previously said that gay rights was not a burning issue for the country." Here Mwilu imagines the sole victims of government bureaucracy and resource limitations as being judges. Queer Kenyans and advocates - the referents of Mwilu's "you" - are recast as impatient and inconsiderate, patently unaware of the judges' demanding workload, but most importantly uninjured. Here Mwilu's "you" emerges from the same political genealogy as Kenyatta's

[“non-issue,”](#) and what is a routinized and standard delay within Kenya’s judicial system, as my friend explained to me, became tethered to a history of malice and neglect in which queer people, their wellbeing, their everyday, their lives, their injuries are *always already* an *afterthought*, things of luxury.

In turn, queer people are made to wait – forced to adhere to the state’s timing. “Waiting” functions as a lapse wherein queer futures exist at the state’s mercy or its lack thereof. The state’s readiness and their lack thereof become ours; the timing of our plans is recalibrated to move at the state’s pace; the ability or desire to feel, work, love, think or even move ebbs and flows with the state’s decisions, its silences. And at some point, in the course of waiting, queer timing is contorted into straight timing and queer life becomes tethered to state life, along with all its delays, its dismissals, its disremembering.

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In its letter rejecting Kenneth Macharia’s petition for asylum, the Home Office stated that he was [“expected to make arrangements to leave the United Kingdom without delay.”](#) *Without delay.* Prior to receiving this letter dated 30<sup>th</sup> May 2019, Macharia had been fighting deportation for three years, starting with [his first asylum claim filed in May 2016 which was thereafter rejected in October 2016,](#) triggering a lengthy appeals process that concluded with the letter I quote in this essay. In reading excerpts of this letter, I struggle to make sense of this timeline – its unevenness. Whilst the state reserves the right to mull over his claim severally over three years, I imagine Macharia’s expending his financial, emotional and mental resources, and delaying everything from critical milestones to the everyday mundane things one must do to survive.

And now, at the state’s command, Macharia is expected to leave immediately; he is expected to leave behind the communities he has cultivated and the home he has created *without delay.* Despite being made to live his life anticipating the state’s actions, despite being made to wait, despite the state’s delays, Macharia is expected to accelerate processes he likely never hoped to initiate. Here the meaning of “delay” morphs from the state’s lengthy bureaucratic requirements for asylum applicants to “prove” persecution into Macharia’s goodbyes, his livelihood, his family, his community, his lease, his rugby team, his resistance, his living. Survival becomes reduced to a “delay.” It does not matter that he has been made to wait for this dehumanizing decision for over three years, and it does not

matter that he is being deported to a place where queer people have also been made to wait for the end of a legal regime put in place by the same British state which has made him wait at home. Here all that matters is the state's time, never that of the queers.

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When Friday May 24<sup>th</sup> arrived, I tried to ignore it. Still jilted from the court's decision to delay its ruling, I found it difficult to be excited, let alone hopeful of what the court's decision might hold. Yet as much as I tried to resist the optimism that framed that moment, the pictures of queer people in matching outfits and audio clips of happy, confident chatter were infectious. Though still cautious, as the morning proceeded, I began to believe that we would win. I followed the court proceedings via Twitter threads, fervently clicking, hoping that each new tweet would provide a surer understanding of what the court's decision might be. I did not anticipate the court's negative ruling until I saw it: "The Petitioners have failed to prove that the provisions are discriminatory," as another Twitter friend paraphrased it. With those words, the disappointment of the court's decision began to sink in. Excitement mutated into anxiety and fear and I began to sense a tethering to the state - to the here and now that Muñoz wrote against. It felt like a kind of betrayal. Even as the state forced us to wait, a standpoint wherein we were *waiting on* the state gradually developed. The line between state extraction and our anticipation had thinned, and disillusionment began to permeate my thoughts. It became clear that "to make wait" works as a strategy to tether queer people to the state, thus diminishing the liberatory capacities of queerness.

Here, we are forced to contend with what it means to anticipate the state's ruling when queerness has always been positioned against the state and its death-dealing logics. Indeed what was at stake with this ruling cannot be dismissed. As many have rightly stated, Penal codes 162 and 165 function as precedents for discrimination, anti-queer violence and isolation - they force you to think twice about mundane things from holding your lover's hand to congregating with other queer people in public and private spaces. What is left in the wake of these two destructive penal codes is distrust and worry, and so to wait on the state for redress is not wrong. In fact, often the extent to which one is able to distance oneself from the state and its violence is the product of cisgender, class and racial privileges. As such, untethering oneself is not always radical, instead it can simply

be convenient.

But there are those who have always consciously resisted waiting. There are those who understand that at best what we gain for the state is harm reduction, never freedom. They teach us that the true work of redress and healing is done through our organizing, our hangouts, our home making, our drag shows, our podcasts, our art, our writing, our dance parties, our workplaces - through our community, away from the state's gaze. They teach us that to untether ourselves from the state is not to take queer precariousness and state repression for granted, but instead to find ways to live *with despair* - to pursue freedom and life even as our bodies and minds continue to be devastated by the psychic and physical violence of being made to wait. For them queerness is found in the small, liberatory worlds we are creating even in this tyrannical here and now, not something far off and definitely never something to be waited on/for. For them queer time is a disruption of state timing, state delays and state disremembering, and a commitment to everyday worldmaking.

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According to the [change.org petition](#) created in protest of Macharia's deportation, on June 6<sup>th</sup> 2019 fifty friends and supporters from around the United Kingdom gathered together to accompany Macharia as he reported to his local police station. Two days prior on June 4<sup>th</sup>, Brenda Wambui, host of Kenyan podcast Otherwise? organized [a live podcast recording](#) featuring queer/ally advocates and organizers Njeri Gateru, Lorna Dias and Pastor David Ochar to think through what post-ruling queer organizing might look like.

Even as despair seemed to consume our everyday, these communities organized and strategized to disrupt the state's everyday. Even in the wake of myriad institutional devastations across borders, across time and across struggles - they continued to generate small queer worlds that were positioned against the state. Together, they molded visions and initiated plans that existed in opposition to the derelict realities and futures the state would prefer we inhabit. *This* is queer time.