



Home Office

Country Policy and Information Note

Malawi: Sexual orientation and gender identity

Version 3.0

February 2017

Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained within this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the European Asylum Support Office’s research guidelines, [Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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Policy guidance

Updated: 20 February 2017

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of persecution or serious harm by the state and/or non-state actors due to a person's actual or perceived sexual orientation and/or gender identity.

1.2 Points to note

- 1.2.1 This note provides policy guidance on the situation generally of gay men, lesbians, bisexuals and transgender persons – referred hereafter collectively as 'LGBT persons', though the experiences of each group may differ.
- 1.2.2 Where a claim by a male applicant falls to be refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as Malawi is listed as a designated state in respect of men only.
- 1.2.3 Decision makers must also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#) and [Gender Identity Issues in Asylum Claims](#).

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2. Consideration of Issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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2.2 Particular social group

- 2.2.1 LGBT persons in Malawi form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society .
- 2.2.2 Although LGBT persons in Malawi form a PSG, this is not sufficient to be recognised as a refugee. The question is whether the particular person will face a real risk of persecution on account of their membership of a PSG.
- 2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.3 Assessment of risk

- 2.3.1 Decision makers must establish whether or not the person, if returned to Malawi, will live freely and openly as a LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why.
- 2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution or serious harm, then they may not have a well-founded fear of persecution or serious harm. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.
- 2.3.3 But if the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded.
- 2.3.4 For further guidance, see the [Asylum Instruction on Sexual Identity Issues in the Asylum Claim](#).
 - a. State treatment
- 2.3.5 Consensual same-sex sexual activity in Malawi is illegal and punishable with imprisonment for up to 5 years for women and up to 14 years with hard labour for men. Same-sex activity may also be prosecuted as “conduct likely to cause a breach of the peace”. On the 17 April 2015, the Marriage, Divorce and Family Relation Law came into force. It makes no provision for same-sex marriages. The new law also does not allow people who have undergone gender reassignment surgery to marry a person, who before that sex changing surgery was of the same sex. The law is, otherwise, silent on matters relating to a person’s gender identity (see [the law](#)).
- 2.3.6 In 2012 (then) President Joyce Banda committed to repeal all laws that criminalized same-sex sexual relations, but she subsequently slowed efforts to repeal the laws (before leaving office in 2014). In November 2013 the High Court of Malawi decided to review the constitutionality of anti-LGBT laws, however at the time of writing no judgement has been made (see [the law](#)).
- 2.3.7 Although a moratorium on arrests and prosecution under the law criminalising homosexual acts was in effect from November 2012, in February 2016 it was annulled following successful appeals to the courts by religious leaders. The law itself is still under review in the High Court (see [Moratorium and law review](#)).
- 2.3.8 There have, however, been few reported cases of arrests and prosecutions of LGBT persons since the re-imposition of the law and only very few arrests in previous years. In December 2016, two gay men were arrested, convicted and fined for public indecency, but not under anti-gay laws, after having sexual relations. The conviction in 2010 of a gay couple and the arrest of another couple in 2015 were both subject to international furore and the government responded by pardoning the convicted couple and dropping the charges

against the arrested couple (see [treatment by, and attitude of, state authorities](#)).

2.3.9 The government has also approved a HIV policy that includes programmes focussing on gay, bisexual, and other men who have sex with men (see [treatment by, and attitude of, state authorities](#) and [moratorium and law review](#)).

2.3.10 The government is seemingly cautious about using anti-gay laws. This is potentially due to it being conscious of international opinion linked to Malawi's reliance on international donations and aid. Irrespective, the evidence available does not establish that LGBT persons are likely to be subject to persecution or serious harm by the state (see [moratorium and law review](#)).

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b. Societal treatment

2.3.11 There is limited information from sources on the societal attitudes and treatment of LGBT persons. Sources indicate that there is societal stigma and discrimination, with incidents ranging from physical assault, harassment in the workplace and at home, loss of employment, and in accessing healthcare. LGBT persons were also subjected to homophobic rhetoric from some members of Christian and Muslim groups, while human rights defenders who advocated LGBT rights experienced ridicule and hate speech (see [societal attitudes](#) and [societal treatment](#)).

2.3.12 However, public discussion of LGBT rights has increased since 2013, and there has been an improvement in the balance of how the media reports on LGBT issues. Some NGOs campaign for, support and document human rights violations against LGBT persons, including supporting a challenge against the laws through the Malawi High Court. Some key religious and traditional leaders publicly supported NGO advocacy programmes on LGBT rights (see [societal attitudes](#) and [societal treatment](#)).

2.3.13 Some domestic media outlets have warned that because Malawi is heavily dependant on international donor aid, the government's promotion of homophobia could lead to suspension of that aid (see [treatment by, and attitude of, state authorities, the law](#)).

2.3.14 While societal intolerance and discrimination occurs, there is no evidence of widespread harassment or violence against persons known or perceived to be LGBT. A number of NGOs actively (and openly) support LGBT persons and there are signs of growing societal tolerance of their rights (see [societal attitudes](#) and [societal treatment](#)).

2.3.15 Societal treatment does not, in general, reach the level to constitute persecution or serious harm. However, it may do in individual cases, depending on the person's particular circumstances. The onus is on the person to show that they are at real risk on return.

2.3.16 For further information on assessing risk, see [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.4 Protection

- 2.4.1 Where the person's fear is of persecution or serious harm at the hands of the state, they will not be able to avail themselves of the protection of the state.
- 2.4.2 Where the person is at risk from a non-state actor, there is limited information about the state's willingness, or not, to provide protection. The current president has however said that he would like gay rights "protected". However it is reported that LGBT persons face a lack of access to justice and the state has in the past failed to prosecute perpetrators of violence against LGBT persons and those who call for it. Protection may be available and the onus is on the person to show that they are unable to seek and obtain it (see [Treatment by, and attitude of, state authorities](#) and [Societal treatment](#)).
- 2.4.3 For further guidance on assessing the availability or not of state protection, see [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.5 Internal relocation

- 2.5.1 Where the threat is from the state, a person cannot internally relocate to escape that risk.
- 2.5.2 While societal intolerance is prevalent throughout the country, relocation may be relevant and reasonable where the threat is from a non-state actor. Decision makers must take into account the person's individual circumstances, with the onus on the person to demonstrate they cannot relocate.
- 2.5.3 Internal relocation is not viable if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.
- 2.5.4 For further guidance on internal relocation, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.6 Certification

- 2.6.1 Malawi is listed as a designated state under section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only. However where a claim made on the basis of the person's sexual orientation is refused, it is unlikely to be certifiable as 'clearly unfounded' because in general the claim when taken at its highest is unlikely to be so clearly without substance that it is bound to fail.
- 2.6.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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3. Policy summary

- 3.1.1 Same-sex sexual relations are criminalised in Malawi, however this legislation is currently under review. Although a moratorium on imposing this law has been annulled there have been no reports of arrests and prosecutions under anti-gay legislation since the annulment. While there have been arrests and prosecutions in the past these have been few in number and since 2010 have been overturned by the government.
- 3.1.2 There is no evidence that there is widespread harassment of, or violence against, LGBT persons. While societal intolerance and discrimination occurs, such treatment does not generally amount to a real risk of persecution or serious harm. Each case needs to be considered on its individual merits, with the onus on the person to demonstrate that they would be at real risk on return.
- 3.1.3 Protection may be available and it is up to the person to show that they are unable to seek and obtain it.
- 3.1.4 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person.
- 3.1.5 Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded'.

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Country Information

Updated: 14 February 2017

Note: some of the quotes in the country information refer to a moratorium on the use of anti-gay legislation. This suspension was in place from November 2012¹ to February 2016².

4. The law

4.1 Discrimination under the law

- 4.1.1 The United States State Department's country report on human rights practices covering events in 2015 ('the USSD report for 2015') noted that the law forbids discrimination based on race; colour; sex; language; religion; political or other opinion; national, ethnic, or social origin; disability; property; birth; or other status. The law does not specifically mention sexual orientation. The capacity of government institutions to enforce the law was limited³.

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4.2 The penal code

- 4.2.1 Same sex sexual relations for men and women are illegal under Section 137A, 153, 154 and 156 of the [Penal Code](#) and are punishable by up to 5 years for women and up to 14 years for men in prison⁴.
- 4.2.2 A report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 'State Sponsored Homophobia', updated to October 2016, detailed the legislation:

'Section 153. Unnatural offences

'Anyone who – has carnal knowledge of any person against the order of nature; or has carnal knowledge of any animal; or permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.

'Section 154. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.

¹ BBC News, 'Malawi suspends laws against homosexual relationships', 5 November 2012, <http://www.bbc.co.uk/news/world-africa-20209802>. Accessed: 4 January 2017

² VOA news, 'Malawi Court Annuls Government Suspension of Anti-Gay Laws', 12 February 2016, <http://www.voanews.com/a/malawi-court-annuls-governments-suspension-on-anti-gay-laws/3188056.html>. Accessed: 21 December 2016

³ United States Department of State, 'Country report on human rights practices - Malawi 2015' (Section 6), 13 April 2016. <http://www.state.gov/j/drl/rls/hrrpt/2015/af/252701.htm>. Accessed: 20 December 2016

⁴ Malawi Penal Code, https://www.unodc.org/mwg-internal/de5fs23hu73ds/progress?id=VHmU2HczRyQMhMMvQ_6nlujZaCzeXFOTv0INoyS2C84, https://www.unodc.org/tldb/pdf/Malawi_Penal_Code.pdf. Accessed: 1 February 2017

‘Section 156 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, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.

‘The new Section 137A: captioned “Indecent practices between females” provides that any female person who, whether in public or private, commits “any act of gross indecency with another female” shall be guilty of an offence and liable to a prison term of five years. The term “gross indecency” remains undefined in this legislation.’⁵

4.2.3 The USSD report for 2015 noted:

‘LGBTI persons are denied by law and practice basic civil, political, social, and economic rights. Consensual same-sex sexual activity is illegal and punishable by up to 14 years in prison, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males...”

‘Same-sex sexual activity may also be prosecuted as “conduct likely to cause a breach of the peace.” A 2011 amendment to the penal code established penalties for consensual same-sex sexual activity between women, setting a maximum prison term for conviction of five years.’⁶

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4.3 Marriage, Divorce and Family Relations Act

4.3.1 The USSD report for 2015 also noted that the Marriage, Divorce, and Family Relations Act enacted in April [2015] explicitly defined marriage as a union between a man and a woman. It also for the first time in Malawian law defined sex (gender) as sex at birth⁷.

4.3.2 Human Rights Watch, in their April 2015 report, ‘Malawi - New Marriage Laws Can Change Lives’, noted:

‘...though Malawi’s constitution does not expressly preclude marriage for same-sex couples, the Marriage Act limits marriage to “persons of the opposite sex,” ignoring the reality of same-sex relationships.

‘The law also reinforces the prohibition of “unnatural offences” under Malawi’s Penal Code – a provision used to criminalize consensual same-sex relations

⁵ IGLA, ‘State Sponsored Homophobia’ (page 73), Updated to October 2016
http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf
Date accessed 20 December 2016

⁶ United States Department of State, ‘Country report on human rights practices - Malawi 2015’ (Section 6), 13 April 2016. <http://www.state.gov/j/drl/rls/hrrpt/2015/af/252701.htm>. Accessed: 20 December 2016

⁷ United States Department of State, ‘Country report on human rights practices - Malawi 2015’ (Section 6), 13 April 2016. <http://www.state.gov/j/drl/rls/hrrpt/2015/af/252701.htm>. Accessed: 20 December 2016

between adults – by listing a conviction for such an offence as acceptable evidence of irretrievable marriage breakdown.⁸

- 4.3.3 The International Gay and Lesbian Human Rights Commission published a press release on 17 April 2015 and stated that, ‘The [Marriage, Divorce and Family Relations Law](#) creates new forms of legal discrimination against lesbian, gay, bisexual, transgender and intersex individuals. While the law raises the minimum marriage age to 18, it also promotes a policy of exclusion against LGBTI Malawians that would likely translate into discrimination in education, housing, jobs and elsewhere.’⁹
- 4.3.4 Pink news added, in reference to the new Marriage Laws, ‘The law also mentions gay sex as being comparable to rape and sexual harassment.’¹⁰

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4.4 Transgender

- 4.4.1 There is no information on laws relating to gender identity, although as noted above, sex is defined as “sex of a person at birth”.
- 4.4.2 Human Rights Watch, in their April 2015 report, ‘Malawi- New Marriage Laws Can Change Lives’, stated, ‘By defining sex as “the sex of a person at birth,” the Marriage Act denies equal rights to form a family to some transgender people. The same provision denies the right to marriage to some intersex people – those born with both male and female sex characteristics – whose sex is often assigned arbitrarily at birth.’¹¹
- 4.4.3 Pink News reported on 17 April 2015 about the new Marriage Laws: ‘It also defines a person’s sex as “determined at birth”, hence sex, for the purpose of marriage, will continue to be regarded as one’s sex at birth. The law states: “Such a determination of sex at birth avoids any potential problems caused by transsexuals or persons who have undergone sex-changing surgery later in life from marrying a person, who, prior to that sex-changing surgery was of the same sex as them.”’¹²
- 4.4.4 The International Gay and Lesbian Human Rights Commission published a press release on 17 April 2015 and stated that: ‘The [new] law denies equal rights to form a family to transgender, intersex and other individuals whose identity does not align with that assigned at birth, and ignores the reality of

⁸ Human Rights Watch, ‘Malawi: New Marriage Laws Can Change Lives’, April 2015 <https://www.hrw.org/news/2015/04/17/malawi-new-marriage-law-can-change-lives>. Accessed: 28 September 2015

⁹ International Gay and Lesbian Human Rights Commission, ‘Serious Concerns Raised Over Discriminatory Malawi Law Targeting LGBTI People’, 17 April 2015, <https://www.outrightinternational.org/content/serious-concerns-raised-over-discriminatory-malawi-law-targeting-lgbti-people>. Accessed: 17 December 2015

¹⁰ Pink News, ‘Malawi’s new anti-LGBT law comes into effect’, 17 April 2015, <http://www.pinknews.co.uk/2015/04/17/malawi-anti-lgbt-law-signed-in/>. Accessed: 17 December 2015

¹¹ Human Rights Watch, ‘Malawi: New Marriage Laws Can Change Lives’, April 2015 <https://www.hrw.org/news/2015/04/17/malawi-new-marriage-law-can-change-lives>. Accessed: 28 September 2015

¹² Pink News, ‘Malawi’s new anti-LGBT law comes into effect’, 17 April 2015, <http://www.pinknews.co.uk/2015/04/17/malawi-anti-lgbt-law-signed-in/>. Accessed: 17 December 2015

any co-living arrangement not in the form of opposite-sex couples—including non-romantic relationships.’¹³

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4.5 Moratorium and law review

4.5.1 The Human Rights Campaign stated in July 2014 that:

‘In November 2013, the Malawi High Court decided to review the constitutionality of the nation’s ban on homosexual intercourse. The question of decriminalization of homosexuality in Malawi has been debated since former President Joyce Banda took office in 2012. She called for repealing the Penal Code but later told international reporters that the country might not be prepared for such a change. The suspension of the anti-LGBT law has been opposed by some religious figures arguing that homosexuality is alien to the Malawian culture.’¹⁴

4.5.2 The USSD report for 2015 stated:

‘In July 2014, however, Solicitor General Janet Banda told the UN Human Rights Commission that the government would not enforce these [same sex] laws. On December 19 [2015], Minister of Justice Samuel Tembenu reaffirmed the moratorium on the enforcement of laws criminalizing consensual same-sex sexual activity.

‘In 2013 the High Court invited friend-of-the-court submissions on the constitutionality of laws against “unnatural offenses” and “indecent practices between males.” It received arguments both for and against the laws’ constitutionality, with most of the arguments being in opposition. The attorney general filed a motion with the Supreme Court objecting to the process on the basis that the chief justice must certify constitutional questions and obtained an order in February 2014 suspending the proceedings. As of October [2015] the motion had yet to be decided.’¹⁵

4.5.3 At the time of writing, there has been no decision.

4.5.4 IGLA’s ‘State Sponsored Homophobia’ report, updated to October 2016, considered political opinion in Malawi:

‘In the year following the introduction of Section 137A, the government introduced a suspension on arrests under the Unnatural offences Articles. However, as widely reported, two men were arrested (filed under ‘sodomy’) in December 2015, which then led to a reaffirmation of the moratorium.

‘As SOGI issues have got greater visibility in Malawi (for example decriminalisation is called for in the National Strategic Plan for HIV and AIDS

¹³ International Gay and Lesbian Human Rights Commission, ‘Serious Concerns Raised Over Discriminatory Malawi Law Targeting LGBTI People’, 17 April 2015, <https://www.outrightinternational.org/content/serious-concerns-raised-over-discriminatory-malawi-law-targeting-lgbti-people>. Accessed: 17 December 2015

¹⁴ Human Rights Campaign, ‘Malawi Suspends Anti-LGBT Law’, 18 July 2014, <http://www.hrc.org/blog/entry/malawi-suspends-anti-lgbt-law>. Accessed: 28 September 2015

¹⁵ United States Department of State, ‘Country report on human rights practices - Malawi 2015’ (Section 6), 13 April 2016, <http://www.state.gov/j/drl/rls/hrrpt/2015/af/252701.htm>. Accessed: 20 December 2016

2015-2020), with strengthening advocacy from within the country, increasing attention from outside it and more calls for Malawi to regularise its legislation in line with its international law commitments, in January 2016 the United Nations cautioned against a rising backlash. Regarding the failure to prosecute a politician for blatant hate speech, the UN said “this case sends a dangerous message that inciting others to kill gay people is legitimate and will be tolerated by the authorities – in effect encouraging violent threats and attacks on the gay and lesbian community in Malawi”.

‘Of the 18 recommendations concerning SOGI that Malawi received in its 2nd UPR in May 2015, the State accepted two: the first agreeing to “take effective measures to protect” LGBTI persons from violence and to prosecute perpetrators (Austria), and the second guaranteeing “effective access” to health services (Honduras).

‘The Human Rights Committee that oversees the ICCPR expressed concern in 2014 that the newly-formed Human Rights Commission did not include SOGI within its mandate. It said Malawi “should review” its discrimination legislation to include SOGI, decriminalise same-sex sexual relations, implement a monitoring mechanism for violence directed at LGBTI people and prosecute perpetrators, ensure public officials do not incite violence and should positively raise public awareness, and finally guarantee “effective access” to health services for LGBTI people.

‘In November 2015, the Committee on the Elimination of Discrimination against Women welcomed the adoption of the Gender Equality Act that prohibits discrimination, but were concerned about the 2011 amendments to the Penal Code that “criminalizes same-sex relationships between women”, and it recommended that Malawi “Envisage decriminalizing sexual relationships between adult women”.’¹⁶

4.5.5 Pink News reported on 12 February 2016 that ‘A court in Malawi has ordered the country’s anti-gay law back into force.’ The article went on to say:

‘The country’s government, which is heavily reliant on support from NGOs and Western aid money, had previously confirmed that it would no longer arrest people for same-sex sexual acts – an agreement first laid out in 2012 after a prolonged campaign.

‘When two men were arrested on gay sex grounds in December [2015], Malawi’s Justice Minister has stepped in to quash the case and impose a “moratorium” on gay sex convictions. [See para 5.1.4 for more detail].

‘However, Malawi24 reports that this week a senior judge in Mzuzu has instructed Malawi Police and the Director of Public Prosecutions to continue to enforce the law, while the government’s decision is “reviewed”.

‘Judge Dingiswayo Madise claimed that any person who disobeys the order shall be guilty of contempt of court.

¹⁶ IGLA, ‘State Sponsored Homophobia’ (page 73), Updated to October 2016
http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf.
Accessed: 20 December 2016

'It comes after three pastors had sought to challenge the government decision.

'Minister for Justice Samuel Tembenu previously acknowledged the viewpoint that no one should be arrested on the grounds of their sexuality or gender identity, and re-committed to reviewing the country's anti-gay laws.

'However, he added that any review would be carried out "in consultation with the people of Malawi as prescribed by the Constitution".

'Even Malawian commentators had expressed fear that if allowed to continue, the country's anti-gay laws could impact on aid contributions received from the West – on which the country is heavily reliant.

'One Nyasa Times columnist warned not to "prick the backsides" of donors, writing: "Most people in England would be appalled to hear that people in this day and age are still being arrested for their sexual identities.

"And what many people in Malawi need to appreciate is that the people of England, America, Germany do not wish to see their tax money being spent in countries that discriminate on these grounds.

"Malawi can exercise its so called sovereignty if it wishes: continue this discrimination, and tear up the donor's cheques in the process."¹⁷

4.5.6 VOA news also reported in February 2016 on the same judgement:

'A high court in Malawi has ordered the annulment of a government moratorium issued in 2012 that suspended a law criminalizing homosexual acts. The government had suspended enforcement of the anti-gay laws pending parliamentary review after rights campaigners said the laws were unconstitutional.

'The court's order to enforce the anti-gay laws comes two months after government authorities ordered police to respect the moratorium by unconditionally pardoning two suspected gays who were arrested in December last year in the capital, Lilongwe.

'Three pastors filed suit in the northern city of Mzuzu, saying that by pardoning the gay suspects, the government was applying the penal code selectively. They argued that the government's suspension of the anti-homosexuality law was illegal.

"Our main arguments have been that the executive branch of government, the minister of justice, the director of public prosecutions and Malawi police service do not have the mandate to change the position of any law in the country," argued George Kadzipatike, lawyer representing the three pastors.

'He said only the Malawi parliament has the mandate to change or suspend any law in the country...And having regards to the penal code which prohibits acts of homosexuality in the country, that Act of Parliament was not amended or repealed in any way by the Malawi parliament," he added. "So it is still in force and has to be applied."

¹⁷ Pink News, 'Malawi's anti-gay law is back in force again', 12 February 2016, <http://www.pinknews.co.uk/2016/02/12/malawis-anti-gay-law-is-back-in-force-again/>. Accessed: 20 December 2016

'When announcing the order this week, Judge Dingiswayo Madise said the arrests [of gays] should continue until there is a judicial review of the government's decision to stop the prosecutions of gay people in Malawi.

'Timothy Mtambo, a campaigner for minority rights and also the executive director for the NGO Centre for Human Rights and Rehabilitation, said the court's position on the matter is worrying.

"These laws are archaic and undemocratic and these laws are not supposed to be implemented in the nation that has the human rights regime," he said.

'Mtambo said his organization is ready to support any group that will challenge the high court's order, which he said will force the country's more than 40,000 homosexuals to suffer in silence over fear of being arrested.

"When there was a moratorium, you saw a number of members of LGBT [lesbian, gay, bisexual, and transgender] community coming in public, demanding their rights to say, 'I am a gay and I am demanding my rights.' So this time around is like we are going back to square zero," said Mtambo.

'A spokesman for the Presbyterian Church in northern Malawi, Reverend Maurice Munthali, welcomes the high court order. "Rights should not be a hiding leaf for people to commit sin. What we think is that anything that is unlawful should not be turned into a [human] right," he said.

'Government authorities said they will announce their position on the court's order once they go through the court's documents.'¹⁸

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5. Treatment by, and attitude of, state authorities

5.1.1 A January 2016 post on 'Erasing 76 Crimes' stated:

'The news coming from Malawi may suggest a gradual shift in political opinion about LGBT rights.

'Recently, Malawian President Peter Mutharika announced through his press secretary Gerald Viola that he "wants gay rights protected," in an interview on a local radio station.

'In an interview with BuzzFeed, Viola reiterated Mutharika's message of increasing tolerance for LGBT people, saying, "These people are human beings" and expressing concern about reports that gay Malawians were being "beaten and locked up."

'He said, the question about repealing the colonial era law regarding homosexuality should now be put to the Malawian people. That law punishes same-sex relations with up to 14 years in prison. In 2012, President Joyce Banda called for parliament to remove the sodomy law, but after a few months dropped the issue and oversaw the imposition of a moratorium on enforcing it. So far, no moves have been taken to introduce such a proposal in parliament or putting it to a vote.

¹⁸ VOA news, 'Malawi Court Annuls Government Suspension of Anti-Gay Laws', 12 February 2016, <http://www.voanews.com/a/malawi-court-annuls-governments-suspension-on-anti-gay-laws/3188056.html>. Accessed: 21 December 2016

'The constitutionality of the law is currently under review in the Malawi High Court.

'Because the issue is a question of human rights, it should not be decided by a popular vote but in court, many activists say.'¹⁹

5.1.2 During the July 2015 Universal Periodic Review at the UN Human Rights Council, Malawi accepted two recommendations regarding the rights of LGBT persons:

- Take effective measures to protect lesbian, gay, bisexual and intersex persons from violence and prosecute the perpetrators of violent attacks (110.93)
- Guarantee that people of the lesbian, gay, bisexual, transgender and intersex communities have effective access to health services, including treatment for HIV/AIDS (110.126)

The government however did not accept several recommendations to repeal provisions in the Penal Code criminalizing consensual same-sex sexual conduct between adults.²⁰

5.1.3 The USSD Human Rights Report covering events in 2015 observed that:

'On December 7 [2015], police arrested and charged two men under the anti-sodomy laws, compelled them to undergo nonconsensual medical examinations, and released them on bail the following day. The Minister of Justice took over the investigation and dropped all charges citing the moratorium on the enforcement of laws criminalizing consensual same-sex sexual activity. Two men charged pursuant to the antisodomy laws in May 2014, after one of them disclosed the relationship to police, remained free on bail at year's end.'²¹

5.1.4 The Washington Post, reported in March 2016 on how the government has reacted to international pressure to quash convictions:

'Six years after the arrest and imprisonment of a gay man and a transgender woman – Steven Monjeza and Tiwonge Chimbalanga – the subject of LGBT rights has resurfaced on the front pages of Malawi's media. Another couple's arrest – this time, that of Cuthbert Kulemeka and Kelvin Gonani – triggered media interest and public furor.

'Kulemeka and Gonani were arrested Dec. 7 [2015] under Section 153 of Malawi's penal code that criminalizes "carnal knowledge of any person against the order of nature" – locally interpreted to mean sodomy. A sodomy conviction can bring a maximum penalty of 14 years imprisonment with hard labor in Malawi.

¹⁹ Erasing 76 Crimes, 'Stronger voices for LGBT rights in Malawi', 16 January 2016, <https://76crimes.com/2016/01/16/stronger-voices-for-lgbt-rights-in-malawi/> Accessed: 20 December 2016

²⁰ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Malawi', 20 July 2015, <http://www.refworld.org/docid/55ed8f444.html>. Accessed: 21 December 2016

²¹ United States Department of State, 'Country report on human rights practices - Malawi 2015' (Section 6), 13 April 2016, <http://www.state.gov/j/drl/rls/hrrpt/2015/af/252701.htm>. Accessed: 20 December 2016

'Back in 2010, when Monjeza and Chimbalanga were arrested and then convicted, international donors objected vociferously. Malawi responded. Only 11 days after the pair were sentenced to 14 years in prison, then-President Bingu wa Mutharika pardoned Monjeza and Chimbalanga – not coincidentally, during an official visit from UN Secretary General Ban Ki-Moon.

'That's what happened again this time. U.S. Ambassador to Malawi Virginia Palmer called on the Malawi government "to drop the charges ... as quickly as possible," in a statement published on the Embassy's Facebook page. German Ambassador to Malawi Peter Woeste urged the Malawi government to honor its policy "not to arrest, detain, charge or pursue people engaged in consensual same-sex activity."

'Objections also erupted from local minority rights advocacy organizations, notably the Center for Development of People (CEDEP) and the Center for Human Rights and Rehabilitation (CHRR). Both condemned the arrest and demanded that the government immediately release Kulemeka and Gonani.

'And that's exactly what the Malawi government did. In December [2015], the Minister of Justice Samuel Tembenu issued a statement saying the government is committed to "adhere to universally accepted human rights standards," to "review the penal laws on homosexuality," and to abide by a "moratorium on arrests and prosecution of consensual homosexual acts."²²

5.1.5 The CHRR, in an assessment of the government's performance in 2016, posted on 9 January 2017, stated that they would like to commend the government for, '...taking bold steps in curbing violence against sexual minorities' and 'equally worth appauling is the moratorium [the] government is implementing on legal status of same-sex relationships in the country.' They also noted that 'the government needs to act on reports of violence against the sexual minority groups in the country as one way of protecting their various rights'²³

5.1.6 CPIT was only able to find the following report of arrests or convictions against LGBT people since the annulment of the moratorium in February 2016:

5.1.7 In December 2016, the newspaper Nyasatimes reported a conviction of two gay men, although the laws used were not specific anti-gay laws:

'Lilongwe Magistrate Court has convicted and fined two gay men for outraging public decency after they were caught having sex in public place in the capital city... They were answering to offences relating to idle and disorderly persons in public place contrary to Sections 180 to 184 of the Penal Code of the Laws of Malawi. The couple pleaded guilty for engaging in sexual activity. Initially, Gomani and Luka pleaded not guilty to the case but later changed plea after the police prosecution team said they were ready with witnesses. Magistrate

²² Washington Post, 'This one graph shows the biggest threat to LGBT rights in Malawi', 1 March 2016, <https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/01/this-one-graph-shows-the-biggest-threat-to-lgbt-rights-in-malawi/>. Accessed: 14 February 2017

²³ CHRR, 'Assessment of government performance in 2016', 8 January 2017, <http://www.chrrmw.org/article/61/chrr-assessment-of-government-performance-in-2016-a-governance-and-human-rights-perspective>. Accessed: 1 February 2017

Arthur Mtalimanja said the two men need to be taught a lesson by being fined K50, 000 each for their “unacceptable behaviour”²⁴

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6. Access to healthcare

6.1.1 The CHRR in their 2014 (and most recent) annual report, covering events between 1 January and 31 December 2014, stated that:

‘The LGBTI persons were left out from public health support initiatives including from HIV information, support and services. Such information is necessary to enable LGBTI persons to make informed decisions and consequently reduce their vulnerability to HIV. However, a major highlight of the year 2014 was the Government’s adoption of the HIV policy that includes programmes targeting gay, bisexual and other men who have sex with men (MSM). Specifically, government sought US\$400,000 from the Global Fund to be used to fund programmes for this group. It is however unclear how the Government would effectively implement these programmes in a context where same sex relations remain criminalised.’²⁵

6.1.2 The UN Human Rights Council noted in its 23 February 2015 review on Malawi that:

‘UNCT stated that the criminalization of consensual same sex relations, societal stigma and discrimination had a detrimental impact on the enjoyment of the right to health. LGBTI persons were often not included in public health and support initiatives, such as education programmes or the provision of disease and infection prevention and care, and were denied access to necessary information, support and services to make informed decisions and to reduce their vulnerability to HIV.’²⁶

6.1.3 The USSD report for 2015 noted:

‘Societal discrimination against persons with HIV/AIDS remained a problem, especially in rural areas. Many individuals preferred to keep silent about their health conditions rather than seek help and risk being ostracized. Campaigns by the government and NGOs to combat the stigma had some success. The National AIDS Commission maintained that discrimination was a problem in both the public and private sectors.’²⁷

²⁴ Nyasa Times, ‘Malawi court convict gay couple over sex act in public place’, 22 December 2016, <http://www.nyasatimes.com/malawi-court-convict-gay-couple-sex-act-public-place/>. Accessed: 14 February 2017

²⁵ Centre for Human Rights and Rehabilitation, ‘Annual Human Rights Report 2014’ (p56), undated, <http://chrrmw.org/downloads/CHRR%202014%20Human%20Rights%20Report.pdf>. Accessed: 7 October 2015

²⁶ UN Human Rights Council, ‘Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Malawi [A/HRC/WG.6/22/MWI/2]’ (para 61), 23 February 2015, available at: <http://www.refworld.org/docid/5538e3194.html>. Accessed: 17 December 2015

²⁷ United States Department of State, ‘Country report on human rights practices - Malawi 2015’ (Section 6), 13 April 2016. <http://www.state.gov/j/drl/rls/hrrpt/2015/af/252701.htm>. Accessed: 20 December 2016

6.1.4 In May 2016 the All Africa Website published an article which stated:

‘...mostly people from sexual minorities [in Malawi] feel they have to live a low profile which makes it hard to reach them with HIV and reproductive health services. This is the case in spite of being more at risk of HIV. Timothy Mtambo, executive director of the Centre for Human Rights and Rehabilitation, said: "Studies we've conducted in hospitals and health centres reveal homosexuals are not being treated when found with sexual health complications. Instead of treating them, the medical personnel would rather start by publicising to their colleagues. You can see why many people never go to the hospital [...] Most health providers hide behind the laws of the country as a scapegoat for not treating them.'"²⁸

6.1.5 In January 2017 Deutsche Welle (DW) reported on the discrimination one homosexual man, who they called “Precious”, faced when trying to obtain health care. The article quoted him as saying:

“I had a sexual health issue that required medical attention. I was disappointed with the way the nurse at the health facility handled the situation. After the routine diagnosis, she asked me if I was homosexual. I said 'yes' because I wanted help. She told me that I was evil and my future was doomed because God does not allow that,...She then called her colleagues to come and see me. They took turns pouring insults on me. One of them openly said I did not deserve medical attention. Instead, I should be arrested for indulging in homosexuality, which is an offence. I was totally upset and I left the clinic for a drug store so I could treat myself.”²⁹

6.1.6 The DW article continued:

‘Minority rights group CEDEP is campaigning for an end to this discrimination and hostility. Maria Ngulube runs Linkages, a project in which CEDEP and other organizations are endeavoring to ensure that everyone, including the LGBT community, has equal access to health care.

“We have had cases of the community complaining of maltreatment at the health centers and clinics, so the project decided to engage the health workers themselves,” said Ngulube.

‘CEDEP and its partners have trained more than 50 health workers in Malawi since the program started in April 2016. The program, which Ngulube plans to expand, offers guidance in how to address the specific health needs of sexual minorities.

‘Ngulube says the religious beliefs and affiliations of health workers and the institutions where they work often contribute to anti-LGBT discrimination. Apart from turning to the public hospitals, which are few in number, much of

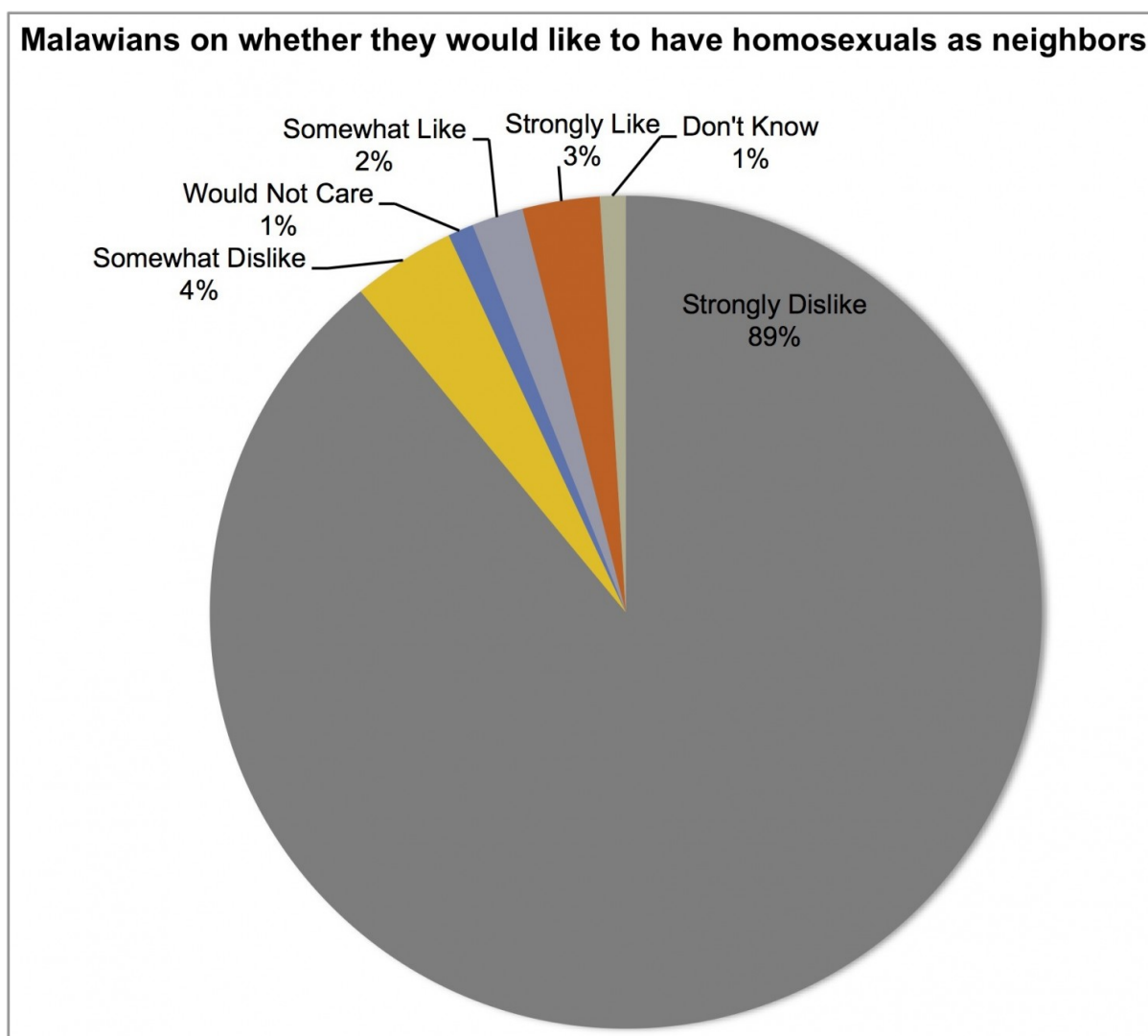
²⁸ All Africa Website, ‘A dangerous life if you're gay’, 16 May 2016, <http://allafrica.com/stories/201605160790.html>. Accessed: 14 February 2017

²⁹ Deutsche Welle, ‘Malawi's LGBT battle for health care’, 26 January 2017, <http://www.dw.com/en/malawis-lgbt-battle-for-health-care/a-37280415>. Accessed: 14 February 2017

Malawi's LGBT population accesses health care at church-owned facilities operated by the Christian Health Association of Malawi.³⁰

7. Societal attitudes

7.1.1 In an Afrobarometer survey conducted in 2014, 93 percent of Malawians said they would not like to have homosexuals as neighbours:³¹



7.1.2 The Nyasa Times stated in their article, No to Gay Rights in Malawi [2015], that:

'The Malawi President Peter Mutharika has been urged by the Church of Central Africa Presbyterian (CCAP) Livingstonia Synod Moderator Douglas Chipofya to be bold like Kenyan's President Uhuru Kenyatta, who flatly rejected Barack Obama's calls for gay rights, during Obama's visit to the country. The CCAP Livingstonia Synod spiritual father termed homosexuality

³⁰ Deutsche Welle, 'Malawi's LGBT battle for health care', 26 January 2017, <http://www.dw.com/en/malawis-lgbt-battle-for-health-care/a-37280415>. Accessed: 14 February 2017

³¹ Afrobarometer, 'This one graph shows the biggest threat to LGBT rights in Malawi', 1 March 2016, <http://afrobarometer.org/blogs/one-graph-shows-biggest-threat-lgbt-rights-malawi>. Accessed: 21 December 2016

as ‘pure evil’ and ‘animal-like behaviour’. Chipofya was asked to offer an opening prayer at the annual Ngoni event, but took advantage of his time on the microphone to appeal against same-sex marriages. He asked the President, who was in attendance, to firmly stand against “alien cultural influences”.

- 7.1.3 ‘Culture is good, but we should not allow some people to take advantage of our cultural celebrations to bring alien practices,” said Chipofya. He continued that “...homosexuality is pure evil. I appeal to you, the State president, to do as your Kenyan counterpart did to Obama. As a church and Malawians, we ask you to say no to this evil.”³²
- 7.1.4 The Human Dignity Report updated on 25 October 2015 noted some homophobic statements by public figures. For example, on 2 May 2014, the report noted: ‘Leader of the Malawi Congress Party Dr Lazarus Chakwera made a link between homosexuality and child abuse, claiming that homosexuality is a form of ‘child exploitation’³³
- 7.1.5 The same source reported that, on 18 February 2014, ‘Dr Salmin Omar Idruss, Secretary-General of the Muslim Association of Malawi, called for the death penalty to be introduced: “Even animals like goats don’t do this, what more with human beings like us who were blessed with wisdom by the Almighty God? The offenders need to be handed the death penalty as a way of making sure that the issue is curbed.”³⁴
- 7.1.6 However in regard to the comments of Dr Idruss, the Nyasa Times reported:

‘Malawi’s Justice and Constitutional Affairs Minister, Fahad Assani, has trashed calls by the Muslims Association of Malawi (MAM) to toughen the punishment for homosexual acts to include death penalty.

‘MAM general secretary Shiek Salmim Omar Idruss said those convicted of homosexual acts should face a death penalty and not 14 years jail as the law states now.

‘Idruss argued that capital punishment was the only way to rid society of homosexuality. However, Assani said pushing such a law there will be an international outcry, which could see some countries suspend aid to the country. Speaking in a telephone interview with Nyasa Times, Assani said Malawi is a democratic country and cannot promote homophobia and impose death penalty on gays.’³⁵

³² No to Gay Rights in Malawi: ‘CCAP Spiritual Father tells Mutharika to be Bold Like Kenya’s Uhuru’, 9 August 2015, <http://www.nyasatimes.com/2015/08/09/no-to-gay-rights-in-malawi-ccap-spiritual-father-tells-mutharika-to-be-bold-like-kenyas-uhuru/>. Accessed: 2 September 2015

³³ Human Dignity Trust, ‘Criminalisation of homosexuality: Malawi’, 25 October 2015, http://www.humandignitytrust.org/uploaded/Map/Country_Reports/Malawi.pdf, Accessed: 17 December 2015

³⁴ Human Dignity Trust, ‘Criminalisation of homosexuality: Malawi’, 25 October 2015, http://www.humandignitytrust.org/uploaded/Map/Country_Reports/Malawi.pdf. Accessed: 17 December 2015

³⁵ Nyasa Times, ‘Malawi govt rejects anti-gay law advanced by Muslims’, 19 February 2014, <http://www.nyasatimes.com/malawi-govt-rejects-anti-gay-law-advanced-by-muslims/>. Accessed: 6 January 2016

7.1.7 Pink News reported on 18 March 2016 about Malawi Catholic bishops' views on homosexuality:

'Catholic bishops in Malawi have attacked the government for placing a moratorium on 'harmful' homosexual laws.

'In a letter to parishioners, the bishops condemned homosexuality and the government's actions.

'They said that although the homosexual "condition is disordered but not sinful in itself", if a person was to act on their feelings and have sex or a relationship, "these are objectively evil and totally unacceptable".'³⁶

7.1.8 Mambaonline (a South African gay news site) reported on 8 December 2016:

'Christian leaders have led hundreds of people in marches to demonstrate against legalising homosexuality and abortion in Malawi.

'Under the banner of the Citizen March for Life and Family, the events were held in a number of cities across the country on Tuesday [8 December 2016].

'The marches were organised by the Episcopal Conference of Malawi (ECM) and the Evangelical Association of Malawi (EAM).

'The Times and the Nyasa Times reported that the protests attracted people from various denominations, including priests from the Catholic Church and Rastafarians, as well as a number of politicians.

'Marchers held up signs proclaiming, "Homosexuality is an Abomination B4 God" and "Man + Woman = Marriage," and a host of anti-abortion messages...

'While activists have called for the decriminalisation of homosexuality, there have been no moves or campaigns to legalise same sex-marriage in Malawi; a fact which religious leaders have ignored. They have instead used the contentious issue to drum up hysterical opposition against the LGBTI community; a strategy also seen in other African nations.'³⁷

7.1.9 The Civic Freedom Monitor, report on Malawi, updated 18 November 2016, observed, '...some advances in deepening human rights in Malawi have at times received resistance from the citizenry, particularly on Gay, Lesbian, Bisexual, Transgender (LGBT) issues.'³⁸

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³⁶ Pink News, 'Malawi bishops attack government over homosexual acts', 18 March 2016, <http://www.pinknews.co.uk/2016/03/18/malawi-bishops-attack-government-over-homosexual-acts/> Accessed: 20 December 2016

³⁷ Mambaonline Malawi, 'religious leaders march against homosexuality and abortion', 8 December 2016, <http://www.mambaonline.com/2016/12/08/malawi-religious-leaders-march-homosexuality-abortion/>. Accessed: 20 December 2016

³⁸ International Centre for Not for Profit Law, 'The Civic Freedom Monitor', 18 November 2016, <http://www.icnl.org/research/monitor/malawi.html>. Accessed: 21 December 2016

8. Societal treatment

8.1.1 The USSD report for 2014 noted that public discussion of LGBT rights increased during 2014³⁹ and the USSD report for 2015 stated:

‘From January to September, the Center for Human Rights and Rehabilitation and the Center for Development of People documented 40 instances of abuse based on sexual orientation and gender identity. The nature of the abuses fell into three broad categories: stigma, harassment, and violence. The Weekend Nation newspaper published a weekly column entitled “Sexual Minority Forum” written by the leaders of human rights NGOs to shed light on conditions affecting LGBTI persons and their rights.’⁴⁰

See paragraph 7.1.6 for more information on the Centre for Development of People.

8.1.2 There are few reported cases of abuse against LGBT people although Nyasatimes reported an attack on a gay man in Lilongwe in February 2016⁴¹.

8.1.3 The UN Human Rights Committee noted in its Concluding Observations in a report dated 19 August 2014 that, ‘The Committee is concerned that the Malawi Human Rights Commission does not function fully independently and is not yet adequately funded. The reluctance of the Commission to engage on issues related to the rights of LGBTI persons is also a source of concern for the Committee.’⁴²

8.1.4 The International Gay and Lesbian Human Rights Commission [IGLHRC] continued that:

‘IGLHRC, CEDEP and 3 other civil society groups submitted shadow reports that document deficiencies regarding Malawi’s legal and policy framework to protect civil and political rights, including the continued explicit criminalization of consensual sexual acts between adults of the same sex. “The Committee raised the criminalization of consensual adult same-sex sexual acts as a serious concern,” said Marianne Møllmann, Director of Programs of IGLHRC. “The Committee understands that, when people are criminalized because of their real or perceived sexual orientation, this affects their ability to get jobs, go to school, or access potentially life-saving health treatment.”’⁴³

³⁹ United States Department of State, ‘Country report on human rights practices - Malawi 2014’ (section 6), 26 June 2015, <http://www.state.gov/documents/organization/236590.pdf>. Accessed: 28 September 2015

⁴⁰ United States Department of State, ‘Country report on human rights practices - Malawi 2015’ (Section 6), 13 April 2016. <http://www.state.gov/j/drl/rls/hrrpt/2015/af/252701.htm>. Accessed: 20 December 2016

⁴¹ Nyasa Times, ‘Malawi gay man subjected to sickening homophobic attack’, 9 February 2016, <http://www.nyasatimes.com/malawi-gay-man-subjected-to-sickening-homophobic-attack/>. Accessed: 14 February 2017

⁴² Human Rights Committee, ‘Concluding observations on the initial periodic report of Malawi’ (para 6), 19 August 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMW%2fCO%2f1%2fAdd.1&Lang=en. Accessed: 17 December 2015

⁴³ International Gay and Lesbian Human Rights Commission, ‘UN Human Rights Committee Identifies Human Rights Violations Against Persons Based on Sexual Orientation in Malawi’, 10 July 2014, <http://iglhrc.org/content/un-human-rights-committee-identifies-human-rights-violations-against->

- 8.1.5 According to the The Marabi Post, in their article, 'Caught Doing It – Two Malawians Girls Dismissed From School Over Lesbianism Act':

'Two girls have been dismissed from Michiru Secondary School in Blantyre for allegedly being found in a lesbianism act. The Malawi Penal Code, under Section 137A provides that any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.'⁴⁴

- 8.1.6 An article of 14 February 2015 on Global Gayz, called 'Gay Malawi: Focused and Determined', looked at the Center for Development of People (CEDEP), founded in 2005, with a 'vision of health education and social support for the Malawi gay community':

'CEDEP now has its own offices in a modest 6-room house in the outskirts of downtown Blantyre. "Our target population is the LGBT community and sex workers and prisoners because they are left out of the government's AIDS services and health education, which aims only at the larger hetero society. They think MSM [men who have sex with men] do not exist so we try to educate them about gay issues and human rights as well as educate our community about safe sex and being proud of who they are," said Gift [Trapence, programme director]. It's a tall order and a daunting challenge.

'To that end, CEDEP's leaders (three and a half paid staff) and some of its few hundred members across the country, mostly from urban areas, conduct outreach workshops focusing on health and human rights...and make lobbying efforts to the National AIDS Commission (NAC).

"...over the course of three years the NAC has become more willing to listen and is warming up to CEDEP's presence even though CEDEP proposals and requests get delayed in the shuffle." [Gift said]

'CEDEP holds two meetings a month...at their offices...where members (15-20 at any one time) gather to talk about personal or organizational matters. A local psychologist facilitates the meeting as issues are raised such as sexual behavior, sexual identity, relationships, health education, coming out, and family/marriage issues.'⁴⁵

- 8.1.7 On 22 January 2016 the United Nations human rights office expressed concern over developments in Malawi, after the spokesperson of one of the country's main political parties called for gay and lesbian people to be killed, describing them as "worse than dogs":

[persons-based-sexual](#). Accessed: 28 September 2015

⁴⁴The Marabi Post, 'Caught Doing It – Two Malawians Girls Dismissed From School Over Lesbianism Act', 26 March 2014, <http://www.maravipost.com/life-and-style/people/5690-caught-doing-it-two-malawian-girls-dismissed-from-school-over-lesbianism-acts.html>. Accessed: 28 September 2015

⁴⁵ Global Gayz, 'Gay Malawi: Focused and Determined', 14 February 2015, <http://www.globalgayz.com/gay-malawi-focused-and-determined/>. Accessed: 4 January 2017

'The spokesperson for the Office of the UN High Commissioner for Human Rights (OHCHR), Rupert Colville, told the regular bi-weekly press briefing in Geneva that "the statements were made earlier this month by People's Party spokesperson Kenneth Msonda on his personal Facebook page and repeated in media interviews."

'A criminal case was subsequently lodged against Mr. Msonda by two civil society organizations and he was due today to appear before the Blantyre Magistrate Court on charges of inciting others to break the law.

'However, the OHCHR spokesperson said that yesterday the director of public prosecutions decided to discontinue the case - underlining that the State would not prosecute Mr. Msonda.

'Mr. Colville said: "We are concerned that the failure to prosecute this case sends a dangerous message that inciting others to kill gay people is legitimate and will be tolerated by the authorities - in effect encouraging violent threats and attacks on the gay and lesbian community in Malawi."

'In May 2015, Malawi accepted a recommendation under the Human Rights Council's Universal Periodic Review in Geneva to "take effective measures to protect lesbian, gay, bisexual, transgender and intersex persons from violence, and prosecute the perpetrators of violent attacks."

"The Government of Malawi has a responsibility, enshrined in international human rights law, to protect all individuals from hatred and violence based on their sexual orientation and gender identity, and to hold to account anyone who either engages in such violence or incites others to do so," said Mr. Colville, concluding: "We urge the Government to meet its responsibilities in this regard."⁴⁶

8.1.8 In May 2016 the All Africa Website published an article which stated:

'Failure by the government to come up with a clear-cut stance on homosexuality is endangering the lives of gays and lesbians in Malawi. This is the clear message from activists lobbying for the rights of minority groups ahead of International Day Against Homophobia and Transphobia (IDAHOT) on 17 May... Daliso [name changed], 25, from Blantyre says: "I started having feelings for boys when I was 13 years. I now have a boyfriend who lives here in the city and we have been in relationship for something like a year." Then he added quickly: "I also have a girlfriend to wave off suspicion from friends and relatives." Daliso is scared to tell his relatives about his sexuality. "I tried to tell some close friends but most of them have since been shunning me. Of course I don't trust even medical personnel, so I can't access reproductive health services."⁴⁷

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⁴⁶ UN News Service, 'Incitement to anti-gay killings in Malawi draws concern of UN human rights office', 22 January 2016, <http://www.refworld.org/docid/56a5d1e240b.html>. Accessed: 20 December 2016

⁴⁷ All Africa Website, 'A dangerous life if you're gay', 16 May 2016, <http://allafrica.com/stories/201605160790.html>. Accessed: 14 February 2017

Version control and contacts

Contacts

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Clearance

Below is information on when this note was cleared:

- version **3.0**
- valid from **22 February 2017**

Changes from last version of this note

Updated country information and guidance

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