



Malawi – Researched and compiled by the Refugee Documentation Centre of Ireland on 29 November 2016

Whether state protection is available and actually provided for LGBT people in Malawi, particularly for instances where people have been forced to hide their sexuality.

An opinion piece published by the Inter Press Service states:

“In May 2012, in her state of the nation address, President Joyce Banda asserted that the provisions of the penal code that criminalise homosexual acts should be repealed. In November 2012, during a public debate, the justice minister announced the suspension of sodomy laws. Since then, some political parties have indicated they would oppose any move to decriminalise homosexuality, and a number of religious and traditional leaders have expressed similar sentiments. Interestingly, the Malawi Human Rights Commission has not made its position clear on homosexuality as a human rights matter.” (Inter Press Service (17 November 2013) *OP-ED: Malawi’s Constitution Clear on Gay Rights but Politicians Aren’t*)

This document also states:

“Section 20 of the constitution affirms the equality of all persons before the law. It also prohibits ‘[d]iscrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status’. Therefore, any legal provisions that violate human rights, as is the case with those that criminalise homosexuality, must be repealed by the relevant authorities, irrespective of whether the majority of Malawians support such a move or not. The constitution also asserts that legislation may be passed to address social inequalities and to prohibit discriminatory practices, and that the propagation of such practices may be criminally punishable. In other words, the government is obligated to respect and protect the rights of LGBTs by, amongst others, repealing ‘bad laws’ that impinge on LGBT persons’ equalities and freedoms. This is both a constitutional obligation and a human rights obligation.” (ibid)

The 2016 Amnesty International report for Malawi, in a paragraph headed “Rights of lesbian, gay, bisexual, transgender and intersex people”, states:

“During the UPR the government accepted a recommendation to take measures to protect LGBTI people against violence and to prosecute the perpetrators. The authorities also agreed to guarantee that LGBTI people have effective access to health services, including treatment for HIV/AIDS. The government rejected recommendations to repeal provisions in the Penal Code criminalizing consensual same-sex sexual conduct between adults.” (Amnesty International (24 February 2016) *Report 2015/16 – Malawi*)

An article published on the US-based gay news website Erasing 76 Crimes states:

“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. The constitutionality of the law is currently under review in the Malawi High Court.” (Erasing 76 Crimes (16 January 2016) *Stronger voices for LGBT rights in Malawi*)

See also article from Erasing 76 Crimes which states:

“Anti-gay politicians and preachers in Malawi have responded harshly to the government’s decision on Dec. 19 to continue the country’s moratorium on arrests for violations of its law against same-sex intercourse. In return, the Malawi Law Society has asked police and the Malawi Human Rights Commission to investigate recent anti-gay statements as hate speech, a criminal offense. Enforcement of the law has been suspended since November 2012 while courts decide whether the law is unconstitutional and politicians decide whether it should be repealed. The law calls for sentences of 14 years for violations by men and five years for women.” (Erasing 76 Crimes (6 January 2016) *Call for police probe of anti-gay hate speech in Malawi*)

An article published by the Malawian online newspaper Malawi 24 states:

“The Peter Mutharika led government maintains that homosexuals will not be arrested in Malawi despite heavy condemnations and legal rejection on the same. A latest development shows that government has gone against an injunction which gave law enforcers a mandate to net homosexuals in the country. Earlier this year, High Court Judge Dingiswayo Madise granted an injunction requested by anti-gay pastors seeking an end to the government’s moratorium on arrests under the country’s anti-homosexuality law during court deliberations on that law’s constitutionality.” (Malawi 24 (9 March 2016) *Mutharika says gays will not be arrested*)

A report from the German government funded website Development and Cooperation states:

“Donor agencies want Malawi to respect gay rights, but the Catholic Bishops and other religious leaders - including Muslim Sheikhs - have warned President Peter Mutharika against including such rights in the constitution. The Archbishop Thomas Msusa of Blantyre has told President Mutharika that

this controversy is 'alien to Malawi'. In his eyes, foreigners are exerting undue pressure on the government. He says the Catholic Church doesn't support same-sex unions and that the Church will strictly follow its doctrine. The Church strongly condemns acts of homosexuality and considers it sinful for people of the same sex to get married. According to the German government, donors' are not demanding that Malawi introduce gay marriage, but do not want minorities to be prosecuted and criminalised as their human rights must be respected." (Development and Cooperation (30 April 2016) *Pressures over homosexual rights*)

A recent report from Agence France Presse states:

"Malawi will hold public consultations to assess whether to reform colonial-era laws that ban homosexuality, the government said Friday. The southern African nation was the focus of controversy in 2010 when it jailed a gay couple for gross indecency after they held the country's first same-sex public 'wedding'. Then president Bingu wa Mutharika said the pair had committed a crime against Malawi's culture, religion and laws but later pardoned them on 'humanitarian grounds' after a meeting with UN secretary general Ban Ki-moon. Legislation outlawing sodomy was suspended two years ago to await a government review in a country where many traditional Christian communities view homosexuality as sinful." (Agence France Presse (25 November 2016) *Malawi to test public opinion on anti-gay law reform*)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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