



## Malawi - Researched and compiled by the Refugee Documentation Centre of Ireland on the 25 July 2014

### Recent Media /COI reports of any incidents of homophobic hate crime in Malawi.

A report by the *United States Department of State* under the heading “Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity” states:

“Consensual same-sex sexual activity is illegal and punishable by up to 14 years in prison in addition to corporal punishment, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males.” Same-sex activity can 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 of five years. However, it was the policy of the government not to enforce these laws.

Public discussion of LGBT rights increased during the year. For example, on September 7, a local NGO that campaigns for LGBT rights showed a documentary film on anti-LGBT efforts in Uganda. After the film a discussion on LGBT matters followed between 40 LGBT persons and an estimated 80 clergy members.

The Weekend Nation newspaper continued to publish a weekly column entitled “Sexual Minority Forum.” On June 22 and 23, the Centre for Human Rights and Rehabilitation and the Centre for Development of People held a workshop for lesbians and bisexual women where they talked about the discrimination they face.” (United States Department of State (27 February 2014) *Country Reports on Human Rights Practices for 2013 Malawi*)

A report by the *Inter Press Service - News Agency* states:

“Recently, a number of presidential candidates for the 2014 elections have proposed a referendum to decide on the fate of homosexuals in Malawi. What precisely is to be decided is unclear: that homosexuality exists, that homosexuals have rights, that homosexuals should be punished or even condemned to death, as some religious leaders have advocated?”

The consequences of a homophobic vote could see persons who engage in homosexual acts continuing to face jail terms of up to 14 years, or further tightening of laws that currently criminalise same-sex sexuality.”(Inter Press Service - News Agency (17 November 2013) *OP-ED: Malawi’s Constitution Clear on Gay Rights but Politicians Aren’t*)

The report continues:

“Continued discrimination and violence against and criminalisation of LGBT people is particularly shameful precisely because the constitution is clear in outlawing discrimination on the basis of sex, gender and any other status. The Malawian government is thereby compelled to repeal the sodomy laws and put in place deliberate policies to protect the rights of LGBTI persons because, as we have seen, such laws fuel homophobic violence.

In a groundbreaking move, the high court recently announced its intention to review the constitutionality of the sodomy laws, more specifically the cases of three individuals who were convicted and sentenced under these laws in 2011. The court has also issued a call to local and international civil society organisations, the Malawi Law Society, Malawi Human Rights Commission, and other interested parties, to apply to join the matter as “friends of the court”.” (ibid)

A report by *Amnesty International* under the heading “Rights of lesbian, gay, bisexual, transgender and intersex people” states:

“President Banda announced on 18 May that an urgent repeal of laws infringing human rights, including those criminalizing homosexuality, would be undertaken. While several legal reforms were made, laws criminalizing homosexuality remained in place.” (Amnesty International (23 May 2013) *Amnesty International Report 2013 - The State of the World's Human Rights – Malawi*)

A report by *Freedom House* under the heading “Rule of Law” states:

“Consensual sexual activity between same-sex couples is illegal and is punishable with up to 14 years in prison. Upon taking office, Banda had announced her intention to repeal these colonial-era laws, and in November 2012, then justice minister Kasambara said the laws would be suspended while their constitutionality was examined. While Kasambara soon backtracked on that statement and the laws remained in place as of the end of 2013, there was some evidence that the Banda government was giving increased support to LGBT (lesbian, gay, bisexual, and transgender) advocates” (Freedom House (23 January 2014) *Freedom in the World 2014 – Malawi*)

A report by *the UN Human Rights Committee* under the heading “Equality before the law, equal protection of the law and non-discrimination (Articles 3 and 26)” states:

“The Constitution of Malawi does not include sexual orientation among the named suspect classes in Section 20(1) to be guaranteed equal and effective protection from discrimination. Not only does the Constitution not guarantee equal protection and non-discrimination on the basis of sexual orientation, but sections of the Penal Code in Malawi actually criminalise homosexual activity. Sections 137A, 153 and 156 of the Penal Code of Malawi criminalise consensual sexual activity between individuals of the same sex with penalties ranging up to fourteen years’ imprisonment and the potential for corporal punishment. Criminalisation of homosexual practices has the affect of driving

gay persons underground, making it difficult for many to access healthcare services. In fact, in its report to the Human Rights Committee, the government of Malawi recognises the affect this forced secrecy has on lesbian, gay, and bisexual people, acknowledging “[homosexuality] is not practiced in the open... it is therefore very unlikely that cases of discrimination and violence based on sexual orientation would be reported.” It is worth noting that the President of the Republic of Malawi, Honorable Dr. Mrs. Joyce Banda, in her maiden State of the Nation Address, promised Malawians that her Administration would repeal laws that criminalise homosexuality practices. However, as of the current time, nothing tangible has been done to fulfill that promise.” (UN Human Rights Committee (2013) *Shadow Report to the Malawi Government's First Periodic Report on the Implementation of the International Covenant on Civil and Political Rights (ICCPR)*)

A report by *Cape Times (South Africa)* notes:

“Blantyre: The high court here yesterday started hearing a case that could decriminalise homosexuality in Malawi.

The Centre for Development of People, a civil rights group that campaigns for minority rights, including those of sexual minorities, took the government to court to review the conviction of three men serving long jail terms for homosexual acts.

In 2011, a lower court, the Blantyre Magistrate's Court, sentenced Amon Champyuni, Mathews Bello and Mussa Chiwisi to between six and 12 years in prison with hard labour, for violating Malawi's anti-homosexual laws.

Under these laws, "unnatural acts", including sodomy, carry a maximum of 14 years in prison with hard labour.

Gift Trapence, the centre's executive director, said that the activists wanted the court to declare the laws that criminalised homosexuality in Malawi unconstitutional.” (Cape Times (South Africa) (21 January 2014) *Case against Malawi's anti-gay laws begins*)

The report continues:

“Malawi's homophobic laws gained global notoriety in December 2009 when the country's first openly gay couple, Tiwonge Chimbalanga and Steven Monjeza, were arrested for performing a public wedding engagement ceremony. They spent five months in jail without bail until May 2010. They were later sentenced to 14 years in prison.

It took UN secretary-general Ban Ki-moon to fly to Lilongwe, to secure a grudging pardon from then-president Bingu wa Mutharika.” (ibid)

A report by the *International Gay and Lesbian Human Rights Commission* states:

“(10 July 2014—Geneva) -- The International Gay and Lesbian Human Rights Commission (IGLHRC) and the Malawi-based Centre for Development of People (CEDEP) on Thursday raised concerns about the criminalization of

same-sex adult sexual acts in that country, as the United Nations Human Rights Committee ended its dialogue with the Malawian government about its human rights obligations.

During the dialogue, the Malawian government referred to the criminalization of same-sex adult sexual acts but claimed that these criminal provisions are not being applied. This contrasts with research findings from CEDEP, whose researchers visited 23 prisons throughout the country and found that from 2011 to 2014, 21 men had served time for adult same-sex sexual acts; at least 6 of the cases involved consensual sex between adults.

“It is, of course, good to know that our government recognizes that the criminalization of consensual adult same-sex sexual acts is a human rights concern,” said Gift Trapence, Executive Director of CEDEP, who was present during the dialogue. “But the information provided to the Committee is manifestly wrong. Adults engaging in same-sex sexual conduct are being arrested and imprisoned, and several are in prison even as the government denies their very existence.” (International Gay and Lesbian Human Rights Commission (10 July 2014) *UN Human Rights Committee Identifies Human Rights Violations Against Persons Based on Sexual Orientation in Malawi*)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre 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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