



Refugee Documentation Centre (Ireland)
LEGAL AID BOARD

Malawi - Researched and compiled by the Refugee Documentation Centre of Ireland on Tuesday 2 & Wednesday 3 September 2013

Treatment of homosexuality by society and government including available NGOs

A document released in April 2013 reviewing events of the preceding year published by the *United States Department of State* points out that:

“On May 18, in her first state of the union address, President Banda committed to work to repeal the “indecent and unnatural acts laws.” On November 5, Minister of Justice Ralph Kasambara stated publicly that the government would suspend enforcement of laws criminalizing consensual same-sex sexual conduct pending a decision on whether to repeal them. However, subsequently Banda slowed efforts to repeal the laws. On September 26, on the margins of the UN General Assembly, she stated that the country was not ready to repeal laws criminalizing homosexuality” (19 April 2013) *Country Reports on Human Rights Practices for 2012/Malawi*, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons/Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity).

In May 2013 *Freedom House* states in a report that:

“Consensual sexual activity between same-sex couples is illegal and is punishable with up to 14 years in prison. However, Banda upon taking office announced her intention to repeal these colonial-era laws, and in November, Justice Minister Ralph Kasambara said the laws would be suspended while their constitutionality was examined. Malawi had faced international condemnation in 2009 when a gay couple who became engaged through a traditional ceremony was charged with gross public indecency. In May 2010, the couple was found guilty of engaging in unnatural acts, among other violations, and was sentenced to 14 years in prison. For her part, Banda has been an outspoken proponent of lesbian, gay, bisexual, and transgender rights, particularly in regards to HIV prevention” (Freedom House (20 May 2013) *Freedom in the World 2013 - Malawi*).

A report published in June 2013 by *Amnesty International* notes:

“On 5 November 2012, the Malawian government said it would suspend the implementation of its laws outlawing consensual same-sex conduct and order police not to arrest any LGBTI people pending a decision on whether or not to repeal the legislation. However, the Minister for Justice, who issued the statement, subsequently denied it.” (Amnesty International (25 June 2013) *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa*, p.18).

This report also states:

“Homosexuality remains highly taboo in Malawi, and in January 2011 the then President Bingu wa Mutharika assented to a law being passed in Parliament that criminalized, for the first time, acts of gross indecency, whether in public or in private, between females. In a positive move, since coming to power in April 2012, President

Joyce Banda has said that LGBTI people will no longer be persecuted in Malawi. The Minister of Justice said that laws criminalizing same-sex conduct would be suspended until further debate, but later retracted these remarks” (ibid, p.19).

In November 2012 a document issued by *Amnesty International* points out that:

“Criminalisation of individuals on the basis of their real or perceived sexual orientation or gender identity violates Malawi’s obligations under treaties it has ratified, including the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights and the Malawian Constitution. These obligate Malawi to respect and protect freedom from discrimination, freedom of conscience, expression and right to privacy” (Amnesty International (5 November 2012) *Suspension of anti-homosexuality laws in Malawi a historic step forward*).

In July 2012 a report issued by the *United Nations Human Rights Committee* on Malawi notes:

“In terms of discrimination based on sexual orientation, the vast majority of society has not accepted homosexuality and 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” (United Nations Human Rights Committee (13 July 2012) *Consideration of reports submitted by States parties under article 40 of the Covenant, Initial reports of States parties, Malawi**, p.20).

A report issued in November 2012 by *BBC News* states:

“Homosexuality is illegal in most African nations and remains a controversial topic in Malawi’s traditionally conservative society” (BBC News (5 November 2012) *Malawi suspends laws against homosexual relationships*).

In November 2012 *Human Rights Watch* notes:

“Malawian LGBT rights activists have assiduously lobbied the government for repeal of the provisions that criminalize homosexuality. The justice minister’s statement announcing the moratorium on arrests was made in a radio debate with human rights activists, organized by two Malawian nongovernmental organizations, the Center for the Development of People (CEDEP) and the Center for Human Rights and Rehabilitation (CHRR). It reflects the effectiveness of Malawian activists’ strategy of engaging with the government in open dialogue about sexual orientation and gender identity” (Human Rights Watch (6 November 2012) *Malawi: Courageous Move to Suspend Anti-Gay Laws*).

A report issued by *76Crimes* in November 2012 states:

“According to press reports, LGBT people in Malawi have not been arrested recently for violating the anti-homosexuality law. The most recent publicized case involved a male couple who were tried and sentenced, then pardoned, after claiming to have become engaged to be married. LGBT activists gave credit to Malawian activist groups CEDEP and CHRR” (76Crimes (6 November 2012) *Moratorium on gay arrests in Malawi*).

The *Guardian* in November 2012 states:

“Gay rights campaigners in Malawi called for the government to go further. Gift Trapence, director of the Centre for the Development of People (CEDEP), which now openly operates in the country, said: "This is a good stepping stone but we want a total repeal of the sodomy laws for Malawi to align itself with international human rights standards. Suspending is something else and repealing is another thing. We want the government to repeal these archaic laws." “ (The Guardian (6 November 2012) *Malawi suspends anti-gay laws as MPs debate repeal: Moratorium follows arrest of gay couple in 2009 Amnesty and rights groups urge permanent solution*).

A report issued in November 2012 by *Waging Nonviolence* notes:

“The Malawian NGO, the Centre for the Development of People (CEDEP), has taken the lead, together with other NGOs, in promoting the rights of LGBTI people. Established in 2005, CEDEP has been carrying out sensitization campaigns on the rights of gay people and other minority groups. In collaboration with Gay and Lesbian Memory in Action, a South African organization, CEDEP published a collection of stories written by the Malawian LGBTI community in 2010” (Waging Nonviolence (17 November 2012) *Debating homosexuality and human rights in Malawi*).

A publication in April 2011 a report by *The International Lesbian Gay Bisexual Trans and Intersex Association* notes:

“The NGOs -Centre for Human Rights and Rehabilitation (CHRR), Centre for Development of People (CEDEP) and Malawi Religious Leaders Living and Affected by HIV and Aids (MANERELA+) - said they were concerned with government’s “derogatory language, threatening remarks, deliberate propaganda to mislead the general public, and twisting of facts about concerns being presented by civil society and other stakeholders.” “(The International Lesbian Gay Bisexual Trans and Intersex Association (26 April 2011) *Malawi NGOs dispel govts gay propaganda*).

No further information on these issues could be found among sources available to the RDC.

References

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Attachment not included due to IT limitations

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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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