canaries in the coal mines

An analysis of spaces for LGBTI activism in Malawi

COUNTRY REPORT
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The question of lesbian, gay, bisexual, transgender and intersex (LGBTI) rights continues to be a point of struggle and strife, extending from the depths of Malawi’s political history. Since its independence in 1964, the twenty-eight-year dictatorship of Kamuzu Banda enforced a strict national Christian morality which has been sustained to the present day.

The experiences and challenges facing LGBTI people in Malawi are shaped by laws, policies and practices that are informed by prevailing social, religious and cultural norms, that in turn shape public discourse around sexual minorities as contrary to Malawi’s culture and morality. The public debate on homosexuality has been complex, unpredictable and contested, and provides a snapshot of the difficulties LGBTI people face. Anti-homosexuality discourse has largely been driven by religious and cultural chauvinism.

The LGBTI movement straddles challenging socio-political divides that meet at the intersections of local and international politics; public religion; relationships with donors, human rights activists and NGOs; the Malawian government, and broader society.

In 2009, the public engagement (“chinkhoswe”) of Steven Monjeza and Tiwonge Chimbalanga, pushed same-sex relationships into the public eye. The trial marked a defining moment for public engagement on LGBTI human rights, and provided LGBTI organizations and their allies a window of opportunity to intensify LGBTI human rights activism and lobbying, towards facilitating an informed discursive space to debate LGBTI human rights and issues in a rational and constructive manner.

While the country’s Constitution, Bill of Rights, and other policy frameworks such as the National Gender Policy, affirm non-discrimination and human rights, they do not specify sexual orientation. Same-sex relations remain criminalized and transgender individuals are denied the right to change their gender identity.

Malawi has ratified a number of continental and international conventions that protect the human rights of LGBTI people, without domesticating these provisions. Arguing that same-sex relations are contrary to the “laws of nature”, the colonial era Penal Code

ABOUT THE AUTHOR

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criminalizes sodomy and homosexuality. A 2010 amendment to the Penal Code now includes women, with consensual lesbian sex now also a punishable offence. The Marriage, Divorce and Family Relations Act limits marriage to “two persons of the opposite sex”, maintaining that sex is determined at birth, effectively denying the existence of transgender or intersex people in Malawi.

The political discourse on LGBTI human rights has been contradictory and often confusing. At times government has appeared willing to scrap discriminatory legislation, while simultaneously wishing to avoid the perception that changing existing laws are the result of external, donor pressure. Despite the government’s apparent reluctance to address the issue there is sufficient evidence to suggest that even within a hostile legislative environment significant progress is being made in terms of raising public awareness and sensitizing key stakeholders about the need for all citizens to have equal rights, and for those rights to be protected.

### The LGBTI Movement

Few civil society organizations (CSOs), work directly on LGBTI issues, and those who do engage from a rights-based perspective, developing a solid reputation for advocating for the rights of marginalized groups as part of consolidating democracy and human rights. The Centre for the Development of People (CEDEP) and the Centre for Human Rights and Rehabilitation (CHRR) have actively monitored state corruption and held the state accountable for failing to comply with constitutional mandates and obligations in terms of regional, continental and global human rights instruments ratified by the state. CEDEP and the CHRR have over policy makers, politicians, opinion shapers and ordinary citizens in Malawi. International NGOs are generally supportive of LGBTI issues in Malawi. The Malawi Peace and Justice Support Network (PEJUSUN) is a newly established ecumenical NGO aiming to counteract homophobia, and is a stand-alone programme on LGBTI rights. It has facilitated training workshops to equip pro-LGBTI religious leaders to be role models against homophobia in Malawi.

The CHRR is a key ally, establishing a stand-alone programme on LGBTI human rights in 2009. The Malawi Network of Religious Leaders Living with HIV and AIDS (MANERELA+) has openly addressed human rights issues and homophobia towards LGBTI within the context of faith-based organizations, and has facilitated training workshops to equip pro-LGBTI religious leaders to be role models against homophobia in Malawi. The Peace and Justice Support Network (PEJUSUN) is a newly established ecumenical NGO aiming to counteract homophobia, and to equip pro-LGBTI religious leaders to be role models against homophobia in Malawi. International NGOs are generally supportive of LGBTI issues in Malawi.

### Needs and Experiences of LGBTI People

The life experiences of LGBTI people in Malawi are shaped by the intersectional barriers of criminalization and stigmatization that impact negatively on their day to day lives. Social discrimination coupled with legal discrimination contributes to multi-layered exclusionary experiences for LGBTI citizens. Altering discriminatory attitudes, beliefs and practices, shrouded in the language of cultural and religious norms and practices is challenging, and requires a longer-term view, incremental approach. Addressing discrimination using Constitutional non-discrimination provisions holds promise for establishing legal precedents that protect the rights of all citizens for far-reaching change. Sexual minorities...
are also affected by discrimination based on class, economic position, ethnicity and disability, and are more likely to be excluded from government service provision and development programmes because of their perceived ‘otherness’.

One of the most serious challenges LGBTI people in Malawi face is the lack of protection from arbitrary harassment, violence and intimidation. The human rights of LGBTI people to safety and security are often violated by the police and the criminal justice system. The healthcare needs of LGBTI people are complex and varied; in some cases, requiring more specialized healthcare provision than is generally provided through poorly-resourced primary healthcare systems.

The evolution of the HIV/AIDS epidemic and national responses to it have had a significant impact on the trajectory of the LGBTI movement in Malawi, serving to highlight some of the many rights-based challenges LGBTI people face. There is both anecdotal evidence and documented cases of students at secondary schools and colleges being expelled on the basis of perceived sexual orientation or gender identity.

Fear of family and community rejection leads many LGBTI people to live secret lives in a patriarchal society with strongly heteronormative value systems. In many instances, this secrecy and the need to hide their sexual orientation means having concurrent male and female sexual partners.

Ways Forward

Key areas for ongoing activism, advocacy and research include:

> Criminalization remains a major obstacle to the full realisation of the human rights of LGBTI people. “Joined up” litigation and associated advocacy through collaborative civil society action to pressure the executive and law makers to scrap the sodomy clauses in the Penal Code is required to decriminalize homosexuality in Malawi.

> Key LGBTI players such as CEDEP and CHRR need to continue engagement with the National AIDS Commission (NAC), Global Fund, UNAIDS and research organizations to generate data that supports addressing critical information gaps hindering focused and targeted programming for LGBTI people.

> The situations, realities and needs of LBT women are particularly under-researched as the language of ‘key populations’ has tended to focus on MSM. Targeted programming, research, advocacy and awareness-raising needs to hone in on LBT populations, seeking out their voices, canaries in the coal mines – an analysis of spaces for LGBTI activism in Malawi

> Collaborative action on LGBTI human rights is taking root, serving a strategic purpose in mobilizing cross-sectoral activism and bringing together different skills sets and capacities to address specific rights issues.

Going forward, it is critical that collaborative policy advocacy and human rights activism is strengthened to create broad fronts towards pro-LGBTI political and social change. Effective LGBTI and broader human rights movement building needs to strengthen transgender and lesbian participation and leadership. This, to broaden the base and diversity of voices and perspectives, and to build LBT capacity to include much-needed, often invisible women who have sex with women (WSW), transgender and intersex individuals and groups.
As an ex-British colony, the Victorian morality that criminalized and stigmatized homosexuality in the 19th century was imported along with a brand of Christianity antagonistic to ‘alternative’ sexualities. With the introduction of new religions came a disconnect from sexual practices that had been woven into pre-colonial, pre-Islamic and pre-Christian Africa. In Malawi, colonial and post-colonial Penal Laws criminalizing sodomy were carried over unchanged into post-independent Malawi, including those regarding ‘unnatural acts’.1

Following Banda’s rule and the introduction of a democratic system, a new Constitution was drafted in 1994 when Malawi’s first multiparty elections were held. In 2004 the Malawi Law Commission (MLC) invited activist organizations to recommend laws in need of reform. The Malawi Human Rights Resource Centre (MHRRC) recommended the repeal of sodomy provisions in the Penal Law and the inclusion of a non-discrimination clause on sexual orientation and gender identity (SOGI). Political and religious leaders rejected the MHRRC’s recommendations, reinforcing the state’s anti-homosexuality position.

Patriarchal social norms significantly limit women’s voice and participation in Malawian society. This is more so for women who do not conform to dominant ideas of femininity, gendered or sexual roles.

During 2008, The Centre for the Development of People (CEDEP) conducted a study that found 34% of gay men interviewed had been blackmailed or denied services such as housing or healthcare due to their sexual orientation, while 8% had been beaten by police or other security forces due to their sexual orientation.2

CEDEP noted that lack of information about lesbians, bisexual women, and women-who-have-sex-with-women (WSW) in Malawi is a particular concern, arguing that “the voices of lesbians and bisexual women in Malawi are systematically silenced, and this reality underscores that women do not have a space, even in protest, to express and live their sexual orientation.”3

While there is some, albeit fractured, political movement towards accepting LGBTI human rights as human rights, ongoing political uncertainties and lack of state consistency on homosexuality continue to negatively impact the lives of sexual minorities. Cultural and religious chauvinism play a critical role in shaping narratives about sexual minorities. The narratives of sexuality that law, culture and religion construct push gender non-conforming Malawians to the margins of society. Their bodies continue to be "sites for political inscription even as they are constituted as the sexual ‘other’." 4

Following the trial of the same-sex engagement between Steven Monjeza and Tewonge Chimbalanga, President Bingu wa Mutharika commented: “These boys committed a crime against our culture, our religion and our laws.”

The 2014 Annual Report of the Centre for Human Rights and Rehabilitation (CHR) notes that the Malawi Human Rights Commission (MHRC) has remained silent on LGBTI issues, noting the UN Human Rights Committee’s concern over the MHRC’s reluctance to engage on the status of sexual minorities. 5

LGBTI human rights continue to be shrouded in hostility, evidenced again in a May 2016 statement by the Young Pastors Coalition of Malawi (YPCM) threatening to take government to court to force it to arrest 4,000 homosexuals they claim are living in the northern city of Mzuzu. 6

4 Tamale, S. Exploring the contours of African sexualities: Religion, law and power.
Despite a Constitution and other legislative frameworks that affirm non-discrimination and human rights without specifying sexual orientation, same-sex relations continue to be criminalized under the Penal Code and transgender individuals are denied the right to change their gender identity.

LGBTI human rights activists have assiduously lobbied government to repeal legal provisions that criminalize homosexuality. In 2012 the Minister of Justice announced a moratorium on arrests in a radio debate with human rights activists, organized by CEDEP and the CHRR. This reflects the effectiveness of activists’ strategy of engaging with government in open dialogue about sexual orientation and gender identity (SOGI).

Malawi is one of 36 African countries with laws barring same-sex relationships. The arrest, trial and conviction of Monjeza and Chimbalanga, engaged to marry each other, saw homosexuality evolve into a fraught national dialogue. In sentencing the two, the judge used the archaic language of the 19 Century Penal Act.8


The judge affirmed the court’s heteronormative stance in finding the “engagement and the living together as husband and wife of the two accused persons, who are both males, transgresses Malawi recognized standards of propriety since it does not recognize the living of a man with another as husband and wife. Both these acts were acts of gross indecency.”

In 2015 the two were detained by a neighbourhood watch team and handed over to police. According to Human Rights Watch (HRW) and CEDEP they were forced to undergo medical tests for HIV and other sexually transmitted diseases, and were charged with sodomy.9 They were later released on bail. This marked the first arrest of individuals accused of consensual same-sex conduct in Malawi since the Monja and Chimbalanga case.10 Kasambara confirmed that the Malawian government would not arrest or prosecute LGBTI citizens while lawmakers reviewed existing anti-LGBTI laws. On the surface it appeared that the Minister’s statement reflected a nuanced awareness that arrests on the basis of consensual same-sex conduct violated international human rights standards, as well as constitutional guarantees of equality. Activists felt that the Justice Minister’s call for a moratorium on arrests would buy time for parliament to debate possible legislative change and perhaps even take the matter to referendum.11

In its 2012 consideration of reports submitted by state parties under Article 40 of the International Covenant on Civil and Political Rights, Malawi noted that “despite recent debate over homosexuality in Malawi, the general consensus still remains that the majority of Malawians do not support homosexuality. In order to take the minority views into account, the relevant laws that criminalize such practices have since been referred to the Law Commission for a comprehensive review.”12 In 2013 the Malawi High Court announced its intention to review the constitutionality of the law but to date no decision has been reached on the issue.

In 2016 the Malawi Law Society (MLS) condemned Ken Mvondo, spokesperson for the former ruling People’s Party, for remarks made on homosexuality, demanding gays be killed after the country’s Justice Minister Samuel Tembo put a temporary prohibition on anti-homosexual laws. Although such overt incidents appear few and far between, they are symptomatic of the continuing vulnerability LGBTI people experience in Malawi.
**2.1 The Constitution and Bill of Rights**

Malawi’s Constitution was adopted in 1995 and has subsequently been amended by nine Constitutional Amendment Acts which have affected ninety sections of the Constitution.15 Chapter III of the Constitution enshrines the principle of non-discrimination in its Equality Clause (20), stating that “discrimination 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”.16 It further asserts as a fundamental principle that the “inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect fundamental human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote”.

The Bill of Rights in Chapter IV of the Constitution includes detailed clauses on the protection of civil and political rights. It does not, however, explicitly refer to “sexual orientation” as a ground for non-discrimination, and despite the fact that Section 22 (3) has a heteronormative assumption, it does not explicitly state that men and women or women and women are prohibited from marriage, inferred from the statement that “all men and women have the right to marry and found a family”.

The rights enshrined in the Bill of Rights are consistent with international human rights instruments to which Malawi is a party. International human rights standards have, however, had little practical impact and the country rarely moves beyond ratification to domestic implementation.

**2.2 The Penal Code**

While the Constitution asserts that legislation may be passed to address social inequalities and to prohibit discriminatory practices, the reality is that laws that impact on the rights, equalities and freedoms of LGBTI people remain on the statute books. The Penal Code (1971) explicitly criminalizes male homosexuality and sodomy in Section 153 “Unnatural Offences” and Section 156 “Indecent practice between males”.

From Section 153: “Any person who — Has carnal knowledge of any person against the order of nature, or Has carnal knowledge of an 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.”

From Section 156: “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.”

According to a CEDEP report, this amendment has served to intensify “the increasingly uncertain and violent environment the LGBT community faces in Malawi”.


In December 2010, the Parliament of Malawi passed a Bill amending the Penal Code to criminalize consensual lesbian sex.
While the Constitution does not explicitly preclude marriage for same-sex couples, the Marriage, Divorce and Family Relations Act limits marriage to “two persons of the opposite sex”.

Part III, 14

2.3 Marriage, Divorce and Family Relations Act

The Marriage, Divorce and Family Relations Act (2015) was informed by the recommendations of a special Law Commission established in 2001 to review the existing legislation relating to marriage and divorce in Malawi. While the new law makes important strides to prevent child marriage, it perpetuates a heteronormative perspective on marriage and includes provisions that continue to discriminate against LGBTI people. In the Law Commission’s memorandum that frames the legislation it is noted that: “The Commission observed that the scheme of law on the various types of marriages presupposes a heterosexual union.” The Act also cites reasons for deciding whether a marriage has “irretrievably broken down”, including conviction for offences under Section 153 of the Penal Code. This perpetuates the state’s stigmatisation of homosexuality and transgender people who have undergone sex-reassignment surgery, who are prohibited from marrying a person who, prior to undergoing the surgery, was of the same sex as that assigned at birth.

2.4 National AIDS Response

As a result of the high HIV prevalence rates among vulnerable groups such as sex workers and gay and bisexual men, the health sector has increasingly become an important entry point for addressing stigma and discrimination against sexual minorities. The National HIV and AIDS Policy (2013) notes the need to address and reduce stigma and discrimination against vulnerable groups. The policy points to tensions between criminal law and the health and psychosocial needs of LGBTI people and acknowledges gaps in the domestication of international instruments to address domestic responses to rights violations.

This is further emphasized in the National HIV and AIDS Strategy 2015-2020 which acknowledges that in Malawi “strategies to address the HIV epidemic are hampered by an environment where human rights are not respected”. In response, the Strategy commits the state to ensuring that human rights are safeguarded through the promotion of gender equity and equality in HIV services and the creation of a stigma-free environment and the protection of patient rights in health facilities.

2.5 National Gender Policy

The National Gender Policy (2011) includes, as one of its policy statements, the need to create a “conducive policy and legal environment for women and men of Malawi to enjoy their human rights”. The policy speaks to the promotion of access to health, employment and agricultural resources for women, men, boys and girls and all vulnerable groups. The term “vulnerable groups”, however, is defined in the policy as including “orphans, persons with disabilities and the majority of women”, and is silent on the human rights of LGBTI people in the context of gender equality.

2.6 Universal Periodic Review Process

In its 2013 Mid-Term Progress Report on the Implementation of the United Nations Human Rights Council’s Universal Periodic Review (UPR) Recommendations to Malawi, the MHRC briefly reported on recommendations not accepted in the UPR, including calling for the reform of the Penal Code and the abolition of discrimination against people based on their sexual orientation or gender identity. The Report goes on to commend the government for encouraging unhindered debate on the rights of minority groups such as LGBTI people, for the citizenry to make informed decisions. The Commission recommended further dialogue and called on government and other stakeholders to provide technical and financial support for research and analysis of the situation of LGBTI people in Malawi.

International reviews focusing on Malawi’s stance on LGBTI issues reflect concern at the ongoing discrimination and marginalization of sexual minorities. Dismissing the recommendations made through the UPR process, the state response was that there is no homophobia or incitement against gay people and that existing laws simply criminalized unnatural acts, which, it argued, could also be committed in a sexual relationship between a man and a woman.

17 Marriage, Divorce and Family Relations Act, p. ix
18 Ibid., p. 17
19 National HIV and AIDS Strategy 2015-2020, p. 16
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2.7 Commitments on UN Conventions

Among others, Malawi is party to the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee, a treaty body tasked with interpreting the ICCPR, has ruled that the criminalization of consensual same-sex conduct violates the Covenant’s provisions on privacy and non-discrimination. Malawi is in violation of several rights of its citizens accorded in the ICCPR because of their sexual orientation or gender identity and expression.

Malawi has failed to bring its criminal code into compliance with the principles of the ICCPR regarding criminal penalties for same-sex conduct, despite promising to uphold these agreements. These laws violate Article 2, 26 (non-discrimination), and 17 (right to privacy) of the ICCPR.[24]

Malawi is also a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In the 6th Periodic Report (2008) submitted by state parties under article 18 of CEDAW, there was no reference to issues that impact lesbians, trans or intersex women.23 In February 2015, the Southern Africa Litigation Centre (SALC) submitted a report in advance of the preparation of the list of issues for the country’s 7th Periodic Report to the CEDAW Committee. SALC raised the concern that the amendment to the Penal Code criminalizing same sex relations between women would add an additional layer of discrimination based on women’s sexual orientation that was likely to affect them to a greater degree than men in a similar position. This, despite the fact that the CEDAW Committee has called on states to “legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned, … [and] … to adopt and pursue policies and programmes designed to eliminate such occurrences.”[25]

In 2014 the United Nations Human Rights Committee (UNHRC) commented on the Initial Periodic Report submitted by Malawi, stating that the MHRC was not functioning as a fully independent body. The report also noted particular concern at the malicious reluctance to engage in issues related to the human rights of LGBTI people.[26] The following actions were recommended by the Committee: 27

- Review legislation to explicitly include sexual orientation and gender identity (SOGI) among the prohibited grounds of discrimination, and repeal the provisions that criminalize homosexuality and other consensual sexual activities among adults;
- Introduce a mechanism to monitor cases of violence against LGBTI persons and undertake all necessary measures to prevent such cases, prosecuting perpetrators and compensating victims.

2.8 Commitments on African Protocols

Malawi is signatory to continental (African Union) and regional (SADC) human rights instruments (including the African Charter on Human and Peoples’ Rights) and is a member of the African Commission on Human and Peoples’ Rights (African Commission). At its 55th Ordinary Session held in Luanda (29 April to 12 May 2014), the African Commission stressed its concern that acts of violence, discrimination and other human rights violations continue to be committed against individuals in many parts of Africa because of their actual or presumed sexual orientation or gender identity, and noted that such violence includes “corrective” rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail. It highlights the need to address a range of LGBTI issues, including:

- The incidence of violence and human rights violations and abuse by state and non-state actors targeting human rights defenders and civil society organizations working on SOGI issues in Africa,
- Ensure that public officials refrain from using language that may encourage violence, and raise awareness to eliminate stereotyping and discrimination,
- Guarantee effective access to health services, including HIV/AIDS treatment, for LGBTI persons.

23 SALC. 2015. Update Submission to the Committee on the Elimination of All Forms of Discrimination against Women Regarding the Government of Malawi’s 7th Periodic Report.
25 Ibid., p. 4.
The failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity;

The increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;

The situation of systematic attacks by state and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity.

The African Commission called on all member states to ensure that human rights defenders work in an enabling environment free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.
The arrest and subsequent trial marked a defining moment for public engagement on homosexuality and gay rights, and provided LGBTI organizations and their allies with a window of opportunity to intensify LGBTI human rights activism and lobbying, and to facilitate an informed discursive space to debate in a rational and constructive manner.

During the trial, the Chief Resident Magistrate described same-sex marriage as “bizarre” and claimed that Malawian society was not ready to see its sons or daughters marrying each other, that there was need to pass a sentence to protect the public and to scare others who might want to emulate this “horrendous act.” Immediately following the conviction and international media coverage, President Bingu wa Mutharika extended pardons to both men during a visit by UN Secretary-General Ban Ki-Moon.26 This act of clemency was not considered reflective of a change in attitude so much as political calculation in the face of global criticism.

UN High Commissioner for Human Rights, Navid Pillay said “laws that criminalize people on the basis of their sexual orientation are by nature discriminatory, and as such are in apparent violation of a number of key international treaties and instruments, including the African Charter on Human and People’s Rights.” After “pardoning” the couple, wa Mutharika clarified that the couple was pardoned only for crimes they had already committed and for which they were convicted; and that if the couple continued their relationship after being released, they risked further arrest. In 2012, a journalist with Blantyre Newspapers Limited, Clement Chinoko, was arrested and held for a number of days for reporting on an alleged engagement ceremony of two women. In its 2012 World Report, HRW noted the climate of fear as journalists and civil society activists who attempted to report on the human rights situation came under increasing attack from security forces and supporters of the ruling party.27

The experiences of LGBTI people in Malawi are shaped by laws, policies and practices informed by prevailing social, religious and cultural norms. Public narratives on sexual minorities beg critical questions regarding who sets the sexuality agenda and who mandates sexual normativity in Malawian society.

The ongoing repetition of homophobic rhetoric, with its attendant distortions and stereotypes, underpinned by religious bigotry, contributes to hardening public attitudes towards LGBTI people. The perspective that depicts homosexuality as un-African continues, either explicitly or implicitly, to inform much of the media coverage on LGBTI issues in Malawi. A CEDEP/CHRR report identifies media outlets as having in some instances contributed to hostility toward gender non-conforming individuals through reporting that had little regard for privacy and scant understanding of LGBTI issues.28

Public debate on homosexuality in Malawi has been complex, unpredictable and contested providing “a snapshot of the difficulties encountered when confronting the dilemmas and anxieties around the issue of homosexuality in Africa.”29 This anti-homosexuality discourse is driven by religious and cultural chauvinism which argues — without substantive evidence — that same-sex sexual relationships are contrary to Malawi’s culture and morality. China’s suggestions that sexual morality and lifestyles are equated with national identity and nationality, and that through such arguments lesbian, gay, bisexual and transgender people are “stripped of their national identity because they are not behaving in the Malawian way,”30 issues relating to transgender and intersex people are poorly understood. Because they disrupt dominant assumptions about sex and gender they are especially vulnerable to violence and discrimination when this is visible or disclosed to others.31

26 CEDEP/CHRR Human Rights review, 2011
27 http://www.hrw.org/sites/default/files/reports/africa12312w.pdf
29 CEDEP/CHRR. 2014 Report, p. 3.
32 Global Action for Trans Equality. 2014. The State of Trans and Intersex Organizing A case for increased support for growing but under-funded movements for human rights.
3.1 Public Perceptions

In the context of the country’s religiosity, broad societal homophobia is unsurprising. The Afrobarometer undertakes periodic attitudinal surveys of countries in Southern Africa, often using proxy questions to measure a society’s view on particular issues. In 2012 the Afrobarometer surveyed a nationally representative, random, stratified probability sample of 2,400 adult Malawians. One of the statements for the survey population was: “People practicing same sex marriage or relationships have the right to do so; after all issues of sexual relationships are private.”

Figure 1: Public Perceptions of Same Sex Marriage or Relationships in Malawi

94% of Malawians disagreed that people practicing same-sex relationships should have the right to do so. Although attitudes were uniformly negative toward same-sex relationships, less than 1% of those surveyed identified same-sex issues as one of the most important problems facing Malawi that government should address.33

In this hostile climate, CEDEP noted a significant rise in MSM reporting they were afraid of being targeted by police. They also expressed concern that the trial of Monjeza and Chimbalanga would have a detrimental effect on national HIV/AIDS programming, in particular outreach and education work in vulnerable MSM populations.34

The political discourse on LGBTI human rights in Malawi has, over the past few years, been contradictory and confusing. At times government has appeared to be willing to scrap discriminatory legislation, but clearly does not want to be seen to be doing so as a result of external pressure. As heavily donor-dependent as Malawi is, it is evident that political parties do not want to act in ways that create public perceptions of weakness.

The Malawi Voice in January 2016 reported that Foreign Affairs Minister George Chaponda said the country’s efforts to access donor funds was being linked to the issue of ‘minority rights’. According to the report Chaponda had asked for time for Malawians to debate an issue that involved the fabric of Malawian society and noted that “even a country like Ireland had to go to a referendum, why don’t you allow Malawi to go to a referendum too?”35 These statements reinforce perceptions that government is playing a stalling game on LGBTI human rights.

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3.2 Donor-Driven Discourses

The Monjeza-Chimbamula ruling created intense pressure from international development agencies, the World Bank, the African Development Bank (AfDB), bilateral partners including the United States, United Kingdom, Germany, Norway; and the European Union (EU), leading to the pardon following Ban Ki-moon’s visit.

Malawi’s reliance on donor support for up to 40% of its development budget was considered a decisive factor in this decision. The controversy came at a time when Malawi’s international development partners were increasingly concerned about the State’s heavy-handed clampdown on political opposition and human rights activists. The US withheld $350-million in funding through the Millennium Challenge Corporation to Malawi following the death in 2011 of 19 people during two days of public protests over fuel and electricity shortages, rising prices and high unemployment. At the same time the World Bank, EU, AfDB, UK, Germany and Norway all suspended or ended general budget support to Malawi noting concern over the deteriorating governance situation in terms of media freedom, freedom of speech and minority rights. The perceived ‘back-down’ by the government heightened anti-gay sentiments and weakened the credibility of the President who was perceived to be supporting undemocratic processes.

Threats to Malawi’s foreign aid over its treatment of LGBTI people resulted in attacks on civil society organizations. The Justice and Constitutional Affairs Minister said withdrawals of foreign aid was the fault of two NGO leaders, specifically naming CHRR chairperson Undule Mwakasungula and CEDEP director, Gift Trapence.

"The country is suffering because of the conduct of some leaders of the civil society. Those people are not patriotic. Some donors have withdrawn their aid and everybody is suffering. More than half of salaries for Ministry of Health come from the donors.”

Minister of Justice and Constitutional Affairs, George Chaponda

Sharma (2012) argues that the undue influence of Western donors and activists has been damaging to the national LGBTI agenda, including opportunities for local ownership in the debate, creating the appearance of a foreign agenda, using economic vulnerability and over-dependence on aid to reinforce ‘western’ stances on LGBTI issues, arguing that ‘external interference’ has made it difficult for Malawians to engage with LGBTI human rights debates on their own terms, and in their own contexts. In this context, linking aid to LGBTI human rights can be counterproductive, and can jeopardize increased awareness, education and information on LGBTI issues through constructive civil debate.

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In this context, linking aid to LGBTI human rights can be counterproductive, and can jeopardize increased awareness, education and information on LGBTI issues through constructive civil debate.


The LGBTI movement in Malawi straddles a complex socio-political divide “at the interface of local and international politics, public religion, and gender and sexuality; in relations between donors, human rights activists and NGOs, and the Malawian government and people”. On the one hand LGBTI organizations operate in an environment where same-sex relations are criminalized and where public discourse on LGBTI human rights is often hostile. On the other, Malawi’s heavy donor dependency might provide strategic entry points for activist interventions to pressurize the country to scrap discriminatory laws and uphold the human rights of all its citizens.

Civil society organizations (CSOs) working on human rights in Malawi have developed a solid reputation for the advocacy and oversight role they have performed in addressing the rights of marginalized constituencies. Under often challenging circumstances CSOs have been active in providing checks and balances against government corruption and the implementation of unjust laws. CSOs do this by holding government accountable for failing to comply with constitutional mandates as well as their obligations in terms of regional, continental and global human rights instruments to which Malawi is a signatory.

As the LGBTI human rights movement has gained momentum, activist organizations are debating whether they ought to take public positions on LGBTI human rights, exploring how inter-movement solidarity could ensure strengthened and more effective gains for gender equality and the rights of sexual minorities. It is notable that LGBTI and rights-based organizations working on LGBTI issues have tended to be male-dominated with LBT women’s issues, participation, voice and visibility under-represented as a result.

Shortly before the Monjeza-Chimbalanga case made international news, CEDEP’s offices were raided and its safer-sex materials confiscated as “pornography”. The case drove many gay Malawians underground, but also ripped open taboos, rallied activists and increased levels of debate on the rights of sexual minorities.

44 Currier, A. Arrested Solidarity: Obstacles to Inter-movement Support for LGBT Rights in Malawi.
46 This important point is made in an article entitled “Malawi gays stay underground, one year after wedding arrests” in Dawn, http://www.dawn.com/news/649771/malawi-gays-stay-underground-one-year-after-wedding-arrests

The LGBTI movement in Malawi straddles a complex socio-political divide “at the interface of local and international politics, public religion, and gender and sexuality; in relations between donors, human rights activists and NGOs, and the Malawian government and people”.

Activists and their allies noted that small windows of opportunity are opening for intensified lobbying on LGBTI human rights, with broader, more informed discursive space for debate in a rational and constructive manner as a result of the efforts of LGBTI and human rights organizations and allies.
CEDEP is adept at regularly publishing articles in the media, creating an entryway for public discourse, towards a more enabling environment with increased tolerance of LGBTI human rights.

4.1 The Centre for the Development of People

CEDEP is a human rights organization dedicated to addressing the needs, improving the lives, and providing support for Malawi’s sexual minority groups. It is the most visible, active and vocal organizations defending the human rights, and lobbying for respect of the human rights of LGBTI people. The organization works in areas that impact on the welfare of minority groups, including prisoners, sex workers, and those in same-sex relationships, with the aim of securing their wellbeing of their constituency.

Founded in 2005, CEDEP works in the areas of civic education, training, capacity building, networking and research. Initially rooted in public health programming, through which it was able to provide support structures and space in Blantyre, particularly for gay men, CEDEP is the only organization in Malawi that directly implements programmes that support community development including a resource centre and social issue support groups for LGBTI people and sex workers. CEDEP has five offices in cities across Malawi, where it focuses its outreach efforts. CEDEP’s peer educators also use mass text messages and social networking to extend their reach to more rural areas.

CEDEP developed the country’s first peer education and healthcare providers’ programme on LGBTI-specific health needs. A feature of CEDEP’s work is its commitment to research to ensure that its advocacy and initiatives are evidence-based, exposing areas where LGBTI people face exclusion and marginalisation. Their advocacy work is multi-layered, with high-level efforts targeted at national politicians and government, while at the same time carrying out targeted advocacy work at district and local levels.

CEDEP has played a critical role in exposing rights abuses in high profile sodomy cases and ensuring these cases received extensive coverage in the media. The government then began using evidence-based, exposing areas where LGBTI people face exclusion and marginalisation. Their advocacy work is multi-layered, with high-level efforts targeted at national politicians and government, while at the same time carrying out targeted advocacy work at district and local levels.

CEDEP has played a critical role in exposing rights abuses in high profile sodomy cases and ensuring these cases received extensive coverage in the media. The government then began using research undertaken by CEDEP to justify official inclusion of sexual minorities in Malawi’s national HIV strategy. CEDEP is currently involved in the first ever national population study of sexual minority groups. It is hoped that this research will translate into improved ability to understand and address the health and psychosocial needs of LGBTI citizens.

In 2011 CEDEP developed a three-year strategy that has focused efforts on training, capacity building, and advocacy for media outlets, especially radio and television, to better cover LGBTI issues, as well as engaging religious groups and parliamentarians. CEDEP has been working with the MLS to sensitize lawyers, the judiciary and the police on LGBTI human rights. A joint-venture workshop to sensitize police officials on LGBTI human rights was undertaken in 2012.

As part of its programmatic strategy, CEDEP works closely with allies to strengthen specific LGBTI agendas. As part of its longer-term strategic vision CEDEP sees itself acting as a nursery for smaller NGOs and community based organizations (CBOs) that have the capacity to address immediate needs at the local level.

4.2 Northern Youth Network

CEDEP is a human rights organization dedicated to addressing the needs, improving the lives, and providing support for Malawi’s sexual minority groups. It is the most visible, active and vocal organizations defending the human rights, and lobbying for respect of the human rights of LGBTI people. The organization works in areas that impact on the welfare of minority groups, including prisoners, sex workers, and those in same-sex relationships, with the aim of securing their wellbeing of their constituency.

The Northern Youth Network (NYN), established in 2009, is a regional network of 29 member organizations, that runs its programmes and activities in the Northern Region of Malawi. NYN focuses on peer education on human rights, MSM, sex workers, HIV/AIDS prevention and health towards some level of community integration for LGBTI people. They advocate, raise awareness, promote the rights of sexual minorities and develop leadership skills within vulnerable communities. Awareness-raising activities focus on the human rights of LGBTI people along with sharing information to help LGBTI people deal with discrimination and human rights violations.

In 2012, in large part due to the advocacy efforts of CEDEP, then President Joyce Banda suspended the laws criminalizing homosexuality.

47 USAID. 2014. The 2014 CSO Sustainability Index For Sub-Saharan Africa (Malawi), p. 91.
48 International Center for Sex Profit Law. 2016. LGBTI Civil Society Organizations Around the Globe: Challenges, Successes, and Lessons Learned, p. 3.
While there is pressure on the government of Malawi to decriminalize same-sex practices and relationships, there is a clear understanding among LGBTI activists that this must be accompanied by comprehensive efforts to normalize same-sex behaviour, enforce laws that protect citizens from discrimination, and systematic sensitization to dislodge prejudices, including in cultural, religious and service provision contexts.

CEDEP believes the prevailing political lacuna with its uncertainties regarding LGBTI human rights provides a strategic space for ground-level engagement across the social spectrum. The apparent contradictions between Constitutional guarantees and the sodomy clause in the Penal Code mean that while same-sex sexual activities are criminalized, sexual orientation is not, providing grounds for legal challenge.

While recognizing the impact mass activism and campaigning can play in raising public awareness of LGBTI issues, there is also an understanding that this may not be the most effective approach due to its potential to alienate public opinion.

Engaging governmental and non-governmental duty bearers at service delivery and local decision-making levels makes for a more constructive approach. This approach has been shaped by a recognition that the rights and entitlements of LGBTI people are primarily impacted through exclusionary practices perpetrated by providers of social and community services such as education, health, policing and justice. The strategy of engaging state actors constructively through dialogue allows for more effective information sharing and awareness raising to counteract poorly-informed homophobia. Strategic interventions to ensure social inclusion targets the following sectors:

- **Education**: Addressing policy gaps that compromise LGBTI people’s access to education; and working with educational institutions to address practices that exclude students based on perceived ‘non-conformity’, often codes for the expulsion of gender non-conforming students.

49 Interview with Rodney Chilima from CEDEP.
Health: Working with the Ministry of Health and health providers to address gaps in the provision of sexual and reproductive health and psychosocial services to LGBTI people and understanding the specific health needs of diverse LGBTI communities, to ensure provision of non-discriminatory services.

HIV/AIDS and STIs: Working programmatically with the National AIDS Commission (NAC) to ensure resources targeted for the provision of tailored health and wellness services for MSM are effectively utilized and meet the health needs of MSM.

Access to Justice: Working with the MHRC and the Ministry of Justice (MoJ) to promote a rights-based approach to managing cases of discrimination and human rights abuses against LGBTI people.

Research: One of the challenges faced by LGBTI organizations and their allies is the lack of reliable and verifiable data on disaggregated demographic and epidemiological issues that can serve as an evidence base for informed responses and interventions for LGBTI people. Criminalization makes data collection difficult, and government-funded data collection agencies have not prioritized the collection of data on LGBTI communities. CEDEP and CHRR collaboration through, for example, Global Fund processes yields some data on MSM but information on the more hidden lesbian, bisexual, transgender and intersex populations is much harder to come by.

Alongside these interventions are programmes aimed at engaging opinion shapers at both national and local levels:

Religious Leaders: While engagement with religious leaders is often cited as a barrier and challenge to achieving LGBTI human rights, it also has potential to foster socio-cultural acceptance and understanding.

Media: CEDEP and CHRR see media engagement as strategic to increasing public understanding of LGBTI concerns by reporting in an informed, balanced way. There is a sense that this approach is achieving positive results in terms of more balanced and less sensationalist coverage of LGBTI issues.

Arts and Culture: Public discourse on LGBTI human rights is underpinned by a projection of African culture as essentialized, homogenous, heterosexual and homophobic. Elite discourses, underpinned as they are by state-sponsored homophobia, tend to mask subaltern discourses emanating from LGBTI communities. A CEDEP publication, Queer Malawi: Untold Stories (2010) presents oral histories of twelve Malawian LGBTI people as a counter-narrative to the prevailing homophobic narrative. The release of the book came just months after the imprisonment and subsequent release of Monjeza and Chimbalanga. The accounts in the book illustrate the joys of love and the heartache of rejection, the dangers posed by homophobia and hatred in communities, and the comfort of close friends and relatives. The twelve life stories were “intended to invoke compassion and support for the rights of African LGBTI people to live freely and harmoniously alongside heterosexual counterparts in Malawi and beyond its borders.”

The strategy to “normalize” the discourse on homosexuality and the lives of sexual minorities aims to position LGBTI human rights firmly within the constitutional and human rights commitments of the country. It is evident that public perceptions of homosexuality are driven by a number of powerful narratives. The language employed to describe perceived sexual “deviants” as “mathanyula”, a Chichewa word, equates with derogatory equivalents in English such as “faggot.” The key strategic focus of principal LGBTI organizations and allies is geared toward counteringact harmful narratives for social change.

50 http://www.mambagirl.com/article.asp?artid=5071

50 http://www.mambagirl.com/article.asp?artid=5071
Alliances with non-LGBTI allies are critical to strengthening activism. Despite uncertainties, and in some cases hostility to both international and grassroots efforts to shift the LGBTI discourse, there is also evidence of growing non-LGBTI support for changes in the legal system and social, cultural and faith levels.

Non-LGBTI allies make a significant contribution to LGBTI activism, not necessarily through broad-based support, but in niche areas where they have specific expertise, influence and capacity. The MLS, for example, noted that their concern is social justice. This can in part be achieved by challenging discriminatory laws and values-driven interpretations of these provisions.51

There are contradictory strands in the response of Malawi’s religious community. While some take an inclusive approach, others take a homophobic stance in condemning sexual minorities. These contradictions create space for a shift in faith-based understandings of sexual minorities. From a strategic perspective, the emergence of faith-based pro-LGBTI platforms are opening up new modalities of thinking about Christianity as a source of LGBTI empowerment.

6.1 Malawi Law Society

The MLS has a mandate to promote the rule of law, and to agitate for the realization of human rights and justice in Malawi, especially for the most marginalized, including women, children, prisoners, persons with disabilities and LGBTI people. Its members are increasingly concerned about basic human rights violations of LGBTI people and other vulnerable populations such as sex workers. The MLS can influence the national agenda on LGBTI human rights and considers itself a strong LGBTI ally.52

The MLS has taken the strategic route of using the courts to challenge the constitutionality and fairness of legislation such as the Penal Code, challenging court rulings in cases where LGBTI people have been convicted of offences under the Penal Code. The MLS argues that the state conflates the issue of sodomy with sexual

51 In discussion with Godfrey Kangaude at the Malawi Law Society in Blantyre.
52 These points were made by Godfrey Kangaude in discussion with the researcher at the MLS offices in Blantyre, 29th April 2016.
orientation which is not criminalized. In response to the trials of three gay men, sentenced under the sodomy laws, the MLS in 2011 made a submission to the court as amicus curiae. The MLS argued that anti-homosexuality provisions are contrary to the Constitution in so far as they proscribe consensual same-sex sexual conduct between adults in private. In particular, the MLS argued that those provisions violated, among others, the right to dignity under section 19(1) of the Constitution; the right to non-discrimination under section 20(1) of the Constitution; and the right to personal privacy under section 21 of the Constitution. The Court has not delivered its judgment on this matter. The MLS believes that targeted litigation cases where LGBTI people have been discriminated against can incrementally improve the human rights environment. The organization would like to test the constitutional boundaries of the powers of the court as judges, magistrates and the police. The organization has been working with CEDEPT to educate police and the courts on issues of LGBTI human rights.

The MLS is concerned about hate speech against LGBTI people and are of the opinion that it needs to be aggressively countered through the courts. The challenge is the lack of provision in current legislation that explicitly prohibits hate speech. In a recent case involving homophobic remarks made by the spokesperson of the People’s Party (PP) the MLS condemned the remarks as “hate speech” and referred the matter to the MHRC and the police. A case was initiated but govenment, through the Director of Public Prosecutions, stopped the case without providing reasons.

At the Constitutional level any proposed amendments have to be certified by the Chief Justice before going to the Constitutional Court, a situation that on occasions has delayed matters. Amendments have to be certified by the Director of Public Prosecutions, stopped the case without providing reasons. The MLS believes that targeted litigation cases where LGBTI people have been discriminated against can incrementally improve the human rights environment. The organization would like to test the constitutional boundaries of the powers of the court as judges, magistrates and the police. The organization has been working with CEDEPT to educate police and the courts on issues of LGBTI human rights.

6.2 Centre for Human Rights and Rehabilitation

CHRR is a leading human rights NGO, founded in 1995. Its purpose is to contribute towards the protection, promotion and consolidation of good governance by empowering communities to be aware of and exercise their rights. In 2009 the CHRR established a stand-alone programme on LGBTI human rights, taking the strategic decision to work collaboratively with CEDEPT to develop comprehensive LGBTI initiatives. CHRR and CEDEPT both belong to the Malawian Sexual and Reproductive Health Alliance (MSRHA), constituted by six local NGOs. One of the MSRHA’s core programmes is increasing the acceptance of sexual diversity and gender identity in Malawi. CHRR uses the broader human rights process as a strategic lever, but also works through the narrower focus of sexual and reproductive health and rights to promote the health and wellbeing of LGBTI people.

CHRR focuses on state commitments to international and continental human rights instruments towards shifting assumptions and perceptions. It has a particular strategic focus on engagement with key national and continental instruments towards shifting assumptions and perceptions. It has a particular strategic focus on engagement with key national and continental.

6.3 Malawi Network of Religious Leaders Living with HIV and AIDS

The Malawian Network of Religious Leaders Living with HIV and AIDS (MANEFELA+) is a membership network of religious leaders living with or personally affected by HIV and AIDS in Malawi. Its overall purpose is to reduce what it terms stigma, silence, denial, discrimination, inaction and mis-action (SSDDIM) in the faith community. The organization works with men, women and youth in leadership positions in both Christian and Muslim communities to address issues of stigma, shame, denial and discrimination around being HIV positive. MANEFELA+ has initiated a framework for dialogue between Religious Leaders and PLHIV where “contensive issues” are discussed including Human Rights, SRHR (especially use of condoms and contraceptives), gender-based violence and LGBTI human rights. MANEFELA+ has openly addressed homophobia.
towards LGBTI within the context of faith-based organizations, and has facilitated training workshops to equip pro-LGBTI religious leaders to be role models against homophobia in Malawi. MANERELA+ has also created fora where challenges facing key populations, including LGBTI people, are discussed in religious spaces, media and workshops.

6.4 Peace and Justice Support Network

The Peace and Justice Support Network (PEJUSUN) is a newly established ecumenical NGO, concerned that in many instances religious organizations, both Christian and Islamic, continue to shape homophobic discourse in Malawi. In late 2015 it conducted its first training for religious leaders to sensitize and raise awareness about LGBTI issues and provide a more encompassing picture of “god and humanity” that enables churches to accept and include membership from LGBTI communities.

6.5 Civil Rights Advocacy Centre

The Civil Rights Advocacy Centre (CRAC) is an NGO involved in broad human rights and good governance issues, with a concern for minority rights. As part of its efforts to promote LGBTI human rights it is attempting to engage with religious leaders and church organizations to advocate for greater acceptance of LGBTI human rights. CRAC’s approach is to engage with religious leaders at different levels to advance a more progressive and inclusive agenda, promoting the health and psychosocial wellbeing of LGBTI people. CRAC’s advocacy addresses public ignorance and misinformation on LGBTI issues, and more specifically around transgender and intersex people.

CRAC wants to facilitate a more informed and pro-active political dialogue on the basis of informed decision-making.\(^{54}\)

CRAC wants to ensure that the proposed referendum on LGBTI human rights does not go ahead as it believes this approach runs counter to human rights principles and that such far-reaching decisions cannot be made based on majoritarian views.

54 In discussion with Staphiel Kangula at the Lilongwe Hotel, April 26th 2016.
7.1 Violence, Harassment and Isolation

LGBTI people in Malawi lack protection from arbitrary harassment, violence and intimidation, with little recourse to legal redress. The 2015 CEDEP-CHRR report documenting human rights violations against LGBTI people states that “in recent years, human rights violations on the basis of real or perceived sexual orientation, gender identity or gender expressions have become increasingly visible in Malawi”.

The report documents 76 cases of rights abuses against LGBTI people.

The CEDEP-CHRR Report notes that “most perpetrators of violent attacks against LGBTI persons conduct such attacks in the knowledge that they would never be arrested or prosecuted”. At the same time LGBTI victims are reluctant to press charges for fear of secondary victimization.

HRW has noted that police continue to arrest transgender people under laws that criminalize same-sex conduct.

Levels of public intolerance of LGBTI people makes them vulnerable to blackmail and extortion. The ways in which some cases have been handled extra-judicially by the police creates little incentive for victims to report cases.

In mid-2015, the government agreed to accept and follow up on the Universal Periodic Review (UPR) Working Group recommendations in the following two areas:

- LGBTI people’s access to health services, including treatment for HIV/AIDS; and
- To include sexual orientation and gender identity (SOGI) among the prohibited grounds of discrimination, repealing provisions criminalizing homosexual relations between consenting adults.

Accepting these recommendations represents a milestone for the LGBTI human rights movement in Malawi. Government, however, is not moving forward decisively, and LGBTI people remain at risk of human rights abuses.

7.2 Health and Wellbeing

The healthcare needs of LGBTI people are complex and varied, and in some instances require more specialized healthcare provisions, not generally available in poorly resourced primary healthcare facilities. Public health services provided through state or church-funded facilities cover the basics of primary health, while more sophisticated health services are provided either through a small number of private hospitals, or through donor-funded programmes.

Critical determinants and health factors for LGBTI people include low testing levels for HIV and STIs, limited knowledge on safe sex practices, limited risk awareness, inaccessibility of barrier methods like dental dams and condom-compatible lubricants, low negotiating skills on safer sex especially when engaging in transactional sex, substance abuse, low self-efficacy and self-worth.

Women

As a result of the criminalization of lesbians, there is concern that women engaging in same-sex acts are subjected to intersectional discrimination, likely limiting their access to health services. Due to the discrimination women already experience, the additional discrimination based on sexual orientation, especially gender non-confirming women is likely to affect them to a greater degree than men in a similar position.

While the HIV/AIDS challenge in Malawi has historically been viewed as predominantly a heterosexual epidemic requiring a standardized biomedical response, a more nuanced understanding of transmission has emerged over the past decade. More detailed research has focused on responses linked to HIV prevalence rates, risky sexual behaviours and access to HIV services among men who have sex with men (MSM) and other vulnerable populations such as sex workers.

MSM

The Malawi National HIV/AIDS Strategic Plan 2011-2016 notes that a sero-survey conducted among MSM in Blantyre in 2009 reported an HIV prevalence of 21.4%, with more than 95% of MSM unaware of their status; and limited awareness of the risks of unprotected anal sex. In addition, 17% of the men in the study reported being in concurrent bisexual relationships with over half of the respondents reporting both male and female sexual partners in the previous six months.

On one hand the increased focus on MSM has served to emphasize the importance of health and psychosocial service tailored to the specific sexual and reproductive needs of gay, bisexual and transgender men. On the other, it has opened up the sexual practices of MSM to greater public awareness, and in some instances to greater vulnerability and abuse. HIV/AIDS activists argue that MSM fail to access HIV and AIDS services for fear of persecution based on their sexuality, as well as ridicule from health personnel who may report them to the police for arrest. As a result of widespread stigma and discrimination those who do visit health facilities often do not receive comprehensive care because they are unwilling to reveal their sexual orientation or other important health and wellness information.

Attitudes of Healthcare Workers

Research recently undertaken by the Sexual and Reproductive Health and Rights Alliance found that most LGBTI people in three districts (Petauke, Mangochi and Chikwawa) experienced healthcare service providers to be homophobic. Healthcare providers themselves often have low levels of knowledge of sexual diversity resulting in high levels of negative attitudes toward sexual minorities. A four-country study undertaken in 2015, that included Malawi, found that the 46.7% of men at all sites reported experiencing at least one human rights abuse. 11.6% had been raped, 6.4% had been denied housing, 5.1% had been denied healthcare, 10.5% had been beaten by the police, and 18.7% had been blackmailed because of their sexual orientation. 16.3% were afraid to walk in their community, and 19.2% were afraid to seek healthcare services.

Social Exclusion

LGBTI people suffer additional discrimination in accessing education and work, are rejected by their families and communities, are forced to ‘live a lie’ by hiding their sexual orientation and live in constant fear of arrest. Rejection by family members, by fellow students at secondary schools and colleges, as well as in broader society leads to isolation, depression and hopelessness. Many LGBTI individuals in Malawi come from poor communities where poverty and deprivation are features of daily life.

7.3 Safety and Security

The human rights of LGBTI people to safety and security are often violated by the police and the criminal justice system. There are recorded instances where people accused of sodomy are stripped naked, medically examined, and tested for HIV without their consent, violating their rights to dignity, privacy and bodily integrity. In response to the Monjeza-Chimbalanga case the Centre for Human Rights at the University of Pretoria in South Africa, noted that the judgment “makes a mockery of the human rights provisions enshrined in chapter four of the Revised Constitution of the Republic of Malawi, 2004, particularly sections 15(1), 19, 20 and 21, which guarantee, respectively: respect for the rights of all persons; human dignity and personal freedom; freedom from discrimination; and respect for privacy. It erodes the progress Malawi has made in the promotion and protection of the rights of all persons; human dignity and personal freedoms; freedom from discrimination; and respect for privacy. It erodes the progress Malawi has made in the promotion and protection of the rights of all persons and constitutes a retrogressive step in the global effort towards dignity and equality for all.”

At the same time, the right to a fair trial, the right to legal representation, and specifically the right to have unconstitutionally obtained evidence excluded from trial are further contraventions of the Constitution.

7.4 Gender Identity

Commonly held understandings of sex and gender norms in Malawi are superimposed onto LGBTI people in a way that has distorted their different realities and created a set of multiple oppressions that perpetuate different types of social exclusion, stigmatization and discrimination. Transgender issues are poorly understood, even within the transgender community itself, and human rights defenders and activists themselves are often poorly informed on the issues. Transgender activists tend to highlight issues of transmen rather than transwomen. There is still very little research on the lived realities of transgender people in Malawi, especially in rural areas. It is evident from experience that transgender people face numerous obstacles related to social stigma and discrimination as well as severe levels of socio-economic disavantage and psychosocial trauma. The intersectionalities of socio-economic class, geographical location, language and gender exacerbates the challenges and discrimination experienced by transgender people in different areas, and are further compromised by the cis-normative erasure of transgender citizenship and rights in Malawian health, legislative and other frameworks, as well as the position of transgender people in prisons.
Ongoing criminalization of homosexuality is the biggest obstacle to realising LGBTI human rights in Malawi. Without clarity and decisive action on the part of the government, the situation for LGBTI people remains uncertain. Despite the government’s apparent reluctance to address the issue there is sufficient evidence to suggest that despite a disabling legislative environment progress is being made in terms of raising public awareness and sensitizing key stakeholders to the full human rights of LGBTI people.

Key areas for ongoing activism, advocacy and research include the following:

> ‘Joined up’ litigation and associated civil society advocacy that puts continued pressure on the executive and law-makers to remove the sodomy clauses in the Penal Code towards effectively decriminalizing homosexuality in Malawi.

> Key LGBTI players such as CEDEP along with other local and international development organizations need to generate data that addresses critical information gaps hindering focussed and targeted programming for LGBTI people. Particular gaps relate to LBT women.

> While more established national organizations such as CEDEP and CRHH have relatively sophisticated resource mobilization strategies, smaller LGBTI NGOs and CBOs struggle to secure funding for community level activities. Grassroots services and support are critical in addressing the needs of LGBTI communities, as well as for local level information sharing and awareness-raising, towards changed public attitudes, discriminatory behaviours that exclude and prevent LGBTI people from realizing their full human rights.

> Collaborative action on LGBTI human rights appears to have taken root within Malawian civil society and serves a strategic purpose in mobilizing cross-sectoral activism, bringing together different skillsets and capacities to address specific rights issues.

> Effective LGBTI and broader human rights movement building needs to strengthen transgender and lesbian leadership by building the capacities of WSW, transgender and intersex individuals and organizations.


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