





**HUMAN RIGHTS VIOLATIONS ON THE BASIS
OF REAL OR PERCEIVED SEXUAL ORIENTATION
AND GENDER IDENTITY IN MALAWI**

2014 REPORT



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Special thanks should also go to the many courageous individuals who came forward to report the abuses they had suffered to our field officers Dunker Kamba, Kenneth Chimombo and Ishmael Makhuludzo to whom we are also grateful. Based on our ongoing research into violations of the rights of lesbian, gay, bisexual, transgender and intersex persons, it is apparent that the cases highlighted in this report are, unfortunately, only the tip of the iceberg.

We would also like to thank our partners and friends who reviewed and sent valuable suggestions for this manual.

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EXECUTIVE SUMMARY

The pervasive stigma, discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons (LGBTI) in Malawi is the primary focus of this report, in line with the shared mandates of The Centre for the Development of People (CEDEP) and The Centre for Human Rights and Rehabilitation (CHRR) to promote and protect the human rights of sexual minorities. The evidence presented herein is the result of rigorous research and documentation efforts carried out by professional Human Rights Officers from both organizations in communities across the length and breadth of Malawi. While the cases detailed in this report offer a qualitative glimpse into the kinds of abuses that sexual minorities are confronted by in Malawi, it is important to note that the vast majority of rights violations are likely to go unreported because of homophobia, self-stigma, and fear of being exposed, or “outed.”

The majority of the 76 documented cases of rights violations that form the basis of this report involve men who have sex with men (MSM), reflecting CEDEP’s long-standing relationship with the MSM community across Malawi. CEDEP and CHRR researchers have more recently begun to engage with LGBTI individuals, and it is our expectation that future documentation efforts will bring greater attention to violations against lesbians, bisexuals, trans-gendered, and intersex people.

This report is an evidence-based tool that puts a human face on ongoing abuses of sexual minorities that violate both Malawi’s Constitution and standards set by international human rights instruments to which Malawi is a state party. It is essential that Malawi review its laws, practices and policies so as to ensure respect for the rights of sexual minorities. Further, it is important that the state institutionalize mechanisms that will allow LGBTI communities to obtain redress for violations committed against them.

METHODOLOGY

This report is based on research and documentation of human rights violations against sexual minorities in Malawi conducted by Human Rights Officers from The Centre for Development of People (CEDEP) and The Centre for Human Rights and Rehabilitation (CHRR) between June 2013 and March 2014. CEDEP and CHRR, both of which are headquartered in Lilongwe, work with networks of peer educators in communities across Malawi to gather allegations of violations of the rights of sexual minorities²⁶. Urban and rural areas were profiled, with a high concentration in the urban areas due to the fact that both organizations' satellite offices are in towns. Once reports of violations have been brought to the attention of headquarters staff at each organization, Human Rights Officers are dispatched to the field to ascertain the veracity of each report and conduct further research and documentation.²⁷

Documentation work conducted by CEDEP and CHRR relies on the testimony of primary sources—victims and eyewitnesses—each of whom is assured that their identity and any identifying information will be kept strictly confidential. In most of the cases of violations included in this report the names of individuals have been changed or omitted altogether, and specific place names have been withheld. This has been done in the interest of protecting the safety and privacy of those interviewed. Interviews were conducted in English and Chichewa with no translation.

Secondary sources such as the news media, and documentary sources such as police reports and medical records, were in many cases used to crosscheck and corroborate information provided by primary sources. In addition, CEDEP and CHRR conducted a literature review in the process of compiling this report to ascertain the human rights climate in Malawi.

26. CEDEP maintains field offices in Mangochi, Mzuzu, Blantyre and a network of peer educators in Mzuzu, Mkatobay, Mkhotakhota, Lilongwe, Mangochi and Blantyre. CHRR maintains field offices in Salima Karoga, Chitipa, Mchinji and Dedza.

27. CEDEP and CHRR carry out human rights documentation and maintain databases of violations on Martus, an open-source software program that allows users to create a searchable and encrypted database and to back this data up remotely to their choice of publicly available servers. Martus is used by human rights workers, attorneys, journalists and others to standardise, securely share, and secure their information from theft, loss, and destruction, and/or unauthorised access. Martus is developed and supported by Benetech, a non-profit technology organisation based in Palo Alto, California (www.martus.com)

Chapter 1 SITUATIONAL ANALYSIS

A 2012 study conducted by CEDEP and CHRR gauging attitudes of religious and traditional leaders attitudes towards sexual minorities found that 86.2% of respondents were aware of the existence of sexual minorities in the country. The study found that 66.7% chose negative words to describe their feelings towards sexual minorities, and that homophobia cuts across all social classes, gender and social groups in the country. Despite the negative perceptions and attitudes, the survey offered some hope for tolerance: with some variation by category, at least 40% of respondents across all categories agreed that LGBTI persons are entitled to the protection of their human rights.²⁶

Media outlets in Malawi have contributed to hostility toward non-gender-conforming individuals thanks to reporting that has little regard for privacy and scant understanding of LGBTI issues. During the final years of Bingu wa Mutharika’s presidency, the media was widely viewed to have taken a central role in pushing homophobic opinions front and centre. In 2012, when President Joyce Banda issued a moratorium on sodomy laws, journalists and media houses argued vehemently against decriminalization. At the same time, the moratorium prompted gay-friendly media houses to seek donor funds to create awareness on access to health services by the gay community—awareness-raising efforts that in many cases were conducted without due regard for their privacy, such that some gay people found themselves publically outed as a result.

Legal Environment in Malawi

In 2009, a world survey of laws prohibiting same-sex activity between consenting adults found that 32 countries in Africa have laws fuelling “state-sponsored homophobia.”²⁷ In Malawi’s case, homosexual sex is criminalised by sections 153 and 156 of the Penal Code, which prohibit “unnatural practices” and “public indecency,” respectively, and provide

26. Dr. Charles Chilimampungu, “Knowledge, Attitude, and Practices of Religious and Traditional Leaders Related to MSM and LGBTI Community in Malawi,” CEDEP and CHRR, February 2013. See also C. Bandawe and Mandala Mambulasa, “CEDEP Needs Assessment: For Effective Implementation of Human Rights, HIV and Other Health Related Interventions among MSM and WSW in Malawi,” CEDEP, 2012.

27. Daniel Ottosson, “State-Sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults,” May 2009, International Lesbian and Gay Alliance.

for sentences of up to 14 years in prison. Violations of Section 154 of the Penal Code carry a maximum sentence of seven years in prison, “with or without corporal punishment,” for “unnatural offences.” In December 2010, Parliament amended Malawi’s Penal Code by adding Section 137A, covering “indecent practices between females,” which provides for a prison term of five years for “any act of gross indecency with another female.”²⁸

Section 20 of the Constitution of the Republic of Malawi, however, provides for “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.”²⁹ Further, Malawi’s obligations under international human rights instruments and treaties to which it is a signatory, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples’ Rights (ACHPR), guarantee protection against discrimination of every person regardless of status³⁰. To point out the obvious, there is a contradiction between Malawi’s national laws and its international legal obligations³¹.

In a notorious 2010 case that aroused international condemnation, two gay men, Steve Monjeza Soko and Tionge Chimbanga, were charged with the offence of “indecent practices between males” under Section 156 of Malawi’s Penal Code. Soko was further charged with “buggery” contrary to Section 153(A) of the Penal Code, and Kachepa was further

28. “Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi,” *International Commission of Jurists*, February 8, 2011.

29. *Constitution of Malawi, Chapter IV, Section 20, Paragraph 1. The Malawi Constitution does not specifically prohibit discrimination on the grounds of sexual orientation. However, paragraph 2 of Section 20 provides for a remedy in that “Legislation may be passed addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts.” Constitution of Malawi, Chapter IV, Section 20, Paragraph 2.*

30. *The treaty monitoring bodies for the ICCPR and the ICESCR (both of which Malawi acceded to in 1993), have stated that the phrase “other status” in the non-discrimination provision encompasses sexual orientation.*

31. *See “An Analysis of Legal and Policy Issues in Malawi In the Context of Lesbian, Gay, Bisexual and Transgender (LGBNT) People’s Human Rights and HIV/AIDS,” CHRR and CEDEP, May 2011.*

charged with “permitting buggery” contrary to Section 153(C) of the Penal Code. Both were convicted in May 2010 and sentenced to a maximum prison term of 14 years. The Chief Resident Magistrate in Blantyre, Nyakwawa Usiwa-Usiwa, told the accused that the harsh sentences were meant to protect Malawian society:

I will give you a scaring sentence so that the public be protected from people like you, so that we are not tempted to emulate this horrendous example. To me this case counts as the worst of its kind and carries a sense of shock against the morals of Malawi.³²

Immediately following the conviction, President Mutharika extended pardons to both men during a visit by UN Secretary-General Ban Ki-Moon.³³ The act of clemency was not considered to be reflective of a change in attitude so much as political calculations in the face of criticism, including from Secretary-General Ban.³⁴ During President Bingu wa Mutharika’s time in office,³⁵ homophobic statements from politicians and religious leaders were widely regarded to have served as political cover for poor governance and increased repression.

The presidency of Joyce Hilda Banda³⁶ brought gains to the LGBTI community in Malawi. On November 5, 2012 then-Malawian Minister of Justice and Attorney General Ralph Kasambara announced a moratorium on all sodomy laws and issued orders to the police not to arrest anyone who committed homosexual acts pending a parliamentary debate on repealing the legislation. In 2013, Malawi’s High Court agreed to review the constitutionality of Section 137A of the Penal Code, with CEDEP, CHRR and others in the LGBTI movement arguing that the provisions stand in conflict with the Constitution. So far, the current administration of President Peter Mutharika does not appear to have built on the momentum provided by his predecessor; Mutharika’s Attorney General, Anthony Kamanga, has successfully blocked the High Court review of Malawi’s sodomy laws on procedural grounds, having obtained an interim order in the Supreme Court staying the proceedings.³⁷

32. *Criminal Case Number 359 of 2009, Republic v Steven Monjeza Soko and Tionge Chimbalanga Kachepea.*

33. *Malawi pardons jailed gay couple,* BBC News, May 29, 2010.

34. *UN: Ban Ki-Moon Condemns Homophobic Laws,* Human Rights Watch, December 17 2012.

35. *May 24, 2004 to April 5, 2012.*

36. *April 7, 2012 to May 31, 2014.*

37. *“Malawi: Litigation to Decriminalise Consensual Same-Sex Sexual Acts,” Southern Africa*

Repeal of Malawi’s regressive laws, while clearly a step in the right direction, will not be enough to ensure that the LGBTI community can enjoy their basic rights without fear of being arrested or discriminated against. As detailed in this report, existing gaps between policy and practice require that efforts to improve respect for LGBTI rights in Malawi extend well beyond the judiciary.

Cultural Context in Malawi

Homosexuality in Malawi: Is it a new phenomenon? Has it been brought by the West? Or has it been here since the old days? As the Malawian public grapples with these questions, the fact remains that homosexuality has long been tolerated in the cultural life of Malawi; Malawian culture even has a name for it: *amatanyula*.³⁸ The perception that same-sex practices are alien to the social and cultural fabric of Africa is deeply ingrained in the minds of Malawians, which makes the fight for the rights of sexual minorities much harder. As one observer noted, “Malawians, sad to say, remain steadfast in their resistance to homosexuality.”³⁹

Traditional and religious leaders command great respect among their communities; as custodians of culture and morality who may have little or no understanding of LGBTI rights issues, they have in many cases propagated trans- and homophobia. A University of Malawi study found that 67.8% of traditional leaders are strongly of the view that the LGBTI community never existed in Malawi,⁴⁰ a position that was repeatedly echoed in a meeting of traditional chiefs organised by CEDEP and CHRR in Mzuzu in April 2014.

While their attitudes toward homosexuality are not uniform, many traditional leaders consider same-sex relationships to be a destabilizing force that runs contrary to Malawi’s cultural norms, while many religious leaders view sexual minorities to be inherently sinful, if not demon-possessed. Partly as a result, the LGBTI community has been subject to hateful speech, discrimination and physical violence in communities

Litigation Centre, blog post, date unknown.

38. Chichewa term for homosexual.

39. Undule Mwakusungula, 2013, “The LGBT situation in Malawi: an activist perspective,” in *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalization and Change*, School of Advanced Study, University of London, pp. 359-37

40. Dr. Charles Chilimampungu, “Knowledge, Attitude, and Practices of Religious and Traditional Leaders Related to MSM and LGBTI Community in Malawi,” CEDEP and CHRR, February 2013.

As religious leaders, we saying nowhere in the Bible or the Qur'an is homosexuality supposed to be there or promoted. On the other hand, what we are saying is that people who are practicing this act are supposed to be served on three things: They are supposed to get protection, love and also we have to look after them, because they are human beings and are totally entitled to all human rights.⁴⁴

Sheikh Tambuli was roundly derided by Muslim leaders in Malawi for his comments, prompting some to call for tougher laws against homosexuality.⁴⁵ The Muslims Association of Malawi went a step further, issuing a statement arguing that homosexuality itself constitutes a rights violation, as it “contradicts our cultural values and beliefs that are also guaranteed by the Universal Declaration of Human Rights and the African Charter on Human and Peoples’ Rights.”⁴⁶

However, all is not lost; with continued advocacy and awareness raising from CEDEP and CHRR, some religious and traditional leaders have come out in support of the LGBTI community, and have continued to call for the respect and promotion of their human rights.⁴⁷ Following a traditional leaders’ meeting organized by CHRR in April 2013, one senior chief said:

My view after that experience is that stories of people who fall in love with members of the same sex are real. These people are there and we might be eating, drinking or doing many other things together with them.

44. Ephraim Munthali, “Sheik Backs Gay Rights,” *The Nation*, October 20, 2013.

45. Facing heavy criticism, Tambuli later retracted his statement and said he’d been misquoted. “Sheikh Tambuli regrets his controversial gay remarks,” *Malawi Muslims website*, October 29, 2012. One reader wrote in the comments section of this posting that Sheikh Tambuli should die for what he said.

46. “Malawi Muslim Group Condemns Sheikh Tamubuli, Gay Campaigners,” *Nyassa Times*, October 24, 2013.

47. CEDEP and CHRR gauge the sentiments of religious and traditional leaders in meetings and trainings that are held on a regular basis in locations across Malawi

CHAPTER 2: I WANT MY STORY TO MAKE A CHANGE

Between January and December 2013, CEDEP and CHRR Human Rights Officers documented and verified a total of 76 instances of violations of the human rights of sexual minorities in Malawi. Of that total, 16 violations took place in Mzuzu, a district in the country's north, where many abuses were perpetrated by family members and members of community. In some cases, men who were alleged to be gay were beaten or paraded by the police; in other cases, blackmail and extortion were used by authorities who agreed not to publicize the case in return for money or favours. In the commercial capital of Blantyre and neighboring districts, 12 cases were documented involving harassment, beating, denial of health services and arbitrary arrest. In Lilongwe and neighboring districts, 22 cases were documented, ranging from arbitrary arrest to forced eviction to physical violence. In Mangochi, where the environment for the LGBTI community was found to be very volatile, the total number of violations documented was 26.²⁶

Socio-Economic Impact of Homophobia in Malawi

The criminalization of same-sex relationships in Malawi conspires with a social climate that is profoundly discriminatory of sexual minorities to violate human rights in ways that can be complex and compounding. For example, the physical assault of a person on the basis of their sexual orientation or gender identity could lead to further denial of the right to access education, housing, and health services, as well as the right to work. One member of the LGBTI community in Malawi told CEDEP:

How do we improve economically if we remain under, if we are beaten for being who we are? Why tell me of economic empowerment when the laws are calling for my arrest?²⁷

When LGBTI people are marginalized, their economic contribution is limited and they are more likely to find it difficult to improve their lot and sustain themselves. LGBTI people are at greater risk of violence and have less recourse to justice than their peers, and lesbians are more likely than the general population to be victims of sexual violence. Lack of access to education and employment can push LGBTI people into sex

26. *The Nyasa Times*, November 25, 2013.

27. CEDEP/CHRR interview, location withheld, 2013.

work and expose them to health risks. Many members of the LGBTI community have been evicted by landlords or chased away by neighbors due to their presumed or known sexual orientation or observed gender non-conformity.

In addition to social stigma, LGBTI—especially non gender-conforming LGBTI—have been physically assaulted in public; many told CEDEP and CHRR Human Rights Officers that they fear corrective rape and future attacks, and that threats of violence affect their daily movements. For example, as will be discussed in detail below, when a young man was outed by his friends he was beaten, kicked out of his home, and his computer shop was vandalized.

Arbitrary arrest and detention

CEDEP and CHRR’s research and documentation of rights abuses in Malawi shows that sexual minorities are subject to arbitrary arrest and detention by police officers who appear to have an uncertain grasp of the law and little regard for due process rights. Victims were in many cases held without charge. The cases that follow illustrate that the Malawian government’s much-publicized moratorium on implementation of sodomy laws was little more than lip service.

Consensual sex fetches six years’ hard labour

On June 2013 the First Grade Magistrate in Rumphi sentenced Kenneth, a 21-year-old secondary school student, to six years imprisonment with hard labour for having anal intercourse with a younger schoolmate. Kenneth was alleged to have dragged the younger student to the school grounds during the evening study period, where he forcefully sodomized him.

Immediately after the case appeared in the news, a Human Rights Officer from CEDEP interviewed the accused in prison, as well as the purported victim. Both confirmed that they had disappeared into the school grounds to have sex. When other students returned from the evening study, each of the two said that they bid each other goodnight and went their different ways. Back at his hostel, the younger student was quizzed by his roommates, some of whom claimed to have seen him with a known “gay” student; he admitted to having had sex with Kenneth at the

school grounds. Kenneth, speaking to CEDEP from his prison cell, said:

Chaos broke out. They came to me house and dragged me out of my bed. They beat me up. Then, in the morning, they handed me over to the headmaster, and he reported the matter to the police. They said that I had sodomised [the younger student] against his will.²⁸

CEDEP's interview with the younger student revealed a key discrepancy: while the younger student testified to CEDEP that he was 19 years old, the criminal charges against Kenneth were based on the apparently erroneous understanding that the younger student was 14 years old. Further, Kenneth told CEDEP that he had been advised by the police to plead guilty so the charges would be reduced. Without proper legal advice, counsel, or representation, he did just that, and unwittingly paved the way for his own imprisonment.

Arrested for kissing in a night club

On Sunday July 2, 2013, two young gay men who work with CEDEP as Interpersonal Communication Volunteers were arrested for kissing and fondling in a local nightclub. While at the club, a friend of the two asked to join them since he had no money to buy drinks, but they refused. At around midnight they were seen kissing on the dance floor. When they decided to go home they were intercepted by two uniformed police officers outside the club; both were arrested and led them to the police station for questioning. One of the two told CEDEP:

The guy we refused to buy drinks for is a policeman, though he wasn't on duty that night. We know each other from the gay circles. He wanted to punish us so he called his [police] colleagues to arrest us.

The two men were locked up for two days without charges and then released, apparently because the arresting officer had failed to track down a witness to testify against them. Both subsequently crossed into Tanzania for fear of continued stigma from the public.²⁹

Peer educators rounded up at College of Medicine

CEDEP and the College of Medicine at the University of Malawi organ-

28. CEDEP/CHRR interview, location withheld, 2013.

29. CEDEP interviews, location withheld, 2013.

ised a training for CEDEP peer educators on March 20th, 2012 to prepare for an upcoming population estimate study to be conducted in the district. According to a CEDEP Human Rights Officer who spoke with primary sources involved in the incident, and according also to what the police officers said when they arrested the peer educators, students at a nearby Islamic school reported to their head teacher that people at the meeting were recruiting others to be gay. The head teacher allegedly sent them to disturb the meeting and several peer educators were roughed up. Police arrived on the scene, but instead of arresting the assailants they arrested three of the peer educators. At the police station, they were subjected to degrading treatment, physically assaulted and held without charge. CEDEP staff and College of Medicine senior management negotiated with police officials for a week before the peer educators were released unconditionally.

Attacked by mob, taken straight to jail

In July 2013, a young gay man named Vincent was arrested for what police referred to as “causing serious injury to his friend while practicing anal sex.” According to testimony taken by a CEDEP Human Rights Officer, the two decided to try sex for the first time one Sunday afternoon at a private home. It is not clear as to who alerted the neighborhood, but according to Vincent, dozens of people flocked to the house while the two were still inside:

They were singing loud songs and dancing. Some were armed with sticks. We were terrified. They wanted to know what we had been doing inside the house.

With Vincent’s partner unable to walk properly, several men forcefully examined him and discovered that he was bleeding from the anus. He admitted to having had anal sex without lubricant, whereupon Vincent was badly beaten. When the matter was reported to the police, it was Vincent, not the perpetrators, who was placed under arrest.

CEDEP visited the police station two days later. Vincent testified that he been physically assaulted by police officers while in custody. CEDEP’s Human Rights Officers negotiated with the police for about four hours, who then released Vincent on bail. While Vincent awaits trial (for which

the date has not yet been set), he has been summoned to report to the police station once each week and has been asked to surrender his passport.

Loss of Family Ties, Eviction, Exclusion from Community and Church Because of Sexual Orientation

Aside from formalized prosecution by law enforcement officials and judiciary apparatus, LGBTI persons face more informal, but equally insidious forms of discrimination. In Malawi, family, community and religion are three critical elements of psychosocial support that are viewed as pillars of personal development; however, LGBTI people are threatened in all three of these realms. Individuals who are suspected of being LGBTI are subjected to abuse, violence and harassment by community members, neighbours, religious persons and family members. In the most extreme cases, the violence unleashed leads to homelessness and destitution; in other cases it compels them to drop out of school or seek refuge abroad.

Mother puts son out of the house

Jacob, 27, told a Human Rights Officer that his fate took hold moments after his name appeared on a Facebook list of purported Malawian gays and lesbians:

My relatives saw my name on the list. My mother asked me to leave the house because of her position at the church. I went to stay with a friend in the city but I'm trying to find a solution for my life since I have no other people to help me.³⁰

Jacob's life has changed drastically as a result of his eviction. He is unable to socialise and misses going out like he once did. About two weeks after leaving home, Jacob was attacked by members of his family who had come to the city looking for him. His friends testified that the family members tied him to a pole with ropes and battered him in an effort to "turn him straight." Jacob, who had been working in the family business, was fired and chased from the family home. He is currently seeking asylum abroad.

30. CEDEP/CHRR interview, location withheld.

Gay and Christian on the radio

In March 2013, two openly gay men participating in a discussion about religion on a popular radio program mentioned the fact that they are Christians; they also gave the names of the churches they attended. The program was aired several times, after which members of the public called their families, mocked the pastor and pressured the church to act on the knowledge of their sexual orientation--since the church preaches against homosexuality. The pastor told the men that they were a disgrace to the church. Both were kicked out of the church. As one of the men put it,

I can't just change my sexual orientation. I can't change the way I am.³¹

Physical Assault against Men who Have Sex with Men

Violence at Panel Discussion

In Mangochi in March 2013, CHRR organized a panel discussion on access to health by men who have sex with men (MSM). Joy Radio, a local radio house, was invited to broadcast the discussion on the condition that the names of the men participating in the panel would not be used, and that their voices would be altered to protect their identities. Joy Radio also promised to air the story only once. Staffers at the radio station did not stick to their promise: they did not alter the men's' voices, nor did they edit out the men's' names. The two men were subsequently physically assaulted due to their sexual orientation. One was disowned and evicted by his parents; he now lives with his sister. Both have found that they are no longer welcome as congregants at the churches they had been attending.³²

CEDEP Human Rights Officer Assaulted

In March 2013 a CEDEP Human Rights Officer went to verify the case of a young gay man who had been subjected to harassment and physical assault by members of his community, including family members. When the Officer met with the victim in a local restaurant, a local man doused

31. CEDEP/CHRR interview, location withheld

32. CEDEP/CHRR interview, location withheld

the two men with a bucket of water and told them that he did not want gay people in that restaurant and in the district. He threatened to kill them. The officer and the victim collected their things and walked out to the car; a group of men rushed to the car and smashed the rear window. When the officer emerged from the car he was hit on the back of the head with an iron bar and he fell unconscious. A Good Samaritan rushed



him to a nearby mission hospital where he regained consciousness the next day. The matter was reported to the police but to date the authorities have not taken action.

Facebook Posting Leads to Attack

Aaron, a gay man, was attacked in June 2013 by two men while escorting a child to school. Though could not identify the men, it was apparent to him that he was targeted due to his perceived sexual orientation:

They kept saying, *Iwe wa homo*.³³

The incident happened after the outing of homosexuals on Facebook. Aaron's name was on the list, though he had not yet become aware of that fact.

33. Chichewa for "We know you are gay."

That's why I was confused when they stopped me and said, "Tell us, how you do it?" I had no idea what they were talking about. One of them grabbed me by the belt and asked if it was true that I was gay.

Aaron tried to break free. A scuffle ensued and a smock Aaron was wearing was torn from him. Luckily, he was released due to the intervention of a passerby.



Aaron showing his clothes torn by his attackers.

Victim Afraid to Seek Medical Care

In some instances, victims have been afraid to seek medical treatment after an assault. One particularly compelling case involved a young medical professional based at a district hospital who was assaulted by a mob after he was spotted chatting with another man in a club. He said,

The beating was meant to teach me a lesson. It was supposed to turn me straight.

Afterward, he didn't feel safe reporting the incident to the police for fear of further abuse; what is more remarkable, he didn't even feel safe seeking medical attention at the hospital where he worked. As he put it,

I was afraid that more people would find out. It would just bring me more problems. If my boss found out that I was beaten up because I'm gay, I would lose my job.³⁴

Assault compounded by loss of livelihood

David had been living with his boyfriend at his uncle's house for eight years without incident until December 2013, when his life was turned upside down. On New Year's Eve, he and his boyfriend organised a New Year's party, which was attended by several neighbours and friends. David and his partner left the party for a nearby computer shop owned by David. Unbeknownst to them, David's youngest nephew had followed them and took pictures of them kissing. New Year's revelers turned to assailants as they descended on the computer store, beating the two men up and setting fire to David's shop. Local police arrived at around 2 am, but David and his partner had already decided to leave the scene in order to avoid any unwarranted entanglements with the law.

Two days later David returned to his uncle's house, where neighbours informed him that he was wanted by the police. His uncle told him point-blank that he was no longer welcome in his home. Initially, David's grandmother and other relatives welcomed him into their homes, but after having been informed of the incident by his uncle they asked him to leave. Having lost his livelihood, David now survives by doing piece-work and sometimes by begging. His partner managed to flee the country and is now seeking asylum in South Africa.³⁵

Physical Assault against Women Who Have Sex with Women

In Malawi, it is not only gay men who suffer acts of abuse and violence. Lesbians, too, have reported human rights violations. As CEDEP builds its programming for women who have sex with women (WSW), it has grown increasingly aware of such cases.

Lesbians harassed, assaulted at a club

Marilyn and her four friends were at a bar on the night of on 31st December 2012; when she and one of her female companions started kiss-

34. CEDEP/CHRR interview, location withheld

35. CEDEP/CHRR interview, location withheld.

ing, they suddenly found themselves involved in a violent confrontation.

A man saw us and shouted, “*Ma Lesbian musiyane.*”³⁶ Somebody pushed me to the floor. Another man came. He said he was going to get us arrested.³⁷

A scuffle ensued. Bottles were broken and both girls were hurt by broken glass.³⁸ A man who claimed to be a lawyer arrived at the scene and stopped the fight. He gave the girls his card and encouraged them to take legal action. He promised that he would represent them. However, what happened that night scared the girls so much that they were afraid to report the incident to police.

Coming out ordeal for Mercy

Early in 2013, Mercy Kumwenda made headlines when she told a public meeting in Lilongwe that she was lesbian. Mercy said she had decided to come out in the open to show Malawian society that lesbians exist in Malawi.



36. Chichewa for “Lesbians, leave each other.”

37. CEDEP/CHRR interview, location withheld.

38. The CEDEP/CHRR researcher who documented this case noted scratches on both women’s bodies consistent with wounds from a broken bottle.

Shortly after news of her decision broke in *The Daily Times*,³⁹ Mercy was bombarded with text messages from friends, neighbours, and relatives. Social networking and gossip sites were inundated with negative, insulting comments about her and her sexual orientation. Mercy received disparaging text messages that were so threatening she Mercy was forced into hiding. She later told a Human Rights Officer that she had been disowned by her father and that her landlord, worried that people would come and destroy his house, had evicted her.⁴⁰

39. "I am a Lesbian," *The Daily Times*.

40. CEDEP/CHRR interview, location withheld, 2013.

CHAPTER 3: THE WAY FORWARD

This collection of accounts of human rights abuses suffered by sexual minorities in Malawi provides a brief glimpse into the daily lives of people who are targeted for violence, discrimination and arrest for no other reason than whom they love. CEDEP and CHRR hope to use this report as a platform for lobbying for the respect and protection of LGBTI rights in Malawi. Both organizations are committed to forging ever stronger collaborative relationships with policy makers at all levels of government in the interest of achieving these goals.

At the same time, it is anticipated that the evidence of human rights violations detailed in this will be useful in informing international mechanisms for improving respect for human rights, such as the UN Human Rights Commission's Universal Period Review process and the Periodic State reports submitted to the African Commission on Human and Peoples' Rights every two years. CEDEP and CHRR believe that the use of evidence-based reporting on violations of sexual minorities' rights in Malawi is the best way to influence both domestic and international policymaking in a direction that is conducive to increased respect for the rights of all.

CEDEP and CHRR hope that this publication will further inform public discourse on the human rights of sexual minorities on the community level in Malawi, and, further, that it will allow both organizations to deploy data on the nature of violations in the service of protecting the rights of sexual minorities. Finally, CEDEP and CHRR hope to use this report to enhance the capacity of LGBTI communities in Malawi to engage directly with stakeholders, policy makers and law enforcers in promoting their right to live lives that are free from violence, discrimination and social stigma.

RECOMMENDATIONS: One struggle, many fronts

To The President of the Republic

- Ensure that appointees to The Malawi Human Rights Commission have professional background and expertise in human rights, and

that the independence of the Commission is safeguarded.

- Take all necessary steps to ensure that The Malawi Human Rights Commission has adequate funds to carry out its mandate.

To Members of Parliament

- Repeal Sections 153(a), 154, 156 and 137(a) of the Penal Code, which criminalize or otherwise impose punitive sanctions on consensual same-sex sexual conduct.
- Amend the Penal Code to introduce penalties for hate crimes, and explicitly include “hatred due to different sexual orientation or gender identity” as an aggravating circumstance in the commission of a crime.
- Amend Section 20(1) of the Malawi Constitution to explicitly extend protection from discrimination to sexual minorities.

To The Minister of Home Affairs

- Set up mechanisms to track and analyze data on arrests of individuals on the basis of sexual orientation and gender identity, both on an ongoing basis and dating back to November 2012, and ensure that up-to-date data is disseminated to relevant authorities, including The Malawi Human Rights Commission.
- Promote public information campaigns to encourage individuals to submit complaints to relevant authorities concerning police misconduct.

To The Inspector General of the Police

- Introduce ongoing training for all levels of police, including Victim Support Units, on human rights obligations in relation to sexual orientation and gender identity, and on efficient and impartial investigation and prosecution of attacks against sexual minorities.
- Circulate written instructions to all levels of the police in Malawi reiterating the government’s November 2012 commitment not to arrest individuals on the basis of sexual orientation

To The Minister of Health

- Issue time-bound instructions to senior personnel in the Health Ministry's Department of Training to design and implement a curriculum on non-discrimination for use by health care workers in public health clinics and hospitals in Malawi.

To The Malawi Human Rights Commission

- Investigate, document and issue public reports on ongoing instances of arbitrary arrest in Malawi, with attention to arrests of individuals on the basis of sexual orientation and gender identity.
- Monitor and condemn speech that incites violence or hatred against minority groups in Malawi, with attention to sexual minorities.

To Civil Society Organizations

- Mainstream the rights of sexual minorities in advocacy work and engagement with the Malawian government and other stakeholders.

