

**MALAWI**

Civil Society Report on LGBTI Rights (Contribution to the List of Issues Prior to Reporting)

To be submitted for the adoption of the List of Issues Prior to Reporting at the 131<sup>st</sup> session of the Human Rights Committee

March 2021

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## **A. Introduction**

### **i. Joining organisations**

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### **ii. Report supported by:**

- Centre for Civil and Political Rights (CCPR)
- Southern Africa Litigation Centre (SALC)
- COSPE

### **iii. Methodology**

The methodology used to draft this submission was a consultative process which consisted of a training, given by CCPR, to LGBTI organisations in Malawi. The training focused on the International Covenant on Civil and Political Rights, and the review process by the Human Rights Committee. After the training, a drafting committee collected input for the report and wrote a first draft, which was finalised after a round of feedback.

## **B. Contribution to the List of Issues Prior to Reporting**

### **1. Decriminalization of consensual same sex activity**

#### **1.1 President Lazarus Chakwera refers same sex rights for Malawians to decide through a nation wide survey to be done by the Malawi Human Rights Commission**

President Lazarus Chakwera has left the issue of legalizing same-sex marriage to the country's citizens to determine how the matter should be handled.<sup>1</sup>

#### **1.2 Denial of registration of LGBTI organization**

On 26<sup>th</sup> July 2016, the Board of Trustees of Nyasa Rainbow Alliance filed with the Registrar General's Department an application to incorporate and register Trustees of National Rainbow Alliance.

A letter addressed to the Board of Trustees dated 18<sup>th</sup> May 2017, the Respondents refused to register the organization on the ground that the 'membership practices' are recognized as an offense under the Laws of Malawi.

On 26<sup>th</sup> July 2017, the Applicants, being members of Nyasa Rainbow Alliance, filed with the court an application for leave for judicial review proceedings against the decision of the Respondents to reject their association/organization's application to be registered under the Trustees Incorporation Act.

They wish to associate themselves with likeminded individuals and assert their right to freedom of association, expression, and assembly which are important democratic values protected by our Constitution and the ICCPR. They do not envisage to break the law or promote any criminal activity but merely to exercise

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<sup>1</sup> <https://www.mwnation.com/chakwera-refers-same-sex-rights-to-public/>

their rights to freely participate in and be part of the democratic processes of Malawi.

This case is at the high court and the Organization is waiting for the court's decision which was referred to a panel of judges from 3 regions of Malawi, the case was referred to as a constitution review case.

### **1.3 Case of LGBTIQ refugees**

LGBTIQ refugee persons not being able to disclose their status to immigration officials.

An entry requirement to Malawi under Immigration act of 1964, requires people entering the country to declare their marital status and sexual orientation among others. As such, LGBTIQ identifying persons from Rwanda, Congo and Burundi force themselves to give false information just for them to be granted refugee status. However, sexuality cannot be hidden, with time they connect and meet local LGBTIQ members, organizations where they disclose their real identities. Cases where their sexual identities are known are subjected to several abuses such as rape, blackmail, eviction from the camp, confiscation of materials and revocation of their refugee status.

### **Recommendation against discrimination of consensual same sex activity**

- Uphold the principle of non-discrimination by decriminalizing consensual same-sex relations, and to explicitly include sexual orientation and gender identity among the grounds of discrimination prohibited by the Constitution.
- Guarantee the freedom of association of LGBTI organisations
- Remove the requirement to fill in sexual orientation and gender identity for refugees.

## **2. Access to health services**

### **2.1 Denial of a gay man to access healthcare**

A gay man went to a private health facility in Lilongwe area 24 to get treated for an STI, he was checked by a medical assistant who after examining him left the room and came back with another health worker to examine him again, upon asking why he was being checked twice the health worker responded by saying that they have never seen an anal STI and so they wanted to see. He left the facility and went to Bwaila Hospital, a government facility where he was given similar treatment. He ended up just going to a pharmacy to buy medication.

In Blantyre, another gay man had anal STIs. When he went to a public health facility Queen Elizabeth Central Hospital Doctors did not assist him. He was verbally harassed by the health workers. After two weeks he went to Johns Hopkins Research Clinic. At the clinic he was screened and assisted.

### **2.2 Case of Transwoman denied STIs treatment, pronounced dead by HCW and had her housed torched down by villagers; suspected of satanism.**

Case of a transwoman living positively, who had a sexually transmitted disease (Anal warts) and went to the hospital to seek treatment. When she was screened, nurses told her to wait outside for further examination, she waited for hours but no other person came through to her. After long waiting hours she went to ask one of the nurses on the progress. It was there where the nurse told her that they will not be able to assist her and she was sent back. Without help, she went back to her house, hoping to buy drugs for herself and self-medicate. However, she did not find money to buy the medicine, thus she was using salt and water to treat the anal sores, after some time, she started to develop sores on the throat, the sores further spread covering her body, hands, and feet. Her situation worsened

and was helped by a peer educator who took her to Kamuzu Central Hospital. There she was hospitalized for three weeks, she grew thin, she couldn't move on her own and news in the village was circulating that she was dead by those that had visited the hospital. When she got back to the village, people started calling her names, mocked her that she was a ghost, that she has escaped from the grave and God has given her a chance to repent if she does not want to go to hell. On the same day she returned home, a kid from the neighbor's home died; people accused her of killing the kid as such they burned down her house in an effort to chase her out from the village.

### **2.3 Transwoman commits suicide at Kamuzu Central Prince**

Gift, a transwoman visited Kamuzu Central Hospital for a routine STI checkup. She was diagnosed with anal STIs, she was then referred for x-ray but the person at the X-ray department kept on chasing her away now and then. The process frustrated her, she ended up throwing herself down from the top floor and died.

### **Recommendations on access to health care**

- Take concrete legal and policy measures, including the provision of adequate human rights training to health personnel, to eliminate all forms of stigma and discrimination in health settings, against women and girls, LGBTI persons, persons affected by HIV/AIDS and persons with mental health conditions and psychosocial disabilities.
- Increase the access and availability to quality health services for LGBTI persons
- Ensure that the new HIV/AIDS National Strategic Plan 2020-2025 comprehensively incorporates specific health needs and demands of LGBTIQ communities, and the safety of actors engaged in the promotion process.

### **3. Hate crimes and physical violence**

#### **3.1 Lesbian woman raped in police cell**

A 40-year-old lesbian woman was arrested on basis that she had abducted a child (3 years old). The lesbian woman started to cohabit with her lover (also a lesbian woman, 33 years old). The parents of her lover lodged a complaint to police and the police officers arrested the lesbian woman. On her first night in cell, the police officers insulted her for her sexual orientation, and they ended up raping her throughout the night.

She did not report the issue to seek justice out of fear of losing her job as she was given a condition that if she reports the case, that means she can only be released on bail. This means she will have to leave work and meet bail conditions. So she just left the issue so that she be released without any conditions.

#### **3.2 Unfair Dismissal of a gay man from Military force**

In November 2020, a young gay person was dismissed from work based on his sexual orientation. The gay man is being falsely accused of taking advantage of a drunk man, by sleeping with him. The case was reported to the police and is currently being heard at the Zomba magistrate court. While the case was referred to the court, the gay man was arrested and spent two weeks in a police cell until he was later discharged from his duties as an employee of the Malawi Defense Force. His dismissal was on the basis of having carnal knowledge against the order of nature, which is against section 153 of the penal code, a case he was charged with and yet to be tried.

### **3.4 Unfair Dismissal of a gay man from Blantyre**

A gay man from Blantyre was blackmailed and arrested by police officers from Ndirande police station because of his sexuality. At the police station, he was sexually harassed by female police officers, through sexual arousal. He was then severely beaten and ended up losing his teeth. When the issue was made known to his employees, they dismissed and relieved him from his work.

### **3.5 Mob assault of a transwoman**

One Sunday morning, a transwoman was going to church, on the way she was assaulted and stripped naked. Her attackers were recorded as to be saying she was beaten because she was not conforming. There were videos of her assault taken and shared on social media platforms. She reported the case to Kanengo police where instead of being assisted by the law enforcers she was equally insulted by the police. To date nothing has been done about this case.

### **3.6. Physical Assault of a transwoman from Dedza**

A transgender woman was verbally attacked because of her sexual orientation and gender identity at a drinking joint in Dedza. Upon seeing that her life was in danger she left the drinking joint heading for home, her attackers followed her and beat her and left her for death. When she regained her consciousness, she was taken to the nearest hospital where instead of getting help she was also insulted by health workers. The case is currently in court and her attacker was released on bail.

### **3.7 Physical Assault of a Transwoman in Zomba by Military police**

A transwoman was beaten and harassed by military officers in Zomba. They recorded the ordeal on video and shared it via social media platforms. The

case was reported to authorities for redress but none of the soldiers were persecuted. This is an element of abuse of office by military officers. The video that was shot while being bitten by the military in one of their rooms clearly showed that she was physically tortured based on her gender identity.

### **3.8 Physical assault of transmen by police officers from area 25**

Two Transgender men aged 23 and 25 from Lilongwe in May 2017, were physically assaulted by three police officers from Area 25 Kanengo police station. During the beating the officers warned them to stop “doing lesbian activities” and telling them that they were “unwanted people in Malawi.”<sup>2</sup>

### **Recommendations on Hate crimes and physical violence**

- Take measures against discrimination against LGBTI people and fight impunity for violence based on gender identity and sexual orientation among the prohibited grounds of discrimination
- Investigate all alleged cases of hate crimes and physical violence against LGBTI people
- Make sure that victims have access to justice and remedies
- Organize awareness raising campaigns for law enforcement officials about sexual orientation and gender identity

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<sup>2</sup> <https://www.hrw.org/report/2018/10/26/let-posterity-judge/violence-and-discrimination-against-lgbt-people-malawi>

## 4. Speech against LGBTI persons

### 4.1 Hate Speech by Msonda

- Msonda a renowned politician made a speech where he referred gay persons as dogs.<sup>3</sup>

### 4.2 Hate speech on social media, articles, and media

Various media outlets have published stories of LGBTIQ people in negative way.<sup>4</sup>

### 4.3 Religious protest against LGBTIQ person from Mzuzu

A group of young pastors in Malawi have called on the government to arrest 4000 homosexuals living in the northern city of Mzuzu.<sup>5</sup>

### 4.4 Case of gay man publicly outed in social media

A gay man posted a photo of himself at family wedding on Facebook. Some of his followers came to the post and instead of commenting on the photograph, outted him and castigated him for being Gay. Screenshots of the post were taken and consequently shared on other social media platforms such as WhatsApp and Twitter. Being known as a gay person in Malawi attracts a lot of hate speeches on social media,

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<sup>3</sup> <https://outrightinternational.org/content/judgment-malawi-hate-speech-case-reserved>;  
<https://malawi24.com/2016/01/10/msonda-dares-gay-rights-activists/>;  
<https://www.reuters.com/article/us-malawi-lgbt-rights-idUSKCN0V02DG>;  
<https://76crimes.com/2017/01/16/malawi-court-to-decide-is-it-hate-speech-to-say-kill-the-gays/>

<sup>4</sup> For example : <https://www.nyasatimes.com/homosexual-community-in-mangochi-get-food-items-ppes-from-manerela/>; <https://www.news24.com/news24/africa/news/picture-of-gay-malawian-man-goes-viral-after-brutal-attack-20160209>; <https://www.mwnation.com/an-hour-with-a-confessed-lesbian/>

<sup>5</sup> <https://www.africanews.com/2016/03/29/malawian-pastors-want-government-to-arrest-4000-homosexuals//>; <https://www.timeslive.co.za/news/africa/2016-03-29-malawian-pastors-threaten-government-with-court-action-to-force-arrest-of-4000-gays/>; <https://africa.cgtn.com/2016/03/29/malawi-pastors-threaten-to-sue-government-for-failure-to-arrest-gays/>

which is also a form of cyber bullying. His right to privacy was compromised. His character was defamed.

### **Recommendations on hate speech**

- The government through the Ministry of Information should empower the Malawi Communication and Regulatory Authority (MACRA), to monitor and take all necessary measures on all forms of hate speeches in all media through its service providers.

## **5. Trans-specific issues**

### **5.1 Unlawful arrest of a transwoman**

A transgender woman was arrested by area 25 Kanengo Police station. At the station, they stripped off her clothes to determine her identity, they took pictures of her and posted them on social media.<sup>6</sup>

### **5.2 Pentecostal pastor who forcibly removed demons on a transwoman**

A renowned pastor made headlines in social media having reportedly removed demons from a transwoman. The pastor allegedly said that the transwoman was sent by agents of Satan; he further explained that the Transwoman (peer educator) was sent by board people who organize and practice (meaning an LGBTIQ led organization). The pastor said that he removed demons in the transwoman, the spirit which makes the transwoman (biologically born male) to be dressing and affirming as a man.

### **Recommendations on Trans-specific issues**

- Ensure that the law enforcement officials do not arbitrarily arrest transgender people
- Realign the policies and practices in order to promote the rights of Malawians who identify as Transgender

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<sup>6</sup> <https://www.facebook.com/Mwebantu/posts/malawi-police-arrest-man-for-impersonating-as-female-prostitutepolice-in-malawi-/1401915626595195/>;  
<https://malawi24.com/2017/07/17/man-impersonates-female-prostitute/>

- Introduce policies and laws that would allow transgender people to change their gender maker to align with their preferred or adult biological sex or identity
- Take necessary steps to educate citizens on the transgender community
- Take necessary steps to protect transgender persons and introduce effective systems that will enable to bring perpetrators to book

## **6. Mental Health**

### **6.1 Refugees commit suicide in dzaleka**

As a result of heightened levels of stigma experienced from the society within; with their status LGBTI people hardly have people to talk to. As a result, they end up committing suicide. Three out of seven suicides were Men who have Sex with Men(MSM) based on Community Health Rights and Advocacy (CHeRA) project reports.

### **6.2 Gay man commits suicide in Kasungu and Blantyre**

In Malawi, Section 14 of the marriage, divorce and family relations act stipulates that marriage shall only be between a man and a woman, and also that sex shall be determined at birth. Pressured into marriage a gay man in Blantyre committed suicide day after his marriage. Similarly, in Kasungu, a gay man also committed suicide after his mother, a nurse by profession found out about his sexuality.

### **Recommendations on mental health**

- Improve access to mental health services and ensure that mental health services are affirming of sexual and gender diversity and are provided without sexual orientation and gender identity-related stigma, prejudice and discrimination.
- Follow the guidelines on sexual and gender diversity published by the Psychological Association of South Africa.
- Provide mandatory sensitisation for healthcare providers at health facilities and include teaching on sexual orientation and gender identity-

related health concerns into health professions education to reduce sexual orientation and gender identity-related stigma, prejudice and discrimination in healthcare.

## **7. Anti-discrimination**

LGBTIQ led members being blamed of any disaster that happens in Malawi; case of covid-19.<sup>7</sup>

### **Recommendations on Anti-Discrimination**

- Provide mechanisms in both public and private sector entities that should handle issues of discrimination based on sexual orientation and gender identity.

## **8. Legal gender recognition**

### **8.1 Case of 2 transmen who were chased away from the hospital and only told to come back dressing in feminine clothes to match the gender on their health passport.**

A transman with genital warts went to the hospital to seek treatment, when he presented his health passport in yellow color (symbolizing women passport). On the sex section they ticked female, which contradicted his gender expression. They started mocking him, asking him why his health passport was labelled she while his expressions were masculine. They chased him away from the hospital and told him to only come back when he dresses up in conformity of her assigned gender. He tried to explain to a nurse who seemed to have been sympathizing with him, to his surprise the nurse demanded MWK 10,000 from him which at the time he didn't have. Because he failed to pay the money, the nurse got frustrated and invited the hospital security personnel, he was later arrested by Chisampo police for impersonating to be a man. The case died in silence.

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<sup>7</sup> <https://malawi24.com/2019/10/27/lgbtiq-rights-in-malawi-colonial-era-penal-codes-fan-intolerance/>

### **Recommendations on legal gender recognition**

- Put in place mechanisms where people can report discrimination by health care personnel
- Repeal sections 153, 154, 156 and 137A of the Penal Code and develop comprehensive legislation that prohibits any discrimination on the base of sexual orientation or gender identity
- Respect its obligations under the African Charter to protect LGBTIQI persons, especially in accordance with Resolution 275.
- Provide mechanisms for supporting victims of violence based on sexual orientation and gender identity in its National Human Rights Plan. This must include establishing “Human Rights Desks” at police stations to provide a safe environment for LGBTIQ persons to report all forms of abuse
- Protect the right of freedom of expression for LGBTIQ persons and all those who want to speak out in solidarity with LGBTIQ persons, and cease the use of unlawfully motivated reprisals by both state and non-state actors.

### **C. Suggested questions to the State**

- What steps is the State taking repeal sections 153, 154, 156 and 137A of the Penal Code?
- What steps are being taken to ensure that LGBTI people are not discriminated against when they seek medical help or want to file a complaint with the police?
- When mistreated by police, is there an independent entity where victims can submit a complaint about it?
- Where can LGBTI people go to submit complaints when they are discriminated against?
- There is already existing data in violence targeted on LGBTI people. What is the government doing on LGBTI programming with the data in place?