



Malawi - Researched and compiled by the Refugee Documentation Centre of Ireland on 25 February 2011

Treatment of homosexuals. Information on the homosexual scene.

The *International Lesbian, Gay, Bisexual, Trans and Intersex association* in May 2010 states:

“More than 50% of African governments have taken action and steps to formally criminalise same sex union, whilst the most venomous are the current debate in Uganda and the prosecution of a gay couple in Malawi” (Lesbian, Gay, Bisexual, Trans and Intersex association (May 2010) *State-Sponsored Homophobia*, p.6)

This document also quotes:

“Penal Code Cap. 7:01 Laws of Malawi 24
Section 153 —Unnatural offences||
—Anyone who –
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of any animal; or
(c) 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.||
Section 156 —Indecent practices between males||
—Any male 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, with or without corporal punishment.||” (ibid, p.14)

In August 2008 *Africa News* states:

“Malawian homosexuals, who claim to have been oppressed for a long time, have formed an association, the Malawi Gay Rights Movement (Magrim). According to the organisation's interim Chairperson, Mc Leod (requested that his surname not be mentioned), Malawian gays and lesbians have never publicly come forward because of the country's repressive laws. Under Malawi law, just like in most Southern African Development Community (Sadc) member states, it is a criminal offence punishable by imprisonment with hard labour” (Africa News (20 August 2008) *Malawian homosexuals form association*)

The *United States Department of State* reporting on events of 2009, note in a report issued in March 2010 that:

“Homosexual activity is defined as "carnal knowledge of any person against the order of nature." It is illegal and is punishable by up to 14 years in prison in addition to corporal punishment. On December 28, two men were arrested in Blantyre and charged with illegal carnal knowledge and committing acts of "gross indecency with another male person." The men were denied bail and were in jail awaiting trial at the end of the year” (United States Department of State (11 March 2010) *2009 Human Rights Report: Malawi*, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons)

A report by *Human Rights Watch* in January 2010 notes:

“Malawi's government should drop all criminal charges against a same-sex couple who are facing up to 14 years in prison, Human Rights Watch said today in a letter to high-level justice and home affairs officials. The prosecution of these individuals under Malawi's colonial-era "sodomy" laws and the ill-treatment and possible torture of the couple are a grave threat to human rights and public health in Malawi, Human Rights Watch said” (Human Rights Watch (12 January 2010) *Malawi: Drop Charges Against Same-Sex Couple*)

This document also notes:

“Malawian human rights defenders told Human Rights Watch that the arrests have created widespread fear in Malawi among men who have sex with men” (ibid)

Inter Press Service in March 2010 states:

“Malawi is quickly becoming unsafe for homosexuals as the country's police service recently launched a campaign to hunt down and arrest prominent people who are suspected of being gay. The police service claim to be investigating issues related to 'homosexual tendencies' as homosexuality is against the law in Malawi” (Inter Press Service (13 March 2010) *Country Not Safe for Homosexuals*)

Article 19 in May 2010 notes:

“ARTICLE 19 condemns the appalling sentence imposed by a Malawian court on a gay couple, Steven Monjenja and Towonge Chimbanga. Both have been found guilty of "gross indecency" and "unnatural acts" and condemned to 14 years hard labor. Steven Monjenja and Tiwonge Chimbanga were arrested by police on 28 December 2009 in Blantyre, two days after holding an engagement ceremony in Chirimba township. They were subsequently denied bail, a decision condemned by the Malawi Law Society which argued that society did not pose a danger to Malawi's first openly gay couple and vice versa” (Article 19 (21 May 2010) *Malawi: Sentence Against Gay Couple Appalling*)

In May 2010 the *Office of the UN High Commissioner for Human Rights* states:

“The UN High Commissioner for Human Rights Navi Pillay said Friday that the prosecution and sentencing of 14 years imprisonment with hard labour for

a Malawian gay couple, imposed by a court in Malawi on Thursday, is “blatantly discriminatory” and sets an alarming precedent in the region for the treatment of lesbian, gay, bisexual and transgender people, as well as groups that support them. “I am shocked and dismayed by the sentence and reports of the treatment of Steven Monjeza and Tiwonge Chimbalanga while in detention,” Pillay said. “The law which enabled the conviction dates back to the colonial era and has lain dormant for a number of years – rightly so, because it is discriminatory and has the effect of criminalizing and stigmatizing people based on perceptions of their identity. If this was replicated worldwide, we would be talking about the widespread criminalization of millions of people in consensual relationships and the rampant violation of privacy.” “Laws that criminalize people on the basis of their sexual orientation are by their 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*,” Pillay said “Unfortunately they still exist in quite a number of countries across the world. The trend should be towards getting rid of them, as is the case with other forms of discrimination. Instead, some countries, including Malawi, seem to be heading in the opposite direction.” The High Commissioner called for the conviction to be repealed and for the penal codes criminalizing homosexuality to be reformed. She said she was also concerned that this case appears to have stimulated a marked deterioration in official and public attitudes in Malawi, not just towards individuals perceived as being homosexual but also towards organizations that speak out about sexual orientation and related issues, including ones doing vital work to mitigate the impact of HIV/AIDS” (Office of the UN High Commissioner for Human Rights (21 May 2010) *UN human rights chief says sentence on Malawi gay couple is discriminatory and sets dangerous precedent*)

BBC News in May 2010 states:

“A gay couple jailed in Malawi after getting engaged have been pardoned by President Bingu wa Mutharika. Mr Mutharika, speaking as UN chief Ban Ki-moon visited his country, said he had ordered their immediate release. Steven Monjeza and Tiwonge Chimbalanga were given 14-year jail terms earlier this month after being convicted of gross indecency and unnatural acts” (BBC News (29 May 2010) *Malawi pardons jailed gay couple*)

This article also states:

“Correspondents say Malawi is a deeply conservative society where religious leaders equate same-sex liaisons with Satanism” (ibid)

In May 2010 *Inter Press Service* state:

“Rejecting the argument that the arrest and trial of Steven Monjeza and Tiwonge Chimbalanga amounted to a violation of their rights to freedom of conscience and expression as protected by Malawi’s constitution, Blantyre chief resident magistrate Nyakwawa Usiwa Usiwa sentenced the two men to 14 years hard labour for “unnatural acts” and “gross indecency”. The magistrate said he was giving the gay couple the maximum sentence permitted under the country’s colonial-era penal code because he wanted to protect Malawians and their children from homosexuality” (Inter Press Service (21 May 2010) *Malawi Gays Had No Chance*)

A June 2010 *Amnesty International* document notes:

“Amnesty International has warned that a Malawian couple given a presidential pardon following their conviction of “gross indecency” and “unnatural acts” could face further harassment unless the law is changed” (Amnesty International (2 June 2010) *Malawi couple could face further harassment*)

The Guardian newspaper in May 2010 states:

“Such is the widespread public hostility to homosexuality that there are fears of reprisals against both men” (The Guardian (30 May 2010) *Gay couple freed by Malawi presidential pardon return to home villages*)

A December 2010 report from the *International Gay and Lesbian Human Rights Commission* states:

“Malawi's parliament passed a bill criminalising sex between two women and it now goes to President Bingu wa Mutharika for his signature. Malawi's penal code currently prohibits sex between two men and the law was applied in the case of Tiwonge Chimbalanga and Steven Monjeza who were sentenced to 14 years in prison with hard labour for celebrating their love with a traditional same-sex ceremony. The couple were pardoned by President Bingu wa Muthairka on May 30th. The expansion of the law criminalising homosexuality has drawn condemnation from the Association for Secular Humanism in Malawi and the German government, the "Nyasa Times" reports. The Malawian parliament has passed a bill proposed by the Government to criminalize homosexuality between women which has attracted criticism from Association for Secular Humanism in Malawi and German government. Unlike homosexual relations between men, female homosexuality was not previously contained in the penal code. The bill was introduced as a bid to ensure greater equality between men and women” (International Gay and Lesbian Human Rights Commission (3 December 2010) *Malawi Parliament Expands Laws Criminalising Homosexuality*)

The *International Gay and Lesbian Human Rights Commission* in February 2011 report that:

“The limited tolerance that gay people enjoy in Malawi makes them particularly vulnerable to blackmail. Although research and common knowledge suggest that gay people have existed in Malawi in significant numbers since the pre-colonial period, and despite increasing acknowledgment of their existence by political and religious leaders, the gay community continues to face significant challenges. These challenges create an environment in which blackmail of gay people is not only possible, but also quite easy. First and foremost, same-sex activity is illegal and harshly punished under the laws of Malawi. Malawi inherited its colonial laws against homosexuality from the British, and as such they are similar to others found across Africa. Section 153 of the Penal Code states that anyone who "has carnal knowledge of any person against the order of nature" is guilty of a felony and faces up to fourteen years in prison with or without corporal punishment. Section 156 further says that any male who commits or attempts to commit "any act of gross indecency with another male person," in public or

private, is also guilty of a felony and faces up to five years in prison with or without corporal punishment. As a result, two people can be gay, but they still do not have the right to practice their sexuality. It does not matter whether they are consenting adults or not, or whether the act was done privately behind closed doors. Once they are found out or reported to the police, they are finished – facing years in prison and hard labor! Secondly, members of the gay community face adverse social marginalization once they are known or believed to be gay. Friends walk out on them and despise them; family may disown them; and people on the streets start calling them by all sorts of inexplicable names. This is not just psychologically or emotionally harmful, but also affects the physical well-being of gay persons” (International Gay and Lesbian Human Rights Commission (15 February 2011) *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*)

The *International Gay and Lesbian Human Rights Commission* in February 2011 note:

“The International Commission of Jurists (ICJ) expresses grave disappointment at Malawi’s recent enactment of a law criminalizing sexual relations between women. Such a law is an affront to human dignity and seriously undermines Malawi’s human rights commitments under international law. The ICJ urges that the Parliament undertake an immediate review with an eye to repealing all laws that currently criminalize sexual activity on the basis of the sex of the partners. In December 2010, the Parliament passed a bill amending the Penal Code of Malawi. In late January 2011, President Bingu Wa Mutharika assented to the bill, thus completing its enactment into law. The new Section 137A, captioned “Indecent practices between females,” provides that any female person who, whether in public or private, commits “any act of gross indecency with another female” shall be guilty of an offence and liable to a prison term of five years. “The criminalization of private sexual activity between consenting adults of the same sex, whether women or men, runs counter to Malawi’s obligations to protect the human rights of all citizens of Malawi, regardless of sexual orientation,” said Alli Jernow, Senior Legal Advisor for the Sexual Orientation & Gender Identity Project. “If used to prosecute women for their private consensual sexual relationships, the new law threatens the universal rights to privacy and freedom from discrimination.” Speaking in Geneva last September, the UN Secretary-General Ban Ki-moon stated, “Laws criminalizing people on grounds of sexual orientation and gender identity violate the principle of non-discrimination. They also fuel violence, help to legitimize homophobia and contribute to a climate of hate.” “ (International Gay and Lesbian Human Rights Commission (9 February 2011) *Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi*).

Addressing issues raised by other countries in a report published by the *Office of the UN High Commissioner for Human Rights*, it is noted in January 2011 that:

“In response to advance questions raised by Denmark, the Czech Republic, the United Kingdom, Norway and the Netherlands regarding homophobia, Malawi stated that it had no plans to legalize homosexuality” (Office of the UN High Commissioner for Human Rights (4 January 2011) *Report of the Working Group on the Universal Periodic Review on Malawi*, point 39).

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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