

## The LGBT situation in Malawi: an activist perspective

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Malawians, sad to say, remain steadfast in their resistance to homosexuality. The perception that same-sex practices are deviant and alien to the social and cultural fabric of Africa (Muula 2007) is still deeply ingrained in the minds of most Malawians, which makes the fight for lesbian, gay, bisexual and transgender (LGBT) rights much harder. Some authors have argued that much of the homophobia being witnessed in Africa today is not 'home-grown' (Mutua 2009). I share the same view. In the case of Malawi, much of the revulsion to homosexuality can be traced to its colonial past.

This chapter begins with the historical background so as to place homophobia in context. It then presents an overview of recent developments in Malawi in relation to LGBT issues, and the various ways in which these issues are resurfacing and being debated in the country. It concludes with a call for recognition and widespread acceptance of LGBT rights as human rights.

### Historical background

Malawi, like most of Southern Africa, experienced British colonialism, which fundamentally altered and even destroyed many positive values. Tolerance and respect for the otherness of the other, the hallmark of the *ubuntu* concept, was replaced by hatred and extreme fanaticism. There were no laws criminalising consensual same-sex acts before colonialism – these were introduced by the colonialists. When the country finally gained independence in 1964, it adopted all the laws that were in force during colonialism, including those regarding 'unnatural acts'.

After independence, it was expected that the country would speedily embrace democracy and guarantee rights and freedoms previously denied to Malawians. Unfortunately, this did not happen. Instead, the country endured three more decades of a brutal dictatorship under a native regime remembered as much for widespread human rights violations as for strictly enforcing its 'four cornerstones', namely unity, loyalty, obedience and discipline. Failure to

observe these cornerstones invited heavy-handed responses from the ruling party's notorious youth wing and the police force. It was during this time of dictatorship that most homosexuals went underground for fear of repression. The regime's insistence on the 'four cornerstones', coupled with the late former-President Ngwazi Dr Hastings Kamuzu Banda's puritanical beliefs, made it impossible to talk openly about sexuality, as sex education was generally banned or censored.

When I was growing up in the 1970s, homosexuality was strictly taboo, but this did not mean that homosexuals were non-existent. They have always existed in Malawi. There were lots of stories back then of homosexual activities taking place in boarding schools, prisons and so on. But people could not openly discuss these issues for fear of Banda's high discipline.

In 1994, following protests and international condemnation, Banda agreed to relinquish power and Malawi became a multiparty democratic state. That was when the human rights situation in Malawi began to improve. Freedom of speech and other freedoms were re-established, creating a more liberal climate in which people could claim their rights without fear of persecution. While some rights claims were successful, others faced stubborn resistance; in some cases, even outright rejection. Up to now, most people in Malawi have not accepted that LGBT rights are actually human rights, and this is where the problem is.

### **Human rights in the Malawian Constitution**

The biggest achievement of the transition period was the adoption of a Constitution, with a fully-fledged Bill of Rights. This was a great achievement considering that previous constitutions – those of 1964 and 1966 – did not have a Bill of Rights. The present Constitution, adopted in 1994, contains various rights provisions, including rights to life, equality, dignity, access to justice and fair trial, and freedom from torture and other cruel and inhumane treatment.

Of particular relevance to this discussion is the provision in Section 20(1) of the Constitution, which provides that 'Discrimination of persons in any form is prohibited' and that '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 or other status'. The Constitution does not explicitly recognise sexual orientation as a prohibited ground for discrimination. However, the inclusion of 'other status' provides room to advocate for LGBT rights.

The recognition in Section 21 that every person has the right to privacy is another relevant provision. The scope of this right is much broader and includes the right not to be subjected to: i) searches of his or her person, home or

property; ii) the seizure of private possessions; or iii) interference with private communications, including mail and all forms of telecommunications.

### **Constitution *versus* Penal Code**

The supremacy of the Malawi Constitution is beyond doubt. Section 5 states clearly that: 'any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to extent of such inconsistency, be invalid'. The supremacy of the Constitution is clearly repeated and emphasised under Sections 199 and 200. Section 199 states that 'this Constitution shall have the status as supreme law and there shall be no legal or political authority, save as is provided by or under this Constitution'.

The biggest embarrassment of the legal system in Malawi is the obvious contradiction between the Constitution and the country's Penal Code. While the Constitution guarantees rights, the Penal Code seems to take them away.

Homosexuality is a criminal offence in Malawi. This is clearly reflected in Sections 153 and 156 of the Penal Code. Section 153, which criminalises 'Unnatural offences', states that anyone who:

- (a) has carnal knowledge of any person against the order of nature; (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, which criminalises 'Indecent practices between males', on the other hand, provides that:

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'.

The criminalisation of same-sex acts between consenting adults flies in the face of constitutional provisions of the rights to privacy, freedom of association and the principle of non-discrimination. There is overwhelming evidence to suggest that the existence of such laws in the Penal Code fuels stigma and the violation of rights. It becomes a legitimisation of police harassment and blackmail of those who wish to keep their sexual orientation a secret as well as discrimination of those who come out.

On the subject of discrimination, a bone of contention over the years has been the exclusion from criminalisation of 'indecent practices' between females. This debate was, however, rested in 2010 when Parliament passed a new law criminalising consensual same-sex activity between women. The new

law, 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'. Reasons for introducing this new law were made clear. The then Justice and Constitutional Affairs Minister, Dr George Chaponda, did not mince words when defending this new law. Addressing a press conference soon after the law was passed, Chaponda described the new law as 'gender sensitive', saying government wanted to include women 'to ensure that homosexuality is criminalised without discrimination' (Sonani 2011a).

What the minister or government perhaps ignored is the fact that, as noted earlier, the existence of laws criminalising homosexual behaviour between consenting adults also constitutes discrimination (see, for example, the Opinion adopted by the UN Working Group on Arbitrary Detention on a case in Cameroon (2007)). It perpetuates stigma and discrimination and contributes to a climate of homophobia, intolerance and violence and fuels the violation of rights enshrined in the Constitution. For the laws of Malawi to be meaningful, there is a need to address all the inconsistencies. It does not otherwise make any sense to give people rights with one hand and take them away with the other.

### **Constitutional review process**

Under the new Constitution, a Law Commission was established, mandated with the task of reviewing all laws, including Penal Code laws, to ensure that they are consistent with the Constitution. As part of the constitutional review process that followed the May 2004 Parliamentary and Presidential Elections (PPE), the issue of homosexuality was raised by various human rights non-governmental organisations (NGOs), including the Malawi Human Rights Resource Centre (MHRRC). The NGOs suggested that homosexuals' rights should be incorporated into the Republic Constitution as a first step towards decriminalisation. However, the suggestion was brushed aside because the majority of the people were against it (Muula 2007).

The constitutional review is an ongoing process; however, decriminalisation of homosexuality looks unlikely in the short-term. Responding to questions raised by Denmark, the Czech Republic, Norway, the Netherlands and the United Kingdom during the Universal Periodic Review (UPR) in November 2010, Malawi indicated that it had no plans to legalise homosexuality and stated that the wishes of the people of Malawi in this regard should be respected (UN Human Rights Council 2011).

The rejection of LGBT rights on the basis that the majority of Malawians are against homosexuality does not add up. In a democracy it is a fallacy to suggest that nothing should be done about an issue that concerns a minority. Moreover,

as discussed earlier, the Constitution of Malawi prohibits discrimination in any form, clearly demonstrating that the argument of the majority of Malawian people being against homosexuality is only used as an excuse to deny LGBT persons their rights.

***Republic v. Steven Monjeza and Tiwonge Chimbalanga***

One case that best illustrates the struggles of LGBT individuals in Malawi is that of Steven Monjeza and Tiwonge Chimbalanga. On 26 December 2009, Monjeza and Chimbalanga were arrested by police after holding the first same-sex traditional engagement ceremony (*chinkhoswe*) ever in Malawi (Malawi, Criminal Case Number 359 of 2009, *Republic v. Steve Monjeza Soko and Tiwonge Chimbalanga Kachepe*). The arrest triggered a spate of homophobia that swept across the country (Kasunda 2010). On 4 January 2010, for example, police arrested Dunker Kamba, an officer from the Centre for the Development of People (CEDEP), for possessing what police alleged to be ‘pornographic gay material’. In February the same year, police arrested a 60-year-old man, Davis Mpanda, for sodomy. He was sentenced to ten years’ imprisonment by the South Lunzu Magistrate’s Court. During the trial, Mpanda told the court that he was ‘born to sexually desire males only’ (Namangale 2011).

Out of all the cases, it was the trial of Monjeza and Chimbalanga that drew the most public attention, probably because this was the first gay couple ever to defy the law of Malawi by openly seeking marriage. The ‘gay couple’, as they soon became known, were charged with two alternative counts, namely, buggery contrary to Section 153(A) of the Penal Code for the first accused (Steve) and permitting buggery, contrary to Section 153(C) of the Penal Code for the second accused (Tiwonge) and, in the alternative, the offence of indecent practices between males, contrary to Section 156 of the Penal Code for both of them.

The case triggered a nationwide debate, which is still ongoing, on whether or not homosexuals have rights, and whether or not they should be tolerated in Malawi. One argument that has been continually raised is that homosexuality is a foreign culture, and against the dominant Christian and Islamic religions. Ironically, Monjeza and Chimbalanga were locals, who had probably never travelled outside Malawi – they were also Christian church-goers. Tiwonge was locally known as ‘Aunt Tiwo’ and his community had long accepted him as a biological male who acted and behaved like a woman.

The case also raised a number of rights issues. There were reports that the two suspects were repeatedly beaten by police while in custody, and forcefully examined to establish whether they practised anal intercourse (Amnesty International 2010). In Malawi, according to Section 42 (2) of the Constitution, any accused person has a right to be given bail unless the courts prove beyond reasonable doubt that doing so would jeopardise investigations

or create insecurity on the part of the accused or the general public. However, the presiding magistrate, Nyakwawa Usiwa-Usiwa, told the court that no bail could be granted to the accused for their own security 'since the case had attracted public interest locally and internationally' (Somanje 2010a).

On that basis, the refusal to grant them bail was unjustified. There was no evidence whatsoever that the accused posed any danger to the public or that they would have influenced investigations of their crime. The claim that the accused persons' security was at risk was also baseless. If the public had witnessed their engagement ceremony and no one had harmed them, it was hard to imagine how their security would be jeopardised. The trial lasted five months, December 2009 to May 2010, during which time the couple were held in detention under terrible living conditions that amounted to cruel, inhumane and degrading treatment.

During the trial, state prosecutor, Barbara Mchenga, argued that the 'gay couple' had left a 'scar on morality' in the country and deserved to be punished heavily, as they seemed to be proud of being gay (Ngozo 2010). Defence lawyers, on the other hand, argued that the charges raised by the magistrate court were contrary to the constitutional provisions, especially sections 5, 199 and 200 which guarantee freedom of conscience, privacy and bail application (Bottoman 2010). However, efforts to have the case certified as a constitutional matter were rejected by the Chief Justice, Lovemore Munlo, on the basis that the charges raised by the magistrate court did not border on constitutional matters, but criminal charges, which meant that the case could only be heard in the lower courts (Somanje 2010b).

On 20 May 2010, the couple was sentenced to the maximum sentence of 14 years in prison with hard labour, with the judge, resident magistrate Nyakwawa Usiwa-Usiwa, telling the couple: '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', and 'Malawi is not ready to see its sons getting married to its sons' (Tenthani 2010).

His opinion reflected the view of most Malawians on homosexuality, which clearly stems from deep religious beliefs and cultural convictions. A majority of Malawians hold such religious beliefs and are convinced that homosexuality is evil (Muula 2007b). Fortunately for the LGBT rights campaign, not everyone in Malawi thinks like that; and certainly not every judge considers homosexuality as the most heinous crime requiring 'a scaring sentence'. One High Court judge who has stated his opinion clearly on the matter is Judge MacLean Kamwembe. This was during the review of the 'sodomy case' involving Davis Mpanda and a young man whose identity was not revealed to the public.

When that case was brought before the High Court for appeal, Kamwembe, presiding, reduced the ten-year sentence given by a lower court to three years. Delivering his ruling, Kamwembe decried what he described as a tendency

by lower-court judges to view homosexuality as the most 'heinous' crime and to impose tougher sentences than the case deserves (Namangale 2011). The judge also questioned the 14-year jail sentence, which the Blantyre Magistrate's Court had imposed on Tiwonge and Steve. It is significant that the judge's opinion came at the height of an intense advocacy and lobbying campaign for LGBT rights by some rights activists, including myself. To us, this was a big victory. It came second to the pardon given to Chimbalanga and Monjeza following their conviction. The judge's opinion showed that positive change is possible in Malawi.

### **International pressure and its impact**

As indicated earlier, the arrest and subsequent conviction of the 'gay couple' sparked condemnation, locally and internationally. On the international scene, the conviction was condemned by the likes of Amnesty International (AI), AIDS and Rights Alliance for Southern Africa (Arasa) and the International Gay and Lesbian Human Rights Commission (IGLHRC). Individuals and international icons, such as Peter Tatchell, Madonna and Sir Elton John, also reacted with condemnation, as did donor entities and governments such as the UK, Germany, the European Union and the World Bank. In March 2010, the Common Approach to Budgetary Support (CABS), a grouping comprising the African Development Bank, Norway, UK, Germany, EU and the World Bank, also added their voice to the orchestra of voices condemning the gay couple's arrest (Mzale 2010).

Such was the international outcry that, within days of the sentencing, Malawi's President Bingu Wa Mutharika pardoned the couple on 29 May 2010, during a visit by UN Secretary General, Ban Ki-moon. The pardon was welcomed by the gay community and rights activists, both within Malawi and abroad. However, the celebration was short-lived as authorities quickly followed it up with a series of retrogressive steps putting further restrictions on the rights of gay and lesbian people. Speaking to reporters on arrival from the France-Africa summit, President Mutharika warned government officials not to comment further on the issue. He also warned that the law remains valid and anyone caught engaging in homosexual acts would be punished. The president argued that homosexuality is alien to Malawi's culture and will never be legalised during his presidency. In November 2010, during the Universal Periodic Review (UPR) review at the UN Human Rights Council, Malawi rejected all recommendations, including those merely requesting the state to ensure adherence to its twin constitutional obligations of non-discrimination and equality, in terms of treatment of the LGBTI community. The then Attorney General, Dr Jane Ansah, argued that Malawi could not implement the recommendations because a majority of the country's population is against homosexuality (UN Human Rights Council 2011).

Barely a month after the UPR session, in December 2010, the Malawi Parliament passed a bill criminalising consensual sex between women. Coming so soon after the presidential pardon, this was the biggest setback to the LGBT rights campaign. Several questions have been raised as to why Malawi has taken such retrogressive steps. The President said he had granted the pardon on humanitarian grounds. However, it was clear it had been motivated by something else – possibly fear of economic sanctions or, worse still, fear of a public backlash, considering that many people had expressed support for the gay couple’s conviction. Malawians, including politicians, need to be made aware in order to understand why discrimination against LGBT persons is unacceptable; otherwise, it will be impossible to effect real change any time soon. As things stand, it is impossible for any politician, or MP, to vote in favour of homosexuality in Parliament. He or she risks the wrath of their constituency or church.

Without awareness, nothing – not even aid cuts – will change people’s negative attitudes towards homosexuality. In recent years, we have seen how some donors, such as the British, have been threatening aid cuts if countries like Malawi do not decriminalise homosexuality. Unfortunately, such approaches are counterproductive as they evoke memories of imperial control. Africans generally are rebellious, especially against attempts to impose ‘foreign’ strategies to fix African problems. There are complex issues underpinning African homophobia that ultimately, sanctions and international condemnations will not address. Information and communication are, in my opinion, powerful tools in the fight against homophobia.

It is also best to tackle the underlying causes of homophobia. Decades of experience and research demonstrate that seeking to influence behaviour alone is insufficient and unsustainable if the underlying factors influencing behaviours such as religion and culture are not addressed. A major lesson from the ‘gay couple’ trial is that to effect real change in Malawi, it is necessary never to lose sight of the community, for it is from the community that many homophobic beliefs and attitudes emanate. It is impossible to change religious beliefs, but at least positive cultural attitudes can be influenced. The best that can be done is to encourage dialogue within communities and the recognition and identification of cultural attitudes and practices that violate human rights and put other people’s lives at risk.

### **Role of culture and religion**

Religion and culture run so deep in Malawi that one sometimes wonders why the country chose to be guided by a secular and not a religious constitution. Most people who opposed homosexuality during the constitutional review process argued on the basis of religion and culture, saying homosexuality is against Malawi’s cultural values and norms and against the ‘creation of man and woman as God designed them to be’ (Muula 2007).

In 2009, some parliamentarians attempted to amend the Constitution so as to include a clause stipulating that Malawi is a 'God-fearing nation'. The attempt was, however, foiled thanks to some parliamentarians who argued that including such a clause would practically be the same as legislating religion.

A majority of Malawians hold religious beliefs and are deeply conservative, particularly on issues of sex and marriage. The perception that sex is for procreation only is a dominant belief running in almost all ethnic groups, reinforced by religious scriptures which define sex as a preserve of married couples in a family unit. The family itself is a closely guarded institution, recognised in Section 22 (1) of the Constitution as the 'natural and fundamental unit of society'. However, the Constitution does not define what a family is, which is then left to individual interpretation.

Also worth noting is the fact that marriages and children are highly valued in traditional Malawian society (Muula 2007). A number of cultural practices attest to this: firstly, little – if anything – is known about cultural practices intended to prevent pregnancy (traditional contraceptives). On the contrary, there are several traditional herbs that people are encouraged to use to improve the chances of pregnancy. Second, cultural practices such as *kupimbira* (early or forced marriage) are still widely practised in order to increase *mbumba* (offspring); third, in many parts of Malawi, particularly in rural areas, the traditional custom of *fsi* (hyena) is still widely practised. With this custom, when a married or cohabiting couple are unable to have a child, an arrangement is made with another man (an outsider) to sleep with the woman to make her pregnant. With such beliefs and values, it is hardly surprising that many people hold negative attitudes towards people with different sexualities.

However, these beliefs are no excuse to perpetuate discrimination of people on the basis of sexual orientation and gender identity. People also need to understand that there is no basis for the continued marginalisation of LGBT persons in Malawi. Same-sex practices are part of Malawian culture. Local names such as *mathanyula* (anal sex) confirm that homosexuality is indeed traditional and indigenous, contrary to popular assertions that the practice comes from the west. It is clear from studies across Africa that homosexuals have existed on the continent for centuries (Roscoe and O'Murry 1998). In Malawi, homosexuality was particularly common among migrant Malawian workers in South Africa and Rhodesia. It was not encouraged, but those who practised it were not persecuted either. It is only recently that intolerance and negative attitudes towards homosexuals have emerged. There is a need to encourage people to reflect on why such is the case now.

In Malawi today intolerance of homosexuals is so widespread that Malawians do not even want to see or associate with someone who supports or sympathises with LGBT people. Why is that? To illustrate this point, the Anglican Church sent a pro-gay rights Bishop, Nick Henderson, to Malawi in 2007, to head the Anglican diocese of Lake Malawi. However, the congregation

did not accept him and protests led to the death of a church member (*The Nation* 2007). Such violence is unheard of. I have discovered no documented evidence showing that homosexuals were persecuted in Malawi in the past. Yet hatred and violence against people of different sexualities is tolerated today and nobody gets punished for it. To make matters even worse, such homophobia is legitimised by the country's laws, the very same statutes intended to limit and contain harm to others. To me, the laws of a secular state are there in the first place to protect individuals from each other and to ensure that no one harms anyone else. The question is: when two adults of the same sex agree to love each other, do they harm anyone? They do not. So what is the point of maintaining laws criminalising homosexuality? These are the questions people should be made to consider.

### **Linking HIV/AIDS and homophobia: a missed opportunity**

A good starting point for any meaningful community dialogue is to highlight the link between homophobia and HIV and the consequences of excluding homosexuals from HIV programming. In this regard, important lessons could be drawn from early responses to HIV and AIDS.

The first HIV/AIDS case in Malawi was reported in 1985. At that time the Malawian people's response was not helpful. It was characterised by scorn, blame, denial and witch-hunting. This was basically due to lack of accurate information about the disease – for example, how HIV was transmitted, and what kind of condition AIDS was. Malawi was then under the autocratic rule of Kamuzu Banda. His style of leadership and religious beliefs did not help matters. During his reign, public discussion of sexual matters was generally banned or censored, and HIV and AIDS were considered taboo, making it very difficult for HIV/AIDS education and prevention schemes to be carried out.

This culture of stigma, denial and blame continued until the mid 1990s when President Bakili Muluzi took office. In his early years in the role, Muluzi made a speech publicly acknowledging that the country was undergoing a severe AIDS epidemic and emphasising the need for a unified response to the crisis. Muluzi later announced that his own brother had died as a result of AIDS. These public announcements were significant in the sense that Malawians could now discuss HIV/AIDS more openly than before. However, this openness came a little too late as the epidemic had already reached crisis levels.

Today, Malawians are repeating the same mistake. Despite evidence of increased risks of HIV infection among men who have sex with men (MSM) the response is still the same – stigma, denial and blame. As a result, many homosexuals operate underground, which poses serious challenges in terms of reaching them with HIV and AIDS interventions.

The rates of HIV among MSM in Malawi are quite alarming; a study conducted in 2008 among 200 MSM who were sampled using a 'snowball' method found 21.4 per cent to be HIV infected, almost double the national prevalence, which now stands at around 12 per cent (Baral et al. 2009). There is also staggering evidence that some MSM have sexual relationships with women, to hide their homosexuality, thereby contributing significantly to the wider epidemic. The National HIV/AIDS Strategy recognises MSM as a high-risk group and recommends action to stem the epidemic within it. Yet in practice, MSM are ignored, a situation that leaves them particularly vulnerable to HIV infection.

Nowhere in Malawi is the problem more pronounced than in the country's prisons. In 1999, a study on HIV and AIDS in Malawi's prisons by Penal Reform International revealed rampant unprotected homosexual acts among inmates. The report highlighted cases of prisoners with sexually transmitted infections and 'peri-anal abscesses', which they could only have contracted through anal sexual intercourse (Jolofani and DeGrabriele 1999). Interestingly, the report distinguished two types of homosexual activity that take place in prisons – that is, habitual and circumstantial:

Some prisoners are said to be 'that way inclined' and were homosexuals even outside the prison. This group is said to be in the minority, with estimates ranging from 10% to 20% of all those involved in homosexual activity ... There is another group who 'because of the lack of women become confused', but they are not really homosexuals (Penal Reform International 1999).

A decade since that research was done, reports of unprotected sex in prison cells keep coming out. In April 2011, two inmates, Stanley Kanthunkako, 19, and Stephano Kalimbakatha, 22, were arrested after prison authorities intercepted 'a chain of love letters'. Local media reported that prison authorities found Stanley 'with sperms on his anus' (Muwamba 2011). Yet, despite this overwhelming evidence of sex in prisons, programmes to distribute condoms in prisons have hit a snag with those advocating for inclusion being castigated. The position of government on the matter is that condoms would encourage homosexuality, which is illegal in Malawi. However, the intention is not to encourage homosexuality, which is a reality and does not need encouragement, but to prevent the spread of HIV among people who practice homosexuality. As the situation stands, people of different sexualities have no means of protecting themselves from HIV.

In Malawi, as in many African countries, prevention messages and products (condoms, lubricants) are not tailored to the needs of homosexuals. What this suggests is that by ignoring these people, HIV programmes are ignoring important dynamics in the epidemic, making it unlikely that the country will be able to achieve its goal of turning off the tap of new infections by 2015.

### **Civil society response**

The issue of homosexuality has received a mixed reaction among local civil society. Mindful of the legal challenges, most civil society organisations (CSOs) have circumvented the issue, focusing instead on governance and other human rights issues. A few of us, however, have grabbed the bull by its horns and are speaking out, warning fellow Malawians that as long as we continue to confine gays and lesbians in dark corners because of our inflexibility to accommodate them, the battle against HIV/AIDS will never be won.

In April 2010, my organisation, the Centre for Human Rights and Rehabilitation (CHRR) and the Centre for the Development of People (CEDEP) organised a two-day national conference with the aim of initiating and promoting dialogue on homosexuality in relation to human rights and HIV/AIDS. The conference brought together a diverse range of stakeholders including human rights lawyers, journalists, representatives of government institutions, such as the Malawi Law Commission and the Malawi Human Rights Commission (MHRC), academia, the private sector, the donor community, civil society and the faith community.

The conference, the first open forum on homosexuality to be held in Malawi, provided an opportunity for different stakeholders to discuss honestly, openly and objectively matters around LGBT and map the way forward in improving lives of LGBT persons in view of statistics showing high HIV prevalence among this very marginalised group. It was held at the height of the highly publicised case of the gay couple. There was drama as police attempted to stop the conference from proceeding. On the first day, they arrived and demanded a copy of the programme and list of participants. When they could not obtain it, they picked up one of the organisers for a brief period of questioning.

However, the conference continued as planned. Delegates were provided with opportunities to learn, not only about the socio-historical context within which HIV thrives in southern Africa, but also about the influences of culture and homophobia. Delegates also discussed strategies to address HIV among Most-at-Risk-Populations (MARPs) – a group that includes MSM.

Robust discussions took place as delegates shared their views on homosexuality. While the religious leaders insisted that homosexuality was evil and should remain criminalised in Malawi, human rights activists, academicians, lawyers and others argued for the repeal of the penal code for the sake of progress in HIV. One of the presenters, Dr Charles Chilimampungu, a social scientist from the University of Malawi, Chancellor College, said culture is dynamic: it is thus possible to challenge and shift negative aspects of cultures that increase people's vulnerability to HIV and which put others at risk.

Through such open discussions, it was later acknowledged by the conference that Malawian society's homophobia and criminalisation of homosexuality is driving the spread of HIV among LGBT persons and fuelling human rights

abuses against them. There was much discussion on how this could be addressed and one suggestion was to advocate and lobby for legal reform at all levels to ensure that the country's laws are consistent with the country's constitutional provisions.

One of the conference's key recommendations was the establishment of a taskforce that would meet regularly to further dialogue on LGBT issues and lead advocacy efforts. Acting on this recommendation, CHRR and CEDEP organised a follow-up workshop where a Technical Working Group on Most at Risk Populations (MARPs) was formed. MARP is a broader group that besides including MSM and women who have sex with men also encompasses sex workers and other marginalised groups. The multi-stakeholder working group comprises religious leaders, human rights lawyers, human rights activists, journalists, researchers and HIV specialists. Government actors, however, were reluctant to get involved. The MHRC said it was still deliberating its position on the matter (Kasunda 2011a). The working group has the following objectives:

- Advocate for the Malawi government to implement a comprehensive package of services for the MARPs based on its commitment in the HIV Prevention Strategy (2009–13) as advanced in the Section Policy Points to implement the Strategy;
- Promote available research to build understanding about HIV-related needs and human rights issues for MARPs, identify gaps in research and advocate for further research needed to understanding HIV prevalence, HIV risk behaviours and human rights context for MARPs to inform policy and evidence-based programming;
- Advocate for reform of laws and practices that act as impediments to effective HIV programming for MARPS;
- Strengthen capacity among MARPs to understand and be actively involved in claiming their rights;
- Build understanding among state and non-state actors about HIV-related needs and human rights issues for MARPs and foster leadership to address them.

CHRR and CEDEP followed this up with the launch of a three-year awareness and advocacy project on LGBT and human rights, designed to promote LGBT issues in the context of human rights and HIV/AIDS. During the LGBT conference, it was evident that the lack of adequate public knowledge or misconceptions about LGBT was fuelling stigma and discrimination in Malawi. Thus the project fights discrimination and moves public opinion on LGBT issues through civic education, capacity building, lobbying and advocacy. The civil education component is aimed at increasing awareness of the general population on legal, policy, cultural and religious issues affecting LGBT people in Malawi. The project recognises the fact that education is a powerful tool in the fight against homophobia.

The capacity-building component, on the other hand, is aimed at providing support to state and non-state actors to deal with LGBT issues. It was acknowledged during the conference that one of the reasons organisations – including civil society – are reluctant to get involved in the fight for LGBT rights is lack of awareness. Staff members of these organisations are poorly informed on LGBT issues. As a result, many hold the misconceptions and prejudices which exist in their society.

Despite the hostile environment, the project has made remarkable progress, creating visibility of LGBT issues and facilitating open discussion on an issue that remains sensitive in Malawi. A number of successful activities have also been undertaken, including engagement with key stakeholders such as the media. A workshop was conducted in April 2011, where journalists from all media houses, including those funded by the government, were briefed on LGBT issues by experts and activists.

The impact of that media workshop was clearly seen in the subsequent days, when at least eight articles on various aspects of homosexuality were published in the country's leading newspapers. The content of these articles ranged from in-depth analysis to one-on-one interviews with LGBT rights campaigners. For example, in their 26 April 2011 edition, the *Daily Times*, one of the leading dailies in Malawi, ran a comment urging Malawians to debate homosexuality seriously. The comment was an improvement on a previous one published in the 13 February 2011 edition, entitled 'Govt should act on "negative trends"' in which the paper appeared to trash LGBT rights by claiming that 'there is consensus in Malawi that homosexuality is not in line with the country's culture'. In one interview, CEDEP executive director Gift Trapence was given ample space to explain matters around LGBT and debunk the myth that homosexuality is unnatural (Kasunda 2011b). The newspapers also carried comments from readers about homosexuality. Although some readers defended criminalisation, others defended homosexuals' right to exist and spoke about the need to embrace them and include them in HIV programming.

Another positive outcome of the conference was networking among journalists. A media technical working group was formed by journalists themselves, which promises to help both in getting across to a wider audience the message of the importance of recognising minority rights, and in facilitating debate. While this is an ongoing process in a challenging environment, it is pleasing to note that an initial platform now exists upon which further advocacy can build and grow.

### **Impact of the LGBT debate**

Despite the hostile environment, the CHRR/CEDEP project has made remarkable progress, creating visibility of LGBT issues in Malawi and a climate of open discussion on an issue that remains sensitive in the country. There has,

for instance, been improvement in the media portrayal of LGBT issues. This is manifested mainly in news articles, analyses and comments as well as radio-panel discussion programmes and theatre performances. A popular vernacular drama group, Kwathu, has come up with a play entitled *Titolerane* (tolerance), which tackles the issue of homosexuality, highlighting the need for widespread acceptance of people who are 'different'. The play has been performed in various places in the country's rural and urban areas, attracting huge audiences and positive press reviews. There have of course been some challenges.

### ***Church leaders' reaction***

The advocacy has in some cases attracted extremities of thought and passion, with some senior government officials, and traditional and religious leaders openly expressing disgust at attempts to promote gay rights. Those opposed to the campaign have done so on the basis of culture, morality and religion. Arguing from the Bible, one leader and founder of a Pentecostal church has called for the death penalty to be imposed on those who practise and promote homosexuality 'as the Bible says' (Mmana 2011). Quoting biblical verses, Apostle Samuel Chilenje argued that God punished Sodom and Gomorrah 'because of gays and lesbians'; 'The Bible says that everybody indulging in same sex acts must be put to death by stoning. Even those promoting it deserve the same'.

Other church leaders have, however, disagreed with these views and called for tolerance and inclusion of homosexuals. One such is the Anglican Bishop, Brighton Malasa, who has called for acceptance of marginalised groups such as homosexuals and sex workers (Munthali 2011). The Church of Central Africa Presbyterian (CCAP), the second-largest Christian denomination in Malawi, after the Catholic Church, has also spoken out in favour of inclusion. Speaking during the celebration of 120 years of the church's St Michaels and All Angels Church, in May 2011, officiating clergy called for tolerance of homosexuals (Mussa 2011). The position of the CCAP Church on the matter is that homosexuals are sinners, just like everyone else, and should therefore be embraced and ministered to with love. One of its senior pastors was quoted in the local media as saying: 'Our Lord Jesus Christ hates sin but He does not hate the sinner. The problem with the way people are debating the gay issue is that they are failing to differentiate between homosexuality as an orientation and homosexuality as a practice' (*Malawi News* 2011).

### ***Government reaction***

The reaction of government officials to the debate has, however, been immensely negative. In May 2011, Malawi's President Mutharika publicly condemned those practising and promoting homosexuality, describing them as being worse than dogs. Mutharika made the remarks in front of his supporters at Kamuzu

Institute for Sports in Lilongwe on 15 May 2011. The *Daily Times* of 17 May 2011 quoted the president as saying: 'If, as human beings created in the image of God, we are failing to appreciate the differences between males and females and start marrying man-to-man or women-to-woman are we not worse than dogs that appreciate nature's arrangement?'

The President's remarks came hot on the heels of an excruciating campaign by the Ministry of Information and Civic Education, which has seen the ministry bringing conservative religious and traditional leaders on national television to condemn homosexuality and reprimand CHRR and CEDEP for promoting acceptance and recognition of homosexuals. Towards the end of April 2011, the Ministry of Information and Civic Education held a string of press conferences to 'expose' a funding proposal for gay rights it had 'unearthed', jointly submitted by CHRR and CEDEP to the Royal Norwegian Embassy. To embarrass the NGOs, and possibly incite hatred against them, the Ministry paraded the traditional leaders and religious leaders on national TV to condemn the NGOs for promoting 'a foreign culture' and 'evil acts', which could 'cause God to punish Malawi as He did with Sodom and Gomorrah'.

### **Impact on HIV advocacy**

As a result of all this campaigning and the president's vitriolic speeches against homosexuality, public officers, who were previously supportive of inclusion for the sake of HIV, have made a U-turn on the issue of MSM and HIV. For example, in April 2011, senior public officer responsible for nutrition and HIV/AIDS, Dr Mary Shawa – who in 2009 argued that Malawi must recognise the rights of its gay population to be able to step up its fight against HIV/AIDS – dismissed the activists' campaign, saying the numbers of homosexuals in Malawi were too small to be a priority. Shawa and other government officials accused the activists of using HIV as an excuse to homosexualise Malawi (Chikoko 2011).

There are many reasons why government has waxed and waned on this issue. However, a major one is that NGOs advancing gay rights are in the government's bad books as these are the same NGOs that have been fiercely attacking the government's poor governance and human rights record. In self-defence, and in order to discredit these NGOs, the government has picked on the gay rights issue in an attempt to gain public sympathy, knowing that this is an issue that most Malawians are not happy about. In this circumstance, it is difficult for any public officer to talk positively about homosexuality; he or she risks the wrath of the government or even dismissal.

### **Threats against human rights defenders and attempts to divide civil society**

Another negative outcome of the debate on homosexuality is the government's use of threats against human rights defenders, particularly those that are critical of the Mutharika administration. In a televised speech on 6 March 2011, Malawi's President Mutharika encouraged his supporters to bring discipline into the country (Somanje 2011). This heightened the risk of attacks against the leadership of CHRR and CEDEP, who have criticised the government for its stand on LGBT issues and various governance and human rights issues facing the country. On 3 March 2011, CHRR offices were attacked (Sonani 2011). This was followed by threats – including death threats – made against the CHRR executive director, making increased security of CHRR and CEDEP premises a matter of necessity.

Worse still, the government has been using the LGBT issue to divide civil society and isolate CSOs promoting LGBT rights. What is even more surprising is that some civil society leaders are using the same issue to attack their friends, tactfully avoiding other matters raised by the CSOs. They have resigned themselves to the government employing the usual tactic of using the gay issue to win the hearts and minds of Malawi's conservatives and to divide civil society. In May 2011, President Mutharika held a secret meeting with board members of the NGOs' umbrella body, the Council for Non Government Organisations in Malawi (CONGOMA), to discuss several issues affecting the NGO/government relationship. Media sources revealed that one of the issues on the table was that of minority rights. A few days after the meeting, a delegation from CONGOMA approached CHRR and CEDEP executive directors to ask them to 'slow down on advocating for minority rights', a request the two flatly refused. Shortly afterwards, on 5 May, some CONGOMA board members, led by chairperson, Victor Mhone, held a press conference in Lilongwe, during which they distanced themselves from the campaign for minority rights. Mhone argued:

The issue of sexual minority rights is diverting the nation from important issues of governance and economic problems.' [...] 'Gay rights are not the priority of the coalition and we know government is blowing this issue out of proportion just to attack civil society. [...] Bearing in mind that law reform should adopt a bottom-up approach, let ordinary Malawians, through an open, transparent and democratic process demand gay rights as and when they need them. [...] As CONGOMA, we have taken a position and it is disassociating the NGO community from such unlawful acts (Khunga 2011).

### **Conclusion: what next?**

The situation of LGBT persons in Malawi is still perilous and demands more concerted action from civil society and activists. There is a need to intensify efforts to combat homophobia. However, this is easier said than done. Winning this fight is a challenge that will require resources, effective strategies and critical reflections on the role of donors and international partners. This chapter mentioned earlier that Malawi does not need a ‘shock and awe’ approach to change its stance on homosexuality. The issue needs to be approached tactfully and with more understanding. Threats of aid cuts if the country does not decriminalise homosexuality will not yield anything. The best approach, in my view, is to convince people to accept these issues through dialogue with respect for their opinions. Understanding, respect and dialogue are required here. We need to dialogue with the community. We also need to start talking with government.

It may be that the approach of LGBT activists is one of the reasons the government has waxed and waned on this issue. As noted earlier, we have, in the recent past, relentlessly attacked government on its governance failures and weaknesses. But in self-defence, government has picked on the gay rights issue and tried to gain public sympathy, knowing that most Malawians are not happy about it. We can change that! – not by turning a blind eye to government’s failures and weaknesses but doing so in a way that does not make actors feel inferior or useless. Experience has shown that the current administration in Malawi does not respond well to public criticism. A closed-door approach would perhaps be necessary to draw government’s attention to the fact that political rhetoric is contradicting policy or expert opinion on homosexuality, and that this will have serious implications in the consolidation of human rights and the national goal of turning off the tap of new HIV infections by 2015.

While talking to government, LGBT people will also need to start up a conversation with fellow members of civil society. Civil society is an important ally in this fight for LGBT rights. Speaking with one voice on this issue makes it easier to convince the public to see the issue our way. There are many reasons why a majority of CSOs are reluctant to get involved. First, several staff members from local CSOs are poorly informed on LGBT issues. The culture and education system in Malawi does not provide a good context for understanding diversity and different sexualities. Due to lack of awareness, many CSO staff members hold many of the misconceptions and prejudices existing in their society.

Of course there are other issues besides lack of awareness. Many CSOs view the LGBT issue as too hot to handle. CSOs would rather concentrate on issues that are popular with the majority of the population, such as children’s rights, rather than issues that may attract a public backlash. For faith-based CSOs, LGBT issues are particularly tricky. Many are already struggling to promote

and provide condoms for heterosexuals; little wonder they have not included LGBT issues in their work. Still, it is necessary to talk and convince them that LGBT rights are human rights, urging them to join hands with us in ensuring that all people are treated the same, regardless of sexual orientation. A training workshop for CSOs on LGBT rights would be a good starting point to start up this conversation.

All in all, the debate on LGBT issues has been fruitful. Not only has it helped to profile LGBT issues and increased their visibility in the public eye, but it has also opened debate on an issue that, a few years ago, was strictly taboo. Sustaining this open discussion is vital as it will undoubtedly lead to greater understanding and tolerance of LGBT persons and their choices and identities.

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