

REPORT ON to the Human Rights Council on the realisation of the right of persons affected by violence and discrimination based on sexual orientation and gender identity to the enjoyment of the highest attainable standard of physical and mental health, in relation to SDG3

Prepared by

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A Synopsis of NRA and this Report

- Nyasa Rainbow Alliance (hereinafter referred to as “NRA”) is an LGBTI led organization which was established in 2014. The organization was established after realizing the implementation gaps within the existing LGBTI organizations and their scope in Malawi.
- NRA derived its strength from a group of LGBTIQ+ persons who came together to support the LGBTIQ+ community drawing from personal experiences including challenges of living as an LGBTIQ+ community.
- The mission of NRA is to create a platform where LGBTIQ+ persons are respected, visible and in a safe place enabling them to include their issues in national development to access social services for their full enjoyment of their human rights.
- Currently, NRA is implementing an “Out and Proud Project” whose overall objective is to create a more favourable and non-discriminatory environment for the recognition, respect and enjoyment of human rights by LGBTIQ+ people in Malawi. The project is co-funded by the European Union.
- In Malawi, there is a plethora of issues that affect the health of lesbian, gay, bisexual, transgender and intersex persons, many of which are issues relating to human rights.
- LGBTI persons face discrimination and marginalization which put them at risk of not being able to attain the highest attainable standard of health.
- This report, however, does not intend to be comprehensive in its coverage of the human rights issues that affect the health of LGBTI persons because the cases are too many.
- Thus, this report will provide an overview of the human rights violations affecting LGBTI person’s health in Malawi.
- The report also depicts an understanding that respect for human rights, which apply equally to all people, can be a strong driver for effecting positive change in health issues of LGBTI persons.

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1. EXECUTIVE SUMMARY

Malawi has repressive laws that criminalize same-sex conduct in its statute books despite growing condemnation from both local and international human rights activists who have been demanding repeal of such laws.¹ *The Penal Code of Malawi (Cap: 7:01 of the Laws of Malawi)* in *sections 137A, 153, 154, and 156* criminalize homosexuality and other consensual activities among adults. As a result, lesbians, gays, bisexuals, transgender, and Intersex (LGBTI) people in Malawi face routine violence and discrimination in almost all aspects of their daily lives.² Thus, the criminalization of adult consensual same-sex conduct and social stigma has had an insidious effect on the individual self-expression of LGBTIQ+ people because any suspicion of non-conformity leads to disturbing cases of health care discrimination—from harassment and humiliation—to being turned away by health care providers. This has even forced some gay men in Malawi to adopt self-censoring behavior by getting married to women to conform to society’s expectations, and avoid discrimination in public health institutions. This report, therefore, depicts the current inhibitory legal environment, stigma, and discrimination based on sexual orientation coupled with high levels of violence against key population in Malawi which is impeding their access to health services, and sustainable national response to HIV/AIDS, since the growing discrimination in public health care centers and hospitals against the LGBTIQ+ community leads to a climate of fear that fuels human rights violations and deters transgender women, gay men and other men who have sex with men (MSM) from seeking and adhering to HIV prevention, treatment, care, and support services, among others.

2. THE LAW ON ACCESS TO HEALTH CARE

The Constitution of Malawi, in unequivocal terms, obligates the Malawi Government *under section 13 (c)* ‘to provide adequate health care, which is commensurate with the health needs of Malawian society and international standards.’ On the other hand, *section 20 of the Constitution* guarantees all citizens the right to equality and nondiscrimination.

However, in spite of these provisions, NRA continues to document increased cases bordering on violation of access to health services by some authorities against LGBTIQ+ people in public health

¹ Recommendations made by Australia, Sweden, Switzerland, Netherlands, Chile, France, Slovenia, Norway, Argentina, Uruguay, United States, Luxemburg, Spain, Brazil, Germany and Italy.

² Key issues related to sexual orientation, gender identity and expression identified by a community consultation in Malawi Research brief for Southern Africa Litigation Centre and Nyasa Rainbow Alliance.

facilities of Malawi. The LGBTIQ+ persons are also indirectly victimized through failure by authorities to recognize and consider this diverse group as healthcare recipients with specific needs resulting in denial of access to the full enjoyment of their right to the highest attainable standard of health.

3. GENERAL CASES OF VIOLATION OF ACCESS TO HEALTHCARE.

As stated above, the LGBTIQ+ community in Malawi continues to struggle to access various services from public health institutions due to their sexual orientation.³ The following are some general cases that a majority of the LGBTIQ+ people have experienced when accessing healthcare services from traditional health facilities:

3.1. Denial of Primary Healthcare Services

Reports of denial of healthcare to the LGBTIQ+ people by health workers at public health institutions are very common in Malawi as some health care providers refuse to attend to them citing religious beliefs, among others. Ironically, the emergency cases report documented by NRA reveals that some few health care providers who have treated the LGBTIQ+ people, albeit reluctantly, have reportedly spoken to them using abusive language or demanded some money in order to treat them.⁴ Invariably, such experiences trigger severe emotional distress which can be associated with the LGBTIQ+ community having higher rates of mental health issues, suicide, and substance abuse among, others.

It is also noteworthy that, unlike other developed countries that have community health centres that are specifically designed to serve the needs of LGBTIQ+ people, Malawi does not have enough of such facilities. This means that the only facilities that the LGBTIQ+ people rely on are the public hospitals and health centres where the reported discrimination occurs.

However, cases of ill-treatment and discrimination faced by the LGBTIQ+ people in most health facilities in Malawi are potentially discouraging them from seeking sexual and reproductive health services from public health institutions. As a result, lesbians, gays, bisexuals, transgender, and

³ Arts and Global Health Centre Africa (AGHCA) (2017). Baseline Report of the Umunthu Programme implemented by the Arts and Global Health Centre Africa (AGHCA).

⁴ Emergency cases documented by Nyasa Rainbow Alliance (NRA).

intersex people in Malawi are being denied access to a wide range of essential healthcare services and education.

3.2. Unavailability of Gender Reassignment Services

Transgender people need gender reassignment to make their bodies more congruent with their gender identity and help them live healthier lives. While transition-related care is critical and life-saving for many transgender people, nonetheless, this critical care is denied to transsexuals in Malawi as there is no health facility which provides transition-related medical care such as, hormone therapy, and various surgeries to make one's face, chest, and anatomy in line with the preferred gender identity. This, therefore, violates the right of transsexuals to make decisions about their care based on their individual needs.

3.3. Barriers to Accessing Reproductive Health Care

Trans-men and nonbinary people who have not had cervical surgery still need to have cervical cancer smears at the same frequency as cis women. Unfortunately, in Malawi, trans men and nonbinary people often face barriers to accessing reproductive healthcare, including essential preventive services like cancer screenings. Moreover, access to information regarding cervical cancer screening is denied to transmen and nonbinary people because of prejudice, discrimination, homophobia, and rejection orchestrated by doctors and health care staff in the health facilities of Malawi. NRA has also documented emergency cases related to women who changed their gender from female to male on their health passport in Malawi, and ended up facing discrimination in cervical cancer screening services.⁵ Regrettably, this is denying transmen and nonbinary people the right to make informed decisions about their sexual reproductive healthcare.

3.4. Suppression of HIV/AIDS Related Services

Criminalization of homosexual activities in Malawi, is suppressing the provision of HIV/AIDS education and other forms of preventive healthcare that should be tailored to the needs of the LGBTI communities, and this is undermining Malawi's efforts to combat the spread of HIV/AIDS. Thus, although the 2020-2025 Malawi National Strategic Plan for HIV/AIDS overtly mentions the Key Populations as a crucial component in HIV epidemic control, nonetheless, the national

⁵ Ibid, note 5.

HIV/AIDS programming in Malawi does not adequately address the needs of same-sex practicing people because of discrimination and homophobia orchestrated by repressive laws, hence denying further LGBTI patients' access to effective HIV prevention, counselling and testing, treatment, and care, among others.

Moreover, the Marginalization of LGBTIQ+ people in Malawi is also undermining public health initiatives as it leaves out this significant sector of the community underserved and often afraid to seek treatment, even if they could, due to stigmatization or criminalization. Other prejudices, such as those associated with HIV/AIDS, are also reinforcing and exacerbating discrimination on the grounds of sexual orientation or gender identity, or vice versa, making it less likely that those in need access health services, even if such services are available.

3.5. Demeaning Treatment

LGBTI patients in Malawi also suffer ostracism, invasive questioning, rough physical handling, derogatory comments, breaches of confidentiality, shock, embarrassment, unfriendliness, pity, condescension, and fear at the hands of healthcare providers who normally hide behind repressive laws that criminalize homosexuality in Malawi. This is impeding the right of LGBTIQ+ people to receive appropriate and gender-affirming healthcare that is not being adequately provided for by the State.

3.6. Unavailability of Appropriate, Gender-Affirming Health Care

Another aspect of LGBTI health right which is being wantonly violated by the authorities in Malawi is the right to receive adequate and appropriate gender-affirming healthcare. This includes the freedom to change one's gender through the use of medical procedures as the laws of Malawi do not recognize or support this.

3.7. Failure to Incorporate Comprehensive Sexuality Education in the School Curricula

Health education is an important aspect of the right to health for LGBTIQ+ individuals. However, the school curricula of Malawi fail to incorporate Comprehensive Sexuality Education (CSE). Thus, educational materials that address sexual orientation and gender identity issues, or even acknowledge the existence of LGBTI concerns, are banned from schools. This is risking the health of young LGBTIQ+ people in the process.

4. CRITICAL CASES OF VIOLATION OF ACCESS TO HEALTH CARE

Apart from the general cases that Rainbow Rights Education and Awareness (RREA) has documented in Malawi, there have also been specific cases that RREA has recorded and need urgent attention and intervention. The said cases have specific names of individuals attached because the named victims had given their unwavering consent to get their cases reported.

4.1. Denial of a Transwoman to Access Healthcare

Limbikani Kapikule is a gender non-conforming transwoman based in a rural conservative area where LGBTI people are never accepted. On Sunday, 14th September, 2020, Limbikani was physically attacked based on her gender Identity. This happened at a drinking joint where a man spit alcohol on her calling her obscene names like ‘Wamathanyulayo’ a demeaning name for Gay people in the local language. This man did not only assault Limbani verbally, but also gave her slaps while scaring her that if she dared to fight back, she would be hit with the bottle of beer which the attacker was holding in his hand. The bar owner came to Limbi’s rescue and pacified the situation.

On her way home, the two men followed her, and they hit her hard on the face and head with a broken bottle of beer until she got unconscious. She was dumped in a nearby forest thinking that she was dead. She was robbed some money amounting to MK5,000 (3 USD), 2 smartphones and other valuables in her bag. She got up after some hours and sought help from nearby houses where she was taken to the hospital. When she got at the hospital, she presented her health passport in yellow color (symbolizing women passport). Instead of treating her, the nurse began interrogations asking Limbani why her health passport was labelled ‘she’ while her expressions were masculine. She was then advised to wait outside for further examination, where 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 would not be able to assist her and she was sent back. Without help, she went back to her house, hoping to buy some drugs for herself and self-medicate.

The said denial and demeaning treatment left Limbani with a permanent feeling of personal inadequacy and she constantly faced anxiety, fear, embarrassment and humiliation in her daily life. She has had to submit to severe hostility and taunts in the light of the general public’s strong

opposition, rooted in traditional and religious norms. Consequently, she has had to follow an almost underground life-style, avoiding situations in which she might have to disclose her original identity. This has left her in a permanent state of depression with suicidal tendencies.

4.2. Denial of a Gay Man to Access Healthcare

On 26th June 2021, Alexander Kampheta—an LGBTIQ Activist, was one of the participants who marched in the first ever LGBTIQ+ pride parade that drew LGBTIQ+ people from different places across Malawi to the streets of Lilongwe to deliver a petition aimed at presenting challenges that the LGBTIQ+ community continues to face in Malawi. However, on 4th July 2021 around 5pm, Alexander was brutally attacked by unknown mob who recognized him that he was one of the participants who “wants to spread the gay agenda and confuse people in Malawi”. Alexander survived with bruises and brumby face. He was rescued and rushed to Police where his case was not given an urgent attention it required. When he went to the hospital to receive medical attention, the healthcare providers on duty started mocking him, asking him why he was indulging in satanic activities. They chased him away from the hospital and told him to “repent and receive Jesus”. One medical practitioner who appeared sympathetic with Alexander’s situation approached him but demanded MWK 20,000 from him in order to assist him with medical treatment which at the time he did not have. Because of his failure to pay the money, the said practitioner got frustrated and invited the hospital security personnel to chase Alexander away from the hospital premises while calling him all sorts of names. He left the hospital premises embarrassed and humiliated. The situation has plunged Alexander into major depression and severe anxiety state which he is still grappling with until now.

5. RECOMMENDATIONS

In Malawi, LGBTI persons face discrimination and marginalization which put them at the risk of not being able to attain the highest attainable standard of health. This report has highlighted, in detail, human rights issues that affect the health of LGBTI persons. Therefore, the following are recommendations that the expert could make in his report:

Governments should:

- (a) 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;
- (b) Guarantee the freedom of association of LGBTIQ+ led organizations;
- (c) Take measures against discrimination against LGBTIQ+ people and fight impunity for violence based on gender identity and sexual orientation among the prohibited grounds of discrimination;
- (d) 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, LGBTIQ+ persons, persons affected by HIV/AIDS and persons with mental health conditions and psychosocial disabilities;
- (e) Improve the access and availability of quality health services for LGBTI persons;
- (f) Provide mandatory sensitization for healthcare providers at health facilities and include teaching on SOGI related health concerns into health professions education to reduce sexual orientation and gender identity-related stigma, prejudice and discrimination in healthcare;
- (g) Improve access to mental health services and ensure that mental health services are affirming of sexual and gender diversity and are provided without SOGI-related stigma, prejudice and discrimination;
- (h) Introduce policies and laws that would allow LGBTIQ+ people to change their gender maker to align with their preferred or adult biological sex or identity;
- (i) 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, in particular against women and girls, LGBTI persons, persons affected by HIV/AIDS and persons with mental health conditions and psychosocial disabilities;
- (j) Take necessary steps to educate citizens on the LGBTIQ+ community; and
- (k) Monitor and take all necessary measures on all forms of hate speeches against LGBTIQ+ people in all media outlets through its service providers.