

CIVIL SOCIETY PARALLEL REPORT OF THE VOLUNTARY NATIONAL REVIEW (VNR) OF SUSTAINABLE DEVELOPMENT GOALS (SDG) IMPLEMENTATION IN MALAWI

Compiled by Centre For the Development of People (CEDEP) with
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Acronyms

CBDAs:	Community-based distribution agents
CHRR :	Centre for Human Rights and Rehabilitation
DICs:	Drop-in-centers
FPAM:	Family Planning Association
GoM:	Government of Malawi
LGBTI:	lesbian, gay, bisexual, transgender and intersex
MNAS:	Malawi National Attitudes Survey
MSM:	Men who have sex with men
PID:	People who Inject Drugs
PLHIV:	People Living with HIV or AIDS
PrEP:	Pre-Exposure Prophylaxis
SOGIE:	Sexual Orientation, Gender Identity and Gender Expression
SRHS:	Sexual and Reproductive Health Services
SDG:	Sustainable Development Goal
TGW:	Trans Gender Women
VNR:	Voluntary National Review

Executive Summary

Challenges facing the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Malawi are shaped by laws, policies and practices that are informed by social, religious and cultural norms. Consensual same-sex sexual relations between adults are not only criminalised but also highly stigmatised in Malawi, resulting in LGBTI persons being forced to remain 'invisible' or 'underground'. This situation has created particular obstacles to progress on Targets in Sustainable Development Goal (SDG) 3 on access to health services including sexual and reproductive health. Other challenges that LGBTI face include denial to housing, blackmail and beating by police or other security forces. Limited data relating to the LGBTI community makes it difficult to develop programming to meet their needs, to assess whether any progress has been made on SDGs and what the continuing gaps/issues are. The undercounting and underreporting of HIV among men who have sex with men (MSM) has been attributed to homophobia.

Despite these challenges, some progress on the services provided to key populations (KP), including gay men and other men who have sex with men, people who inject drugs, sex workers, transgender people, and people in prisons and other incarcerated people, have been aided by interventions from civil society and development partners. Community based drop-in health centers offer a parallel distribution channel to the public sector supply chain system, hence minimizing barriers for KP to access services, especially for those who are highly stigmatized, and face discrimination and violence at public health facilities. Networks of peer educators are utilized to reach out to MSM connecting them to these distribution channels. However, the majority of MSM still do not access sexual and reproductive health services (SRHS) through this arrangement, as they remain outside this network/system and are left behind.

Government and non-State actors collaborated in developing a Human Rights Action Plan that clearly set up timelines for milestones, like the review of the laws on consensual same-sex relations between adults as well as support for LGBTI people in health care services in 2016. This plan has not been approved to date. Back and forth actions by the State cast doubt on the willingness of political leadership to create an environment that is truly inclusive of the most marginalized, including LGBTI people.

This report makes recommendations that would enhance progress on SDG 3 and in consideration of Targets in SDGs 10 (reducing inequalities) and 16 (justice, peace, and strong institutions). The recommendations are as

follows:

- Increase access and availability to quality health services, including quality treatment, care and support for LGBTI people. This includes delivery of services in a stigma free environment.
- Ensure that what is defined as “Essential Health Package” meets the needs of the LGBTI community; this includes increasing access to lubricants, oral condoms, and other services targeted at MSM and LGBTI communities.
- Build capacity for health service providers in both public and private facilities to be equipped with skills and knowledge to provide sexual and reproductive health services that are sensitive to the needs of the LGBTI community. Partner with LGBTI-led organizations to deliver sensitization trainings and information to providers on a regular basis.
- Dedicate resources to create awareness messaging regarding sexual and reproductive health issues tailored to LGBTI people.
- To the best extent possible, and in a way that respects confidentiality and safety, collect data disaggregated by sexual orientation, gender identity and expression, to ensure that SDG planning and annual reporting for Malawi can measure progress for LGBTI people.
- Develop a separate National HIV and AIDS Programme for LGBTI people, particularly with more details for how to reach and serve trans people.
- As Malawi finalises developing the HIV/AIDS National Strategic Plan 2020-2025, incorporate a strong monitoring mechanism and indicators targeting MSM and the transgender community.
- Regularly and routinely consult LGBTI-led community-based organizations to help tailor approaches and policies serving LGBTI people.
- Develop comprehensive legislation that prohibits all forms of discrimination, including on the basis of sexual orientation and gender identity and expression.
- Implement a vocational skills and entrepreneurship training intervention targeting LGBTI individuals to live productive, self-sufficient and rewarding lives.
- Collect data on the experiences of LGBTI people with discrimination and harassment in the workplace and in daily life.

- Disseminate messages and awareness in places of work, schools, colleges and business places on human rights and anti-discrimination for key populations.
- Conduct regular and routine training of law enforcement agents on LGBTI and human rights issues as well as orienting them on the protection of the LGBTI people;
- Sensitize the LGBTI community on their rights and channels for reporting acts of violence and discrimination based on sexual orientation.
- Provide training to journalists and media outlets on reporting LGBTI cases.
- Government should update and approve the National human rights action plan.
- Ensure that victims of violence based on sexual orientation and gender identity have access to effective and adequate remedy domestically.
- Fight impunity for violence based on sexual orientation and gender identity perpetrated by State and non-State actors.
- Issue clear directives to all police officers instructing them to respect the moratorium pending repeal of the relevant provisions of the Penal Code and end arbitrary arrests and detention of LGBT individuals.
- Repeal sections 153, 154, 156 and 137A of the Penal Code that criminalize adult consensual same sex conduct.
- Establish Human Rights Desks at Police Stations to provide a safe environment for LGBT persons to report police abuses and for complaints to be processed and investigated without delay.

1. Background and Context

1.1 Introduction

As Malawi participates for the first time in a Voluntary National Review of Sustainable Development Goal (SDG) implementation, civil society representing the LGBTI community in Malawi takes the opportunity to participate in this process through creating a parallel report. This report highlights issues pertaining to engagement and participation of the LGBTI community in SDG implementation, investment and prioritization of country-level interventions. Through the concept of “leaving no one behind” the report highlights issues on stigma, discrimination, and human rights as they pertain to minorities that include LGBTI community in the national HIV response.

Out of the 17 SDGs, this report singles out SDG 3 as the center of focus as it seeks to ‘Ensure healthy lives and promote well-being for all people at all ages’, including the Target to ‘End the epidemic of AIDS by 2030’. Other SDGs that are covered include SDG 10 on reducing inequalities and 16 on access to justice. The political, social and legal environment in Malawi makes it difficult for fulfilment of SDG 3 due mainly to the underlying issues of stigma and discrimination propelled by laws that criminalise the existence of the LGBTI, which is why this report considers the Targets within SDGs 10 and 16.

1.2 About CEDEP

Centre for the Development of People (CEDEP) is a Human Rights organization registered in Malawi in 2006. CEDEP’s mission is to create an enabling environment and protect the wellbeing of Lesbians, Gays, Bisexuals, Transgender and Intersex (LGBTI) and other vulnerable groups. CEDEP has three areas of focus, namely; Advocacy, Health and Research. CEDEP’s governance structure includes a board of trustees mandated to provide oversight action to ensure that the organization operates within its parameters. The Presence of diverse professionals on the board such as Lawyers, Academicians, the Clergy and the LGBTI representatives, enriches the work that CEDEP does. The organization has a pool of 36 staff members who are of diverse sexual orientations and gender identity and expressions. It also has 358 volunteers who are all LGBTI volunteering to work as peer educators under various projects being implemented within the organization.

1.3 Methodology and Process

Following the announcement by the United Nations that Malawi would present its Voluntary National Review (VNR) of the SDGs implementation at the High-Level Political Forum (HLPF) in July 2020, Government commenced the process of drafting the VNR. Several committees were established to coordinate the exercise. These committees were composed of a range of stakeholders including staff from key Government ministries; representatives of academia, CSOs and others. Members from the LGBTI community were however not included in the committees and neither were they amongst key informants to the data collection exercise for the review report.

Centre For the Development of People (CEDEP) with support from MPact Global Action for Gay Men's health & Rights embarked on the process of drafting a Parallel Report of the Voluntary National Review of Sustainable Development Goals implementation in Malawi with a view to highlight issues pertaining to engagement and participation of the LGBTI community in SDG implementation. The process involved review of documentation that included national law, frameworks, policies and guidelines on the implementation of the SDGs in Malawi. The reviewed documents also included plans and reports on health and HIV, SDG reports and reviews of Malawi Growth and Development Strategy which is the country's overarching medium- term national development strategy. Newspaper reports and studies on LGBTI issues were also reviewed.

Stakeholders that included organisations that work with the LGBTI community and LGBTI members themselves were brought together to provide more input and validate parallel VNR. The organisations included Community Health Rights Advocacy (CHERA), Nyasa Rainbow Alliance (NRA), Ivy Foundation and Center for Human Rights and Rehabilitation (CHRR). These stakeholders further agreed that after completion, the parallel report should be circulated among themselves and to other stakeholders so that its recommendations can inform their further advocacy on the plight of the LGBTI community.

1.4 Background to the Situation of the LGBTI Community in Malawi

Challenges facing the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Malawi are shaped by laws, policies and practices that are informed by social, religious and cultural norms. Chapter XV of the Penal Code, on "Offences Against Morality," contains several provisions

that criminalize adult consensual same-sex conduct¹. Section 153 provides that any person found guilty of committing an “unnatural offence / offence against the order of nature” is liable to 14 years in prison, with or without corporal punishment. Section 154 punishes attempted unnatural offences with seven years’ imprisonment, and section 156 punishes “gross indecency” between males with five years in prison, with or without corporal punishment. These laws date back to British colonialism, but former president Bingu wa Mutharika’s government enacted a new anti-homosexuality law in January 2011, amending the Penal Code to extend the crime of “gross indecency” to women. Section 137A 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.

While these laws have rarely been enforced, in December 2009, police in Blantyre arrested Steven Monjeza and Tiwonge Chimbalanga after local newspapers reported on their traditional engagement ceremony². Prosecutors charged them with “unnatural offenses” and “indecent practices between males” under sections 153 and 156 of Malawi’s Criminal Code. In May 2010, a Blantyre magistrate court convicted them and sentenced them to 14 years in prison, the maximum sentence for “unnatural offenses.” Handing down the sentence, the Chief Resident Magistrate in Blantyre, Nyakwawa Usiwa-Usiwa, stated:

...[W]e are sitting in place of the Malawi society. Which I do not believe is ready at this point in time to see its sons getting married to other sons or cohabiting or conducting engagement ceremonies. I do not believe Malawi is ready to smile at her daughters marrying each other. Let posterity judge this judgment. So this case being “the first of its kind”, to me, that becomes “the worst of its kind”. I cannot imagine more aggravated sodomy than where the perpetrators go on to seek heroism, without any remorse, in public, and think of corrupting the mind of a whole nation with a chinkhoswe ceremony. For that, I will give you a scaring sentence so that the public must also be protected from others who may be tempted to emulate their [horrendous] example.³

1 Malawi Penal Code, Chapter 7:01 Laws of Malawi, <http://crm.misa.org/upload/web/12-laws%20of%20Malawi%20penal%20code.pdf> (last accessed 3 June 2020)

2 <https://www.bbc.com/news/10130240> (last accessed June 4, 2020)

3 Chief Resident Magistrate’s Court at Blantyre, Criminal Case Number 359 of 2009, Republic v Steven Monjeza Soko and Tionge Chimbalanga Kachepa, full judgment, <https://malawilii.org/node/4837> (last accessed June 4, 2020).

As noted from the judgement, consensual same-sex sexual relations between adults are not only criminalised but also highly stigmatised in Malawian society, resulting in LGBTI persons being forced to remain ‘invisible’ or ‘underground’, creating self-stigma and other obstacles to their access to services. The negative attitudes remain despite several attempts by human rights organisations to change this status quo through awareness campaigns. The 2019 Malawi National Attitudes Survey (MNAS) by the Other Foundation, the first nationally representative survey of attitudes towards LGBTI people in Malawi, found that 90% of Malawians find the idea of same-sex physical intimacy to be ‘unnatural’⁴. The study also found that a majority of Malawians have strongly negative views and misconceptions about gay men, lesbians, and bisexuals. These negative attitudes towards sexual and gender diversity drive stigma and discrimination at every turn of daily life for LGBTI Malawians.

Despite ratifying a number of regional and international conventions that protect the human rights of all people, including LGBTI people, the country has not domesticated these provisions. Arguments to the contrary have been driven by politics propelled by religious and cultural beliefs.

By adopting the 2030 Agenda for Sustainable Development, Malawi as a member of the United Nations pledged to ensure “no one will be left behind” and to “endeavour to reach the furthest behind first.” The obligation placed on the government necessitates that it takes explicit action to end extreme poverty, curb inequalities, confront discrimination and fast-track progress for the furthest behind.

In Malawi key populations (gay men and other men who have sex with men, sex workers, transgender people, people who inject drugs, prisoners and other incarcerated people) are at higher risk of HIV exposure and report alarming levels of stigma, discrimination and limitations of their rights in policies, law and in practice. It is widely accepted locally, regionally and internationally that a protective legal and regulatory framework is crucial to reduce stigma and discrimination and to promote effective national responses to HIV and AIDS.⁵

4 The Other Foundation, “Under Wraps, a survey of public attitudes to homosexuality and gender non-conformity in Malawi available on <https://theotherfoundation.org/under-wraps/> (last accessed on June 4, 2020)

5 Global Commission on HIV and the Law, UNDP, “HIV and the Law: Risks, Rights & Health” and the “2018 Supplement.” <https://hivlawcommission.org/>

1.5 Legislative and Policy Context

Malawi is a signatory to several global and regional commitments relating to HIV and AIDS. At the national and local levels, a variety of legislation and policies support the SDG implementation, including the fight to end the HIV and AIDS pandemic while striving to leave no one behind.

Equal treatment under the law for people living with and affected by HIV is articulated in several legal and policy documents in Malawi. The Constitution of the Republic of Malawi guarantees the fundamental rights of all Malawians to life, personal liberty, dignity and freedom. The Constitution also provides protection for the right to equality and non-discrimination on a number of grounds, including “other status”. Although it is generally agreed by legal scholars as well as international guidance, that “other status” includes sexual orientation, gender identity and expression (SOGIE), explicit protection against SOGIE-related discrimination is lacking⁶. The HIV and AIDS (Prevention and Management) Act, 2017⁷, provides for the prevention and management of HIV and AIDS; the rights and obligations of people infected and affected by HIV and AIDS including prohibition of discrimination based on HIV status ; The National Health Policy 2018 – 2030 seeks to address the identified key challenges in the Malawi Health System including social determinants of health and their root causes such as inequalities, and improve its functioning and positioning the country on the path to achieving the health-related SDGs. The National HIV and AIDS Policy provides guidance to the national HIV and AIDS response including various interventions. Malawi Growth and Development Strategy 2017-2022 is the overall development agenda for Malawi that recognizes HIV and AIDS as a priority area and details interventions, that focus on the reduction of new infections, HIV and AIDS deaths and stigma and discrimination.

The fight against HIV and AIDS in Malawi is also guided by the UNAIDS Fast Track Strategy that supports the achievement of SDG 3 through fast track targets known as the 90:90:90 targets by 2020 and 95-95-95 by 2030: 90% of People Living with HIV (PLHIV) know their status; 90% PLHIV who know their status receive Antiretroviral Therapy (ART); and 90% of people on ART are retained in HIV care and have suppressed HIV viral load by 2020, rising to 95% on each category by 2030.

The 2016 Political Declaration on HIV and AIDS, The 2017 Global HIV

6 ILO, 2019, Information paper on protection against sexual orientation, gender identity and expression and sexual characteristics (SOGIESC) discrimination

7 Malawi Government HIV and AIDS (Prevention and Management) Act No. 12 of 2017

Prevention Road Map are also some of the international commitments that support SDG 3 implementation. Other policies and strategies that directly support the LGBTI community include the Malawi HIV and AIDS Removing Legal Barriers National Action Plan: Priorities for Action 2016-2020; National Key Population Standard Operating Procedures (SOPs) and other related documents. Much as the existence of these policies and strategies connotes an improvement in the institutional package supporting key population, knowledge about these documents among the key populations and organisations supporting them is very limited. Dissemination has been very limited and hence the documents remain on the shelves of developers. Increased knowledge on these policies and strategies can help in the fight against HIV/AIDS, prevent stigma amongst KPs, and achieve the SDGs.

2.0 Progress in the Implementation of Sustainable Development Goals

2.1. Goal 3. Ensure healthy lives and promote well-being for all at all ages

The HIV and AIDS National Action Plan for Malawi (2016-2020) adopted a strategy that prioritizes alleviation of legal barriers to the effective and full enjoyment of the rights of persons living with HIV in Malawi, including LGBTI people living with HIV. However, Malawi's annual SDG report for 2018 ⁸conspicuously excluded specific reporting on areas that concern key populations. Based on other reports, recordings and interviews, the following describes the progress on the SDG 3, especially for the LGBTI community in Malawi.

2.1.1 Target 3.3: By 2030, end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases

Indicator 3.3.1 Number of new HIV infections per 1,000 uninfected population, by sex, age and key populations

Progress on this indicator from the 2018 SDG annual report shows stagnation or below recommended rate to achieve the target by 2030. The 2015-2020 National HIV/AIDS strategic plan also aimed to reduce new infections from 56,000 in 2010 to 25,000 in 2020. However, the 2019 epidemiological estimates put the number of new infections at 34,000, meaning that the indicator was far from being met.

There continues to be a lack of disaggregated data across a number of indicators. Limited data relating to the LGBTI community makes it difficult to assess the extent whether any progress has been made and what the continuing gaps/issues are. The only available data on HIV incidence relates to Men who have Sex with Men (MSM). However, there have been contradictions on the current population size estimate of MSM in Malawi, with one study estimating the population at 9,698 (NAC, 2018) and another at 42,600 (UNAIDS KP Atlas 2019). Estimating prevalence rates has also been a challenge. HIV prevalence among MSM was at 18% in a study conducted between 2011 and 2014 (National Statistical Office, 2014). LINKAGES project, however, found in 2017 a prevalence of 7% among MSM residing in four high burden districts of Blantyre, Lilongwe, Mzimba North

8 Malawi Government, SDG report for 2018

and Mangochi. While prevalence was 41% among male and 42% among female inmates in central prisons and lower in medium and small prisons.

The undercounting and underreporting of HIV among MSM has been attributed to homophobia, which make it difficult to ascertain accurate population sizes, incidence, and prevalence estimates. Currently, very little is known about the epidemic amongst LGBTI people in the country. Criminalization of consensual same-sex relations between adults makes it hard for government institutions to regularize collection of HIV data relating to LGBTI people. A lack of national population estimates beyond the MSM community and for the entire LGBTI community also makes it difficult to develop programming to support these key populations and to assess whether any progress has been made and what the continuing gaps/issues are.

2.1.2 Target 3.7: By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes

Key and vulnerable populations in Malawi constitute a small proportion of Malawi's population, but they are at disproportionate risk of acquiring and transmitting HIV due to widespread stigma, discrimination, violence and criminalization, which pose serious barriers to all steps along the HIV prevention and treatment cascade and to accessing sexual and reproductive health services. Sexual reproductive health services (SRHS) have often been provided for the purpose of HIV prevention and mostly target MSM, however there are other specific SHRS services that other groups in the LGBTI community require like hormonal therapies for the transgender community

The use of condoms has been proven as a cost effective method for reducing the risk of HIV infection for sexual transmission in almost all populations, including sero-discordant couples, MSM and sex workers. It has been noted that since the publication of the National Condom Strategy in 2015 and the Revised National HIV Prevention Strategy in 2018, Malawi has significantly expanded its condom and lubricant programming. Distribution of 102 million male condoms in 2019 amounts to a 73% increase from the 59 million condoms distributed in the one-year period from mid-2016 to mid-2017. The 2018 SDGs annual report shows positive progress on this indicator. Of significance to the MSM community has been the doubling of the lubricant sachets distributed in 2019 to 1.5 million sachets. This was possible with the use of parallel distribution channels to the public sector

supply chain system. These include community-based distribution agents (CBDAs) and a dedicated distribution channel for condoms and lubricants for KP service providers; and the introduction of lubricants into ongoing KP programs.

The 2018 Study on Perception, Barriers and Facilitators to Access to Sexual and Reproductive Health Services for MSM, female sex workers (FSWs), people who inject drugs (PIDs) and transgender women (TGW) in Malawi commissioned by CEDEP collected data in nine districts to identify barriers and facilitators of access to Sexual and Reproductive Health Services (SRHS). The study revealed that in all districts surveyed, some MSM accessed SRHS at CEDEP drop-in centers, within communities using a network of peer educators or at Family Planning Association (FPAM) clinics. Commodities accessed include condoms, condom compatible lubricants, HIV testing and counseling (HTC), HIV and STI treatment and prevention information. The study noted, however, that the majority of MSM could not access SRHS through this arrangement as they were outside this network/system. These commodities are not available in public health facilities and are expensive to purchase in the private sector. This indicates the crucial role that community-based organizations and communities play in achieving SDG 3, and further reiterates that more must be done to support these organizations to ensure that MSM can overcome challenges when accessing SRH services.

It is lubricants, they are not found in hospitals. We access them through CEDEP peer educators. Sometimes he does not have. If they make them available in hospitals, it can help; we can get them through our special doctors or any other means which can be put into place so that they are available.

- Key informant, CEDEP 2018

In September 2016 I went to a government hospital to get treatment for an STI. The doctor asked me to come into her office, examined me and found that I had anal warts. Desperate to get treatment, I told her the truth – that I am a gay man and engage in anal sex. She stepped out of the room and returned with five nurses and asked me to repeat my story. I felt my privacy was violated. I had trusted the doctor with this information. They just stood there, laughing at me. I got frustrated and left the hospital without treatment.

- Human Rights Watch 2018

The above testimonies show that there is a need to increase distribution points for SRH services in communities, as well as at public health facilities that must also routinely train all health care providers to provide stigma-free services.

The provision of SRH information that is specific to the needs of LGBTI people remains inadequate in Malawi, as the needs of people from this group are not given priority by the government. As a result, these groups have very limited access to tailor-made SRH messages. For instance, most HIV prevention messages target heterosexual couples, creating the impression that homosexual couples are safer. The HIV information materials do not even mention anal sex.

HIV campaigns aren't relevant to me. The HIV posters only show straight couples, so it looks as if I am safer sleeping with guys than with girls. The HIV leaflets don't even mention anal sex.

- Key informant, CHRR 2018

2.1.3 Target 3.8 Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all

Indicator 3.8.1 Coverage of essential health services

The 2018 SDG annual report shows that progress on this indicator has stagnated, as per capita expenditure on health is still low. Health expenditure as a percentage of GDP is estimated at 9.3% against the target of 15% (Malawi Government Economic Report, 2018). The 2018 report, however, does not present further statistics on the actual coverage of services, let alone disaggregate coverage by SOGIE. It is therefore a challenge to assess progress on this indicator and target when the government is not collecting data.

To enhance the delivery of quality service to key and vulnerable populations, several efforts have been made by State and non-State partners. A KP technical working group (TWG) was established at the national level in 2017 to guide programming of KP activities. It is composed of government and non-State partners that include KP representatives and has shown signs of strength at the national level. At the local level, however, challenges remain to effectively leverage the TWG because the KP community is loosely organized, with limited advocacy capacity and not necessarily aware of

opportunities opportunities within the HIV space. This affects coordination of delivery of KP interventions, particularly because the distribution of services across districts is not even. While some public health facilities support key populations, most of this assistance targets female sex workers. The majority of support for MSM and TG persons comes from development partners such as the Global Fund, MSF, and PEPFAR and is delivered through drop-in-centres (DICs). Reports indicate that in 2019, there were 19 DICs operating in six districts - Blantyre, Lilongwe, Machinga, Mangochi, Mzimba North, and Zomba. Only four of these DICs are for MSM and TG persons and the remaining 15 are for female sex workers (FSWs).

DICs are community-based and minimize barriers for KP, especially for those who are migratory and those who are highly stigmatized, and face discrimination and violence at public health facilities. The services provided by these DICs include Pre-Exposure Prophylaxis (PrEP) to prevent the acquisition of HIV. PrEP was approved by Ministry of Health in 2018 as an additional prevention intervention for individuals at substantial risk of acquiring HIV, including MSM. PrEP is currently available for KPs at selected service delivery points in Lilongwe and Blantyre districts. However, the challenge of limited coverage remains.

2.1.4 Target 3.c Substantially increase health financing and the recruitment, development, training and retention of the health workforce in developing countries, especially in least developed countries and small island developing States

Indicator 3.c.1 Health worker density and distribution

Overall progress on this indicator in the 2018 SDGs annual progress for Malawi is off-track, as the health worker density and distribution including doctor/10000 proportion has remained stagnant.

As reported in the 2018 CEDEP study highlighted above, health care professionals regularly treat MSM with stigma, discrimination, contempt, and disrespect. Respondents across the surveyed districts observed that there are very few professionals in the healthcare field who have acquired training in the provision of services tailored for key populations. KP issues get a brief mention in the medical training curriculum. However, protocols at the health centers rarely give them any recognition. CEDEP and CHRR have provided specialized training on access to health services for KPs. However, the scale of these trainings is limited and have only reached a very small percentage of health personnel. Lack of training results in lack of sensitivity to the needs of KPs, including lack of knowledge and

skills, failure to protect confidentiality, and projecting having judgmental mindsets on their clients.

“A certain friend had a wound at the anus, when he went to the hospital the doctor who was treating him called fellow health workers to come and see a man who had a wound in the anus. It was a bad experience... When his relatives heard about it, they beat him up”

- Key informant, CEDEP, 2018

This situation results in some KPs to elect not to seek services or getting treatment where health facilities do not provide trained personnel. More health care professionals must be recruited and trained to provide quality services to LGBTI clients.

2.1.5 Recommendations on Selected Targets of SDG 3

Ensuring healthy lives and promoting well-being for all at all ages is one of the most essential goals to attain sustainable development, as development relies on a healthy populous. The principle of leaving no one behind is only meaningful if explicit efforts are made to reach marginalized populations, including LGBTI people. The gaps that exist to achieving inclusive SDG 3 implementation in Malawi require several measures to be corrected. Below are the recommendations that CEDEP has outlined specific to SDG 3:

- Increase access and availability to quality health services, including quality treatment, care and support for LGBTI people. This includes delivery of services in a stigma free environment.
- Ensure that what is defined as “Essential Health Package” meets the needs of the LGBTI community; this includes increasing access to lubricants, oral condoms, and other services targeted at MSM and LGBTI communities.
- Build capacity for health service providers in both public and private facilities to be equipped with skills and knowledge to provide sexual and reproductive health services that are sensitive to the needs of the LGBTI community. Partner with LGBTI-led organizations to deliver sensitization trainings and information to providers on a regular basis.

- Dedicate resources to create awareness messaging regarding sexual and reproductive health issues tailored to LGBTI people.
- To the best extent possible, and in a way that respects confidentiality and safety, collect data disaggregated by sexual orientation, gender identity and expression, to ensure that SDG planning and annual reporting for Malawi can measure progress for LGBTI people.
- Develop a separate National HIV and AIDS Programme for LGBTI people, particularly with more details for how to reach and serve trans people.
- As Malawi finalises developing the HIV/AIDS National Strategic Plan 2020-2025, incorporate a strong monitoring mechanism and indicators targeting MSM and the transgender community.
- Regularly and routinely consult LGBTI-led community-based organizations to help tailor approaches and policies serving LGBTI people.

2.2. Goal 10: Reduce Inequality Within and Among Countries

Given the several criminalization statutes in the Malawi Penal Code that prohibit consensual same-sex relations between adults, inequality and exclusion for LGBTI people in the country is commonplace. As Malawi endeavors to achieve the 2030 Agenda and “leave no one behind,” particular focus should be placed on reducing inequalities and removing discriminatory laws, policies and practices that impact the LGBTI community. This is essential to the achievement of SDG 3 and the entire 2030 Agenda.

2.2.1 Target 10.2 By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.

Indicator 10.3.1 Proportion of the population reporting having personally felt discriminated against or harassed within the previous 12 months.

Across almost all social, economic, and political dimensions of human development, LGBTI people in Malawi continue to lag behind due to widespread discrimination, reinforced by laws, policies and practices that either fail to take LGBTI people’s needs into account or deliberately

exclude them. These laws, policies and practices reinforce negative social attitudes, and encourage backlash against the LGBTI communities calling for equality.

Unfortunately, there has not yet been a systematic survey of the LGBTI population regarding personal experiences of discrimination and harassment. Despite this, studies have consistently shown that Malawians are generally opposed to same-sex relationships. For instance, a 2012 survey by Afro barometer, a Pan-African research network operating since 1999, found that 94 percent of adult Malawians did not accept that people had a right to private, same-sex relationships. A 2008 survey by CEDEP found that more than one third of gay men in Malawi had been denied services such as housing or healthcare or had been blackmailed due to their sexual orientation. Nearly one in ten had been beaten by police or other security forces. In a 2014 report, CEDEP and CHRR noted that “the voices of lesbians and bisexual women in Malawi are systematically silenced... women do not have a space, even in protest, to express and live their sexual orientation.” In 2018, Human Rights Watch followed up with a report, “Let Posterity Judge: Violence and Discrimination against LGBT People in Malawi,” based on in-depth interviews with LGBTI people in Lilongwe and Blantyre as well as with lawyers, activists, and government officials. The report confirmed that “discrimination against LGBT people is rife in Malawi, creating an atmosphere in which some of its most vulnerable citizens are afraid to seek out police assistance or potentially life-saving medical care.”

Anti-discrimination protections stipulated by law in Malawi fail to include protections against discrimination based on sexual orientation or gender identity. For instance, section 20 of the Constitution of Malawi states: “Discrimination of persons in any form is prohibited and 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, national, ethnic or social origin, disability, property, birth or other status or condition.”

Section 5(1) of the Employment Act of 2000 states: “No person shall discriminate against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other

matters arising out of the employment relationship.”⁹

In both of the above sections, discrimination based on sexual orientation or gender identity is not included. This lack of explicit protection increases vulnerability to unfair treatment and lack of redress for LGBTI people in the workplace. There has not been a specific study on discrimination on the basis of sexual orientation and gender identity and expression in the workplace in Malawi. However, there is both anecdotal evidence and documented cases of workers being harassed or dismissed because of their sexual orientation. It is also evident that fear of being discovered leads many LGBTI workers to conceal their sexual orientation and gender identity, which causes stress and can have negative consequences on productivity and career progression.

In 2015, CEDEP and CHRR documented the case of a young gay man working for a local commercial bank in Malawi who was forced to quit his job after fellow employees discovered his sexual orientation and started to ask him inappropriate questions¹⁰. The lack of legal protections also limits employment options for LGBTI people. There are some LGBTI persons who have graduated with good degrees but are jobless due to homophobic attitudes by employers. For some LGBTI people who are unable to be hired due to homophobia and transphobia, sex work is one of the only options as a means to survive.

2.2.2 Recommendations for SDG 10

- Develop comprehensive legislation that prohibits all forms of discrimination, including on the basis of sexual orientation and gender identity and expression.
- Implement a vocational skills and entrepreneurship training intervention targeting LGBTI individuals to live productive, self-sufficient and rewarding lives.
- Collect data on the experiences of LGBTI people with discrimination and harassment in the workplace and in daily life.

9 [https://www.ilo.org/dyn/natlex/docs/WEBTEXT/58791/65218/E00MWI01.htm#:~:text=%2D%2D\(1\)%20No%20person%20shall%20discriminate%20against%20any%20employee%20or,in%20respect%20of%20recruitment%2C%20training%2C](https://www.ilo.org/dyn/natlex/docs/WEBTEXT/58791/65218/E00MWI01.htm#:~:text=%2D%2D(1)%20No%20person%20shall%20discriminate%20against%20any%20employee%20or,in%20respect%20of%20recruitment%2C%20training%2C)

10 CEDEP, CHRR (2015) ‘Abuse, discrimination and violence on the basis of sexual orientation and gender identity in Malawi.

- Disseminate messages and awareness in places of work, schools, colleges and business places on human rights and anti-discrimination for key populations.

2.3 Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

The achievement of SDG 3 is dependent on the full realization of SDG 16 due to the interconnections across discrimination and stigma, unequal application of the rule of law, and poor health and development outcomes. It is therefore important to discuss and find solutions to governance challenges for the 2030 Agenda to be achieved for all people, especially LGBTI people and other marginalized populations. Promoting and protecting human rights, as well as ensuring effective rule of law, is essential to the SDG 16 Targets to significantly reduce all forms of violence and end conflict and insecurity.

2.3.1 Target 16.b Promote and enforce non-discriminatory laws and policies for sustainable development

The Constitution of Malawi guarantees rights through provisions of the rights to privacy, freedom of association and the principle of non-discrimination. The Penal Code, on the other hand, fuels discrimination based on sexuality. Section 156, 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.” A new law was added in 2010, Section 137 A, captioned ‘Indecent practices between females’, providing 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’. This addition come at a time when the laws should have been aligning with the constitutional guarantees on freedoms. The Marriage, Divorce and Family Relations Act (Marriage Act) of 2015 limits marriage to “persons of the opposite sex,” ignoring the reality of same-sex relationships. The Act defines all marriages, unions, cohabitation, or customary marriages as being between a man and a woman, codifying State rejection of all same-sex relationships, whether married or not. The Act also specifies that sex/gender is determined at birth, effectively denying the existence of intersex or transgender persons.

Police have arrested people for “practicing same sex relationships” since 2009. The criminalization statues in Section 156 and Section 137A greatly undermine any government efforts to increase LGBTI access to health services, as they will not feel safe to disclose their sexual orientation to providers. Any and all advancements in health programming for key populations are a result of advocacy from LGBTI-led organizations and human rights organizations, such as CEDEP and its partners, national and international.

The political response to the problem of criminalisation has been contradictory. At times, governments have seemed willing to scrap discriminatory legislation, but fear of a backlash, or of appearing to give in to foreign pressure, has made them hesitate or backtrack. As a result, the laws criminalizing same-sex relations remain in the country’ statutes. In 2012, the Ministry of Justice and Constitutional Affairs issued a moratorium on arrests and prosecutions for consensual same-sex acts. In 2016, a high court order suspended the moratorium pending judicial review by the Constitutional Court. However, the review never took place, creating uncertainty on the status of this moratorium¹¹.

Human rights violations in both public and private spaces are common place for LGBTI people in Malawi. Social exclusion (being chased at home by parents/relatives, evicted from rented house, chased away from school), being booed or pointed fingers at in public spaces, being beaten, being ostracized by significant others (family, relatives, parents), being mistreated in hospital settings are some of the experiences that MSM have undergone in Malawi since the first reported case of MSM public engagement in 2009. LGBTQI people continue to face violence and discrimination in almost all aspects of their daily lives.

2.3.2 Target 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms

Physical assault, arbitrary arrests and detention of LGBT people at the hands of the Police have often made headlines in the press and more are unreported. Criminalization laws and routine discrimination and social stigma combine to contribute to a climate of impunity for crimes

11 <https://www.hrw.org/news/2015/12/21/malawi-moratorium-anti-gay-arrests-rea-firmed>

committed against LGBTI people by members of the public. Many abuses against LGBTI persons go unreported because of fear of arrest. A strong and robust protection system for the LGBTI community is therefore needed to ensure they are not left behind.

A look into the lives of transgender sex workers reveals many human rights issues that urgently need addressing, including violence. In Malawi's patriarchal culture, the narrative of transgender people as undesirable and transgender sex workers as disposable is commonplace. Last year, an 18-second video clip of two soldiers holding down and beating a transgender woman at an undisclosed location went viral on social media. In the video, a man in military uniform can be seen lashing the victim with what appears to be a baton stick. Another man joins the officer, slapping and pushing as he orders the victim to lie down flat on her belly to receive further lashes on her buttocks. Even though her assailants were later identified, no one has been arrested for this attack.

In November 2017 Olivia reported that a mob assaulted her friend in Lilongwe market. The police rather arresting the assailants the police arrested her friend because they suspected that she was 'gay'. The arrested friend was detained for a month in Maula Prison¹²

In 2016 the Government, Malawi Human Rights Commission, and national stakeholders drafted a National Human Rights Action Plan that established steps for the realization of human rights for the LGBTI community in Malawi, including timelines for milestones like the review of the laws on sodomy and same-sex relationships as well as providing health care services for LGBTI people. The plan has not been approved to date.

2.3.3 Recommendations on SDG 16

In order for Malawi to truly "leave no one behind" in the implementation of the SDGs, the Government must endeavor to create a safer, enabling environment for LGBTI people. This will require structural change, and reforming and repealing discriminatory laws. To achieve SDG 16, the Government of Malawi should:

- Conduct regular and routine training of law enforcement agents on LGBTI and human rights issues as well as orienting them on the protection of the LGBTI people;

12 Human Rights Watch Interview with Olivia (pseudonym), Lilongwe, May, 2018

- Sensitize the LGBTI community on their rights and channels for reporting acts of violence and discrimination based on sexual orientation.
- Provide training to journalists and media outlets on reporting LGBTI cases.
- There is need to urge government to update and approve the National human rights action plan.
- Ensure that victims of violence based on sexual orientation and gender identity have access to effective and adequate remedy domestically.
- Fight impunity for violence based on sexual orientation and gender identity perpetrated by State and non-State actors.
- Issue clear directives to all police officers instructing them to respect the moratorium pending repeal of the relevant provisions of the Penal Code and end arbitrary arrests and detention of LGBT individuals.
- Repeal sections 153, 154, 156 and 137A of the Penal Code that criminalize adult consensual same sex conduct.
- Establish Human Rights Desks at Police Stations to provide a safe environment for LGBT persons to report police abuses and for complaints to be processed and investigated without delay.

3.0 Conclusion

Given the reality of wide-ranging stigma, discrimination and violence against LGBTI people in Malawi as outlined in this report, it is essential to recognize that community-led and LGBTI-led organizations have played a crucial role in influencing progress towards the achievement of the SDGs for the LGBTI community, particularly with regard to health and well-being and access to justice. Community based drop-in centers have minimized barriers for KPs to access services. While the Government of Malawi espouses the ideal of “leaving no one behind,” it has however presented a contradictory and confusing discourse with regard to LGBTI people: an apparent willingness to scrap discriminatory legislation has often been overshadowed by heavy handed treatment of the LGBTI community at the hands of the law enforcers.

In order to achieve the 2030 Agenda, the Government of Malawi and other non-State actors will need to collaborate in order to reduce stigma and discrimination of key populations so that they are not left behind. Key among this is changing the laws that criminalizes same-sex acts as they seriously impede the realization of the SDGs for LGBTI Malawians, and further leave LGBTI people behind. Data must be disaggregated by sexual orientation, gender identity and expression to minimise challenges in effectively tailoring programs and initiatives to serve LGBTI people. The Government of Malawi should recognize community-based organizations as equals in the development and implementation of the SDGs, and accordingly consult them on all policy issues.

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