

## ADDRESSING TORTURE AGAINST LGBTIQ+ PERSONS IN MALAWI

September 2025

LGBTIQ+ persons in Malawi face pervasive violence – much of it amounting to torture and other ill-treatment – perpetrated by both State officials and non-State actors. This violence is fuelled by discriminatory laws, including the criminalisation of consensual same-sex conduct, and reinforced by systemic stigma and institutional neglect. Despite constitutional guarantees against torture and Malawi’s obligations under the UN Convention against Torture (UNCAT), torture is not criminalised in domestic law, investigations are rare or not adequately conducted, perpetrators enjoy impunity, and victims are denied justice. The upcoming UPR offers an opportunity for States to press Malawi to end this cycle of violence and discrimination.

### KEY RECOMMENDATIONS

1. **Criminalise torture** as a separate criminal offence in accordance with Article 1 of UNCAT.
2. **Prevent and address discriminatory torture** against LGBTIQ+ persons, including by repealing discriminatory laws that fuel or enable this practice, such as the criminalisation of consensual same-sex conduct.
3. Ensure **effective investigations** of allegations of violence against LGBTIQ+ persons, including by establishing an independent investigative body and developing specific guidelines for investigating discriminatory torture.
4. Provide mandatory, ongoing **training on the rights of LGBTIQ+ individuals and anti-torture standards** for law enforcement officials and other State institutions.

### WHY URGENT ACTION IS NEEDED: THE CONTEXT

Patterns of torture and ill-treatment: Documented abuses reveal a systemic pattern of violence against LGBTIQ+ persons based on discrimination on grounds of actual or perceived sexual orientation or gender identity and expression.

Police have stripped transgender women naked to “verify” their gender, beaten transgender men, and subjected lesbian women to sexual violence intended to “correct” their sexual orientation. Gay men perceived as effeminate have been caned or beaten in police custody under the guise of “behavioural correction”. In one case, a transgender woman who reported a violent mob attack to police was denied assistance and insulted by officers – her assault was filmed and posted online, yet no investigation followed.

Victims are frequently denied medical care or police protection, and in some cases are mocked or further abused by officials when they seek help. These practices often amount to discriminatory torture or ill-treatment and create a climate of fear that forces victims into silence.

Criminalisation of same-sex conduct as a driver of violence: Malawi’s Penal Code imposes penalties of up to 14 years’ imprisonment for consensual same-sex relations. In June 2024, the Constitutional Court upheld these provisions, reinforcing a climate of fear. Such criminalisation

does not merely legitimise discrimination — it actively fuels and enables violence against LGBTIQ+ persons by both State officials and non-State actors.

Social stigma and exclusion: Deep-rooted societal stigma, reinforced by cultural norms and, in some cases, religious beliefs, fuels widespread discrimination against LGBTIQ+ persons. This includes the denial of medical care, exclusion from community resources, and harassment by authorities. Civil society organisations working to support LGBTIQ+ persons operate in a hostile environment and face regular threats, limiting their ability to provide essential services and advocacy.

Barriers to justice: Many LGBTIQ+ victims of torture or other forms of violence do not report abuses due to fear of harassment, further abuse, arrest under discriminatory laws, or public exposure. Those who do come forward often face inadequate or biased investigations, with cases rarely resulting in prosecution. When prosecutions occur, discriminatory motives are overlooked, denying victims full recognition of the harm suffered and allowing patterns of violence to persist.

## GAPS IN LEGAL AND POLICY FRAMEWORK

International obligations: Malawi has ratified UNCAT, the African Charter on Human and Peoples' Rights, and other treaties that impose a binding obligation to prohibit and prevent torture. Yet, it has not incorporated torture as a distinct criminal offence into domestic law, leaving a critical gap between its international commitments and national enforcement.

Gaps in accountability: While some Constitutional safeguards against torture exist, the absence of a specific offence of torture in domestic law and an independent body to investigate complaints leaves serious violations unpunished. Perpetrators, especially State officials, rarely face accountability, reinforcing a climate of impunity and enabling further abuses.

Need for a gender perspective: Discriminatory torture against LGBTIQ+ persons is rooted in harmful social norms and stereotypes about gender and sexuality. A gender perspective is essential to expose these discriminatory motives, recognise the heightened harm they cause, and ensure that laws, investigations, and remedies address them directly. Without it, the root causes of such violence remain invisible, and responses risk reinforcing rather than dismantling discrimination.

Policy shortcomings: Malawi lacks an independent body to investigate police misconduct and specific guidelines for investigating discriminatory torture. Training for law enforcement and other State officials on LGBTIQ+ rights is not systematic, leaving many officials ill-equipped to prevent, identify, or respond to such abuses. Public statements from State officials condemning anti-LGBTIQ+ violence are absent, allowing impunity and prejudice to persist.

## CONTACT

For more information, read our shadow UPR submission [here](#) or contact:

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